§194-D. Background investigations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected person" means a person who is:

(1) An applicant for employment with the bureau;

(2) A contractor for the bureau, including the contractor's employees, subcontractors and subcontractors' employees, who provides or is assigned to provide services to the bureau under an identified contract;

(3) A current employee of the bureau; or

(4) An employee or contractor, including the contractor's respective employees, subcontractors and subcontractors' employees, of another state agency, if the assessor determines the employee's or contractor's duties involve access or the substantial possibility of access to federal tax information obtained from the bureau. [PL 2019, c. 607, Pt. D, §2 (AMD).]

B. "Confidential tax information" means any information the inspection or disclosure of which is limited or prohibited by section 191, including federal tax information. [PL 2019, c. 343, Pt. G, §13 (NEW).]

C. "Federal tax information" means a return and return information as defined in the Code, Section 6103(b) that is received directly from the United States Internal Revenue Service or obtained through a United States Internal Revenue Service-authorized secondary source and that is subject to the confidentiality protections and safeguarding requirements of the United States Internal Revenue Code and corresponding federal regulations and guidance. "Federal return information" does not include information in the possession of the State that is obtained from sources wholly independent from the United States Internal Revenue Service. [PL 2019, c. 343, Pt. G, §13 (NEW).]

D. "Identified contract" means a contract that the assessor determines involves access or the substantial possibility of access to the bureau's information technology systems or to confidential tax information. [PL 2019, c. 607, Pt. D, §3 (NEW).]

[PL 2019, c. 607, Pt. D, §§2, 3 (AMD).]

2. Background investigation requirements. The assessor shall perform background investigations for affected persons in accordance with this subsection.

A. As part of the process of evaluating an affected person, except for a current employee of the bureau, for employment with the bureau, a background investigation must be conducted before an offer of employment is extended. [PL 2019, c. 607, Pt. D, §4 (AMD).]

B. A background investigation for an affected person assigned to provide services to the bureau under an identified contract must be conducted before that affected person begins providing services to the bureau, and at least once every 5 years, as long as the affected person continues providing services to the bureau. [PL 2023, c. 613, Pt. D, §1 (AMD).]

C. As part of the process of evaluating an affected person for continued employment with the bureau, a background investigation must be conducted at least once every 5 years. [PL 2023, c. 613, Pt. D, §1 (AMD).]

D. A background investigation for an employee or contractor of another state agency must be conducted before that affected person is provided access, or the substantial possibility of access, to federal tax information obtained from the bureau, and at least once every 5 years, as long as the affected person continues to have such access. However, if the assessor determines that the affected person has been subject to a background investigation that satisfies the background investigation

standards established by the United States Internal Revenue Service regarding access to federal tax information within the past 5 years, no further investigation is required under this subsection for the 5-year period commencing at the time of the background investigation. [PL 2023, c. 613, Pt. D, §1 (AMD).]

The background investigation must include fingerprinting and obtaining national criminal history record information from the Federal Bureau of Investigation and must satisfy the background investigation standards established by the United States Internal Revenue Service regarding access to federal tax information.
[PL 2023, c. 613, Pt. D, §1 (AMD).]

3. Fingerprinting. An affected person must consent to having fingerprints taken for use in background investigations in accordance with this section. The State Police shall take or cause to be taken the affected person's fingerprints and shall forward the fingerprints to the Department of Public Safety, Bureau of State Police, State Bureau of Identification so that the State Bureau of Identification can conduct state and national criminal history record checks for the bureau. The State Police may charge the bureau for the expenses incurred in processing state and national criminal history record checks. The full fee charged under this subsection must be deposited in a dedicated revenue account for the State Bureau of Identification with the purpose of paying costs associated with the maintenance and replacement of the criminal history record systems.
[PL 2019, c. 343, Pt. G, §13 (NEW).]

4. Confidentiality. All information obtained by the assessor pursuant to this section is confidential and not a public record as defined in Title 1, section 402, subsection 3. The information must only be used for making decisions regarding the suitability of an affected person for new or continued employment with the bureau, to provide services to the bureau under an identified contract or to access federal tax information obtained from the bureau.
[PL 2019, c. 343, Pt. G, §13 (NEW).]

5. Affected person's access to criminal history record information. The bureau shall provide an affected person with access to information obtained pursuant to this section, if requested, by providing a paper copy of the criminal history record information directly to the affected person, but only after the bureau confirms that the affected person is the subject of the record. In addition, the bureau shall publish guidance on requesting such information from the Federal Bureau of Investigation.
[PL 2019, c. 343, Pt. G, §13 (NEW).]

6. Disqualifying offenses; refusal to consent. The assessor shall review the information obtained under this section and determine whether an affected person has a disqualifying offense that would prohibit authorizing that individual from accessing confidential tax information or federal tax information. If an affected person refuses to consent to the background investigation requirements under this section, that affected person is considered to have a disqualifying offense. If the affected person has a disqualifying offense:

A. The bureau may not employ or utilize that affected person in a position for which access to confidential tax information is required; [PL 2019, c. 343, Pt. G, §13 (NEW).]

B. If the affected person is an employee of the bureau or is assigned to provide services to the bureau under an identified contract and the assessor has authorized the affected person to access confidential tax information, the bureau shall terminate that affected person's access and may remove that affected person from any position that involves access, or the substantial possibility of access, to confidential tax information. If the affected person is an employee of the bureau, the bureau shall make a reasonable effort to retain that person as an employee in another position within the bureau that does not require access to confidential tax information; and [PL 2019, c. 343, Pt. G, §13 (NEW).]

C. If the affected person is an employee or contractor of another state agency, the assessor shall notify the other agency and the agency shall terminate the affected person's access, or substantial possibility of access, to federal tax information and may remove that affected person from any position that involves such access. If the affected person is an employee of the agency, the agency shall make a reasonable effort to retain that person as an employee in another position that does not require access to federal tax information. [PL 2019, c. 343, Pt. G, §13 (NEW).]

[PL 2019, c. 343, Pt. G, §13 (NEW).]

SECTION HISTORY

PL 2019, c. 343, Pt. G, §13 (NEW). PL 2019, c. 607, Pt. D, §§2-4 (AMD). PL 2023, c. 613, Pt. D, §1 (AMD).

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