

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 1931

H.P. 1375

House of Representatives, January 8, 2020

**An Act To Require Background Investigations for Certain
Individuals To Receive Federal Tax Information in Accordance with
Federal Standards**

(EMERGENCY)

Submitted by the Department of Labor pursuant to Joint Rule 203.
Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SYLVESTER of Portland.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the Department of Labor is currently under a security compliance audit by
4 the United States Internal Revenue Service; and

5 **Whereas,** loss of access to federal tax information by the department could cause
6 irreparable damage to the enforcement efforts of the department; and

7 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
8 the meaning of the Constitution of Maine and require the following legislation as
9 immediately necessary for the preservation of the public peace, health and safety; now,
10 therefore,

11 **Be it enacted by the People of the State of Maine as follows:**

12 **Sec. 1. 25 MRSA §1542-A, sub-§1, ¶U** is enacted to read:

13 U. Who is an affected person, as defined in Title 26, section 1085, subsection 1,
14 paragraph A, whose fingerprints have been required by the department pursuant to
15 Title 26, section 1085.

16 **Sec. 2. 25 MRSA §1542-A, sub-§3, ¶T** is enacted to read:

17 T. The State Police shall take or cause to be taken the fingerprints of the person
18 named in subsection 1, paragraph U at the request of that person and upon payment
19 of the expenses by the Department of Labor, Bureau of Unemployment
20 Compensation as specified under Title 26, section 1085, subsection 3.

21 **Sec. 3. 25 MRSA §1542-A, sub-§4-A** is enacted to read:

22 **4-A. Duty to submit fingerprints to State Bureau of Identification; affected**
23 **persons under Title 26, section 1085. Fingerprints taken pursuant to subsection 1,**
24 **paragraph U must be transmitted immediately to the State Bureau of Identification to**
25 **enable the bureau to conduct state and national criminal history record checks for the**
26 **Department of Labor.**

27 **Sec. 4. 26 MRSA §1085** is enacted to read:

28 **§1085. Access to federal tax information; background investigation requirements**

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

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

32 (1) An applicant for employment with the bureau who will have access to federal
33 tax information as part of that employment;

34 (2) A contractor for the bureau who provides or is assigned to provide services to
35 the bureau under an identified contract. For the purposes of this subparagraph,

1 "identified contract" means a contract that the Director of Unemployment
2 Compensation determines involves access, or the substantial possibility of access,
3 to the bureau's information technology systems that contain federal tax
4 information;

5 (3) An employee of the bureau who has or will be given access to federal tax
6 information as part of that employee's employment with the bureau and has not
7 undergone a federal background investigation within the past 10 years; or

8 (4) An employee or contractor of another state agency, if the bureau determines
9 the duties of that employee or contractor involve access or the substantial
10 possibility of access through the bureau to federal tax information obtained from
11 the United States Internal Revenue Service or the Department of Administrative
12 and Financial Services, Bureau of Revenue Services.

13 B. "Contractor" includes a contractor's employees and subcontractors and employees
14 of those subcontractors.

15 C. "Federal tax information" means returns and return information as defined in the
16 United States Internal Revenue Code of 1986, Section 6103(b) that are received
17 directly from the United States Internal Revenue Service or obtained through a
18 secondary source authorized by the Internal Revenue Service and that are subject to
19 the confidentiality protections and safeguarding requirements of the United States
20 Internal Revenue Code of 1986 and corresponding federal regulations and guidance.
21 "Federal tax information" also includes information received as part of the treasury
22 offset program under the authority of the United States Internal Revenue Code of
23 1986, Section 6103(l)(10) from the United States Department of the Treasury, Bureau
24 of the Fiscal Service. "Federal tax information" does not include information in the
25 possession of the State that is obtained by means wholly from sources independent
26 from the Internal Revenue Service.

27 **2. Federal background investigation requirements.** The Bureau of
28 Unemployment Compensation shall perform background investigations for affected
29 persons in accordance with this subsection. A federal background investigation
30 conducted pursuant to this subsection must include fingerprinting and obtaining national
31 criminal history record information from the Federal Bureau of Investigation and must
32 satisfy the background investigation standards established by the United States Internal
33 Revenue Service regarding access to federal tax information.

34 A. As part of the process of evaluating an affected person for employment with the
35 bureau involving access to federal tax information, a federal background
36 investigation must be conducted before an offer of employment is extended.

37 B. A federal background investigation for an affected person assigned to provide
38 services to the bureau under an identified contract must be conducted before that
39 affected person begins providing services to the bureau and at least once every 10
40 years as long as the affected person continues providing services to the bureau.

41 C. As part of the process of evaluating an affected person for continued employment
42 with the bureau, a federal background investigation must be conducted at least once
43 every 10 years. If an affected person has not been subject to a federal background

1 investigation within 10 years prior to the effective date of this section, a federal
2 background investigation must be conducted within one year of the effective date of
3 this section.

4 D. A federal background investigation for an affected person who is an employee or
5 contractor of another state agency must be conducted before that affected person is
6 provided access, or the substantial possibility of access, to federal tax information
7 obtained from the bureau and at least once every 10 years as long as the affected
8 person continues to have such access, except that, if the bureau determines that the
9 affected person has been subject to a background investigation that satisfies the
10 background investigation standards established by the United States Internal Revenue
11 Service regarding access to federal tax information within the past 10 years, no
12 further investigations are required under this paragraph for the 10-year period
13 commencing at the time of the federal background investigation.

14 **3. Fingerprinting.** An affected person must consent to having fingerprints taken for
15 use in background investigations in accordance with this subsection. The State Police
16 shall take or cause to be taken the affected person's fingerprints and shall forward the
17 fingerprints to the Department of Public Safety, State Bureau of Identification so that the
18 State Bureau of Identification can conduct state and national criminal history record
19 checks for the Bureau of Unemployment Compensation. The State Police may charge the
20 Bureau of Unemployment Compensation for the expenses incurred in processing state
21 and national criminal history record checks. The full fee charged under this subsection
22 must be deposited in a dedicated revenue account for the State Bureau of Identification
23 with the purpose of paying costs associated with the maintenance and replacement of the
24 criminal history record systems.

25 **4. Confidentiality.** All information obtained by the bureau pursuant to this section
26 is confidential and not a public record as defined in Title 1, section 402, subsection 3.
27 The information may be used only for making decisions regarding the suitability of an
28 affected person for new or continued employment with the bureau, to provide services to
29 the bureau under an identified contract or to access federal tax information obtained from
30 the bureau.

31 **5. Affected person's access to criminal history record information.** The bureau
32 shall provide an affected person with access to information obtained pursuant to this
33 section, if requested, by providing a paper copy of the criminal history record information
34 directly to the affected person, but only after the bureau confirms that the affected person
35 is the subject of the record. In addition, the bureau shall publish guidance on requesting
36 such information from the Federal Bureau of Investigation.

37 **6. Disqualifying offenses; refusal to consent.** The Director of Unemployment
38 Compensation shall review the information obtained under this section and determine
39 whether an affected person has a disqualifying offense that would prohibit authorizing
40 that individual to access federal tax information. Refusal by the affected person to
41 consent to the background investigation requirements under this section is deemed a
42 disqualifying offense.

43 The following applies to an affected person who has a disqualifying offense:

1 A. The bureau may not employ or utilize that affected person in a position for which
2 access to federal tax information is required;

3 B. If the affected person is an employee of the bureau or is assigned to provide
4 services to the bureau under an identified contract and the director of the bureau has
5 authorized the affected person to access federal tax information, the bureau shall
6 terminate that affected person's access and may remove that affected person from any
7 position that involves access, or the substantial possibility of access, to federal tax
8 information. If the affected person is an employee of the bureau, the bureau shall
9 make a reasonable effort to retain that person as an employee in another position
10 within the bureau that does not require access to federal tax information; and

11 C. If the affected person is an employee or contractor of another state agency, the
12 bureau shall notify the other agency and the agency shall terminate the affected
13 person's access, or substantial possibility of access, to federal tax information and
14 may remove that affected person from any position that involves such access. If the
15 affected person is an employee of the other agency, the agency shall make a
16 reasonable effort to retain that person as an employee in another position that does
17 not require access to federal tax information.

18 **Emergency clause.** In view of the emergency cited in the preamble, this
19 legislation takes effect when approved.

20 **SUMMARY**

21 This bill implements background investigations for certain individuals with a
22 business need to receive federal tax information, in order to meet United States Internal
23 Revenue Service standards.