

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

SECOND SPECIAL SESSION
June 19, 2018 to September 13, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 13, 2018

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2018 to June 20, 2019

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2019

CHAPTER 402
H.P. 1282 - L.D. 1801

**An Act To Ensure Compliance
with Federal Requirements for
Background Checks of Certain
Department of Health and
Human Services Employees**

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

Sec. 1. 19-A MRSA §2111 is enacted to read:

§2111. Criminal history record checks for Department of Health and Human Services employees, applicants for employment, contractors and subcontractors

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

A. "Federal Bureau of Investigation" means the United States Department of Justice, Federal Bureau of Investigation.

B. "State Police" means the Department of Public Safety, Bureau of State Police.

2. Criminal history; information about criminal records and data obtained. The department shall obtain, in print or electronic format, criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8, from the Maine Criminal Justice Information System, established pursuant to Title 16, section 631, and the Federal Bureau of Investigation, for any person employed by the department, who may be offered employment by the department or who is employed by or may be offered employment by a department contractor or subcontractor in order to comply with the United States Internal Revenue Service's tax information security guidelines for federal, state and local agencies.

3. Fingerprint-based criminal history obtained. A person employed by the department or a person who is employed by a department contractor or subcontractor shall consent to and have the person's fingerprints taken. A person who may be offered employment by the department or by a department contractor or subcontractor shall consent to and have the person's fingerprints taken prior to being employed by the department or by a department contractor or subcontractor. The State Police shall take or cause to be taken the fingerprints of a person who has consented under this subsection and shall forward the fingerprints to the Department of Public Safety so that the Department of Public Safety may conduct a state and national criminal history record check on the person.

The Department of Public Safety shall forward the results obtained to the department. The fee charged to the department by the State Police must be consistent with the fee charged to executive branch agencies receiving similar services. Except for the portion of the payment that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police under this subsection must be paid to the Treasurer of State, who shall apply the money to the expenses of administration of this section by the Department of Public Safety.

4. Updates to information. The department may request a subsequent criminal history record check under subsection 3 on an employee, a person who has been offered employment by the department, an employee of a department contractor or subcontractor or a person who has been offered employment by a department contractor or subcontractor as the department determines appropriate, including continuous notifications of updated criminal history record information if a service providing notifications of updated criminal history record information becomes available.

5. Confidentiality. Information obtained pursuant to this section is confidential and may not be disseminated for purposes other than as provided in subsections 6 and 7.

6. Use of information obtained. Criminal history record information obtained pursuant to this section may be used by the department for employment purposes to screen an employee, a person who may be offered employment by the department, an employee of a department contractor or subcontractor or a person who may be offered employment by a department contractor or subcontractor. The subject of any criminal history record check under subsection 3 may contest any negative decision made by the department based upon the information received pursuant to the criminal history record check.

7. Person's access to information obtained. A person subject to a criminal history record check pursuant to subsection 3 must be notified each time a criminal history record check is performed on the person. A person subject to a criminal history record check under subsection 3 may inspect and review the criminal history record information pursuant to Title 16, section 709 and obtain federal information obtained pursuant to the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.

8. Right of subject to remove fingerprints from record. Upon request from a person subject to a criminal history record check pursuant to subsection 3, the Department of Public Safety shall remove the person's fingerprints from the Department of Public Safety's records and provide written confirmation of the removal to the person.

Sec. 2. 25 MRSA §1542-A, sub-§1, ¶P, as enacted by PL 2017, c. 452, §25 and c. 457, §13, is repealed and the following enacted in its place:

P. Who is licensed under Title 32, chapter 36 and has applied for an expedited license under Title 32, section 18506;

Sec. 3. 25 MRSA §1542-A, sub-§1, ¶¶Q and R, as enacted by PL 2017, c. 457, §13, are amended to read:

Q. Who is an applicant for licensure with the State Board of Nursing as required under Title 32, section 2111, subsection 1; or

R. Who is required to have a criminal background check under Title 22, section 8302-A or 8302-B;

Sec. 4. 25 MRSA §1542-A, sub-§1, ¶¶S and T are enacted to read:

S. Who is required to have a criminal history record check under Title 22, section 2425-A, subsection 3-A; or

T. Who is required to have a criminal history record check under Title 19-A, section 2111.

Sec. 5. 25 MRSA §1542-A, sub-§3, ¶O, as enacted by PL 2017, c. 452, §26 and c. 457, §15, is repealed and the following enacted in its place:

O. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph P at the request of that person and upon payment of the expenses by that person as required by Title 32, section 2571-A.

Sec. 6. 25 MRSA §1542-A, sub-§3, ¶¶R and S are enacted to read:

R. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph S at the request of that person or the Department of Administrative and Financial Services under Title 22, section 2425-A, subsection 3-A.

S. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph T at the request of that person or the Department of Health and Human Services pursuant to Title 19-A, section 2111.

Sec. 7. 25 MRSA §1542-A, sub-§4, as amended by PL 2017, c. 452, §27 and c. 457, §16, is repealed and the following enacted in its place:

4. Duty to submit to State Bureau of Identification. It is the duty of the law enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B and G to transmit immediately to the State Bureau of Identification the criminal fingerprint record. Fingerprints taken pursuant to subsection 1,

paragraph C, D, E or F or pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless an express request is made by the commanding officer of the State Bureau of Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Education. The bureau may not use the fingerprints for any purpose other than that provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints, except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the court and the Department of Public Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection 1, paragraph J, K, L or S must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Administrative and Financial Services. Fingerprints taken pursuant to subsection 1, paragraph P must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Osteopathic Licensure, established in Title 32, chapter 36. Fingerprints taken pursuant to subsection 1, paragraph N must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Licensure in Medicine, established in Title 32, chapter 48. Fingerprints taken pursuant to subsection 1, paragraph Q must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the State Board of Nursing, established in Title 32, chapter 31. Fingerprints taken pursuant to subsection 1, paragraph O must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks under Title 28-B, section 204. Fingerprints taken pursuant to subsection 1, paragraph R or T must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Health and Human Services.

See title page for effective date.