HOUSE AMENDED

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 613 Session of 2019

INTRODUCED BY MENSCH, APRIL 30, 2019

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 14, 2020

AN ACT

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; providing for judicial administration; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," in administrative organization, repealing provisions relating to employees with access to Federal tax information and ~~providing for~~ REENACTING PROVISIONS RELATING TO criminal history background checks of employees and contractors with access to Federal tax information; AND PROVIDING FOR COVID-19 EMERGENCY MITIGATION PLAN FOR BUSINESSES. <-- <--

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 225 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed:

[Section 225. Employes with Access to Federal Tax Information.--(a) As required under any Federal law, regulation or published guidance from the Internal Revenue Service, an employe or prospective employe whose duties and responsibilities require or will require access to Federal tax information shall submit all of the following to the employe's or prospective employe's employer:

(1) A report of Federal criminal history record information.

(2) A report of criminal history record information from the Pennsylvania State Police as provided under 18 Pa.C.S. Ch. 91 (relating to criminal history record information) or a statement from the Pennsylvania State Police that the Pennsylvania State Police central repository contains no information relating to the individual. The criminal history record information shall be limited to that which is disseminated under 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).

(3) Validation of the employe's or prospective employe's eligibility to legally work in the United States.

(b) For the purpose of complying with subsection (a)(1), an employe or prospective employe shall provide fingerprints to the Pennsylvania State Police, its agent or an agent approved for fingerprinting by the Federal Government. The fingerprints may be used by the Pennsylvania State Police to conduct a criminal background check and shall be forwarded to the Federal Bureau of Investigation for a national criminal background check.

(c) (1) Except as provided under paragraph (2), information relating to an employe or prospective employe submitted to or obtained by an employer or prospective employer under this section shall be interpreted and used only to determine the employe's or prospective employe's character, fitness and suitability to access Federal tax information.

(2) An employer may utilize information obtained under this section for employment decisions, including hiring of an applicant, promotion of a current employe or disciplinary action against an employe regarding a position that requires access to Federal tax information.

(3) An employer may receive and retain information consistent with this section that is otherwise protected under 18 Pa.C.S. Ch. 91, subject to any requirements related to redaction as specified in 18 Pa.C.S. § 9121(b)(2).

(d) An individual who has been cleared to access Federal tax information under this section shall reapply for clearance under subsections (a) and (b) within ten years of the issuance of the prior clearance unless the employer participates in a program exempting employes from clearance.

(e) A Commonwealth agency receiving Federal tax information that transfers the Federal tax information to any other entity except as it involves a Federal or State court or the Board of Finance and Revenue as part of a legal proceeding before the same may audit that entity to determine compliance with this section.

(f) The Department of Revenue shall publish guidelines to implement this section.

(g) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Employer." Any Commonwealth agency, office, department, authority, board, multistate agency or commission of the executive branch, an independent agency or State-affiliated entity, political subdivision or a contractor thereof, receiving Federal tax information, even though the Federal tax information may be forwarded to another Commonwealth agency, political subdivision or contractor, from any of the following:

(1) The Internal Revenue Service.

(2) The Social Security Administration.

(3) Under section 6103 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6103).

(4) By exchange agreement approved by the Internal Revenue Service.

(5) Any other secondary source.

"Federal tax information." Includes any "return" or "return information" as defined in section 6103 of the Internal Revenue Code of 1986.]

~~Section 2. The act is amended by adding a section to read:~~ <--

~~Section 226. Criminal History Background Checks of Employes and Contractors with Access to Federal Tax Information.--(a) An agency shall require any current or prospective employe or contractor whose duties and responsibilities require, or will require, access to Federal tax information to submit to a criminal history background check to be conducted by the Pennsylvania State Police. A current or prospective employe or contractor shall submit fingerprints and other identifying information to the Pennsylvania State Police. An individual who refuses to comply with this subsection will not be considered suitable to access Federal tax information for purposes of subsection (c).~~

~~(b) When a criminal history background check is requested under subsection (a), the Pennsylvania State Police, or its designee, shall do all of the following:~~

~~(1) Provide the agency with a report of the individual's criminal history record information as defined by 18 Pa.C.S. § 9102 (relating to definitions) or a statement that the Pennsylvania State Police central repository contains no information relating to the individual. The criminal history record information shall be limited to that which is disseminated under 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).~~

~~(2) Submit the individual's fingerprints to the Federal Bureau of Investigation for a national criminal history records check.~~

~~(3) Provide the agency with the national criminal history record information of the individual. The information provided under this subsection may not be limited by 18 Pa.C.S. § 9121(b)(2).~~

~~(c) Information relating to a current or prospective employe or contractor submitted to or obtained by an agency under this section shall be interpreted and used only to determine the individual's character, fitness and suitability to access Federal tax information. If an agency determines an individual is not suitable to access Federal tax information, the agency shall take appropriate action, including:~~

~~(1) declining to hire or utilize the services of the individual;~~

~~(2) transferring the individual to a position that does not require access to Federal tax information; or~~

~~(3) terminating the individual's employment.~~

~~(d) An agency may receive and retain information consistent with this section that is otherwise protected under 18 Pa.C.S. Ch. 91 (relating to criminal history record information),~~

~~subject to any requirements related to redaction as specified in 18 Pa.C.S. § 9121(b)(2) with respect to information described in subsection (b)(1). All information received and retained by an agency in accordance with this section shall be marked as confidential and shall be excluded from any requirement of public disclosure as a public record.~~

~~(e) An individual who has been determined suitable to access Federal tax information under this section shall resubmit to a criminal history background check under subsections (a) and (b) within ten years of the individual's last check under this section, unless the agency participates in a program exempting employes from clearance.~~

~~(f) An agency receiving Federal tax information that transfers the Federal tax information to any other entity except as it involves a Federal or State court or the Board of Finance and Revenue as part of a legal proceeding before the same may audit that entity to determine compliance with this section.~~

~~(g) The Department of Revenue may publish guidelines to implement this section.~~

~~(h) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:~~

~~"Agency." A Commonwealth agency, office, department, authority, board or commission of the executive branch or a political subdivision receiving Federal tax information, even though the Federal tax information may be forwarded to the agency from or through any of the following:~~

~~(1) The Internal Revenue Service.~~

~~(2) The Social Security Administration.~~

~~(3) A permitted disclosure under section 6103 of the~~

~~Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6103).~~

~~(4) By exchange agreement approved by the Internal Revenue Service.~~

~~(5) Any other secondary source.~~

~~"Contractor." An individual who is not an employe of an agency and performs work functions for an agency under the terms of a written agreement, regardless of whether the written agreement is directly with the agency or a third party.~~

~~"Federal tax information." Includes any "return" or "return information" as defined in section 6103 of the Internal Revenue Code of 1986.~~

~~Section 3. This act shall take effect in 60 days.~~

SECTION 2. SECTION 226 OF THE ACT, ADDED JUNE 28, 2019 (P.L.101, NO.15), IS REENACTED TO READ: <--

SECTION 226. CRIMINAL HISTORY BACKGROUND CHECKS OF EMPLOYES AND CONTRACTORS WITH ACCESS TO FEDERAL TAX INFORMATION.--(A) AN AGENCY SHALL REQUIRE ANY CURRENT OR PROSPECTIVE EMPLOYE OR CONTRACTOR WHOSE DUTIES AND RESPONSIBILITIES REQUIRE, OR WILL REQUIRE, ACCESS TO FEDERAL TAX INFORMATION TO SUBMIT TO A CRIMINAL HISTORY BACKGROUND CHECK TO BE CONDUCTED BY THE PENNSYLVANIA STATE POLICE. A CURRENT OR PROSPECTIVE EMPLOYE OR CONTRACTOR SHALL SUBMIT FINGERPRINTS AND OTHER IDENTIFYING INFORMATION TO THE PENNSYLVANIA STATE POLICE. AN INDIVIDUAL WHO REFUSES TO COMPLY WITH THIS SUBSECTION WILL NOT BE CONSIDERED SUITABLE TO ACCESS FEDERAL TAX INFORMATION FOR PURPOSES OF SUBSECTION (C).

(B) WHEN A CRIMINAL HISTORY BACKGROUND CHECK IS REQUESTED UNDER SUBSECTION (A), THE PENNSYLVANIA STATE POLICE, OR ITS DESIGNEE, SHALL DO ALL OF THE FOLLOWING:

(1) PROVIDE THE AGENCY WITH A REPORT OF THE INDIVIDUAL'S CRIMINAL HISTORY RECORD INFORMATION AS DEFINED BY 18 PA.C.S. § 9102 (RELATING TO DEFINITIONS) OR A STATEMENT THAT THE PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY CONTAINS NO INFORMATION RELATING TO THE INDIVIDUAL. THE CRIMINAL HISTORY RECORD INFORMATION SHALL BE LIMITED TO THAT WHICH IS DISSEMINATED UNDER 18 PA.C.S. § 9121(B)(2) (RELATING TO GENERAL REGULATIONS).

(2) SUBMIT THE INDIVIDUAL'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.

(3) PROVIDE THE AGENCY WITH THE NATIONAL CRIMINAL HISTORY RECORD INFORMATION OF THE INDIVIDUAL. THE INFORMATION PROVIDED UNDER THIS SUBSECTION MAY NOT BE LIMITED BY 18 PA.C.S. § 9121(B)(2).

(C) INFORMATION RELATING TO A CURRENT OR PROSPECTIVE EMPLOYE OR CONTRACTOR SUBMITTED TO OR OBTAINED BY AN AGENCY UNDER THIS SECTION SHALL BE INTERPRETED AND USED ONLY TO DETERMINE THE INDIVIDUAL'S CHARACTER, FITNESS AND SUITABILITY TO ACCESS FEDERAL TAX INFORMATION. IF AN AGENCY DETERMINES AN INDIVIDUAL IS NOT SUITABLE TO ACCESS FEDERAL TAX INFORMATION, THE AGENCY SHALL TAKE APPROPRIATE ACTION, INCLUDING:

(1) DECLINING TO HIRE OR UTILIZE THE SERVICES OF THE INDIVIDUAL;

(2) TRANSFERRING THE INDIVIDUAL TO A POSITION THAT DOES NOT REQUIRE ACCESS TO FEDERAL TAX INFORMATION; OR

(3) TERMINATING THE INDIVIDUAL'S EMPLOYMENT.

(D) AN AGENCY MAY RECEIVE AND RETAIN INFORMATION CONSISTENT WITH THIS SECTION THAT IS OTHERWISE PROTECTED UNDER 18 PA.C.S. CH. 91 (RELATING TO CRIMINAL HISTORY RECORD INFORMATION),

SUBJECT TO ANY REQUIREMENTS RELATED TO REDACTION AS SPECIFIED IN 18 PA.C.S. § 9121(B)(2) WITH RESPECT TO INFORMATION DESCRIBED IN SUBSECTION (B)(1). ALL INFORMATION RECEIVED AND RETAINED BY AN AGENCY IN ACCORDANCE WITH THIS SECTION SHALL BE MARKED AS CONFIDENTIAL AND SHALL BE EXCLUDED FROM ANY REQUIREMENT OF PUBLIC DISCLOSURE AS A PUBLIC RECORD.

(E) AN INDIVIDUAL WHO HAS BEEN DETERMINED SUITABLE TO ACCESS FEDERAL TAX INFORMATION UNDER THIS SECTION SHALL RESUBMIT TO A CRIMINAL HISTORY BACKGROUND CHECK UNDER SUBSECTIONS (A) AND (B) WITHIN TEN YEARS OF THE INDIVIDUAL'S LAST CHECK UNDER THIS SECTION, UNLESS THE AGENCY PARTICIPATES IN A PROGRAM EXEMPTING EMPLOYES FROM CLEARANCE.

(F) AN AGENCY RECEIVING FEDERAL TAX INFORMATION THAT TRANSFERS THE FEDERAL TAX INFORMATION TO ANY OTHER ENTITY EXCEPT AS IT INVOLVES A FEDERAL OR STATE COURT OR THE BOARD OF FINANCE AND REVENUE AS PART OF A LEGAL PROCEEDING BEFORE THE SAME MAY AUDIT THAT ENTITY TO DETERMINE COMPLIANCE WITH THIS SECTION.

(G) THE DEPARTMENT OF REVENUE MAY PUBLISH GUIDELINES TO IMPLEMENT THIS SECTION.

(H) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"AGENCY." A COMMONWEALTH AGENCY, OFFICE, DEPARTMENT, AUTHORITY, BOARD OR COMMISSION OF THE EXECUTIVE BRANCH OR A POLITICAL SUBDIVISION RECEIVING FEDERAL TAX INFORMATION, EVEN THOUGH THE FEDERAL TAX INFORMATION MAY BE FORWARDED TO THE AGENCY FROM OR THROUGH ANY OF THE FOLLOWING:

(1) THE INTERNAL REVENUE SERVICE.

(2) THE SOCIAL SECURITY ADMINISTRATION.

(3) A PERMITTED DISCLOSURE UNDER SECTION 6103 OF THE

INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 6103).

(4) BY EXCHANGE AGREEMENT APPROVED BY THE INTERNAL REVENUE SERVICE.

(5) ANY OTHER SECONDARY SOURCE.

"CONTRACTOR." AN INDIVIDUAL WHO IS NOT AN EMPLOYE OF AN AGENCY AND PERFORMS WORK FUNCTIONS FOR AN AGENCY UNDER THE TERMS OF A WRITTEN AGREEMENT, REGARDLESS OF WHETHER THE WRITTEN AGREEMENT IS DIRECTLY WITH THE AGENCY OR A THIRD PARTY.

"FEDERAL TAX INFORMATION." INCLUDES ANY "RETURN" OR "RETURN INFORMATION" AS DEFINED IN SECTION 6103 OF THE INTERNAL REVENUE CODE OF 1986.

SECTION 3. THE ACT IS AMENDED BY ADDING AN ARTICLE TO READ:

ARTICLE XXI-C

COVID-19 EMERGENCY MITIGATION PLAN FOR BUSINESSES

SECTION 2101-C. COVID-19 EMERGENCY MITIGATION PLAN FOR BUSINESSES.

(A) GENERAL RULE.--NOTWITHSTANDING 35 PA.C.S. PART V (RELATING TO EMERGENCY MANAGEMENT SERVICES), THE GOVERNOR SHALL DEVELOP AND IMPLEMENT A PLAN TO MITIGATE THE SPREAD OF COVID-19 FOR BUSINESSES IN THIS COMMONWEALTH PURSUANT TO SUBSECTION (B). THE PLAN SHALL BE PUBLISHED ON THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE WITHIN SEVEN DAYS OF THE EFFECTIVE DATE OF THIS SECTION.

(B) MITIGATION PLAN FOR BUSINESS AND INDUSTRY.--THE PLAN UNDER SUBSECTION (A) SHALL BE DEVELOPED USING RECOMMENDED GUIDANCE FOR MITIGATING EXPOSURE TO COVID-19 FROM THE CENTERS FOR DISEASE CONTROL AND PREVENTION AND SHALL CONFORM TO THE MARCH 28, 2020, ADVISORY MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19

RESPONSE, AS PUBLISHED BY THE UNITED STATES CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY (CISA).

(C) COMPLIANCE.--A BUSINESS THAT COMPLIES WITH THE REQUIREMENTS OF THE MITIGATION PLAN DEVELOPED UNDER SUBSECTION (B) MAY OPERATE IN THIS COMMONWEALTH.

(D) DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SECTION SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"BUSINESS." ANY BUSINESS, INDUSTRY OR TRADE OPERATING WITH A PHYSICAL LOCATION IN THIS COMMONWEALTH, REGARDLESS OF WHETHER THAT PHYSICAL LOCATION IS OPEN TO THE PUBLIC.

"COVID-19." THE NOVEL CORONAVIRUS, OTHERWISE KNOWN AS COVID-19.

SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

(1) THE ~~ADDITION OF ARTICLE XXI-C OF~~ AMENDMENT OR REENACTMENT OF SECTIONS 225 AND 226 OF THE ACT SHALL TAKE EFFECT ~~IMMEDIATELY~~ IN 60 DAYS. <-- <--

(2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT ~~IN 60 DAYS~~ IMMEDIATELY. <-- <--