

**SUBSTITUTE FOR
HOUSE BILL NO. 5254**

A bill to require the fingerprinting of certain public employees for the purpose of receiving criminal history record information from the department of state police and the Federal Bureau of Investigation; to provide for the powers and duties of certain state and local governmental officers and entities; to provide for the collection of fees; and to prohibit the release of certain information and prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "public employee fingerprint-based criminal history check act".

3 Sec. 2. As used in this act:

4 (a) "Agency" means a department of this state or a local
5 department or agency, including public departments or agencies in a
6 county, city, village, or township that in the course of conducting

1 its business has or maintains access to federal information
2 databases.

3 (b) "Employee" means an individual employed by this state, an
4 individual working for a private business entity under contract
5 with this state, an individual working for a private business
6 entity under contract with a county, city, village, or township, or
7 an individual who is employed by a county, city, village, or
8 township.

9 (c) "Federal information database" means a database of
10 information maintained by the federal government that contains
11 confidential or personal information, including, but not limited
12 to, federal tax information.

13 (d) "Publication 1075" means Internal Revenue Service
14 Regulation Publication 1075 of September 2016.

15 (e) "Federal tax information" means any information created by
16 the recipient that is derived from federal return or return
17 information received from the Internal Revenue Service or obtained
18 through a secondary source such as the Social Security
19 Administration, Federal Office of Child Support Enforcement, Bureau
20 of the Fiscal Service, or Centers for Medicare and Medicaid
21 Services, or another entity acting on behalf of the Internal
22 Revenue Service pursuant to an agreement under section 6103 of the
23 internal revenue code, 26 USC 6103.

24 (f) "Return" means any tax or information return, estimated
25 tax declaration, or refund claim, and includes amendments,
26 supplements, supporting schedules, attachments, or lists required
27 by or permitted under the internal revenue code and filed with the

1 Internal Revenue Service by, on behalf of, or with respect to any
2 person or entity. Examples of returns include forms filed on paper
3 or electronically, such as forms 1040, 941, and 1120, and other
4 informational forms, such as 1099 or W-2. Forms include supporting
5 schedules, attachments, or lists that are supplemental to or part
6 of such a return.

7 (g) "Return information" means any information collected or
8 generated by the Internal Revenue Service with regard to any
9 person's liability or possible liability under the internal revenue
10 code. Return information includes, but is not limited to,
11 information that the Internal Revenue Service obtained from any
12 source or developed through any means that relates to the potential
13 liability of any person under the internal revenue code for any
14 tax, penalty, interest, fine, forfeiture, or other imposition or
15 offense, information extracted from a return, including names of
16 dependents or the location of a business, the taxpayer's name,
17 address, and identification number, information collected by the
18 Internal Revenue Service about any person's tax affairs, even if
19 identifiers, such as name, address, and identification numbers, are
20 deleted, information regarding whether a return was filed or not,
21 is under examination, or is subject to other investigation or
22 processing, including collection activities, and information
23 contained on transcripts of accounts.

24 Sec. 3. (1) Each agency in this state that determines it must
25 do so to comply with publication 1075 shall develop a written
26 policy that ensures that its current and prospective employees who
27 may have access to federal information databases in the course of

1 his or her employment undergo the fingerprint-based criminal
2 history check required by publication 1075.

3 (2) Except as otherwise provided in subsections (3), (4), and
4 (5), the results of a criminal history check conducted under this
5 act are confidential and are not subject to disclosure under the
6 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

7 (3) The results of a fingerprint-based criminal history check
8 may be provided to the Internal Revenue Service or other federal
9 governmental entity as required by federal regulation or law.

10 (4) The results of a fingerprint-based criminal history check
11 conducted under this act may only be provided to an agency and must
12 not be shared with a vendor or contractor providing employees to an
13 agency under a contract between a vendor or contractor and an
14 agency. However, the results may be shared between a requesting
15 agency and another agency in this state.

16 (5) In circumstances in which the civil service manages human
17 resource functions for an agency under an executive order, the
18 results of a fingerprint-based criminal history check may be shared
19 between the agency and the civil service staff providing human
20 resource services to the agency.

21 Sec. 4. (1) Upon an offer of initial employment by an agency
22 that is subject to publication 1075 to an individual for any full-
23 time or part-time employment with the agency during which the
24 individual may have access to federal information databases, the
25 agency shall request from the department of state police a
26 fingerprint-based criminal history check on the individual,
27 including a criminal records check through the Federal Bureau of

1 Investigation.

2 (2) Before assigning an individual to employment during which
3 he or she may have access to federal information databases, the
4 agency shall have received from the department of state police the
5 report described in subsection (5). This subsection does not
6 require an agency to delay hiring an individual until the
7 completion of the fingerprint-based criminal history check required
8 under this section.

9 (3) An agency shall ensure that an employee who may have
10 access to federal information databases already employed by the
11 agency on the effective date of this act completes the fingerprint-
12 based criminal history check required under this section.

13 (4) An agency shall make a request to the department of state
14 police for a fingerprint-based criminal history check required
15 under this section on a form and in a manner prescribed by the
16 department of state police.

17 (5) Within 30 days after receiving a proper request by an
18 agency for a fingerprint-based criminal history check on an
19 individual under this section, the department of state police shall
20 conduct the criminal history check and initiate the criminal
21 records check through the Federal Bureau of Investigation. After
22 the completion of the fingerprint-based criminal history check
23 required under this section, the department of state police shall
24 provide a report of the results of the fingerprint-based criminal
25 history check to the requesting agency. The report must contain any
26 criminal history record information on the individual maintained by
27 the criminal records division of the department of state police and

1 any information obtained from the Federal Bureau of Investigation.

2 (6) Criminal history record information received from the
3 department of state police under subsection (5) must be used by an
4 agency only for the purpose of evaluating an individual's
5 qualifications for employment. Except as required by federal
6 regulation or rule, an agency or an employee of the agency shall
7 not disclose the report or its contents received under this section
8 to any person who is not directly involved in evaluating the
9 applicant's or employee's qualifications to begin or maintain
10 access to federal information databases. A person who violates this
11 subsection is guilty of a misdemeanor punishable by a fine of not
12 more than \$10,000.00.

13 (7) If the fingerprint-based criminal history check required
14 under this section has been completed for a particular employee and
15 the results have been reported to an agency as provided under this
16 section, then another fingerprint-based criminal history check is
17 not required under this section for that employee as long as the
18 employee remains employed with no separation from service from the
19 agency. For the purposes of this subsection, an employee is not
20 considered to have a separation from service if the employee is
21 laid off or placed on a leave of absence by the agency and returns
22 to active employment with the agency within 1 year after being laid
23 off or placed on the leave of absence.

24 (8) The department of state police shall store and retain
25 fingerprints submitted under this section in an automated
26 fingerprint identification system that provides for an automatic
27 notification if subsequent criminal information matches

1 fingerprints previously submitted under this section. Upon a
2 notification under this subsection, the department of state police
3 shall immediately notify the agency that requested the fingerprint-
4 based criminal history check. The fingerprints retained under this
5 act may be searched against future fingerprint submissions, and any
6 relevant results will be shared with submitting and subscribing
7 entities. The searches described under this subsection include
8 latent fingerprint searches.

9 (9) The department of state police shall forward the
10 fingerprints submitted under this section to the Federal Bureau of
11 Investigation to be retained in the Federal Bureau of
12 Investigation's automated fingerprint identification system that
13 provides for automatic notification if criminal information matches
14 fingerprints previously submitted to the Federal Bureau of
15 Investigation under this subsection. If the department of state
16 police receives a notification from the Federal Bureau of
17 Investigation under this subsection, the department of state police
18 shall immediately inform the agency that requested the fingerprint-
19 based criminal history check. This subsection does not apply unless
20 the department of state police is capable of participating in the
21 Federal Bureau of Investigation's automated fingerprint
22 notification system.

23 Enacting section 1. This act takes effect 90 days after the
24 date it is enacted into law.