

# HOUSE BILL No. 5254

November 9, 2017, Introduced by Rep. Vaupel and referred to the Committee on Judiciary.

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

1 county, city, village, or township that in the course of conducting  
2 its business has or maintains access to federal information  
3 databases.

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

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

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

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

25 (f) "Return" means any tax or information return, estimated  
26 tax declaration, or refund claim, and includes amendments,  
27 supplements, supporting schedules, attachments, or lists required

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

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

25 Sec. 3. (1) Each agency in this state 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 subsection (3), the  
4 results of a criminal history check conducted under this act are  
5 confidential and are not subject to disclosure under the freedom of  
6 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.

15 Sec. 4. (1) Upon an offer of initial employment by an agency  
16 to an individual for any full-time or part-time employment with the  
17 agency during which the individual may have access to federal  
18 information databases, the agency shall request from the department  
19 of state police a fingerprint-based criminal history check on the  
20 individual, including a criminal records check through the Federal  
21 Bureau of Investigation.

22 (2) Before assigning an individual to employment during which  
23 he or she may have access to federal information databases, the  
24 agency shall have received from the department of state police the  
25 report described in subsection (7). This subsection does not  
26 require an agency to delay hiring an individual until the  
27 completion of the fingerprint-based criminal history check required

1 under this section.

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

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

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

22 (6) Criminal history record information received from the  
23 department of state police under subsection (5) must be used by an  
24 agency only for the purpose of evaluating an individual's  
25 qualifications for employment. Except as required by federal  
26 regulation or rule, an agency or an employee of the agency shall  
27 not disclose the report or its contents received under this section

1 to any person who is not directly involved in evaluating the  
2 applicant's or employee's qualifications to begin or maintain  
3 access to federal information databases. A person who violates this  
4 subsection is guilty of a misdemeanor punishable by a fine of not  
5 more than \$10,000.00.

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

17 (8) The department of state police shall store and retain  
18 fingerprints submitted under this section in an automated  
19 fingerprint identification system that provides for an automatic  
20 notification if subsequent criminal information matches  
21 fingerprints previously submitted under this section. Upon a  
22 notification under this subsection, the department of state police  
23 shall immediately notify the agency that requested the fingerprint-  
24 based criminal history check. The fingerprints retained under this  
25 act may be searched against future fingerprint submissions, and any  
26 relevant results will be shared with submitting and subscribing  
27 entities. The searches described under this subsection include

1 latent fingerprint searches.

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

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