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S.B. 217
134th General Assembly

Final Analysis

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SUMMARY

- Narrows circumstances under which criminal records check reports of various long-term care job applicants and contractors may be released to certain individuals involved in specified legal matters by stipulating that the release must be pursuant to a lawful subpoena or court order.
- Prohibits a private individual or entity that administers municipal income taxes from having access to an employee's, prospective employee's, or contractor's criminal history records.

DETAILED ANALYSIS

Criminal records checks – long-term care

The act narrows an exception under the Public Records Law that authorizes the release of otherwise nonpublic criminal records check reports with respect to:¹

1. Applicants for employment with the State Long-Term Care Ombudsman's office or a regional long-term care ombudsman, in a position that involves providing ombudsman services to long-term care residents and recipients;²

¹ R.C. 173.27(G), 173.38 (I), and 173.381(G).

² R.C. 173.27.

2. Applicants for employment with an Area Agency on Aging, a PASSPORT administrative agency, a provider or subcontractor under a Department of Aging program, or a consumer, in a position that involves providing direct care to consumers;³
3. Applicants for and holders of community-based long-term care certificates, contracts, or grants.⁴

Under continuing law, these criminal records check reports are generally not subject to disclosure under the Public Records Law, but a court, hearing officer, or “other necessary individual” may access a report in a case dealing with (1) a denial of the person’s employment or refusal to issue a certificate, contract, or grant, (2) the person’s employment or unemployment benefits or revocation of a certificate, contract, or grant, or (3) a civil or criminal action regarding Medicaid or a Department of Aging program. The act’s change addresses the “other necessary individuals” in these cases by stipulating that their access must be pursuant to “a lawful subpoena or court order.” The access by courts and hearing officers is unchanged.⁵

Municipal income tax administration

Under continuing law, a municipal corporation may directly administer and collect an income tax it levies or it may contract with a third party to do so. These third parties may include another municipal corporation, the Central Collection Agency (CCA), the Regional Income Tax Agency (RITA), or a private organization. RITA is a regional council of governments that administers municipal income taxes of member municipalities.⁶ CCA is a similar organization operated by the City of Cleveland, though it is not registered or organized as a regional council of governments.⁷ With the exception of the municipal net profits tax, which is administered and collected by the Department of Taxation for businesses that opt for state administration of the tax, municipal corporations maintain discretion to determine whether to undertake tax administration responsibilities or outsource administration to another party. Once chosen, Ohio law imposes various responsibilities on the tax administrator.

One such responsibility is the requirement that a tax administrator order a criminal background check for any employee, prospective employee, or contractor of a municipality or regional council of government that will have access to confidential federal income tax information. The tax administrator must request the Superintendent of the Bureau of Criminal

³ R.C. 173.38.

⁴ R.C. 173.381.

⁵ R.C. 173.27(G), 173.38(I), and 173.381(G).

⁶ See R.C. Chapter 167, not in the act. See also Regional Income Tax Agency (RITA), *RITA Municipalities*, available at <https://www.ritaohio.com/Municipalities>, and Ohio Auditor of State, *Councils of Governments (COG) Registration*, available at <https://ohioauditor.gov/local/cog/CogListing.aspx>.

⁷ See City of Cleveland – Division of Taxation, CCA Member Municipalities, available at <http://ccatax.ci.cleveland.oh.us/?p=ccamap>.

Identification and Investigation to conduct the criminal records check and must also request criminal records information from the Federal Bureau of Investigation.⁸

The act prohibits any “private individual or entity” acting as a municipal income tax administrator, other than a municipal corporation itself, from having access to any criminal history records. The act does not clarify who or what qualifies as a private individual or entity. Since RITA is a regional council of government created through statutory authority, it is possible that the act’s prohibition does not apply to RITA or any other regional council that may serve as a tax administrator. Additionally, the prohibition likely does not apply to the CCA, since the organization is operated by the City of Cleveland and thus is unlikely to be considered a private entity. The prohibition does appear to apply to a private organization contracted by a municipality to perform administrative duties.⁹

As indicated above, these private party tax administrators are required to order criminal records checks for anyone associated with the administrator that is considered a “contractor” of a municipality or a regional council of government that handles confidential federal tax information, but, since the act prohibits those private party tax administrators from having access to any criminal history records, it is unclear who is responsible for reviewing the criminal records of those contractors.

HISTORY

Action	Date
Introduced	08-10-21
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Passed Senate (32-0)	10-06-21
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Passed House (89-5)	12-08-21

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⁸ R.C. 718.131, not in the act.

⁹ R.C. 718.01(U) and 718.39.