

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2962

BY DELEGATES NELSON AND BOGGS

(BY REQUEST OF THE TAX AND REVENUE DEPARTMENT)

[Introduced March 13, 2017; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-1-1 of the Code of West Virginia, 1931, as amended, relating
2 to enlarging the authority of the Tax Commissioner to perform background investigations
3 of employees and contractors; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

1 That §11-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

ARTICLE 1. SUPERVISION

**§11-1-1. Office of Tax Commissioner continued and designated the state Tax Division;
appointment, term, oath and bond of commissioner; powers and duties generally;
sections of division; assistant Tax Commissioner; authorization of criminal
background checks conducted by Tax Commissioner for prospective employees;
assistant attorneys general to assist commissioner.**

1 (a) The Office of the Tax Commissioner is continued in all respects as previously
2 constituted in the state government, but is hereby designated as the state Tax Division of the
3 Department of Revenue.

4 (b) The Tax Commissioner is the chief executive officer of the state Tax Division and shall
5 be appointed by the Governor, by and with the advice and consent of the Senate, to serve at the
6 will and pleasure of the Governor for the term for which the Governor was elected and until a
7 successor has been appointed and has qualified.

8 (c) The Tax Commissioner, before entering upon the duties of office, shall take the oath
9 or affirmation prescribed by section 5, article IV of the Constitution. The Tax Commissioner shall
10 give bond with good security, to be approved by the Governor, in the penalty of \$15,000. The Tax
11 Commissioner shall be repaid his or her actual disbursements for traveling expenses. The Tax
12 Commissioner shall be provided with an office in ~~the capitol~~ a state owned or lease building and
13 with furniture, office equipment and any necessary clerical assistance.

14 (d) The Tax Commissioner has control and supervision of the state Tax Division and is
15 responsible for the work of each of its sections or other subunits. Each section or bureau shall be
16 headed by a director appointed by the Tax Commissioner and who is responsible to the Tax
17 Commissioner for the work of his or her section or bureau. The Tax Commissioner may create
18 any sections or bureaus and employ any necessary staff or employees to administer the state tax
19 laws for which the Tax Commissioner or Tax Division is responsible, within the amount of
20 expenditures appropriated for operation of the Tax Division by the Legislature. The Tax
21 Commissioner has authority to appoint an assistant Tax Commissioner who shall be his or her
22 principal assistant. The powers and duties vested in the Tax Commissioner by this chapter and
23 any other provisions of law may be delegated by the Tax Commissioner to the assistant or other
24 employees, but the Tax Commissioner is responsible for all official acts of his or her delegates.

25 ~~(e) In order to assist in determining if an applicant for employment in the state Tax Division~~
26 ~~is suitable for such employment, the commissioner is authorized to conduct a criminal records~~
27 ~~check through the criminal identification bureau of the West Virginia State Police and a national~~
28 ~~criminal history check through the federal bureau of investigation. The result of any criminal~~
29 ~~records or criminal history check shall be sent to the commissioner. The commissioner and any~~
30 ~~other employees of the state Tax Division shall not disclose information obtained pursuant to this~~
31 ~~subsection except for purposes directly related to the employment of the application by the Tax~~
32 ~~Division.~~

33 Background checks.

34 (1) The commissioner is authorized to conduct a criminal records check through the West
35 Virginia State Police and a national criminal history check through the Federal Bureau of
36 Investigation, and such other police or investigative organization or agency as the Tax
37 Commissioner may designate.

38 (2) Investigations may be conducted for:

39 (A) Applicants or prospective applicants for employment with the Tax Division.

- 40 (B) Current and preexisting employees of the Tax Division,
- 41 (C) Applicants or prospective applicants for contract employment with the Tax Division,
- 42 (D) Current and preexisting contractors that work with or for the Tax Division, and
- 43 (E) Any other person or entity that may handle, review or possess federal tax information
- 44 or state tax information.

45 (3) These investigations may be conducted for the purpose of determining whether an
46 applicant for employment with the Tax Division, or an individual, company or entity, that is being
47 evaluated as a potential contractor with the Tax Division, is suitable for such employment, or for
48 the purpose of determining suitability of an individual to be granted access to federal tax
49 information, that is subject to the disclosure restrictions of 26 U.S.C. § 6103, or for any other lawful
50 purpose.

51 (4) Background investigations of any individual, corporation, limited liability company,
52 partnership or other entity or organization, or of any officer, owner, representative, agent,
53 employee or principal of any such corporation, limited liability company, partnership or other entity
54 or organization pursuant to this section may include, but not be limited to:

55 (A) Federal Bureau of Investigation (FBI) fingerprint results;

56 (B) A check of an individual's criminal history in all states of the United States;

57 (C) A check of the criminal history in all states of the United States of a corporation, limited
58 liability company, partnership or other entity or organization, or of any officer, owner,
59 representative, agent, employee or principal of any such corporation, limited liability company,
60 partnership or other entity or organization; and

61 (D) Investigation of records of local law-enforcement agencies where the individual has
62 lived, worked, or attended school within the preceding five years, or longer, as the Tax
63 Commissioner may determine, to identify:

64 (i) Any arrests of the individual or of an officer, owner, representative, agent or principal of
65 a corporation, limited liability company, partnership or other entity or organization.

66 (ii) Any criminal record of a corporation, limited liability company, partnership or other
67 entity or organization, or of any officer, owner, representative, agent, employee or principal of any
68 such corporation, limited liability company, partnership or other entity or organization.

69 (iii) Misbehavior or trends of misbehavior that may not have been reported to the FBI
70 database, but which provide information regarding character and suitability of an individual to hold
71 a responsible employment position or to receive and handle federal tax information or state tax
72 information.

73 (iv) The citizenship and residency of an individual.

74 (v) Validation of an individual's eligibility to legally work in the United States.

75 (5) The result of any criminal records or criminal history check shall be sent to the
76 commissioner, and any other state of federal agency having a lawful interest in the results of such
77 an investigation, as designated by the Tax Commissioner.

78 (f) The Tax Commissioner, if he or she considers the action necessary, may request the
79 Attorney General to appoint assistant attorneys general who shall perform duties as required by
80 the Tax Commissioner. The Attorney General, in pursuance of the request, may select and
81 appoint assistant attorneys general, with the consent of the Tax Commissioner, to serve during
82 the will and pleasure of the Attorney General, and the assistants shall be paid out of any funds
83 made available for that purpose by the Legislature to the state Tax Division.

NOTE: The purpose of this bill is to Amend 11-1-1(e) to enlarge the authority of the Tax Commissioner to perform background investigations of employees and contractors and make technical corrections. Enactment of this bill is necessary for the Tax Commissioner to receive federal tax information for the Internal Revenue Service.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.