

107TH CONGRESS
1ST SESSION

S. 1830

To amend sections 3, 4, and 5 of the National Child Protection Act of 1993, relating to national criminal history background checks of providers of care to children, elderly persons, and persons with disabilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2001

Mr. DEWINE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend sections 3, 4, and 5 of the National Child Protection Act of 1993, relating to national criminal history background checks of providers of care to children, elderly persons, and persons with disabilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Child Protec-
5 tion Amendments Act of 2001”.

1 **SEC. 2. FACILITATION OF BACKGROUND CHECKS.**

2 (a) IN GENERAL.—Section 3 of the National Child
3 Protection Act of 1993 (42 U.S.C. 5119a) is amended to
4 read as follows:

5 **“SEC. 3. FACILITATION OF BACKGROUND CHECKS.**

6 “(a) IN GENERAL.—

7 “(1) BACKGROUND CHECKS.—

8 “(A) IN GENERAL.—A qualified entity des-
9 ignated by a State may contact an authorized
10 agency of the State to obtain a fingerprint-
11 based national criminal history background
12 check (referred to in this section as a ‘back-
13 ground check’) of a provider who provides care
14 to children, the elderly, or individuals with dis-
15 abilities (referred to in this section as a ‘pro-
16 vider’).

17 “(B) DEFINITION.—In this paragraph, the
18 term ‘fingerprint-based’ means based upon fin-
19 gerprints or other biometric identification char-
20 acteristics approved under rules applicable to
21 the Interstate Identification Index System as
22 defined in Article I (13) of the National Crime
23 Prevention and Privacy Compact.

24 “(2) PROCEDURES.—

25 “(A) SUBMISSION.—A request for back-
26 ground check pursuant to this section shall be

1 submitted through a State criminal history
2 record repository.

3 “(B) DUTIES OF REPOSITORY.—After re-
4 ceipt of a request under subparagraph (A), the
5 State criminal history record repository shall—

6 “(i) conduct a search of the State
7 criminal history record system and, if nec-
8 essary, forward the request, together with
9 the fingerprints of the provider, to the
10 Federal Bureau of Investigation; and

11 “(ii) make a reasonable effort to re-
12 spond to the qualified entity within 15
13 business days after the date on which the
14 request is received.

15 “(C) DUTIES OF THE FBI.—Upon receiv-
16 ing a request from a State repository under this
17 section, the FBI shall—

18 “(i) conduct a search of its criminal
19 history record system; and

20 “(ii) make a reasonable effort to re-
21 spond to the State repository or the quali-
22 fied entity within 5 business days after the
23 date on which the request is received.

24 “(3) NATIONAL CRIME PREVENTION AND PRI-
25 VACY COMPACT.—Each background check pursuant

1 to this section shall be conducted pursuant to the
2 National Crime Prevention and Privacy Compact.

3 “(b) GUIDELINES.—

4 “(1) IN GENERAL.—In order to conduct back-
5 ground checks pursuant to this section, a State
6 shall—

7 “(A) establish or designate one or more
8 authorized agencies to perform the duties re-
9 quired by this section, including the designation
10 of qualified entities; and

11 “(B) establish procedures requiring that—

12 “(i) a qualified entity that requests a
13 background check pursuant to this section
14 shall forward to the authorized agency the
15 fingerprints of the provider and shall ob-
16 tain a statement completed and signed by
17 the provider that—

18 “(I) sets out the name, address,
19 and date of birth of the provider ap-
20 pearing on a valid identification docu-
21 ment (as defined in section 1028 of
22 title 18, United States Code);

23 “(II) states whether the provider
24 has a criminal history record and, if

1 so, sets out the particulars of such
2 record;

3 “(III) notifies the provider that
4 the qualified entity may request a
5 background check and that the signa-
6 ture of the provider to the statement
7 constitutes an acknowledgement that
8 such a background check may be con-
9 ducted and explains the uses and dis-
10 closures that may be made of the re-
11 sults of the background check;

12 “(IV) notifies the provider that
13 pending the completion of the back-
14 ground check the provider may be de-
15 nied unsupervised access to children,
16 the elderly, or disabled persons with
17 respect to which the provider intends
18 to provide care; and

19 “(V) notifies the provider of the
20 rights of the provider under subpara-
21 graph (B);

22 “(ii) each provider who is the subject
23 of an adverse fitness determination based
24 on a background check pursuant to this
25 section shall be provided with an oppor-

1 tunity to contact the authorized agency
2 and initiate a process to—

3 “(I) obtain a copy of the criminal
4 history record upon which the deter-
5 mination was based; and

6 “(II) file a challenge with the
7 State repository or, if appropriate, the
8 FBI, concerning the accuracy and
9 completeness of the criminal history
10 record information in the report, and
11 obtain a prompt determination of the
12 challenge before a final adverse fitness
13 determination is made on the basis of
14 the criminal history record informa-
15 tion in the report;

16 “(iii) an authorized agency that re-
17 ceives a criminal history record report that
18 lacks disposition information shall make
19 appropriate inquiries to available State and
20 local recordkeeping systems to obtain com-
21 plete information, to the extent possible
22 considering available personnel and re-
23 sources;

1 “(iv) an authorized agency that re-
2 ceives the results of a background check
3 conducted under this section shall either—

4 “(I) make a determination re-
5 garding whether the criminal history
6 record information received in re-
7 sponse to the background check indi-
8 cates that the provider has a criminal
9 history record that renders the pro-
10 vider unfit to provide care to children,
11 the elderly, or individuals with disabil-
12 ities and convey that determination to
13 the qualified entity; or

14 “(II) provide some or all of such
15 criminal history record information to
16 the qualified entity for use by the
17 qualified entity in making a fitness
18 determination concerning the pro-
19 vider; and

20 “(v) a qualified entity that receives
21 criminal history record information con-
22 cerning a provider in response to a back-
23 ground check pursuant to this section—

24 “(I) shall adhere to a standard of
25 reasonable care concerning the secu-

1 rity and confidentiality of the infor-
 2 mation and the privacy rights of the
 3 provider;

4 “(II) shall make a copy of the
 5 criminal history record available, upon
 6 request, to the provider; and

7 “(III) shall not retain the crimi-
 8 nal history record information for any
 9 period longer than necessary for a
 10 final fitness determination concerning
 11 the subject of the information.

12 “(2) RETENTION OF INFORMATION.—The state-
 13 ment required under paragraph (1)(B)(i)—

14 “(A) may be forwarded by the qualified en-
 15 tity to the authorized agency or retained by the
 16 qualified entity; and

17 “(B) shall be retained by such agency or
 18 entity, as appropriate, for not less than 1 year.

19 “(c) GUIDANCE BY THE ATTORNEY GENERAL.—The
 20 Attorney General shall to the maximum extent practicable,
 21 encourage the use of the best technology available in con-
 22 ducting background checks pursuant to this section.

23 “(d) GUIDANCE BY THE NATIONAL CRIME PREVEN-
 24 TION AND PRIVACY COMPACT COUNCIL.—

1 “(1) IN GENERAL.—The Compact Council shall
2 provide guidance to States to ensure that national
3 background checks conducted under this section
4 comply with the National Crime Prevention and Pri-
5 vacy Compact and shall provide guidance to author-
6 ized agencies to assist them in performing their du-
7 ties under this section.

8 “(2) MODEL FITNESS STANDARDS.—The guid-
9 ance under paragraph (1) shall include model fitness
10 standards for particular types of providers, which
11 may be adopted voluntarily by States for use by au-
12 thorized agencies in making fitness determinations.

13 “(3) NCPA CARE PROVIDER COMMITTEE.—In
14 providing the guidance under paragraph (1), the
15 Compact Council shall create a permanent NCPA
16 Care Provider Committee which shall include, but
17 not be limited to, representatives of national organi-
18 zations representing private nonprofit qualified enti-
19 ties using volunteers to provide care to children, the
20 elderly, or individuals with disabilities.

21 “(4) REPORTS.—At least annually, the Com-
22 pact Council shall report to the President and Con-
23 gress with regard to national background checks of
24 providers conducted pursuant to the NCPA.

1 “(e) PENALTY.—Any officer, employee, or authorized
 2 representative of a qualified entity who knowingly and
 3 willfully—

4 “(1) requests or obtains any criminal history
 5 record information pursuant to this section under
 6 false pretenses; or

7 “(2) uses criminal history record information
 8 for a purpose not authorized by this section, shall be
 9 guilty of a misdemeanor and fined not more than
 10 \$5,000.

11 “(f) LIMITATIONS ON LIABILITY.—

12 “(1) LIABILITY OF QUALIFIED ENTITIES.—

13 “(A) FAILURE TO REQUEST BACKGROUND
 14 CHECK.—A qualified entity shall not be liable in
 15 an action for damages solely for the failure of
 16 such entity to request a background check on a
 17 provider.

18 “(B) WILLFUL VIOLATIONS.—A qualified
 19 entity shall not be liable in an action for dam-
 20 ages for violating any provision of this section,
 21 unless such violation is knowing and willful.

22 “(C) REASONABLE CARE STANDARD.—A
 23 qualified entity that exercises reasonable care
 24 for the security, confidentiality, and privacy of
 25 criminal history record information received in

1 response to a background check pursuant to
2 this section shall not be liable in an action for
3 damages.

4 “(2) LIABILITY OF GOVERNMENTAL ENTI-
5 TIES.—A State or political subdivision thereof, or
6 any agency, officer, or employee thereof, shall not be
7 liable in an action for damages for the failure of a
8 qualified entity (other than itself) to take adverse
9 action with respect to a provider who was the sub-
10 ject of a background check.

11 “(3) RELIANCE ON INFORMATION.—An author-
12 ized agency or a qualified entity that reasonably re-
13 lies on criminal history record information received
14 in response to a background check pursuant to this
15 section shall not be liable in an action for damages
16 based upon the inaccuracy or incompleteness of the
17 information.

18 “(g) FEES.—

19 “(1) LIMITATION.—In the case of a background
20 check pursuant to a State requirement adopted after
21 December 20, 1993, conducted with fingerprints on
22 a person who volunteers with a qualified entity, the
23 fees collected by authorized State agencies and the
24 Federal Bureau of Investigation may not exceed
25 \$18, respectively, or the actual cost, whichever is

1 less, of the background check conducted with finger-
 2 prints.

3 “(2) STATE FEE SYSTEMS.—The States shall
 4 establish fee systems that ensure that fees to non-
 5 profit entities for background checks do not discour-
 6 age volunteers from participating in child care pro-
 7 grams.

8 “(3) AUTHORITY OF FEDERAL BUREAU OF IN-
 9 VESTIGATION.—This subsection shall not effect the
 10 authority of the Federal Bureau of Investigation or
 11 the States to collect fees for conducting background
 12 checks of persons who are employed as or apply for
 13 positions as paid care providers.”.

14 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS; CON-**
 15 **FORMING AMENDMENTS.**

16 (a) FUNDING FOR IMPROVEMENT OF CHILD ABUSE
 17 CRIME INFORMATION.—Section 4 of the National Child
 18 Protection Act of 1993 (42 U.S.C. 5119b) is amended—

19 (1) by redesignating subsections (b) and (c) as
 20 subsections (a) and (b), respectively; and

21 (2) in subsection (a), as redesignated—

22 (A) in paragraph (1)—

23 (i) in each of subparagraphs (C) and
 24 (D), by striking “national criminal history

1 background check system” and inserting
 2 “criminal history record repository”; and

3 (ii) by striking subparagraph (E) and
 4 inserting the following:

5 “(E) to assist the State in offsetting the
 6 costs to qualified entities of background checks
 7 under section 3 on volunteer providers.”; and

8 (B) by striking paragraph (2) and insert-
 9 ing the following:

10 “(2) AUTHORIZATION OF APPROPRIATIONS.—

11 There are authorized to be appropriated for grants
 12 under paragraph (1)—

13 “(A) \$80,000,000 for fiscal year 2001; and

14 “(B) such sums as may be necessary for
 15 each of fiscal years 2002 through 2005.”.

16 (b) FUNDING FOR COMPACT COUNCIL.—There are
 17 authorized to be appropriated to the Federal Bureau of
 18 Investigation to support the activities of the National
 19 Crime Prevention and Privacy Compact Council—

20 (1) \$1,000,000 for fiscal year 2001; and

21 (2) such sums as may be necessary for fiscal
 22 years 2002 through 2005.

23 **SEC. 4. DEFINITIONS.**

24 Section 5 of the National Child Protection Act of
 25 1993 (42 U.S.C. 5119c) is amended—

1 (1) by striking paragraph (8);

2 (2) by redesignating paragraphs (6) and (7) as
3 paragraphs (7) and (8), respectively;

4 (3) by inserting after paragraph (5) the fol-
5 lowing:

6 “(6) the term ‘criminal history record reposi-
7 tory’ means the State agency designated by the Gov-
8 ernor or other executive official of a State, or by the
9 legislature of a State, to perform centralized record-
10 keeping functions for criminal history records and
11 services in the State;”; and

12 (4) in paragraph (9)—

13 (A) in subparagraph (A)(iii)—

14 (i) by inserting “or to an elderly per-
15 son or person with a disability” after “to
16 a child”; and

17 (ii) by striking “child care” and in-
18 serting “care”; and

19 (B) in subparagraph (B)(iii)—

20 (i) by inserting “or to an elderly per-
21 son or person with a disability” after “to
22 a child”; and

23 (ii) by striking “child care” and in-
24 serting “care”.

1 **SEC. 5. AMENDMENT TO NATIONAL CRIMINAL HISTORY AC-**
 2 **CESS AND CHILD PROTECTION ACT.**

3 Section 215 of the National Criminal History Access
 4 and Child Protection Act is amended by—

5 (1) striking subsection (b) and inserting the fol-
 6 lowing:

7 “(b) DIRECT ACCESS TO CERTAIN RECORDS NOT
 8 AFFECTED.—Nothing in the Compact shall affect any di-
 9 rect terminal access to the III System provided prior to
 10 the effective date of the Compact under the following:

11 “(1) Section 9101 of title 5, United States
 12 Code.

13 “(2) The Brady Handgun Violence Prevention
 14 Act (Public Law 103–159; 107 Stat. 1536).

15 “(3) The Violent Crime Control and Law En-
 16 forcement Act of 1994 (Public Law 103–322; 108
 17 Stat. 2074) or any amendments made by that Act.

18 “(4) The United States Housing Act of 1937
 19 (42 U.S.C. 1437 et seq.).

20 “(5) The Native American Housing Assistance
 21 and Self-Determination Act of 1996 (25 U.S.C.
 22 4101 et seq.).

23 “(6) Any direct terminal access to Federal
 24 criminal history records authorized by law.”; and

25 (2) in subsection (c) by inserting after the pe-
 26 riod at the end thereof the following: “Criminal his-

1 tory records disseminated by the FBI pursuant to
2 such Act by means of the III System shall be subject
3 to the Compact.”.

○