S. 1362

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2013

Mr. SCHUMER (for himself, Mr. HATCH, Ms. KLOBUCHAR, Mr. FRANKEN, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

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 “Child Protection Im-
5 provements and Electronic Life and Safety Security Sys-
6 tems Act of 2013”.

7 SEC. 2. FINDINGS.

8 Congress finds the following:

9 (1) The Integrated Automated Fingerprint

10 Identification System of the Federal Bureau of In-
vestigation maintains fingerprints and criminal history records on more than 71,000,000 individuals.

(2) Congress has worked with the States to make criminal history background checks available to organizations seeking to screen employees and volunteers who work with children, the elderly, and individuals with disabilities, through the National Child Protection Act of 1993 (42 U.S.C. 5119 et seq.), the Volunteers for Children Act (Public Law 105–251; 112 Stat. 1885), the Serve America Act (Public Law 111–13; 123 Stat. 1460), the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248; 120 Stat. 587), and statutes enacted by 48 states in compliance with Public Law 92–544. However, there may still be persons providing care and services to children who fall outside these numerous and broad categories of criminal history background checks authorized by Federal and State law.

(3) The electronic life safety and security systems industry provides commercial buildings, public agencies and private residences with alarm, security and central monitoring systems to help prevent crime. These systems may be installed by individual
employer-owned companies and other private sector businesses.

   (4) Although 18 States currently have legislation, enacted under Public Law 92–544, to authorize criminal history background checks on individuals in burglar alarm installation and related professions, most States do not require a criminal history background check. To protect lives and property, individuals in the electronic life safety and security systems industry should undergo a State and national criminal history background check.

SEC. 3. BACKGROUND CHECKS.

The National Child Protection Act of 1993 (42 U.S.C. 5119 et seq.) is amended—

   (1) by redesignating section 5 as section 6; and

   (2) by inserting after section 4 the following:

   "SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS.

   "(a) DEFINITIONS.—In this section—

   "(1) the term ‘background check designee’ means the entity designated by the Attorney General under subsection (b)(3) to carry out the duties described in subsection (c);

   "(2) the term ‘covered entity’ means any business or organization that provides, or licenses, cer-
ifies, or coordinates individuals or organizations to
provide, care, care placement, supervision, treat-
ment, education, training, instruction, or recreation
to children;

“(3) the term ‘covered individual’ means an in-
dividual—

“(A) who has, seeks to have, or may have
unsupervised access to vulnerable populations
served by a covered entity;

“(B) who—

“(i) is employed by or volunteers with,
or seeks to be employed by or volunteer
with, a covered entity; or

“(ii) owns or operates, or seeks to
own or operate, a covered entity; or

“(C) who is an employer or employee in
the electronic life and safety security systems
industry;

“(4) the term ‘criminal history review desigee’
means the entity designated by the Attorney General
under subsection (b)(2) to carry out the criminal
history review program;

“(5) the term ‘criminal history review program’
means the program established under subsection (d);
“(6) the term ‘electronic life safety and security systems industry’ means employers and employees in businesses that provide installation and central monitoring of fire and burglar alarm systems to public or private entities, including fire alarms, burglar alarms, closed-circuit television, biometric systems, access control systems, personal emergency response systems, and other crime prevention systems;

“(7) the term ‘qualified State program’ means a program of a State authorized agency that provides access to national criminal history background checks, as authorized by Federal or State law;

“(8) the term ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; and

“(9) the term ‘vulnerable populations’ shall include elderly persons, disabled persons, and children.

“(b) ESTABLISHMENT OF PROGRAM.—

“(1) PURPOSE.—The purpose of this subsection is to facilitate widespread access to State and national criminal history background checks, not other-
wise authorized by Federal or State law, on covered
individuals and on employers and employees in the
electronic life safety and security systems industry.

“(2) IN GENERAL.—Not later than 1 year after
the date of enactment of the Child Protection Im-
provements and Electronic Life and Safety Security
Systems Act of 2013, the Attorney General shall es-
establish—

“(A) policies and procedures to carry out
the duties described in subsection (c); and

“(B) a criminal history review program in
accordance with subsection (d).

“(3) DESIGNEES.—The Attorney General may
designate 1 or more Federal Government agencies to
carry out the duties described in subsection (c).

“(c) ACCESS TO STATE AND NATIONAL BACK-
GROUND CHECKS.—

“(1) DUTIES.—The Attorney General shall—

“(A) inform covered entities and covered
individuals about how to request State and na-
tional background checks—

“(i) for covered entities and covered
individuals located in a State with a quali-
fied State program, by referring the cov-
ered entity or covered individual to the
State authorized agency; or

“(ii) for covered entities and covered
individuals located in a State without a
qualified State program, by providing in-
formation on alternative methods of ob-
taining a State and national background
check;

“(B) complete a check of the national
criminal history background check system; and

“(C) provide information received in re-
sponse to such national criminal history back-
ground check to the criminal history review des-
ignee.

“(2) REQUIRED INFORMATION.—A request for
a State and national criminal history background
check shall include—

“(A) the fingerprints of the covered indi-

“(B) other documents required by State
law for a State criminal history background
check; and

“(C) the appropriate fee.

“(3) FEES.—The Attorney General shall, in ad-

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criminal history background check authorized under
section 534 of title 28, United States Code—

“(A) collect a fee to offset the costs of car-
rying out the duties described in subsection (d),
in an amount equal to the cost of conducting
the criminal history review; and

“(B) remit such fee to the Federal Bureau
of Investigation.

“(d) CRIMINAL HISTORY REVIEW PROGRAM.—

“(1) PURPOSE.—The purpose of this subsection
is to provide covered entities with reliable and accu-
rate information regarding the fitness of the covered
individuals to have responsibility for the safety and
well-being of vulnerable populations in their care, or
for the installation and central monitoring of fire
and burglar alarm systems.

“(2) REQUIREMENTS.—The Attorney General
or designee shall—

“(A) establish procedures to securely re-
ceive criminal history records;

“(B) make determinations regarding
whether the criminal history records received in
response to a criminal history background check
conducted under this section indicate that the
covered individual has a criminal history that
may bear on the covered individual’s fitness to provide care to vulnerable populations or to in-
stall and monitor fire and burglar alarm sys-
tems;

“(C) convey to the covered entity that sub-
mitted the request for a State and national criminal history background check—

“(i) the fitness and suitability of the covered individual based solely on the cri-
teria described in paragraph (3); and

“(ii) instructions and guidance that the covered entity should consult the Equal Employment Opportunity Commission En-
forcement Guidance #915.002, dated April 25, 2012, ‘Consideration of Arrest and Conviction Records in Employment Deci-
sions under Title VII of the Civil Rights Act of 1964’, or any successor thereto, issued by the United States Equal Employ-
ment Opportunity Commission.

“(3) CRIMINAL HISTORY REVIEW CRITERIA.—In determining whether a criminal history record indi-
cates that a covered individual has a criminal history that may bear on the fitness of the covered indi-
vidual to provide care to vulnerable populations or to
install and monitor fire and burglar alarm systems,
the Attorney General or designee shall employ the
criteria used to evaluate individuals under other
Federal laws, such as the Volunteers for Children
Act (Public Law 105–251; 112 Stat. 1885), the
Serve America Act (Public Law 111–13; 123 Stat.
1460), and the Adam Walsh Child Protection and
587).

“(4) APPLICATION PROCESSING.—

“(A) IN GENERAL.—The Attorney General
shall establish the process by which a covered
entity or a covered individual in a State without
a qualified State program may obtain a State
and national criminal history background check.

“(B) CHALLENGE TO COMPLETENESS OF
RECORD.—A covered individual may challenge
the completeness of any information in the
criminal history record of the individual by con-
tacting the Federal Bureau of Investigations
under the procedure set out in section 16.34 of
title 28, Code of Federal Regulations, or any
successor thereto.
“(5) Participation in program.—The Attorney General or designee shall determine whether an entity is a covered entity.

“(6) Privacy of information.—

“(A) In general.—Any entity authorized to receive or transmit fingerprints or criminal history records under this section—

“(i) shall use the fingerprints, criminal history records, or information in the criminal history records only for the purposes specifically set forth in this section; and

“(ii) shall maintain adequate security measures to ensure the confidentiality of the fingerprints, the criminal history records, and the information in the criminal history records.

“(B) Retention of fingerprints by the FBI.—In accordance with State or Federal procedures, for the purpose of providing fingerprint verification, criminal investigation or subsequent hit notification services, or for the retention of criminal history, the Federal Bureau of Investigation may retain any fingerprints
submitted to the Federal Bureau of Investigation under this section.

“(7) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to change or replace any background check program authorized by Federal or State law on the day before the date of enactment of the Child Protection Improvements and Electronic Life and Safety Security Systems Act of 2013.”.