

111TH CONGRESS
2^D SESSION

H. R. 1469

IN THE SENATE OF THE UNITED STATES

JULY 26, 2010

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Child Protection Im-
3 provements Act of 2010”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) In 2006, 61,200,000 adults (a total of 26.7
7 percent of the population) contributed a total of
8 8,100,000,000 hours of volunteer service. Of those
9 who volunteer, 27 percent dedicate their service to
10 education or youth programs, or a total of
11 16,500,000 adults.

12 (2) Assuming recent incarceration rates remain
13 unchanged, an estimated 6.6 percent of individuals
14 in the United States will serve time in prison for a
15 crime during their lifetime. The Integrated Auto-
16 mated Fingerprint Identification System of the Fed-
17 eral Bureau of Investigation maintains fingerprints
18 and criminal history records on more than
19 65,000,000 individuals, many of whom have been ar-
20 rested or convicted multiple times.

21 (3) A study released in 2002, found that, of in-
22 dividuals released from prison in 15 States in 1994,
23 an estimated 67.5 percent were rearrested for a fel-
24 ony or serious misdemeanor within 3 years. Three-
25 quarters of those new arrests resulted in convictions
26 or a new prison sentence.

1 (4) Given the large number of individuals with
2 criminal history records and the vulnerability of the
3 population they work with, human service organiza-
4 tions that work with children need an effective and
5 reliable means of obtaining relevant information
6 about criminal histories in order to determine the
7 suitability of a potential volunteer or employee.

8 (5) The large majority of Americans (88 per-
9 cent) favor granting youth-serving organizations ac-
10 cess to conviction records for screening volunteers
11 and 59 percent favored allowing youth-serving orga-
12 nizations to consider arrest records when screening
13 volunteers. This was the only use for which a major-
14 ity of those surveyed favored granting access to ar-
15 rest records.

16 (6) Congress has previously attempted to en-
17 sure that States make Federal Bureau of Investiga-
18 tion criminal history background checks available to
19 organizations seeking to screen employees and volun-
20 teers who work with children, the elderly, and indi-
21 viduals with disabilities, through the National Child
22 Protection Act of 1993 (42 U.S.C. 5119 et seq.) and
23 the Volunteers for Children Act (Public Law 105–
24 251; 112 Stat. 1885). However, according to a June
25 2006 report from the Attorney General, these laws

1 “did not have the intended impact of broadening the
2 availability of NCPA checks.”. A 2007 survey con-
3 ducted by MENTOR/National Mentoring Partner-
4 ship found that only 18 States allowed youth men-
5 toring organizations to access nationwide Federal
6 Bureau of Investigation background searches.

7 (7) Even when accessible, the cost of a criminal
8 history background check can be prohibitively expen-
9 sive, ranging from \$5 to \$75 for a State fingerprint
10 check, plus the Federal Bureau of Investigation fee,
11 which ranges from \$15.25 to \$30.25, depending on
12 the method of processing, for a total of between \$21
13 and \$99 for each volunteer or employee.

14 (8) Delays in processing such checks can also
15 limit their utility. While the Federal Bureau of In-
16 vestigation processes all civil fingerprint requests in
17 less than 24 hours, State response times vary widely,
18 and can take as long as 42 days.

19 (9) The Child Safety Pilot Program under sec-
20 tion 108 of the PROTECT Act (42 U.S.C. 5119a
21 note) revealed the importance of performing finger-
22 print-based Federal Bureau of Investigation criminal
23 history background checks. Of 68,000 background
24 checks performed through the pilot program as of
25 May 2009, 6 percent of volunteer applicants were

1 found to have a criminal history of concern, includ-
2 ing very serious offenses such as sexual abuse of mi-
3 nors, assault, child cruelty, murder, and serious
4 drug offenses.

5 (10) In an analysis performed on the volunteers
6 screened by the Child Safety Pilot Program, it was
7 found that over 41 percent of the individuals with
8 criminal histories had committed an offense in a
9 State other than the State in which they were apply-
10 ing to volunteer, meaning that a State-only search
11 would not have found relevant criminal results. In
12 addition, even though volunteers knew a background
13 check was being performed, over 50 percent of the
14 individuals found to have a criminal history falsely
15 indicated on their application form that they did not
16 have a criminal history.

17 (11) The Child Safety Pilot Program also dem-
18 onstrates that timely and affordable background
19 checks are possible, as background checks under
20 that program are completed within 3 to 5 business
21 days at a cost of \$18.

22 **SEC. 3. BACKGROUND CHECKS.**

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

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

1 (2) by inserting after section 4 the following:

2 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**
3 **BACKGROUND CHECKS FOR CHILD-SERVING**
4 **ORGANIZATIONS.**

5 “(a) DEFINITIONS.—In this section—

6 “(1) the term ‘background check designee’
7 means the entity or organization, if any, designated
8 by or entering an agreement with the Attorney Gen-
9 eral under subsection (b)(3)(A) to carry out or assist
10 in carrying out the duties described in subsection
11 (c);

12 “(2) the term ‘child’ means an individual who
13 is less than 18 years of age;

14 “(3) the term ‘covered entity’ means a business
15 or organization, whether public, private, for-profit,
16 nonprofit, or voluntary that provides care, care
17 placement, supervision, treatment, education, train-
18 ing, instruction, or recreation to children, including
19 a business or organization that licenses, certifies, or
20 coordinates individuals or organizations to provide
21 care, care placement, supervision, treatment, edu-
22 cation, training, instruction, or recreation to chil-
23 dren;

24 “(4) the term ‘covered individual’ means an in-
25 dividual—

1 “(A) who has, seeks to have, or may have
2 unsupervised access to a child served by a cov-
3 ered entity; and

4 “(B) who—

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

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

10 “(5) the term ‘criminal history review designee’
11 means an entity or organization, if any, designated
12 by or entering an agreement with the Attorney Gen-
13 eral under subsection (b)(3)(B) to carry out or as-
14 sist in carrying out the criminal history review pro-
15 gram;

16 “(6) the term ‘criminal history review program’
17 means the program established under subsection
18 (b)(1)(B);

19 “(7) the term ‘identification document’ has the
20 meaning given that term in section 1028 of title 18,
21 United States Code;

22 “(8) the term ‘participating entity’ means a
23 covered entity that is—

24 “(A) located in a State that does not have
25 a qualified State program; and

1 “(B) approved under subsection (f) to re-
2 ceive nationwide background checks in accord-
3 ance with subsection (e) and participate in the
4 criminal history review program;

5 “(9) the term ‘qualified State program’ means
6 a program of a State authorized agency that the At-
7 torney General determines is meeting the standards
8 identified in subsection (b)(2) to ensure that a wide
9 range of youth-serving organizations have affordable
10 and timely access to nationwide background checks;

11 “(10) the term ‘open arrest’ means an arrest
12 relating to which charges may still be brought, tak-
13 ing into consideration the applicable statute of limi-
14 tations;

15 “(11) the term ‘pending charge’ means a crimi-
16 nal charge that has not been resolved through con-
17 viction, acquittal, dismissal, plea bargain, or any
18 other means;

19 “(12) the term ‘State’ means a State of the
20 United States, the District of Columbia, the Com-
21 monwealth of Puerto Rico, American Samoa, the
22 Virgin Islands, Guam, the Commonwealth of the
23 Northern Mariana Islands, the Federated States of
24 Micronesia, the Republic of the Marshall Islands,
25 and the Republic of Palau; and

1 “(13) the term ‘State authorized agency’ means
2 a division or office of a State designated by that
3 State to report, receive, or disseminate criminal his-
4 tory information.

5 “(b) ESTABLISHMENT OF PROGRAM.—

6 “(1) IN GENERAL.—Not later than 1 year after
7 the date of enactment of the Child Protection Im-
8 provements Act of 2010, the Attorney General
9 shall—

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

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

15 “(2) ASSESSMENTS.—The Attorney General
16 shall conduct—

17 “(A) an annual assessment of each State
18 authorized agency to determine whether the
19 agency operates a qualified State program, in-
20 cluding a review of whether the State author-
21 ized agency—

22 “(i) has designated a wide range of
23 covered entities as eligible to submit State
24 criminal background check requests and

1 nationwide background check requests to
2 the State authorized agency;

3 “(ii) charges a covered entity not
4 more than a total of \$25 and the fee
5 charged by the Federal Bureau of Inves-
6 tigation for a nationwide background
7 check; and

8 “(iii) returns requests for State crimi-
9 nal background checks and nationwide
10 background checks to a covered entity not
11 later than 10 business days after the date
12 on which the request was made; and

13 “(B) in addition to an annual assessment
14 under subparagraph (A), an assessment de-
15 scribed in that subparagraph of a State author-
16 ized agency if—

17 “(i) a State authorized agency that
18 does not have a qualified State program
19 requests such an assessment; or

20 “(ii) the Attorney General receives re-
21 ports from covered entities indicating that
22 a State authorized agency that has a quali-
23 fied State program no longer meets the
24 standards described in subparagraph (A).

1 “(3) DESIGNNEES.—The Attorney General
2 may—

3 “(A) designate one or more Federal gov-
4 ernment agencies or enter into an agreement
5 with any other entity or organization, or enti-
6 ties or organizations to carry out or assist in
7 carrying out the duties described in subsection
8 (c); and

9 “(B) designate a Federal government
10 agency or enter into an agreement with 1 or
11 more Federal, State, or local government agen-
12 cies to carry out or assist in carrying out the
13 criminal history review program.

14 “(c) ACCESS TO NATIONWIDE BACKGROUND
15 CHECKS.—

16 “(1) PURPOSE.—The purpose of this section is
17 to streamline the process of obtaining nationwide
18 background checks, provide effective customer serv-
19 ice, and facilitate widespread access to nationwide
20 background checks by participating entities.

21 “(2) DUTIES.—The Attorney General or the
22 background check designee shall—

23 “(A) handle inquiries from covered entities
24 and inform covered entities about how to re-
25 quest nationwide background checks—

1 “(i) for a covered entity located in a
2 State with a qualified State program, by
3 referring the covered entity to the State
4 authorized agency; and

5 “(ii) for a covered entity located in a
6 State without a qualified State program,
7 by providing information on the require-
8 ments to become a participating entity;

9 “(B) provide participating entities with ac-
10 cess to nationwide background checks on cov-
11 ered individuals in accordance with this section;

12 “(C) receive paper and electronic requests
13 for nationwide background checks on covered
14 individuals from participating entities;

15 “(D) to the extent practicable, negotiate
16 an agreement with each State authorized agen-
17 cy under which—

18 “(i) that State authorized agency shall
19 conduct a State criminal background check
20 within the time periods specified in sub-
21 section (e) in response to a request from
22 the Attorney General or the background
23 check designee and provide criminal his-
24 tory records to the Attorney General or the
25 criminal history review designee; and

1 “(ii) a participating entity may elect
2 to obtain a State criminal background
3 check, in addition to a nationwide back-
4 ground check, through 1 unified request to
5 the Attorney General or the background
6 check designee;

7 “(E) convert all paper fingerprint cards
8 into an electronic form and securely transmit
9 all fingerprints electronically to the national
10 criminal history background check system and,
11 if appropriate, the State authorized agencies;

12 “(F) collect a fee to conduct the nation-
13 wide background check, and, if appropriate, a
14 State criminal background check, and remit
15 fees to the Attorney General or the criminal
16 history review designee, the Federal Bureau of
17 Investigation, and, if appropriate, the State au-
18 thorized agencies; and

19 “(G) coordinate with the Federal Bureau
20 of Investigation, participating State authorized
21 agencies, and the Attorney General or the
22 criminal history review designee to ensure that
23 background check requests are being completed
24 within the time periods specified in subsection
25 (e).

1 “(3) REQUIRED INFORMATION.—A request for
2 a nationwide background check by a participating
3 entity shall include—

4 “(A) the fingerprints of the covered indi-
5 vidual, in paper or electronic form;

6 “(B) a photocopy of a valid identification
7 document; and

8 “(C) a statement completed and signed by
9 the covered individual that—

10 “(i) sets out the covered individual’s
11 name, address, and date of birth, as those
12 items of information appear on a valid
13 identification document, and demographic
14 characteristics defined at subsection
15 (j)(2)(A);

16 “(ii) notifies the covered individual
17 that the Attorney General and, if appro-
18 priate, a State authorized agency may per-
19 form a criminal history background check
20 and that the signature of the covered indi-
21 vidual on the statement constitutes an ac-
22 knowledgment that such a check may be
23 conducted;

24 “(iii) notifies the covered individual
25 that the signature of the covered individual

1 constitutes consent to participate in the
2 criminal history review program, under
3 which the participating entity may be in-
4 formed if the criminal history records of
5 the covered individual reveal a criminal
6 history that warrants special concern or
7 further inquiry;

8 “(iv) notifies the covered individual
9 that the covered individual shall be pro-
10 vided with a copy of the criminal history
11 records of the covered individual and shall
12 have 10 business days to review the
13 records, challenge the accuracy or com-
14 pleteness of any information in the
15 records, or withdraw consent to participate
16 in the criminal history review program be-
17 fore any information about the criminal
18 history of the covered individual is pro-
19 vided to the participating entity; and

20 “(v) notifies the covered individual
21 that prior to and after the completion of
22 the background check, the participating
23 entity may choose to deny the covered indi-
24 vidual access to children.

25 “(4) FEES.—

1 “(A) IN GENERAL.—The Attorney General
2 or the background check designee may collect a
3 fee to defray the costs of carrying out the du-
4 ties described in this subsection, the costs of
5 the Federal Bureau of Investigation and State
6 and local agencies in resolving the accuracy of
7 criminal history records of covered individuals,
8 and the duties of the criminal history review
9 designee under this section—

10 “(i) for a nationwide background
11 check and criminal history review, in an
12 amount not to exceed the lesser of—

13 “(I) the sum of—

14 “(aa) the actual cost to the
15 Attorney General or the back-
16 ground check designee of con-
17 ducting a nationwide background
18 check; and

19 “(bb) the actual cost to the
20 Attorney General or the criminal
21 history review designee of con-
22 ducting a criminal history review
23 under this section; or

24 “(II) to the extent practicable, no
25 greater than \$25 for a covered indi-

1 vidual who volunteers with a covered
2 entity except that where practicable
3 the fee may be waived by the Attorney
4 General upon a showing of substantial
5 hardship; and

6 “(ii) for a State criminal background
7 check described in paragraph (2)(D), in
8 the amount specified in the agreement with
9 the applicable State authorized agency, not
10 to exceed \$25.

11 “(B) PROHIBITION ON FEES.—

12 “(i) IN GENERAL.—A participating
13 entity may not charge another entity or in-
14 dividual a surcharge to access a back-
15 ground check conducted under this section.

16 “(ii) VIOLATION.—The Attorney Gen-
17 eral shall bar any participating entity that
18 the Attorney General determines violated
19 clause (i) from submitting background
20 checks under this section.

21 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

22 “(1) PURPOSE.—The purpose of the criminal
23 history review program is to provide participating
24 entities with reliable and accurate information re-
25 garding whether a covered individual has been con-

1 victed of, or has an open arrest or pending charges
2 for, a crime that may bear upon the fitness of the
3 covered individual to have responsibility for the safe-
4 ty and well-being of the children in their care.

5 “(2) REQUIREMENTS.—The Attorney General
6 or the criminal history review designee shall—

7 “(A) establish procedures to securely re-
8 ceive criminal history records from the Federal
9 Bureau of Investigation, if necessary, and from
10 State authorized agencies, if appropriate;

11 “(B) after receiving a criminal history
12 record from the Federal Bureau of Investiga-
13 tion transmit to the covered individual—

14 “(i) the criminal history records;

15 “(ii) a detailed notification of the
16 rights of the covered individual under sub-
17 section (g); and

18 “(iii) information about how to con-
19 tact the Attorney General or criminal his-
20 tory review designee for the purpose of
21 challenging the accuracy or completeness
22 of any information in the criminal history
23 record or to withdraw consent to partici-
24 pate in the criminal history review pro-
25 gram;

1 “(C) if the covered individual informs the
2 Attorney General or criminal history review des-
3 ignee that the covered individual intends to
4 challenge the accuracy or completeness of any
5 information in the criminal history record, as-
6 sist the covered individual in contacting the ap-
7 propriate persons or offices within the Federal
8 Bureau of Investigation or State authorized
9 agency;

10 “(D) make determinations regarding
11 whether the criminal history records received in
12 response to a criminal history background check
13 conducted under this section indicate that the
14 covered individual has a criminal history that
15 may bear on the covered individual’s fitness to
16 provide care to children, based solely on the cri-
17 teria described in paragraph (3);

18 “(E) unless the covered individual has
19 withdrawn consent to participate in the criminal
20 history review program, convey to the partici-
21 pating entity that submitted the request for a
22 nationwide background check—

23 “(i) which of the 3 categorizations de-
24 scribed in paragraph (3) criminal convic-
25 tion of special concern identified, further

1 inquiry recommended, or no criminal
2 records of special concern identified apply
3 to the covered individual;

4 “(ii) information and guidance relat-
5 ing to the appropriate use of criminal his-
6 tory information when making decisions re-
7 garding hiring employees and using volun-
8 teers;

9 “(iii) if a criminal history that meets
10 the criteria set forth in subparagraph (A)
11 or (B) of paragraph (3) is found, a rec-
12 ommendation to the participating entity to
13 consult with the covered individual in order
14 to obtain more information about the
15 criminal history of the covered individual,
16 and a list of factors to consider in assess-
17 ing the significance of that criminal his-
18 tory, including—

19 “(I) the nature, gravity, and cir-
20 cumstances of the offense, including
21 whether the individual was convicted
22 of the offense;

23 “(II) the period of time that has
24 elapsed since the date of the offense

1 or end of a period of incarceration or
2 supervised release;

3 “(III) the nature of the position
4 held or sought; and

5 “(IV) any evidence of rehabilita-
6 tion; and

7 “(iv) instructions and guidance that,
8 in evaluating the considerations described
9 in clause (iii), the participating entity
10 should consult the Equal Employment Op-
11 portunity Commission Policy Statement on
12 the Issue of Conviction Records under
13 Title VII of the Civil Rights Act or any
14 successor thereto issued by the Equal Em-
15 ployment Opportunity Commission;

16 “(F) if a covered individual has withdrawn
17 consent to participate in the criminal history re-
18 view program, inform the participating entity
19 that consent has been withdrawn;

20 “(G) work with the Attorney General or
21 the background check designee and the Federal
22 Bureau of Investigation to develop processes
23 and procedures to ensure that criminal history
24 background check requests are completed within
25 the time periods specified in subsection (e); and

1 “(H) serve as a national resource center to
2 provide guidance and assistance to participating
3 entities on how to interpret criminal history in-
4 formation, the possible restrictions that apply
5 when making hiring decisions based on criminal
6 histories, and other related information.

7 “(3) CRIMINAL HISTORY REVIEW CRITERIA.—
8 The Attorney General or the criminal history review
9 designee shall, in determining when a criminal his-
10 tory record indicates that a covered individual has a
11 criminal history that may bear on the fitness of the
12 covered individual to provide care to children—

13 “(A) assign a categorization of criminal
14 conviction of special concern identified if a cov-
15 ered individual is found to have a conviction
16 that would prevent the individual from being
17 approved as a foster or adoptive parent under
18 section 471(a)(20)(A) of the Social Security Act
19 (42 U.S.C. 671(a)(20)(A));

20 “(B) assign a categorization of further in-
21 quiry recommended if a covered individual is
22 found to have—

23 “(i) a conviction for a serious mis-
24 demeanor, committed against a child, in-
25 volving the same type of conduct prohib-

1 ited by a felony described in section
2 471(a)(20)(A) of the Social Security Act
3 (42 U.S.C. 671(a)(20)(A));

4 “(ii) a conviction for a serious mis-
5 demeanor, not committed against a child,
6 involving the same type of conduct prohib-
7 ited by a felony described in section
8 471(a)(20)(A) of the Social Security Act
9 (42 U.S.C. 671(a)(20)(A)) unless 5 years
10 has elapsed since the later of the date of
11 conviction and the date of release of the
12 person from imprisonment for that convic-
13 tion;

14 “(iii) an open arrest or pending
15 charge for a felony described in, or a seri-
16 ous misdemeanor involving the same type
17 of conduct prohibited by a felony described
18 in, section 471(a)(20)(A) of the Social Se-
19 curity Act (42 U.S.C. 671(a)(20)(A)); and

20 “(C) assign a categorization of no criminal
21 records of special concern identified for a cov-
22 ered individual that does not meet the criteria
23 described in subparagraph (A) or (B).

24 “(e) TIMING.—

1 “(1) IN GENERAL.—Unless exceptional cir-
2 cumstances apply, criminal background checks shall
3 be completed according to the time frame under this
4 subsection. The Attorney General or the background
5 check designee shall work with the criminal history
6 review designee and the Federal Bureau of Inves-
7 tigation to ensure that the time limits under this
8 subsection are being achieved.

9 “(2) APPLICATION PROCESSING.—The Attorney
10 General or the background check designee shall elec-
11 tronically submit a national background check re-
12 quest to the Federal Bureau of Investigation and, if
13 appropriate, the participating State authorized agen-
14 cy not later than 2 business days after the date on
15 which a request for a national background check is
16 received by the Attorney General or the background
17 check designee.

18 “(3) CONDUCT OF BACKGROUND CHECKS.—The
19 Federal Bureau of Investigation and, if appropriate,
20 a State authorized agency shall provide criminal his-
21 tory records to the Attorney General or the criminal
22 history review designee not later than 2 business
23 days after the date on which the Federal Bureau of
24 Investigation or State authorized agency, as the case
25 may be, receives a request for a nationwide back-

1 ground check from the Attorney General or the
2 background check designee.

3 “(4) PROVISION OF RECORDS TO COVERED IN-
4 DIVIDUALS AND OPPORTUNITY TO CHALLENGE.—

5 When the Attorney General or the criminal history
6 review designee finds that a covered individual’s
7 criminal history records fall with the categorizations
8 described in subparagraph (A) or (B) of subsection
9 (d)(3), the Attorney General or criminal history re-
10 view designee shall provide the covered individual
11 with the criminal history records of the covered indi-
12 vidual and a detailed notification of the rights of the
13 covered individual under subsection (g) not later
14 than 1 business day after the date on which the At-
15 torney General or criminal history review designee
16 receives a criminal history record from the Federal
17 Bureau of Investigation and, if necessary, resolves
18 any potentially incomplete information in accordance
19 with subsection (d)(2)(B). The covered individual
20 shall have 10 business days from the date sent to
21 challenge the accuracy or completeness of any infor-
22 mation in the criminal history record or to withdraw
23 consent to participate in the criminal history review
24 program.

1 “(5) CRIMINAL HISTORY REVIEWS.—Unless the
2 Federal Bureau of Investigation certifies that fur-
3 ther time is required to resolve a challenge brought
4 by a covered individual, the Attorney General or the
5 criminal history review designee shall convey to the
6 participating entity the information set forth in sub-
7 paragraph (F) or (G) of subsection (d)(2), as appro-
8 priate, 10 business days after providing the covered
9 individuals with the criminal history records of the
10 covered individual and a notification of their rights
11 under subsection (g).

12 “(f) PARTICIPATION IN PROGRAM.—

13 “(1) IN GENERAL.—The Attorney General or
14 the background check designee shall determine
15 whether an entity is a covered entity and whether
16 that covered entity should be approved as a partici-
17 pating entity, based on—

18 “(A) whether the entity is located in a
19 State that has a qualified State program; and

20 “(B) the consultation conducted under
21 paragraph (2).

22 “(2) CONSULTATION.—In determining how
23 many covered entities to approve as participating en-
24 tities, the Attorney General or the background check
25 designee shall consult quarterly with the Federal

1 Bureau of Investigation and the criminal history re-
2 view designee to determine the volume of requests
3 for national background checks that can be com-
4 pleted, based on the capacity of the criminal history
5 review program and the Federal Bureau of Inves-
6 tigation, the availability of resources, and the dem-
7 onstrated need for national background checks in
8 order to protect children.

9 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-
10 TIONS.—In determining whether a covered entity
11 should be approved as a participating entity under
12 paragraph (1), the Attorney General or the back-
13 ground check designee shall give preference to any
14 organization participating in the Child Safety Pilot
15 Program under section 108(a)(3) of the PROTECT
16 Act (42 U.S.C. 5119a note) on the date of enact-
17 ment of the Child Protection Improvements Act of
18 2010 and to any other nonprofit organizations.

19 “(g) RIGHT OF COVERED INDIVIDUALS TO CHAL-
20 LENGE ACCURACY OR COMPLETENESS OF RECORDS.—A
21 covered individual who is the subject of a nationwide back-
22 ground check under this section may challenge the accu-
23 racy and completeness of the criminal history records in
24 the criminal history report as provided in subsection

1 (d)(2)(D), without submitting a separate set of finger-
2 prints or an additional fee.

3 “(h) DUTIES OF THE FEDERAL BUREAU OF INVES-
4 TIGATION.—

5 “(1) RESPONSE TO A REQUEST FOR CRIMINAL
6 BACKGROUND RECORDS.—Upon request by the At-
7 torney General or background check designee, the
8 Federal Bureau of Investigation shall conduct a na-
9 tionwide background check and provide any criminal
10 history records to the Attorney General or criminal
11 history review designee.

12 “(2) RESOLUTION OF CHALLENGES.—If a cov-
13 ered individual challenges the accuracy or complete-
14 ness of any information in the criminal history
15 record of the covered individual, the Federal Bureau
16 of Investigation, in consultation with the agency that
17 contributed to the record, shall—

18 “(A) investigate the challenge with relevant
19 departments and agencies of the Federal Gov-
20 ernment and State and local governments;

21 “(B) promptly make a determination re-
22 garding the accuracy and completeness of the
23 challenged information; and

24 “(C) correct any inaccurate or incomplete
25 records.

1 “(i) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IN GENERAL.—There are authorized to be
3 appropriated to the Attorney General for each of fis-
4 cal years 2011 through 2014 such sums as are nec-
5 essary to carry out the provisions of this Act.

6 “(2) SENSE OF THE HOUSE.—It is the sense of
7 the House of Representatives that in fiscal year
8 2011, and each fiscal year thereafter, the fees col-
9 lected by the Attorney General or the background
10 check designee should be sufficient to carry out the
11 duties of the Attorney General or the background
12 check designee under this section and to help sup-
13 port the criminal history review program.

14 “(j) COLLECTION OF DATA AND REPORT TO CON-
15 GRESS.—

16 “(1) IN GENERAL.—Not later than 1 year after
17 the establishment of the program created under sub-
18 section (b), and annually thereafter, the Attorney
19 General shall prepare and submit to Congress and
20 make available to the public a report on the pro-
21 grams and procedures established under this Act.

22 “(2) COLLECTION OF DATA.—

23 “(A) DEFINITION OF DEMOGRAPHIC CHAR-
24 ACTERISTICS.—In this paragraph, the term ‘de-
25 mographic characteristics’ includes information

1 pertaining to race, color, ancestry, national ori-
2 gin, age, sex, and marital status.

3 “(B) COMPILING.—Beginning within 90
4 days after the establishment of the program
5 under subsection (b), the Attorney General shall
6 compile data regarding—

7 “(i) the number and types of partici-
8 pating entities;

9 “(ii) the fees charged to participating
10 entities under this section;

11 “(iii) the time interval between na-
12 tionwide background check submissions
13 and responses under this section;

14 “(iv) the fiscal impact of this section
15 on State authorized agencies;

16 “(v) the number and demographic
17 characteristics of covered individuals sub-
18 mitting a statement described in subsection
19 (c)(3)(A)(iii) as part of a request for a na-
20 tionwide background check;

21 “(vi) the number and demographic
22 characteristics of covered individuals deter-
23 mined to have a criminal history;

24 “(vii) the number, type (including the
25 identity of the offense and whether the of-

1 fense was committed while the covered in-
2 dividual was a juvenile or adult), and fre-
3 quency of offenses, and length of the pe-
4 riod between the date of the offense and
5 the date of the nationwide background
6 check for any covered individuals found to
7 have a criminal history under this section;

8 “(viii) the procedures available for
9 covered individuals to challenge the accu-
10 racy and completeness of criminal history
11 records under this section;

12 “(ix) the number and results of chal-
13 lenges to the accuracy and completeness of
14 criminal history records under this section;

15 “(x) the number and types of correc-
16 tions of erroneous criminal history records
17 based on a challenge under this section;
18 and

19 “(xi) the number and types of inquir-
20 ies for assistance on interpreting a crimi-
21 nal history received by the criminal history
22 review program.

23 “(C) AGGREGATING DATA.—The Attorney
24 General shall—

1 “(i) aggregate the data collected
2 under this paragraph by State and city;
3 and

4 “(ii) aggregate the data collected
5 under clauses (v), (vi), and (vii) of sub-
6 paragraph (B) by race, color, ancestry, na-
7 tional origin, age, sex, and marital status.

8 “(D) REPORTS.—

9 “(i) IN GENERAL.—Not later than 1
10 year after the date of enactment of the
11 Child Protection Improvements Act of
12 2010, and annually thereafter, the Attor-
13 ney General shall prepare and submit to
14 Congress a report concerning the data
15 compiled and aggregated under this para-
16 graph.

17 “(ii) CONTENTS.—Each report sub-
18 mitted under clause (i) shall contain—

19 “(I) the data compiled and ag-
20 gregated under this paragraph, orga-
21 nized in such a way as to provide a
22 comprehensive analysis of the pro-
23 grams and procedures established
24 under this section;

1 “(II) information regarding and
2 analysis of—

3 “(aa) the programs and pro-
4 cedures established under this
5 section; and

6 “(bb) the extent such pro-
7 grams and procedures have
8 helped screen individuals who
9 may pose a risk to children; and

10 “(III) information regarding and
11 analysis of whether and to what ex-
12 tent the programs and procedures es-
13 tablished under this section are hav-
14 ing a disparate impact on individuals
15 based on race, color, ancestry, na-
16 tional origin, age, sex, or marital sta-
17 tus.

18 “(iii) RECOMMENDATIONS.—A report
19 submitted under clause (i) may contain
20 recommendations to Congress on possible
21 legislative improvements to this section.

22 “(iv) ADDITIONAL INFORMATION.—
23 Upon the request of any member of Con-
24 gress, the Attorney General shall make
25 available any of the data compiled or ag-

1 gregated under this paragraph. The Attor-
2 ney General shall not make available any
3 data that identifies specific individuals.

4 “(k) LIMITATION ON LIABILITY.—

5 “(1) IN GENERAL.—

6 “(A) FAILURE TO CONDUCT CRIMINAL
7 BACKGROUND CHECKS.—No participating entity
8 shall be liable in an action for damages solely
9 for failure to conduct a criminal background
10 check on a covered individual.

11 “(B) FAILURE TO TAKE ADVERSE ACTION
12 AGAINST COVERED INDIVIDUAL.—No partici-
13 pating entity shall be liable in an action for
14 damages solely for a failure to take action ad-
15 verse to a covered individual upon receiving any
16 notice of criminal history from the Attorney
17 General or the criminal history review designee
18 under subsection (d)(2)(F).

19 “(2) RELIANCE.—A participating entity that
20 reasonably relies on criminal history records received
21 in response to a background check under this section
22 shall not be liable in an action for damages based
23 on the inaccuracy or incompleteness of that informa-
24 tion.

25 “(3) CRIMINAL HISTORY REVIEW PROGRAM.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C) the background
3 check designee and the criminal history review
4 designee, including a director, officer, employee,
5 or agent of the background check designee, or
6 the criminal history review designee, shall not
7 be liable in an action for damages relating to
8 the performance of the responsibilities and
9 functions of the background check designee and
10 the criminal history review designee under this
11 section.

12 “(B) INTENTIONAL, RECKLESS, OR OTHER
13 MISCONDUCT.—Subparagraph (A) shall not
14 apply in an action if the background check des-
15 ignee, or the criminal history review designee,
16 or a director, officer, employee, or agent of the
17 background check designee, or the criminal his-
18 tory review designee, engaged in intentional
19 misconduct or acted, or failed to act, with ac-
20 tual malice, with reckless disregard to a sub-
21 stantial risk of causing injury without legal jus-
22 tification, or for a purpose unrelated to the per-
23 formance of responsibilities or functions under
24 this section.

1 “(C) ORDINARY BUSINESS ACTIVITIES.—
2 Subparagraph (A) shall not apply to an act or
3 omission relating to an ordinary business activ-
4 ity, such as an activity involving general admin-
5 istration or operations, the use of motor vehi-
6 cles, or personnel management.

7 “(4) CIVIL CLAIMS OF DAMAGES.—Nothing in
8 this subsection shall apply in actions for damages
9 based upon title VII of the Civil Rights Act of 1964
10 or the Fair Credit Report Act.

11 “(1) PRIVACY OF INFORMATION.—

12 “(1) PROHIBITION ON UNAUTHORIZED DISCLO-
13 SURE OR USE OF CRIMINAL HISTORY RECORDS.—
14 Except for a covered individual, any entity or indi-
15 vidual authorized to receive or transmit fingerprints
16 or criminal history records under this Act—

17 “(A) shall use the fingerprints, criminal
18 history records, or information in the criminal
19 history records only for the purposes specifically
20 set forth in this Act;

21 “(B) shall allow access to the fingerprints,
22 criminal history records, or information in the
23 criminal history records only to those employees
24 of the entity, and only on such terms, as are

1 necessary to fulfill the purposes set forth in this
2 Act;

3 “(C) shall not disclose the fingerprints,
4 criminal history records, or information in the
5 criminal history records, except as specifically
6 authorized under this Act;

7 “(D) shall keep a written record of each
8 authorized disclosure of the fingerprints, crimi-
9 nal history records, or the information in the
10 criminal history records; and

11 “(E) shall maintain adequate security
12 measures to ensure the confidentiality of the
13 fingerprints, the criminal history records, and
14 the information in the criminal history records.

15 “(2) COMPLIANCE.—

16 “(A) IN GENERAL.—The Attorney General
17 shall promulgate regulations to ensure the en-
18 forcement of the nondisclosure requirements
19 under paragraph (1) and to provide for appro-
20 priate sanctions in the case of violations of the
21 requirements.

22 “(B) PARTICIPATING ENTITIES AND DES-
23 IGNEES.—The participation in any program
24 under this section by an entity or organization
25 that enters into an agreement with the Attorney

1 General to carry out the duties described in
2 subsection (c) or to carry out the criminal his-
3 tory review program shall be conditioned on the
4 person—

5 “(i) establishing procedures to ensure
6 compliance with, and respond to any viola-
7 tions of, paragraph (1); and

8 “(ii) maintaining substantial compli-
9 ance with paragraph (1).

10 “(3) DESTRUCTION OF RECORDS.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the Attorney General, the
13 background check designee, and the criminal
14 history review designee shall destroy any finger-
15 prints, either in paper or electronic form, or
16 criminal history record received for the purpose
17 of carrying out the provisions of this Act after
18 any transaction based on the fingerprints or
19 criminal history record is completed, and shall
20 not maintain the fingerprints, the criminal his-
21 tory records, or the information in the criminal
22 history record in any form. This paragraph
23 shall not apply to the retention of fingerprints
24 by the FBI, upon consent of the covered indi-
25 vidual or in accordance with State or Federal

1 procedures, for the purpose of providing finger-
2 print verification or subsequent hit notification
3 services, or for the retention of criminal history
4 record information which updates the criminal
5 history record.

6 “(B) REPEAT APPLICANTS.—A covered in-
7 dividual may sign a release permitting the At-
8 torney General or background check designee to
9 retain the fingerprints of the covered individual
10 for a period not to exceed 5 years, for the sole
11 purpose of participating in the criminal history
12 review program on a subsequent occasion.”.

13 **SEC. 4. EXTENSION OF CHILD SAFETY PILOT.**

14 Section 108(a)(3)(A) of the PROTECT Act (42
15 U.S.C. 5119a note) is amended—

16 (1) by striking “92-month”; and

17 (2) by adding at the end the following: “The
18 Child Safety Pilot Program under this paragraph
19 shall terminate on the date that the program for na-
20 tional criminal history background checks for child-
21 serving organizations established under the Child
22 Protection Improvements Act of 2010 is operating

1 and able to enroll any organization using the Child
2 Safety Pilot Program.”.

Passed the House of Representatives July 22, 2010.

Attest: LORRAINE C. MILLER,
Clerk.