

113TH CONGRESS
2D SESSION

H. R. 3902

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 2014

Mr. SCHIFF (for himself and Mr. ROGERS of Michigan) introduced the following bill; which was 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 Act of 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Integrated Automated Fingerprint
9 Identification System of the Federal Bureau of In-

1 investigation maintains fingerprints and criminal his-
2 tory records on more than 71,000,000 individuals.

3 (2) Congress has worked with the States to
4 make criminal history background checks available
5 to organizations seeking to screen employees and
6 volunteers who work with children, the elderly, and
7 individuals with disabilities, through the National
8 Child Protection Act of 1993 (42 U.S.C. 5119 et
9 seq.), the Volunteers for Children Act (Public Law
10 105–251; 112 Stat. 1885), the Serve America Act
11 (Public Law 111–13; 123 Stat. 1460), the Adam
12 Walsh Child Protection and Safety Act of 2006
13 (Public Law 109–248; 120 Stat. 587), and statutes
14 enacted by 48 states in compliance with Public Law
15 92–544. However, there may still be persons pro-
16 viding care and services to children who fall outside
17 these numerous and broad categories of criminal his-
18 tory background checks authorized by Federal and
19 State law.

20 **SEC. 3. BACKGROUND CHECKS.**

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

- 23 (1) by redesignating section 5 as section 6; and
24 (2) by inserting after section 4 the following:

1 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**

2 **BACKGROUND CHECKS.**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘background check designee’
5 means the entity designated by the Attorney General
6 under subsection (b)(3) to carry out the duties de-
7 scribed in subsection (c);

8 “(2) the term ‘covered entity’ means any busi-
9 ness or organization that provides, or licenses, cer-
10 tifies, or coordinates individuals or organizations to
11 provide, care, care placement, supervision, treat-
12 ment, education, training, instruction, or recreation
13 to children;

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

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

19 “(B) who—

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

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

25 “(4) the term ‘criminal history review designee’
26 means the entity designated by the Attorney General

1 under subsection (b)(2) to carry out the criminal
2 history review program;

3 “(5) the term ‘criminal history review program’
4 means the program established under subsection (d);

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

9 “(7) the term ‘State’ means a State of the
10 United States, the District of Columbia, the Com-
11 monwealth of Puerto Rico, American Samoa, the
12 Virgin Islands, Guam, the Commonwealth of the
13 Northern Mariana Islands, the Federated States of
14 Micronesia, the Republic of the Marshall Islands,
15 and the Republic of Palau; and

16 “(8) the term ‘vulnerable populations’ shall in-
17 clude elderly persons, disabled persons, and children.

18 “(b) ESTABLISHMENT OF PROGRAM.—

19 “(1) PURPOSE.—The purpose of this subsection
20 is to facilitate widespread access to State and na-
21 tional criminal history background checks, not other-
22 wise authorized by Federal or State law, on covered
23 individuals.

24 “(2) IN GENERAL.—Not later than 1 year after
25 the date of enactment of the Child Protection Im-

1 provements Act of 2013, the Attorney General shall
2 establish—

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

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

7 “(3) DESIGNEE.—The Attorney General may
8 designate one or more Federal Government agencies
9 to carry out the duties described in subsection (c).

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

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

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

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

21 “(ii) for covered entities and covered
22 individuals located in a State without a
23 qualified State program, by providing in-
24 formation on alternative methods of ob-

1 taining a State and national background
2 check;

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

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

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

12 “(A) the fingerprints of the covered indi-
13 vidual;

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

17 “(C) the appropriate fee.

18 “(3) FEES.—The Attorney General shall, in ad-
19 dition to the fee for the noncriminal justice national
20 criminal history background check authorized under
21 section 534 of title 28, United States Code—

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

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

3 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

4 “(1) PURPOSE.—The purpose of this subsection
5 is to provide covered entities with reliable and accu-
6 rate information regarding the fitness of the covered
7 individuals to have responsibility for the safety and
8 well-being of vulnerable populations in their care.

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

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

13 “(B) make determinations regarding
14 whether the criminal history records received in
15 response to a criminal history background check
16 conducted under this section indicate that the
17 covered individual has a criminal history that
18 may bear on the covered individual’s fitness to
19 provide care to vulnerable populations;

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

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

1 “(ii) instructions and guidance that
2 the covered entity should consult the Equal
3 Employment Opportunity Commission En-
4 forcement Guidance #915.002, dated April
5 25, 2012, ‘Consideration of Arrest and
6 Conviction Records in Employment Deci-
7 sions under Title VII of the Civil Rights
8 Act of 1964’, or any successor thereto,
9 issued by the United States Equal Employ-
10 ment Opportunity Commission.

11 “(3) CRIMINAL HISTORY REVIEW CRITERIA.—In
12 determining whether a criminal history record indi-
13 cates that a covered individual has a criminal history
14 that may bear on the fitness of the covered indi-
15 vidual to provide care to vulnerable populations, the
16 Attorney General or designee shall employ the cri-
17 teria used to evaluate individuals under other Fed-
18 eral laws, such as the Volunteers for Children Act
19 (Public Law 105–251; 112 Stat. 1885), the Serve
20 America Act (Public Law 111–13; 123 Stat. 1460),
21 and the Adam Walsh Child Protection and Safety
22 Act of 2006 (Public Law 109–248; 120 Stat. 587).

23 “(4) APPLICATION PROCESSING.—

24 “(A) IN GENERAL.—The Attorney General
25 shall establish the process by which a covered

1 entity or a covered individual in a State without
2 a qualified State program may obtain a State
3 and national criminal history background check.

4 “(B) CHALLENGE TO COMPLETENESS OF
5 RECORD.—A covered individual may challenge
6 the completeness of any information in the
7 criminal history record of the individual by con-
8 tacting the Federal Bureau of Investigation
9 under the procedure set out in section 16.34 of
10 title 28, Code of Federal Regulations, or any
11 successor thereto.

12 “(5) PARTICIPATION IN PROGRAM.—The Attor-
13 ney General or designee shall determine whether an
14 entity is a covered entity.

15 “(6) PRIVACY OF INFORMATION.—

16 “(A) IN GENERAL.—Any entity authorized
17 to receive or transmit fingerprints or criminal
18 history records under this section—

19 “(i) shall use the fingerprints, crimi-
20 nal history records, or information in the
21 criminal history records only for the pur-
22 poses specifically set forth in this section;
23 and

24 “(ii) shall maintain adequate security
25 measures to ensure the confidentiality of

1 the fingerprints, the criminal history
2 records, and the information in the crimi-
3 nal history records.

4 “(B) RETENTION OF FINGERPRINTS BY
5 THE FBI.—In accordance with State or Federal
6 procedures, for the purpose of providing finger-
7 print verification, criminal investigation or sub-
8 sequent hit notification services, or for the re-
9 tention of criminal history, the Federal Bureau
10 of Investigation may retain any fingerprints
11 submitted to the Federal Bureau of Investiga-
12 tion under this section.

13 “(7) RULE OF CONSTRUCTION.—Nothing in
14 this subsection shall be construed to change or re-
15 place any background check program authorized by
16 Federal or State law on the day before the date of
17 enactment of the Child Protection Improvements Act
18 of 2013.”.

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