

Calendar No. 512

112TH CONGRESS
2D SESSION

S. 645

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

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2011

Mr. SCHUMER (for himself, Mr. HATCH, Mr. ENSIGN, Mr. BROWN of Ohio, Mr. JOHANNES, Mr. WHITEHOUSE, Mrs. GILLIBRAND, Mr. FRANKEN, Mr. BLUNT, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Ms. KLOBUCHAR, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 19, 2012

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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 2011~~”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) In 2006, 61,200,000 adults (a total of 26.7
4 percent of the population) contributed a total of
5 8,100,000,000 hours of volunteer service. Of those
6 who volunteer, 27 percent dedicate their service to
7 education or youth programs, or a total of
8 16,500,000 adults.

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

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

24 (4) Given the large number of individuals with
25 criminal history records and the vulnerability of the
26 population they work with, human service organiza-

1 tions that work with children need an effective and
2 reliable means of obtaining relevant information
3 about criminal histories in order to determine the
4 suitability of a potential volunteer or employee.

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

13 (6) Congress has previously attempted to en-
14 sure that States make Federal Bureau of Investiga-
15 tion criminal history background checks available to
16 organizations seeking to screen employees and volun-
17 teers who work with children, the elderly, and indi-
18 viduals with disabilities, through the National Child
19 Protection Act of 1993 (42 U.S.C. 5119 et seq.) and
20 the Volunteers for Children Act (Public Law 105-
21 251; 112 Stat. 1885). However, according to a June
22 2006 report from the Attorney General, these laws
23 “did not have the intended impact of broadening the
24 availability of NCPA checks.” A 2007 survey con-
25 ducted by MENTOR/National Mentoring Partner-

1 ship found that only 18 States allowed youth men-
2 toring organizations to access nationwide Federal
3 Bureau of Investigation background searches.

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

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

16 (9) The Child Safety Pilot Program under sec-
17 tion 108 of the PROTECT Act (42 U.S.C. 5119a
18 note) revealed the importance of performing finger-
19 print-based Federal Bureau of Investigation criminal
20 history background checks. Of 68,000 background
21 checks performed through the pilot program as of
22 May 2009, 6 percent of volunteer applicants were
23 found to have a criminal history of concern, includ-
24 ing very serious offenses such as sexual abuse of mi-

1 nors, assault, child cruelty, murder, and serious
2 drug offenses.

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

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

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 FOR CHILD-SERVING**
3 **ORGANIZATIONS.**

4 “(a) DEFINITIONS.—In this section—

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

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

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

23 “(4) the term ‘covered individual’ means an in-
24 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 ~~1~~ or more Federal, State, or local government
12 agencies, if any, designated by or entering an agree-
13 ment with the Attorney General under subsection
14 (b)(3)(B) to carry out or assist in carrying out the
15 criminal history review program;

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 2011, 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) DESIGNEEES.—The Attorney General
2 may—

3 “(A) designate 1 or more Federal Govern-
4 ment agencies or enter into an agreement with
5 any other entity or organization, or entities or
6 organizations to carry out or assist in carrying
7 out the duties described in subsection (c); and

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

13 “(e) ACCESS TO NATIONWIDE BACKGROUND
14 CHECKS.—

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

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

22 “(A) handle inquiries from covered entities
23 and inform covered entities about how to re-
24 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 a 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 name, address, and
11 date of birth of the covered individual, as
12 those items of information appear on a
13 valid identification document, and demo-
14 graphic characteristics defined at sub-
15 section (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 and the duties
5 of the criminal history review designee under
6 this section—

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

10 “(I) the sum of—

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

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

21 “(II) to the extent practicable, no
22 greater than \$25 for a covered indi-
23 vidual who volunteers with a covered
24 entity except that where practicable
25 the fee may be waived by the Attorney

1 General upon a showing of substantial
2 hardship; and

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

8 “(B) PROHIBITION ON FEES.—

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

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

18 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

19 “(1) PURPOSE.—The purpose of the criminal
20 history review program is to provide participating
21 entities with reliable and accurate information re-
22 garding whether a covered individual has been con-
23 victed of, or has an open arrest or pending charges
24 for, a crime that may bear upon the fitness of the

1 covered individual to have responsibility for the safe-
2 ty and well-being of the children in their care.

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

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

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

12 “(i) the criminal history records;

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

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

24 “(C) if the covered individual informs the
25 Attorney General or criminal history review des-

1 ignore that the covered individual intends to
2 challenge the accuracy or completeness of any
3 information in the criminal history record, as-
4 sist the covered individual in contacting the ap-
5 propriate persons or offices within the Federal
6 Bureau of Investigation or State authorized
7 agency;

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

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

21 “(i) which of the 3 categorizations de-
22 scribed in paragraph (3) criminal convic-
23 tion of special concern identified, further
24 inquiry recommended, or no criminal

1 records of special concern identified apply
2 to the covered individual;

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

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

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

22 “(II) the period of time that has
23 elapsed since the date of the offense
24 or end of a period of incarceration or
25 supervised release;

1 “(III) the nature of the position
2 held or sought; and

3 “(IV) any evidence of rehabilita-
4 tion; and

5 “(iv) instructions and guidance that,
6 in evaluating the considerations described
7 in clause (iii), the participating entity
8 should consult the Equal Employment Op-
9 portunity Commission Policy Statement on
10 the Issue of Conviction Records and the
11 Equal Employment Opportunity Commis-
12 sion Policy Guidance on the Consideration
13 of Arrest Records in Employment Deci-
14 sions under Title VII of the Civil Rights
15 Act of 1964 or any successor thereto
16 issued by the Equal Employment Oppor-
17 tunity Commission;

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

22 “(G) work with the Attorney General or
23 the background check designee and the Federal
24 Bureau of Investigation to develop processes
25 and procedures to ensure that criminal history

1 background check requests are completed within
2 the time periods specified in subsection (e); and

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

9 “(3) CRIMINAL HISTORY REVIEW CRITERIA.—

10 The Attorney General or the criminal history review
11 designee shall, in determining when a criminal his-
12 tory record indicates that a covered individual has a
13 criminal history that may bear on the fitness of the
14 covered individual to provide care to children—

15 “(A) assign a categorization of criminal
16 conviction of special concern identified if a cov-
17 ered individual is found to have a conviction
18 that would prevent the individual from being
19 approved as a foster or adoptive parent under
20 section 471(a)(20)(A) of the Social Security Act
21 (42 U.S.C. 671(a)(20)(A));

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

1 “(i) a conviction for a serious mis-
2 demeanor, committed against a child, in-
3 volving the same type of conduct prohib-
4 ited by a felony described in section
5 471(a)(20)(A) of the Social Security Act
6 (42 U.S.C. 671(a)(20)(A));

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

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

23 “(C) assign a categorization of no criminal
24 records of special concern identified for a cov-

1 ered individual that does not meet the criteria
2 described in subparagraph (A) or (B).

3 “(e) TIMING.—

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

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

21 “(3) CONDUCT OF BACKGROUND CHECKS.—The
22 Federal Bureau of Investigation and, if appropriate,
23 a State authorized agency shall provide criminal his-
24 tory records to the Attorney General or the criminal
25 history review designee not later than 2 business

1 days after the date on which the Federal Bureau of
2 Investigation or State authorized agency, as the case
3 may be, receives a request for a nationwide back-
4 ground check from the Attorney General or the
5 background check designee.

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

8 “(A) IN GENERAL.—When the Attorney
9 General or the criminal history review designee
10 finds that the criminal history records of a cov-
11 ered individual fall within the categorizations
12 described in subparagraph (A) or (B) of sub-
13 section (d)(3), the Attorney General or criminal
14 history review designee shall provide the cov-
15 ered individual with the criminal history records
16 of the covered individual and a detailed notifica-
17 tion of the rights of the covered individual
18 under subsection (g) not later than 1 business
19 day after the date on which the Attorney Gen-
20 eral or criminal history review designee receives
21 a criminal history record from the Federal Bu-
22 reau of Investigation and, if necessary, resolves
23 any potentially incomplete information in ac-
24 cordance with subsection (d)(2)(B).

1 “(B) OPPORTUNITY TO CHALLENGE.—The
2 covered individual shall have 10 business days
3 from the date the criminal history records and
4 notification described in subparagraph (A) are
5 sent to challenge the accuracy or completeness
6 of any information in the criminal history
7 record or to withdraw consent to participate in
8 the criminal history review program.

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

20 “(f) PARTICIPATION IN PROGRAM.—

21 “(1) IN GENERAL.—The Attorney General or
22 the background check designee shall determine
23 whether an entity is a covered entity and whether
24 that covered entity should be approved as a partici-
25 pating entity, based on—

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

3 “(B) the consultation conducted under
4 paragraph (2).

5 “(2) CONSULTATION.—In determining how
6 many covered entities to approve as participating en-
7 tities, the Attorney General or the background check
8 designee shall consult quarterly with the Federal
9 Bureau of Investigation and the criminal history re-
10 view designee to determine the volume of requests
11 for national background checks that can be com-
12 pleted, based on the capacity of the criminal history
13 review program and the Federal Bureau of Inves-
14 tigation, the availability of resources, and the dem-
15 onstrated need for national background checks in
16 order to protect children.

17 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-
18 TIONS.—In determining whether a covered entity
19 should be approved as a participating entity under
20 paragraph (1), the Attorney General or the back-
21 ground check designee shall give preference to any
22 organization participating in the Child Safety Pilot
23 Program under section 108(a)(3) of the PROTECT
24 Act (42 U.S.C. 5119a note) on the date of enact-

1 ment of the Child Protection Improvements Act of
2 2011 and to any other nonprofit organizations.

3 “(g) RIGHT OF COVERED INDIVIDUALS TO CHAL-
4 LENGE ACCURACY OR COMPLETENESS OF RECORDS.—A
5 covered individual who is the subject of a nationwide back-
6 ground check under this section may challenge the accu-
7 racy and completeness of the criminal history records in
8 the criminal history report as provided in subsection
9 (d)(2)(D), without submitting a separate set of finger-
10 prints or an additional fee.

11 “(h) DUTIES OF THE FEDERAL BUREAU OF INVES-
12 TIGATION.—

13 “(1) RESPONSE TO A REQUEST FOR CRIMINAL
14 BACKGROUND RECORDS.—Upon request by the At-
15 torney General or background check designee, the
16 Federal Bureau of Investigation shall conduct a na-
17 tionwide background check and provide any criminal
18 history records to the Attorney General or criminal
19 history review designee.

20 “(2) RESOLUTION OF CHALLENGES.—If a cov-
21 ered individual challenges the accuracy or complete-
22 ness of any information in the criminal history
23 record of the covered individual, the Federal Bureau
24 of Investigation, in consultation with the agency that
25 contributed to the record, shall—

1 “(A) investigate the challenge with relevant
2 departments and agencies of the Federal Gov-
3 ernment and State and local governments;

4 “(B) promptly make a determination re-
5 garding the accuracy and completeness of the
6 challenged information; and

7 “(C) correct any inaccurate or incomplete
8 records.

9 “(i) AUTHORIZATION OF APPROPRIATIONS.—

10 “(1) IN GENERAL.—There are authorized to be
11 appropriated to the Attorney General for each of fis-
12 cal years 2012 through 2015 such sums as are nec-
13 essary to carry out the provisions of this Act.

14 “(2) SENSE OF THE CONGRESS.—It is the sense
15 of the Congress that in fiscal year 2012, and each
16 fiscal year thereafter, the fees collected by the Attor-
17 ney General or the background check designee
18 should be sufficient to carry out the duties of the
19 Attorney General or the background check designee
20 under this section and to help support the criminal
21 history review program.

22 “(j) COLLECTION OF DATA AND REPORT TO CON-
23 GRESS.—

24 “(1) IN GENERAL.—Not later than 1 year after
25 the establishment of the program created under sub-

1 section (b), and annually thereafter, the Attorney
2 General shall prepare and submit to Congress and
3 make available to the public a report on the pro-
4 grams and procedures established under this Act.

5 “(2) COLLECTION OF DATA.—

6 “(A) DEFINITION OF DEMOGRAPHIC CHAR-
7 ACTERISTICS.—In this paragraph, the term ‘de-
8 mographic characteristics’ includes information
9 pertaining to race, color, ancestry, national ori-
10 gin, age, sex, and marital status.

11 “(B) COMPILING.—Beginning not later
12 than 90 days after the establishment of the pro-
13 gram under subsection (b), the Attorney Gen-
14 eral shall compile data regarding—

15 “(i) the number and types of partici-
16 pating entities;

17 “(ii) the fees charged to participating
18 entities under this section;

19 “(iii) the time interval between na-
20 tionwide background check submissions
21 and responses under this section;

22 “(iv) the fiscal impact of this section
23 on State authorized agencies;

24 “(v) the number and demographic
25 characteristics of covered individuals sub-

1 mitting a statement described in subsection
2 (e)(3)(A)(iii) as part of a request for a na-
3 tionwide background check;

4 “(vi) the number and demographic
5 characteristics of covered individuals deter-
6 mined to have a criminal history;

7 “(vii) the number, type (including the
8 identity of the offense and whether the of-
9 fense was committed while the covered in-
10 dividual was a juvenile or adult), and fre-
11 quency of offenses, and length of the pe-
12 riod between the date of the offense and
13 the date of the nationwide background
14 check for any covered individuals found to
15 have a criminal history under this section;

16 “(viii) the procedures available for
17 covered individuals to challenge the accu-
18 racy and completeness of criminal history
19 records under this section;

20 “(ix) the number and results of chal-
21 lenges to the accuracy and completeness of
22 criminal history records under this section;

23 “(x) the number and types of correc-
24 tions of erroneous criminal history records
25 based on a challenge under this section;

1 “(xi) the number and types of inquiries for assistance on interpreting a criminal history received by the criminal history review program; and

2
3
4
5 “(xii) to the extent practicable, the number of covered individuals denied employment based on the criminal history information provided by the Attorney General or the criminal history review designee.

6
7
8
9
10
11 “(C) AGGREGATING DATA.—The Attorney
12 General shall—

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

14
15
16 “(ii) aggregate the data collected under clauses (v), (vi), and (vii) of subparagraph (B) by race, color, ancestry, national origin, age, sex, and marital status.

17
18
19
20 “(D) REPORTS.—

21 “(i) IN GENERAL.—Not later than 1
22 year after the date of enactment of the
23 Child Protection Improvements Act of
24 2011, and annually thereafter, the Attorney
25 General shall prepare and submit to

1 Congress a report concerning the data
2 compiled and aggregated under this para-
3 graph.

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

6 “(I) the data compiled and ag-
7 gregated under this paragraph; orga-
8 nized in such a way as to provide a
9 comprehensive analysis of the pro-
10 grams and procedures established
11 under this section;

12 “(II) information regarding and
13 analysis of—

14 “(aa) the programs and pro-
15 cedures established under this
16 section; and

17 “(bb) the extent such pro-
18 grams and procedures have
19 helped screen individuals who
20 may pose a risk to children; and

21 “(III) information regarding and
22 analysis of whether and to what ex-
23 tent the programs and procedures es-
24 tablished under this section are hav-
25 ing a disparate impact on individuals

1 based on race, color, ancestry, na-
2 tional origin, age, sex, or marital sta-
3 tus.

4 “(iii) RECOMMENDATIONS.—A report
5 submitted under clause (i) may contain
6 recommendations to Congress on possible
7 legislative improvements to this section.

8 “(iv) ADDITIONAL INFORMATION.—

9 “(I) IN GENERAL.—Upon the re-
10 quest of any member of Congress, the
11 Attorney General shall make available
12 any of the data compiled or aggre-
13 gated under this paragraph.

14 “(II) EXCEPTION.—The Attorney
15 General shall not make available any
16 data that identifies specific individ-
17 uals.

18 “(k) LIMITATION ON LIABILITY.—

19 “(1) IN GENERAL.—

20 “(A) FAILURE TO CONDUCT CRIMINAL
21 BACKGROUND CHECKS.—No participating entity
22 shall be liable in an action for damages solely
23 for failure to conduct a criminal background
24 check on a covered individual.

1 “(B) FAILURE TO TAKE ADVERSE ACTION
2 AGAINST COVERED INDIVIDUAL.—No partici-
3 pating entity shall be liable in an action for
4 damages solely for a failure to take action ad-
5 verse to a covered individual upon receiving any
6 notice of criminal history from the Attorney
7 General or the criminal history review designee
8 under subsection (d)(2)(F).

9 “(2) RELIANCE.—A participating entity that
10 reasonably relies on criminal history records received
11 in response to a background check under this section
12 shall not be liable in an action for damages based
13 on the inaccuracy or incompleteness of that informa-
14 tion.

15 “(3) CRIMINAL HISTORY REVIEW PROGRAM.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraphs (B) and (C) the background
18 check designee and the criminal history review
19 designee, including a director, officer, employee,
20 or agent of the background check designee, or
21 the criminal history review designee, shall not
22 be liable in an action for damages relating to
23 the performance of the responsibilities and
24 functions of the background check designee and

1 the criminal history review designee under this
2 section:

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

16 “(C) ORDINARY BUSINESS ACTIVITIES.—
17 Subparagraph (A) shall not apply to an act or
18 omission relating to an ordinary business activ-
19 ity, such as an activity involving general admin-
20 istration or operations, the use of motor vehi-
21 cles, or personnel management.

22 “(1) PRIVACY OF INFORMATION.—

23 “(1) PROHIBITION ON UNAUTHORIZED DISCLO-
24 SURE OR USE OF CRIMINAL HISTORY RECORDS.—

25 Except for a covered individual, any entity or indi-

1 vidual authorized to receive or transmit fingerprints
2 or criminal history records under this Act—

3 “(A) shall use the fingerprints, criminal
4 history records, or information in the criminal
5 history records only for the purposes specifically
6 set forth in this Act;

7 “(B) shall allow access to the fingerprints,
8 criminal history records, or information in the
9 criminal history records only to those employees
10 of the entity, and only on such terms, as are
11 necessary to fulfill the purposes set forth in this
12 Act;

13 “(C) shall not disclose the fingerprints,
14 criminal history records, or information in the
15 criminal history records, except as specifically
16 authorized under this Act;

17 “(D) shall keep a written record of each
18 authorized disclosure of the fingerprints, crimi-
19 nal history records, or the information in the
20 criminal history records; and

21 “(E) shall maintain adequate security
22 measures to ensure the confidentiality of the
23 fingerprints, the criminal history records, and
24 the information in the criminal history records.

25 “(2) COMPLIANCE.—

1 “(A) IN GENERAL.—The Attorney General
2 shall promulgate regulations to ensure the en-
3 forcement of the nondisclosure requirements
4 under paragraph (1) and to provide for appro-
5 priate sanctions in the case of violations of the
6 requirements.

7 “(B) PARTICIPATING ENTITIES AND DES-
8 IGNEES.—The participation in any program
9 under this section by an entity or organization
10 that enters into an agreement with the Attorney
11 General to carry out the duties described in
12 subsection (c) or to carry out the criminal his-
13 tory review program shall be conditioned on the
14 person—

15 “(i) establishing procedures to ensure
16 compliance with, and respond to any viola-
17 tions of, paragraph (1); and

18 “(ii) maintaining substantial compli-
19 ance with paragraph (1).

20 “(3) DESTRUCTION OF RECORDS.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), the Attorney General, the
23 background check designee, and the criminal
24 history review designee shall destroy any finger-
25 prints, either in paper or electronic form, or

1 criminal history record received for the purpose
2 of carrying out the provisions of this Act after
3 any transaction based on the fingerprints or
4 criminal history record is completed; and shall
5 not maintain the fingerprints, the criminal his-
6 tory records, or the information in the criminal
7 history record in any form.

8 “(B) EXCEPTION.—This paragraph shall
9 not apply to the retention of fingerprints by the
10 FBI, upon consent of the covered individual or
11 in accordance with State or Federal procedures,
12 for the purpose of providing fingerprint
13 verification or subsequent hit notification serv-
14 ices, or for the retention of criminal history
15 record information which updates the criminal
16 history record.

17 “(C) REPEAT APPLICANTS.—A covered in-
18 dividual may sign a release permitting the At-
19 torney General or background check designee to
20 retain the fingerprints of the covered individual
21 for a period not to exceed 5 years, for the sole
22 purpose of participating in the criminal history
23 review program on a subsequent occasion.”

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

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

4 (1) by striking “104-month”; and

5 (2) by adding at the end the following: “The
6 Child Safety Pilot Program under this paragraph
7 shall terminate on the date that is 1 year after the
8 date of enactment of the Child Protection Improve-
9 ments Act of 2011.”.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Child Protection Im-*
12 *provements Act of 2012”.*

13 **SEC. 2. FINDINGS.**

14 *Congress finds the following:*

15 (1) *In 2006, 61,200,000 adults (a total of 26.7*
16 *percent of the population) contributed a total of*
17 *8,100,000,000 hours of volunteer service. Of those who*
18 *volunteer, 27 percent dedicate their service to edu-*
19 *cation or youth programs, or a total of 16,500,000*
20 *adults.*

21 (2) *Assuming recent incarceration rates remain*
22 *unchanged, an estimated 6.6 percent of individuals in*
23 *the United States will serve time in prison for a*
24 *crime during their lifetime. The Integrated Auto-*
25 *mated Fingerprint Identification System of the Fed-*
26 *eral Bureau of Investigation maintains fingerprints*

1 *and criminal history records on more than*
2 *71,000,000 individuals, many of whom have been ar-*
3 *rested or convicted multiple times.*

4 *(3) A study released in 2002, found that, of indi-*
5 *viduals released from prison in 15 States in 1994, an*
6 *estimated 67.5 percent were rearrested for a felony or*
7 *serious misdemeanor within 3 years. Three-quarters*
8 *of those new arrests resulted in convictions or a new*
9 *prison sentence.*

10 *(4) Given the large number of individuals with*
11 *criminal history records and the vulnerability of the*
12 *population they work with, human service organiza-*
13 *tions that work with children need an effective and*
14 *reliable means of obtaining relevant information*
15 *about criminal histories in order to determine the*
16 *suitability of a potential volunteer or employee.*

17 *(5) The large majority of Americans (88 percent)*
18 *favor granting youth-serving organizations access to*
19 *conviction records for screening volunteers and 59*
20 *percent favored allowing youth-serving organizations*
21 *to consider arrest records when screening volunteers.*
22 *This was the only use for which a majority of those*
23 *surveyed favored granting access to arrest records.*

24 *(6) Congress has previously attempted to ensure*
25 *that States make Federal Bureau of Investigation*

1 *criminal history background checks available to orga-*
2 *nizations seeking to screen employees and volunteers*
3 *who work with children, the elderly, and individuals*
4 *with disabilities, through the National Child Protec-*
5 *tion Act of 1993 (42 U.S.C. 5119 et seq.) and the Vol-*
6 *unteers for Children Act (Public Law 105–251; 112*
7 *Stat. 1885). However, according to a June 2006 re-*
8 *port from the Attorney General, these laws “did not*
9 *have the intended impact of broadening the avail-*
10 *ability of NCPA checks.” A 2007 survey conducted by*
11 *MENTOR/National Mentoring Partnership found*
12 *that only 18 States allowed youth mentoring organi-*
13 *zations to access nationwide Federal Bureau of Inves-*
14 *tigation background searches.*

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

22 *(8) Delays in processing such checks can also*
23 *limit their utility. While the Federal Bureau of Inves-*
24 *tigation processes all civil fingerprint requests in less*

1 *than 24 hours, State response times vary widely, and*
2 *can take as long as 42 days.*

3 *(9) The Child Safety Pilot Program under sec-*
4 *tion 108 of the PROTECT Act (42 U.S.C. 5119a*
5 *note) revealed the importance of performing finger-*
6 *print-based Federal Bureau of Investigation criminal*
7 *history background checks. Of 77,000 background*
8 *checks performed through the pilot program, 6 percent*
9 *of volunteer applicants were found to have a criminal*
10 *history of concern, including very serious offenses*
11 *such as sexual abuse of minors, assault, child cruelty,*
12 *murder, and serious drug offenses.*

13 *(10) In an analysis performed on the volunteers*
14 *screened by the Child Safety Pilot Program, it was*
15 *found that over 40 percent of the individuals with*
16 *criminal histories had committed an offense in a*
17 *State other than the State in which they were apply-*
18 *ing to volunteer, meaning that a State-only search*
19 *would not have found relevant criminal results. In*
20 *addition, even though volunteers knew a background*
21 *check was being performed, over 50 percent of the in-*
22 *dividuals found to have a criminal history falsely in-*
23 *dicated on their application form that they did not*
24 *have a criminal history.*

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

6 **SEC. 3. BACKGROUND CHECKS.**

7 *The National Child Protection Act of 1993 (42 U.S.C.*
 8 *5119 et seq.) is amended—*

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

10 (2) *by inserting after section 4 the following:*

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

12 **BACKGROUND CHECKS FOR CHILD-SERVING**

13 **ORGANIZATIONS.**

14 “(a) *DEFINITIONS.—In this section—*

15 “(1) *the term ‘background check designee’ means*
 16 *the entity or organization, if any, designated by or*
 17 *entering an agreement with the Attorney General*
 18 *under subsection (b)(3)(A) to carry out or assist in*
 19 *carrying out the duties described in subsection (c);*

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

22 “(3) *the term ‘covered entity’ means a business*
 23 *or organization, whether public, private, for-profit,*
 24 *nonprofit, or voluntary that provides care, care place-*
 25 *ment, supervision, treatment, education, training, in-*

1 *struction, or recreation to children, including a busi-*
2 *ness or organization that licenses, certifies, or coordi-*
3 *nates individuals or organizations to provide care,*
4 *care placement, supervision, treatment, education,*
5 *training, instruction, or recreation to children;*

6 “(4) the term ‘covered individual’ means an in-
7 *dividual—*

8 “(A) *who has, seeks to have, or may have*
9 *unsupervised access to a child served by a cov-*
10 *ered entity; and*

11 “(B) *who—*

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

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

17 “(5) the term ‘criminal history review designee’
18 *means 1 or more Federal, State, or local government*
19 *agencies, if any, designated by or entering an agree-*
20 *ment with the Attorney General under subsection*
21 *(b)(3)(B) to carry out or assist in carrying out the*
22 *criminal history review program;*

23 “(6) the term ‘criminal history review program’
24 *means the program established under subsection*
25 *(b)(1)(B);*

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

4 “(8) the term ‘open arrest’ means an arrest re-
5 lating to which charges may still be brought, taking
6 into consideration the applicable statute of limita-
7 tions;

8 “(9) the term ‘pending charge’ means a criminal
9 charge that has not been resolved through conviction,
10 acquittal, dismissal, plea bargain, or any other
11 means;

12 “(10) the term ‘serious misdemeanor’ means—

13 “(A) an offense described in section
14 3581(b)(6) of title 18, United States Code; or

15 “(B) for a State offense, an offense carrying
16 a penalty of more than 6 months, but not more
17 than 1 year;

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

1 “(12) the term ‘State authorized agency’ means
2 a division or office of a State designated by that State
3 to report, receive, or disseminate criminal history in-
4 formation.

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 2012, the Attorney General shall—

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

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

14 “(2) *DESIGNEES.*—The Attorney General may
15 designate 1 or more Federal Government agencies or
16 enter into an agreement with any other entity or or-
17 ganization, or entities or organizations to carry out
18 or assist in carrying out the duties described in sub-
19 section (c).

20 “(c) *ACCESS TO NATIONWIDE BACKGROUND*
21 *CHECKS.*—

22 “(1) *PURPOSE.*—The purpose of this section is to
23 streamline the process of obtaining nationwide back-
24 ground checks, provide effective customer service, and

1 *facilitate widespread access to nationwide background*
2 *checks by covered entities.*

3 “(2) *DUTIES.—The Attorney General or the*
4 *background check designee shall—*

5 “(A) *handle inquiries from covered entities*
6 *and inform covered entities about how to request*
7 *nationwide background checks;*

8 “(B) *provide covered entities with access to*
9 *nationwide background checks on covered indi-*
10 *viduals in accordance with this section;*

11 “(C) *receive paper and electronic requests*
12 *for nationwide background checks on covered in-*
13 *dividuals from covered entities;*

14 “(D) *convert all paper fingerprint cards*
15 *into an electronic form and securely transmit all*
16 *fingerprints electronically to the national crimi-*
17 *nal history background check system;*

18 “(E) *collect a fee to conduct the nationwide*
19 *background check, and, if appropriate, a State*
20 *criminal background check, and remit fees to the*
21 *Attorney General or the criminal history review*
22 *designee and the Federal Bureau of Investiga-*
23 *tion; and*

24 “(F) *coordinate with the Federal Bureau of*
25 *Investigation and the Attorney General or the*

1 *criminal history review designee to ensure that*
2 *background check requests are being completed*
3 *within the time periods specified in subsection*
4 *(e).*

5 “(3) *REQUIRED INFORMATION.*—*A request for a*
6 *nationwide background check by a covered entity shall*
7 *include—*

8 “(A) *the fingerprints of the covered indi-*
9 *vidual, in paper or electronic form;*

10 “(B) *a photocopy of a valid identification*
11 *document; and*

12 “(C) *a statement completed and signed by*
13 *the covered individual that—*

14 “(i) *sets out the name, address, and*
15 *date of birth of the covered individual, as*
16 *those items of information appear on a*
17 *valid identification document;*

18 “(ii) *notifies the covered individual*
19 *that the Attorney General may perform a*
20 *criminal history background check and that*
21 *the signature of the covered individual on*
22 *the statement constitutes an acknowledg-*
23 *ment that such a check may be 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 covered entity may be informed if*
4 *the criminal history records of the covered*
5 *individual reveal a criminal history that*
6 *warrants special concern or further inquiry;*

7 “(iv) *notifies the covered individual*
8 *that the covered individual shall be pro-*
9 *vided with a copy of the criminal history*
10 *records of the covered individual and shall*
11 *have 10 business days to review the records,*
12 *challenge the accuracy or completeness of*
13 *any information in the records, or with-*
14 *draw consent to participate in the criminal*
15 *history review program before any informa-*
16 *tion about the criminal history of the cov-*
17 *ered individual is provided to the covered*
18 *entity; and*

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

24 “(4) *FEES.—*

1 “(A) *IN GENERAL.*—*The Attorney General*
2 *or the background check designee shall collect a*
3 *fee to offset the costs of carrying out the duties*
4 *described in this subsection and the duties of the*
5 *criminal history review designee under this sec-*
6 *tion for a nationwide background check and*
7 *criminal history review, in an amount equal to*
8 *the sum of—*

9 “(i) *the actual cost to the Attorney*
10 *General or the background check designee of*
11 *conducting a nationwide background check;*
12 *and*

13 “(ii) *the actual cost to the Attorney*
14 *General or the criminal history review des-*
15 *ignee of conducting a criminal history re-*
16 *view under this section; and*

17 “(B) *PROHIBITION ON FEES.*—

18 “(i) *IN GENERAL.*—*A covered entity*
19 *may not charge another entity or indi-*
20 *vidual a surcharge to access a background*
21 *check conducted under this section.*

22 “(ii) *VIOLATION.*—*The Attorney Gen-*
23 *eral shall have the authority to collect res-*
24 *titution from any covered entity that the*

1 *Attorney General determines violated clause*
2 *(i).*

3 “(d) *CRIMINAL HISTORY REVIEW PROGRAM.*—

4 “(1) *PURPOSE.*—*The purpose of the criminal*
5 *history review program is to provide covered entities*
6 *with reliable and accurate information regarding*
7 *whether a covered individual has been convicted of, or*
8 *has an open arrest or pending charges for, a crime*
9 *that may bear upon the fitness of the covered indi-*
10 *vidual to have responsibility for the safety and well-*
11 *being of the children in their care.*

12 “(2) *REQUIREMENTS.*—*The Attorney General or*
13 *the criminal history review designee shall—*

14 “(A) *establish procedures to securely receive*
15 *criminal history records from the Federal Bu-*
16 *reau of Investigation, if necessary;*

17 “(B) *after receiving a criminal history*
18 *record from the Federal Bureau of Investigation*
19 *transmit to the covered individual—*

20 “(i) *the criminal history records;*

21 “(ii) *a detailed notification of the*
22 *rights of the covered individual under sub-*
23 *section (g); and*

24 “(iii) *information about how to contact*
25 *the Attorney General or criminal history re-*

1 *view designee for the purpose of challenging*
2 *the accuracy or completeness of any infor-*
3 *mation in the criminal history record or to*
4 *withdraw consent to participate in the*
5 *criminal history review program;*

6 *“(C) if the covered individual informs the*
7 *Attorney General or criminal history review des-*
8 *ignee that the covered individual intends to chal-*
9 *lenge the accuracy or completeness of any infor-*
10 *mation in the criminal history record, assist the*
11 *covered individual in contacting the appropriate*
12 *persons or offices within the Federal Bureau of*
13 *Investigation;*

14 *“(D) make determinations regarding wheth-*
15 *er the criminal history records received in re-*
16 *sponse to a criminal history background check*
17 *conducted under this section indicate that the*
18 *covered individual has a criminal history that*
19 *may bear on the covered individual’s fitness to*
20 *provide care to children, based solely on the cri-*
21 *teria described in paragraph (3);*

22 *“(E) unless the covered individual has with-*
23 *drawn consent to participate in the criminal*
24 *history review program, convey to the covered*

1 entity that submitted the request for a nation-
2 wide background check—

3 “(i) which of the 3 categorizations de-
4 scribed in paragraph (3) criminal convic-
5 tion of special concern identified, further
6 inquiry recommended, or no criminal
7 records of special concern identified apply
8 to the covered individual;

9 “(ii) information and guidance relat-
10 ing to the appropriate use of criminal his-
11 tory information when making decisions re-
12 garding hiring employees and using volun-
13 teers;

14 “(iii) if a criminal history that meets
15 the criteria set forth in subparagraph (A) or
16 (B) of paragraph (3) is found, a rec-
17 ommendation to the participating entity to
18 consult with the covered individual in order
19 to obtain more information about the crimi-
20 nal history of the covered individual, and a
21 list of factors to consider in assessing the
22 significance of that criminal history, in-
23 cluding—

24 “(I) the nature, gravity, and cir-
25 cumstances of the offense, including

1 *whether the individual was convicted*
2 *of the offense;*

3 *“(II) the period of time that has*
4 *elapsed since the date of the offense or*
5 *end of a period of incarceration or su-*
6 *pervised release;*

7 *“(III) the nature of the position*
8 *held or sought; and*

9 *“(IV) any evidence of rehabilita-*
10 *tion; and*

11 *“(iv) instructions and guidance that,*
12 *in evaluating the considerations described*
13 *in clause (iii), the participating entity*
14 *should consult the Equal Employment Op-*
15 *portunity Commission Policy Statement on*
16 *the Issue of Conviction Records and the*
17 *Equal Employment Opportunity Commis-*
18 *sion Policy Guidance on the Consideration*
19 *of Arrest Records in Employment Decisions*
20 *under Title VII of the Civil Rights Act of*
21 *1964 or any successor thereto issued by the*
22 *Equal Employment Opportunity Commis-*
23 *sion;*

24 *“(F) if a covered individual has withdrawn*
25 *consent to participate in the criminal history re-*

1 *view program, inform the covered entity that*
2 *consent has been withdrawn;*

3 “(G) *work with the Attorney General or the*
4 *background check designee and the Federal Bu-*
5 *reau of Investigation to develop processes and*
6 *procedures to ensure that criminal history back-*
7 *ground check requests are completed within the*
8 *time periods specified in subsection (e); and*

9 “(H) *serve as a national resource center to*
10 *provide guidance and assistance to covered enti-*
11 *ties on how to interpret criminal history infor-*
12 *mation, the possible restrictions that apply when*
13 *making hiring decisions based on criminal his-*
14 *tories, and other related information.*

15 “(3) *CRIMINAL HISTORY REVIEW CRITERIA.—The*
16 *Attorney General or the criminal history review des-*
17 *ignee shall, in determining when a criminal history*
18 *record indicates that a covered individual has a*
19 *criminal history that may bear on the fitness of the*
20 *covered individual to provide care to children—*

21 “(A) *assign a categorization of criminal*
22 *conviction of special concern identified if a cov-*
23 *ered individual is found to have a conviction*
24 *that would prevent the individual from being ap-*
25 *proved as a foster or adoptive parent under sec-*

1 *tion 471(a)(20)(A) of the Social Security Act (42*
2 *U.S.C. 671(a)(20)(A));*

3 *“(B) assign a categorization of further in-*
4 *quiry recommended if a covered individual is*
5 *found to have—*

6 *“(i) a conviction for a serious mis-*
7 *demeanor, committed against a child, in-*
8 *volving the same type of conduct prohibited*
9 *by a felony described in section*
10 *471(a)(20)(A) of the Social Security Act (42*
11 *U.S.C. 671(a)(20)(A));*

12 *“(ii) a conviction for a serious mis-*
13 *demeanor, not committed against a child,*
14 *involving the same type of conduct prohib-*
15 *ited by a felony described in section*
16 *471(a)(20)(A) of the Social Security Act (42*
17 *U.S.C. 671(a)(20)(A)) unless 5 years has*
18 *elapsed since the later of the date of convic-*
19 *tion and the date of release of the person*
20 *from imprisonment for that conviction;*

21 *“(iii) an open arrest or pending charge*
22 *for a felony described in, or a serious mis-*
23 *demeanor involving the same type of con-*
24 *duct prohibited by a felony described in,*

1 *section 471(a)(20)(A) of the Social Security*
2 *Act (42 U.S.C. 671(a)(20)(A)); and*

3 *“(C) assign a categorization of no criminal*
4 *records of special concern identified for a covered*
5 *individual that does not meet the criteria de-*
6 *scribed in subparagraph (A) or (B).*

7 *“(e) TIMING.—*

8 *“(1) IN GENERAL.—Unless exceptional cir-*
9 *cumstances apply, criminal background checks shall*
10 *be completed according to the time frame under this*
11 *subsection. The Attorney General or the background*
12 *check designee shall work with the criminal history*
13 *review designee and the Federal Bureau of Investiga-*
14 *tion to ensure that the time limits under this sub-*
15 *section are being achieved.*

16 *“(2) APPLICATION PROCESSING.—The Attorney*
17 *General or the background check designee shall elec-*
18 *tronically submit a national background check request*
19 *to the Federal Bureau of Investigation not later than*
20 *2 business days after the date on which a request for*
21 *a national background check is received by the Attor-*
22 *ney General or the background check designee.*

23 *“(3) CONDUCT OF BACKGROUND CHECKS.—The*
24 *Federal Bureau of Investigation shall provide crimi-*
25 *nal history records to the Attorney General or the*

1 *criminal history review designee not later than 2*
2 *business days after the date on which the Federal Bu-*
3 *reau of Investigation receives a request for a nation-*
4 *wide background check from the Attorney General or*
5 *the background check designee.*

6 “(4) *PROVISION OF RECORDS TO COVERED INDI-*
7 *VIDUALS AND OPPORTUNITY TO CHALLENGE.—*

8 “(A) *IN GENERAL.—When the Attorney*
9 *General or the criminal history review designee*
10 *finds that the criminal history records of a cov-*
11 *ered individual fall within the categorizations*
12 *described in subparagraph (A) or (B) of sub-*
13 *section (d)(3), the Attorney General or criminal*
14 *history review designee shall provide the covered*
15 *individual with the criminal history records of*
16 *the covered individual and a detailed notifica-*
17 *tion of the rights of the covered individual under*
18 *subsection (g) not later than 1 business day after*
19 *the date on which the Attorney General or crimi-*
20 *nal history review designee receives a criminal*
21 *history record from the Federal Bureau of Inves-*
22 *tigation and, if necessary, resolves any poten-*
23 *tially incomplete information in accordance with*
24 *subsection (d)(2)(B).*

1 “(B) *OPPORTUNITY TO CHALLENGE.*—The
2 *covered individual shall have 10 business days*
3 *from the date the criminal history records and*
4 *notification described in subparagraph (A) are*
5 *sent to challenge the accuracy or completeness of*
6 *any information in the criminal history record*
7 *or to withdraw consent to participate in the*
8 *criminal history review program.*

9 “(5) *CRIMINAL HISTORY REVIEWS.*—Unless the
10 *Federal Bureau of Investigation certifies that further*
11 *time is required to resolve a challenge brought by a*
12 *covered individual, the Attorney General or the crimi-*
13 *nal history review designee shall convey to the covered*
14 *entity the information set forth in subparagraph (F)*
15 *or (G) of subsection (d)(2), as appropriate, 10 busi-*
16 *ness days after providing the covered individuals with*
17 *the criminal history records of the covered individual*
18 *and a notification of their rights under subsection (g).*

19 “(f) *PARTICIPATION IN PROGRAM.*—

20 “(1) *IN GENERAL.*—The Attorney General or the
21 *background check designee shall determine whether an*
22 *entity is a covered entity based on—*

23 “(A) *whether the entity is located in a State*
24 *with a State authorized agency; and*

1 “(B) *the consultation conducted under*
2 *paragraph (2).*”

3 “(2) *CONSULTATION.—In determining whether*
4 *an entity is a covered entity for purposes of this sec-*
5 *tion, the Attorney General or the background check*
6 *designee shall consult quarterly with the Federal Bu-*
7 *reau of Investigation and the criminal history review*
8 *designee to determine the volume of requests for na-*
9 *tional background checks that can be completed, based*
10 *on the capacity of the criminal history review pro-*
11 *gram and the Federal Bureau of Investigation, the*
12 *availability of resources, and the demonstrated need*
13 *for national background checks in order to protect*
14 *children.*”

15 “(g) *RIGHT OF COVERED INDIVIDUALS TO CHALLENGE*
16 *ACCURACY OR COMPLETENESS OF RECORDS.—A covered*
17 *individual who is the subject of a nationwide background*
18 *check under this section may challenge the accuracy and*
19 *completeness of the criminal history records in the criminal*
20 *history report as provided in subsection (d)(2)(D), without*
21 *submitting a separate set of fingerprints or an additional*
22 *fee.*”

23 “(h) *DUTIES OF THE FEDERAL BUREAU OF INVES-*
24 *TIGATION.—*”

1 “(1) *RESPONSE TO A REQUEST FOR CRIMINAL*
2 *BACKGROUND RECORDS.*—Upon request by the Attor-
3 *ney General or background check designee, the Federal*
4 *Bureau of Investigation shall conduct a nationwide*
5 *background check and provide any criminal history*
6 *records to the Attorney General or criminal history*
7 *review designee.*

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

14 “(A) *investigate the challenge with relevant*
15 *departments and agencies of the Federal Govern-*
16 *ment and State and local governments;*

17 “(B) *promptly make a determination re-*
18 *garding the accuracy and completeness of the*
19 *challenged information; and*

20 “(C) *correct any inaccurate or incomplete*
21 *records.*

22 “(i) *FUND.*—

23 “(1) *ESTABLISHMENT.*—*There is established in*
24 *the Treasury a fund to be known as the ‘National*
25 *Criminal History Background Check Fund’ (referred*

1 to in this subsection as the ‘Fund’), to be adminis-
2 tered by the Attorney General to carry out this sec-
3 tion.

4 “(2) DEPOSITS.—Any amounts collected under
5 subsection (c)(4) shall be deposited into the Fund.

6 “(3) AVAILABILITY.—Amounts in the Fund shall
7 be available to the Attorney General for use in accord-
8 ance with this section without fiscal year limitation
9 or further appropriation by Congress.

10 “(j) COLLECTION OF DATA AND REPORT TO CON-
11 GRESS.—

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

18 “(2) COLLECTION OF DATA.—

19 “(A) COMPILING.—Beginning not later than
20 90 days after the establishment of the program
21 under subsection (b), the Attorney General shall
22 compile data regarding—

23 “(i) the number and types of covered
24 entities;

1 “(ii) the fees charged to covered entities
2 under this section;

3 “(iii) the time interval between nation-
4 wide background check submissions and re-
5 sponses under this section;

6 “(iv) the number, type (including the
7 identity of the offense and whether the of-
8 fense was committed while the covered indi-
9 vidual was a juvenile or adult), and fre-
10 quency of offenses, and length of the period
11 between the date of the offense and the date
12 of the nationwide background check for any
13 covered individuals found to have a crimi-
14 nal history under this section;

15 “(v) the procedures available for cov-
16 ered individuals to challenge the accuracy
17 and completeness of criminal history
18 records under this section;

19 “(vi) the number and results of chal-
20 lenges to the accuracy and completeness of
21 criminal history records under this section;

22 “(vii) the number and types of correc-
23 tions of erroneous criminal history records
24 based on a challenge under this section;

1 “(viii) the number and types of inquiries for assistance on interpreting a criminal history received by the criminal history review program; and

2
3
4
5 “(ix) to the extent practicable, the number of covered individuals denied employment based on the criminal history information provided by the Attorney General or the criminal history review designee.

6
7
8
9
10 “(B) *AGGREGATING DATA.*—The Attorney General shall aggregate the data collected under this paragraph by State and city.

11
12
13 “(C) *REPORTS.*—

14 “(i) *IN GENERAL.*—Not later than 1 year after the date of enactment of the Child Protection Improvements Act of 2012, and annually thereafter, the Attorney General shall prepare and submit to Congress a report concerning the data compiled and aggregated under this paragraph.

15
16
17
18
19
20
21 “(ii) *CONTENTS.*—Each report submitted under clause (i) shall contain—

22
23 “(I) the data compiled and aggregated under this paragraph, organized in such a way as to provide a com-

1 *prehensive analysis of the programs*
2 *and procedures established under this*
3 *section; and*

4 “(II) *information regarding and*
5 *analysis of—*

6 “(aa) *the programs and pro-*
7 *cedures established under this sec-*
8 *tion; and*

9 “(bb) *the extent such pro-*
10 *grams and procedures have helped*
11 *screen individuals who may pose*
12 *a risk to children.*

13 “(iii) *RECOMMENDATIONS.—A report*
14 *submitted under clause (i) may contain rec-*
15 *ommendations to Congress on possible legis-*
16 *lative improvements to this section.*

17 “(iv) *ADDITIONAL INFORMATION.—*

18 “(I) *IN GENERAL.—Upon the re-*
19 *quest of any member of Congress, the*
20 *Attorney General shall make available*
21 *any of the data compiled or aggregated*
22 *under this paragraph.*

23 “(II) *EXCEPTION.—The Attorney*
24 *General shall not make available any*

1 *data that identifies specific individ-*
2 *uals.*

3 “(k) *LIMITATION ON LIABILITY.—*

4 “(1) *IN GENERAL.—*

5 “(A) *FAILURE TO CONDUCT CRIMINAL*
6 *BACKGROUND CHECKS.—A covered entity shall*
7 *not be held liable in an action for damages solely*
8 *for failure to conduct a criminal background*
9 *check on a covered individual.*

10 “(B) *FAILURE TO TAKE ADVERSE ACTION*
11 *AGAINST COVERED INDIVIDUAL.—A covered enti-*
12 *ty shall not be held liable in an action for dam-*
13 *ages solely for a failure to take action adverse to*
14 *a covered individual upon receiving any notice*
15 *of criminal history from the Attorney General or*
16 *the criminal history review designee under sub-*
17 *section (d)(2)(F).*

18 “(2) *RELIANCE.—A covered entity that reason-*
19 *ably relies on criminal history records received in re-*
20 *sponse to a background check under this section shall*
21 *not be liable in an action for damages based on the*
22 *inaccuracy or incompleteness of that information.*

23 “(3) *CRIMINAL HISTORY REVIEW PROGRAM.—*

24 “(A) *IN GENERAL.—Except as provided in*
25 *subparagraphs (B) and (C), the background*

1 *check designee and the criminal history review*
2 *designee, including a director, officer, employee,*
3 *or agent of the background check designee, or the*
4 *criminal history review designee, shall not be*
5 *liable in an action for damages relating to the*
6 *performance of the responsibilities and functions*
7 *of the background check designee and the crimi-*
8 *nal history review designee under this section.*

9 “(B) *INTENTIONAL, RECKLESS, OR OTHER*
10 *MISCONDUCT.—Subparagraph (A) shall not*
11 *apply in an action if the background check des-*
12 *ignee, or the criminal history review designee, or*
13 *a director, officer, employee, or agent of the back-*
14 *ground check designee, or the criminal history*
15 *review designee, engaged in intentional mis-*
16 *conduct or acted, or failed to act, with actual*
17 *malice, with reckless disregard to a substantial*
18 *risk of causing injury without legal justification,*
19 *or for a purpose unrelated to the performance of*
20 *responsibilities or functions under this section.*

21 “(C) *ORDINARY BUSINESS ACTIVITIES.—*
22 *Subparagraph (A) shall not apply to an act or*
23 *omission relating to an ordinary business activ-*
24 *ity, such as an activity involving general admin-*

1 *istration or operations, the use of motor vehicles,*
2 *or personnel management.*

3 “(l) *PRIVACY OF INFORMATION.*—

4 “(1) *PROHIBITION ON UNAUTHORIZED DISCLO-*
5 *SURE OR USE OF CRIMINAL HISTORY RECORDS.*—*Ex-*
6 *cept for a covered individual, any entity or indi-*
7 *vidual authorized to receive or transmit fingerprints*
8 *or criminal history records under this Act—*

9 “(A) *shall use the fingerprints, criminal*
10 *history records, or information in the criminal*
11 *history records only for the purposes specifically*
12 *set forth in this Act;*

13 “(B) *shall allow access to the fingerprints,*
14 *criminal history records, or information in the*
15 *criminal history records only to those employees*
16 *of the entity, and only on such terms, as are nec-*
17 *essary to fulfill the purposes set forth in this Act;*

18 “(C) *shall not disclose the fingerprints,*
19 *criminal history records, or information in the*
20 *criminal history records, except as specifically*
21 *authorized under this Act;*

22 “(D) *shall keep a written record of each au-*
23 *thorized disclosure of the fingerprints, criminal*
24 *history records, or the information in the crimi-*
25 *nal history records; and*

1 “(E) shall maintain adequate security
2 measures to ensure the confidentiality of the fin-
3 gerprints, the criminal history records, and the
4 information in the criminal history records.

5 “(2) COMPLIANCE.—

6 “(A) IN GENERAL.—The Attorney General
7 shall promulgate regulations to ensure the en-
8 forcement of the nondisclosure requirements
9 under paragraph (1) and to provide for appro-
10 priate sanctions in the case of violations of the
11 requirements.

12 “(B) DESIGNEES.—The participation in
13 any program under this section by an entity or
14 organization that enters into an agreement with
15 the Attorney General to carry out the duties de-
16 scribed in subsection (c) or to carry out the
17 criminal history review program shall be condi-
18 tioned on the person—

19 “(i) establishing procedures to ensure
20 compliance with, and respond to any viola-
21 tions of, paragraph (1); and

22 “(ii) maintaining substantial compli-
23 ance with paragraph (1).

24 “(3) DESTRUCTION OF RECORDS.—

1 “(A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (B), the Attorney General, the*
3 *background check designee, and the criminal his-*
4 *tory review designee shall destroy any finger-*
5 *prints, either in paper or electronic form, or*
6 *criminal history record received for the purpose*
7 *of carrying out the provisions of this Act after*
8 *any transaction based on the fingerprints or*
9 *criminal history record is completed, and shall*
10 *not maintain the fingerprints, the criminal his-*
11 *tory records, or the information in the criminal*
12 *history record in any form.*

13 “(B) *EXCEPTION.*—*This paragraph shall*
14 *not apply to the retention of fingerprints by the*
15 *FBI, upon consent of the covered individual or*
16 *in accordance with State or Federal procedures,*
17 *for the purpose of providing fingerprint*
18 *verification or subsequent hit notification serv-*
19 *ices, or for the retention of criminal history*
20 *record information which updates the criminal*
21 *history record.*

22 “(C) *REPEAT APPLICANTS.*—*A covered indi-*
23 *vidual may sign a release permitting the Attor-*
24 *ney General or background check designee to re-*
25 *tain the fingerprints of the covered individual*

1 *for the sole purpose of participating in the*
2 *criminal history review program on a subsequent*
3 *occasion.”.*

4 **SEC. 4. ELECTRONIC LIFE SAFETY AND SECURITY SYSTEMS**
5 **FEDERAL BACKGROUND CHECKS.**

6 *(a) FINDINGS.—Congress finds the following:*

7 *(1) The electronic life safety and security systems*
8 *industry performs critical security installation and*
9 *protection for much of the infrastructure in the*
10 *United States and provides commercial buildings,*
11 *public agencies and residences with alarm and secu-*
12 *rity systems that are an important part of homeland*
13 *security and anti-crime and terrorist prevention.*

14 *(2) The electronic life safety and security systems*
15 *industry includes central monitoring stations and in-*
16 *dividual employer-owned companies and other pri-*
17 *vate sector businesses that install alarm and security*
18 *systems in infrastructure of the United States.*

19 *(3) Some States do not provide for any licensing*
20 *or regulation requirement that includes a State or*
21 *Federal background check on employers and employ-*
22 *ees of the companies involved in the electronic life*
23 *safety and security systems industry.*

24 *(4) Many employers and employees in the elec-*
25 *tronic life safety and security systems industry travel*

1 *across State lines to install systems and may or may*
2 *not be required to undergo Federal background checks*
3 *as a condition of employment and in some cases there*
4 *may be background check requirements at the State*
5 *level or duplicated background checks at the county or*
6 *city levels.*

7 *(5) Many employees in the electronic life safety*
8 *and security systems industry have access to public*
9 *and private structures and should undergo a Federal*
10 *background check in order to protect lives and prop-*
11 *erty.*

12 *(b) DEFINITION.—In this section, the term “electronic*
13 *life safety and security systems industry” means businesses*
14 *that provide installation and central monitoring of fire and*
15 *burglar alarm systems to public or private entities, includ-*
16 *ing fire alarms, burglar alarms, closed-circuit TV, biomet-*
17 *ric systems, access control systems, personal emergency re-*
18 *sponse systems, and other crime prevention systems.*

19 *(c) ESTABLISHMENT OF BACKGROUND CHECK.—*

20 *(1) IN GENERAL.—Not later than 180 days after*
21 *the date of enactment of this Act, the Attorney Gen-*
22 *eral shall establish a method to permit employers in*
23 *the electronic life safety and security systems installa-*
24 *tion and monitoring industry to request a fitness de-*
25 *termination by a governmental entity based on State*

1 *and Federal fingerprint-based background checks, in*
2 *accordance with the information contained in appro-*
3 *priate records acquired under section 534 of title 28,*
4 *United States Code.*

5 (2) *REQUIREMENTS.—*

6 (A) *METHOD.—The method for background*
7 *checks established under paragraph (1)—*

8 (i) *shall allow employers to obtain a*
9 *fitness determination from a governmental*
10 *entity based upon a background check of a*
11 *State and Federal criminal history record*
12 *information by submitting fingerprints—*

13 (I) *to the Attorney General*
14 *through the State criminal history*
15 *record repository of the State in which*
16 *the employer is located; or*

17 (II) *if a State declines to allow*
18 *access to the criminal history record*
19 *repository of the State, in the manner*
20 *determined by the Attorney General;*
21 *and*

22 (ii) *shall not require a duplicate back-*
23 *ground check regarding an employee work-*
24 *ing only within 1 State where the State li-*

1 censing and regulation of that employee al-
2 ready requires a Federal background check.

3 (B) *CRITERIA FOR DETERMINATION.*—The
4 fitness determination under subparagraph (A)(i)
5 shall be based on whether the employee or pro-
6 spective employee has been convicted of or im-
7 prisoned for a felony during the 10-year period
8 before the background check is conducted.

9 (C) *REQUIRED ATTORNEY GENERAL AC-*
10 *TION.*—Unless an employee or prospective em-
11 ployee has withdrawn consent to participate in
12 the fitness determination under paragraph
13 (3)(B), if the criminal history of the employee or
14 prospective employee includes a conviction or
15 imprisonment for a felony during the 10-year
16 period before the background check was con-
17 ducted, the Attorney General shall provide to the
18 employer—

19 (i)(I) a recommendation to consult
20 with the employee or prospective employee
21 in order to obtain more information about
22 the criminal history of the employee or pro-
23 spective employee; and

1 (ii) a list of factors to consider in as-
2 sessing the significance of the criminal his-
3 tory, including—

4 (aa) the nature, gravity, and cir-
5 cumstances of the offense, including
6 whether the employee or prospective
7 employee was convicted of the offense;

8 (bb) the period of time that has
9 elapsed since the date of the offense or
10 end of a period of incarceration or su-
11 pervised release;

12 (cc) the nature of the position held
13 or sought; and

14 (dd) any evidence of rehabilita-
15 tion; and

16 (ii) instructions and guidance that, in
17 evaluating the considerations described in
18 clause (i)(II), the participating entity
19 should consult the Equal Employment Op-
20 portunity Commission Policy Statement on
21 the Issue of Conviction Records and the
22 Equal Employment Opportunity Commis-
23 sion Policy Guidance on the Consideration
24 of Arrest Records in Employment Decisions
25 under Title VII of the Civil Rights Act of

1 1964 or any successor thereto issued by the
2 Equal Employment Opportunity Commis-
3 sion.

4 (3) *PROVISION OF RECORDS TO EMPLOYEES AND*
5 *PROSPECTIVE EMPLOYEES AND OPPORTUNITY TO*
6 *CHALLENGE OR WITHDRAW CONSENT.—*

7 (A) *IN GENERAL.—When the Attorney Gen-*
8 *eral finds that the criminal history records of an*
9 *employee or prospective employee demonstrate*
10 *that the employee or prospective employee has*
11 *been convicted of or imprisoned for a felony dur-*
12 *ing the 10-year period before the background*
13 *check is conducted, the Attorney General shall*
14 *provide the employee or prospective employee*
15 *with the criminal history records of the employee*
16 *or prospective employee and a detailed notifica-*
17 *tion of the rights of the employee or prospective*
18 *employee under subparagraph (C) not later than*
19 *1 business day after the date on which the Attor-*
20 *ney General receives a criminal history record*
21 *from the Federal Bureau of Investigation.*

22 (B) *OPPORTUNITY TO CHALLENGE OR WITH-*
23 *DRAW CONSENT.—An employee or prospective*
24 *employee described in subparagraph (A) shall*
25 *have 10 business days from the date the criminal*

1 *history records and notification described in sub-*
2 *paragraph (A) are sent to challenge the accuracy*
3 *or completeness of any information in the crimi-*
4 *nal history record or to withdraw consent to par-*
5 *ticipate in the fitness determination.*

6 (C) *RIGHT OF EMPLOYEES AND PROSPEC-*
7 *TIVE EMPLOYEES TO CHALLENGE ACCURACY OR*
8 *COMPLETENESS OF RECORDS.—An employee or*
9 *prospective employee who is the subject of back-*
10 *ground check under this section may challenge*
11 *the accuracy and completeness of the criminal*
12 *history records in the criminal history report as*
13 *provided in paragraph (4), without submitting a*
14 *separate set of fingerprints or an additional fee.*

15 (D) *RESOLUTION OF CHALLENGES.—If an*
16 *employee or prospective employee challenges the*
17 *accuracy or completeness of any information in*
18 *the criminal history record of the employee or*
19 *prospective employee under this paragraph, the*
20 *Federal Bureau of Investigation, in consultation*
21 *with the agency that contributed to the record,*
22 *shall—*

23 (i) *investigate the challenge with rel-*
24 *evant departments and agencies of the Fed-*

1 *eral Government and State and local gov-*
2 *ernments;*

3 *(ii) promptly make a determination*
4 *regarding the accuracy and completeness of*
5 *the challenged information; and*

6 *(iii) correct any inaccurate or incom-*
7 *plete records.*

8 *(4) CRIMINAL HISTORY REVIEWS.—Unless the*
9 *Federal Bureau of Investigation certifies that further*
10 *time is required to resolve a challenge brought by an*
11 *employee or prospective employee under paragraph*
12 *(3)(B), the Attorney General shall convey to the em-*
13 *ployer the criminal history records of the employee or*
14 *prospective employee 10 business days after providing*
15 *the employee or prospective employee with the crimi-*
16 *nal history records of the employee or prospective em-*
17 *ployee and a notification of their rights under para-*
18 *graph (3)(C).*

19 *(5) FEES.—The Attorney General shall collect*
20 *from an employer requesting a fitness determination*
21 *under this section a fee to offset the costs of carrying*
22 *out the duties described in this section, including this*
23 *subsection, in an amount equal to the sum of the ac-*
24 *tual cost to the Attorney General of conducting the*
25 *fitness determination and other criteria.*

1 (d) *PRIVACY OF INFORMATION.*—

2 (1) *PROHIBITION ON UNAUTHORIZED DISCLO-*
3 *SURE OR USE OF CRIMINAL HISTORY RECORDS.*—*Ex-*
4 *cept for an employee or prospective employee de-*
5 *scribed in subsection (c), any entity or individual au-*
6 *thorized to receive or transmit fingerprints or crimi-*
7 *nal history records under this section—*

8 (A) *shall use the fingerprints, criminal his-*
9 *tory records, or information in the criminal his-*
10 *tory records only for the purposes specifically set*
11 *forth in this section;*

12 (B) *shall allow access to the fingerprints,*
13 *criminal history records, or information in the*
14 *criminal history records only to those employees*
15 *of the entity, and only on such terms, as are nec-*
16 *essary to fulfill the purposes set forth in this sec-*
17 *tion;*

18 (C) *shall not disclose the fingerprints,*
19 *criminal history records, or information in the*
20 *criminal history records, except as specifically*
21 *authorized under this section;*

22 (D) *shall keep a written record of each au-*
23 *thorized disclosure of the fingerprints, criminal*
24 *history records, or the information in the crimi-*
25 *nal history records; and*

1 (E) shall maintain adequate security meas-
2 ures to ensure the confidentiality of the finger-
3 prints, the criminal history records, and the in-
4 formation in the criminal history records.

5 (2) COMPLIANCE.—The Attorney General shall
6 promulgate regulations to ensure the enforcement of
7 the nondisclosure requirements under paragraph (1)
8 and to provide for appropriate sanctions in the case
9 of violations of the requirements.

10 (3) DESTRUCTION OF RECORDS.—

11 (A) IN GENERAL.—Except as provided in
12 subparagraph (B), the Attorney General shall de-
13 stroy any fingerprints, either in paper or elec-
14 tronic form, or criminal history record received
15 for the purpose of carrying out the provisions of
16 this section after any transaction based on the
17 fingerprints or criminal history record is com-
18 pleted, and shall not maintain the fingerprints,
19 the criminal history records, or the information
20 in the criminal history record in any form.

21 (B) EXCEPTION.—This paragraph shall not
22 apply to the retention of fingerprints by the FBI,
23 upon consent of the employee or prospective em-
24 ployee or in accordance with State or Federal
25 procedures, for the purpose of providing finger-

1 *print verification or subsequent hit notification*
2 *services, or for the retention of criminal history*
3 *record information which updates the criminal*
4 *history record.*

Calendar No. 512

112TH CONGRESS
2^D SESSION

S. 645

A BILL

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

SEPTEMBER 19, 2012

Reported with an amendment