

112TH CONGRESS
1ST 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. JOHANNIS, Mr. WHITEHOUSE, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Protection Im-
5 provements Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2006, 61,200,000 adults (a total of 26.7
9 percent of the population) contributed a total of

1 8,100,000,000 hours of volunteer service. Of those
2 who volunteer, 27 percent dedicate their service to
3 education or youth programs, or a total of
4 16,500,000 adults.

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

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

20 (4) Given the large number of individuals with
21 criminal history records and the vulnerability of the
22 population they work with, human service organiza-
23 tions that work with children need an effective and
24 reliable means of obtaining relevant information

1 about criminal histories in order to determine the
2 suitability of a potential volunteer or employee.

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

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

1 toring organizations to access nationwide Federal
2 Bureau of Investigation background searches.

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

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

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

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

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

18 **SEC. 3. BACKGROUND CHECKS.**

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

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

22 (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 (c);

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) DESIGNNEES.—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 “(c) 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 1 unified request to
5 the Attorney General or the background
6 check designee;

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

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

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

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

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

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

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

10 “(i) sets out the 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 ignee 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 (c)(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 inquir-
2 ies for assistance on interpreting a crimi-
3 nal history received by the criminal history
4 review program; and

5 “(xii) to the extent practicable, the
6 number of covered individuals denied em-
7 ployment based on the criminal history in-
8 formation provided by the Attorney Gen-
9 eral or the criminal history review des-
10 ignee.

11 “(C) AGGREGATING DATA.—The Attorney
12 General shall—

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

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

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 Attor-
25 ney 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.”.

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