

106TH CONGRESS
2D SESSION

S. 3220

To amend sections 3 and 5 of the National Child Protection Act of 1993, relating to national criminal history background checks of providers of care to children, elderly persons, and persons with disabilities.

IN THE SENATE OF THE UNITED STATES

OCTOBER 19 (legislative day, SEPTEMBER 22), 2000

Mr. DEWINE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend sections 3 and 5 of the National Child Protection Act of 1993, relating to national criminal history background checks of providers of care to children, elderly persons, and persons with disabilities.

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 “National Child Protec-
5 tion Amendments Act of 2000”.

6 **SEC. 2. RELATIONSHIP TO STATE STATUTES.**

7 The amendments made by this Act shall not affect
8 the validity of any State statute dealing with criminal his-

1 tory background checks of care providers enacted in com-
 2 pliance with Public Law 92–544 before, on, or after the
 3 date of enactment of this Act.

4 **SEC. 3. FACILITATION OF BACKGROUND CHECKS.**

5 (a) IN GENERAL.—Section 3 of the National Child
 6 Protection Act of 1993 (42 U.S.C. 5119a) is amended to
 7 read as follows:

8 **“SEC. 3. FACILITATION OF BACKGROUND CHECKS.**

9 “(a) IN GENERAL.—

10 “(1) BACKGROUND CHECKS.—A qualified entity
 11 designated by a State may contact an authorized
 12 agency of the State to obtain a fingerprint-based na-
 13 tional criminal history background check (referred to
 14 in this section as a ‘background check’) of a provider
 15 who provides care to children, the elderly, or individ-
 16 uals with disabilities (referred to in this section as
 17 a ‘provider’).

18 “(2) PROCEDURES.—

19 “(A) SUBMISSION.—A request for back-
 20 ground check pursuant to this section shall be
 21 submitted through a State criminal history
 22 record repository.

23 “(B) DUTIES OF REPOSITORY.—After re-
 24 ceipt of a request under subparagraph (A), the
 25 State criminal history record repository shall—

1 “(i) conduct a search of the State
2 criminal history record system and, if nec-
3 essary, forward the request, together with
4 the fingerprints of the provider, to the
5 Federal Bureau of Investigation; and

6 “(ii) make a reasonable effort to re-
7 spond to the qualified entity within 15
8 business days after the date on which the
9 request is submitted.

10 “(3) NATIONAL CRIME PREVENTION AND PRI-
11 VACY COMPACT.—Each background check pursuant
12 to this section shall be conducted pursuant to the
13 National Crime Prevention and Privacy Compact.

14 “(b) GUIDELINES.—

15 “(1) IN GENERAL.—In order to conduct back-
16 ground checks pursuant to this section, a State
17 shall—

18 “(A) establish or designate 1 or more au-
19 thorized agencies to perform the duties required
20 by this section, including the designation of
21 qualified entities; and

22 “(B) establish the procedures described in
23 paragraph (2).

24 “(2) PROCEDURES.—The procedures described
25 in this paragraph are procedures that require—

1 “(A) a qualified entity that requests a
2 background check pursuant to this section to
3 forward to the authorized agency the finger-
4 prints of the provider and to obtain a statement
5 completed and signed by the provider that—

6 “(i) sets out the name, address, and
7 date of birth of the provider appearing on
8 a valid identification document (as defined
9 in section 1028 of title 18, United States
10 Code);

11 “(ii) states whether the provider has a
12 criminal history record and, if so, sets out
13 the particulars of such record;

14 “(iii) notifies the provider that the
15 qualified entity may request a background
16 check and that the signature of the pro-
17 vider to the statement constitutes an ac-
18 knowledgement that such a check may be
19 conducted and explains the uses and dis-
20 closures that may be made of the results of
21 the background check;

22 “(iv) notifies the provider that pend-
23 ing the completion of the background
24 check the provider may be denied unsuper-
25 vised access to children, the elderly, or dis-

1 abled persons with respect to which the
2 provider intends to provide care; and

3 “(v) notifies the provider of the rights
4 of the provider under subparagraph (B);

5 “(B) that each provider who is the subject
6 of a background check pursuant to this section
7 be provided with an opportunity to contact the
8 authorized agency and initiate a process to—

9 “(i) obtain a copy of the criminal his-
10 tory record; and

11 “(ii) file a challenge with the author-
12 ized agency, but only as to the accuracy
13 and completeness of the criminal history
14 record information in the report, and ob-
15 tain a prompt determination of the chal-
16 lenge before a final adverse fitness deter-
17 mination is made on the basis of the crimi-
18 nal history record information in the re-
19 port;

20 “(C) an authorized agency that receives a
21 criminal history record report that lacks dis-
22 position information to conduct research in
23 available State and local recordkeeping systems
24 to obtain complete information, to the extent

1 possible considering available personnel and re-
2 sources;

3 “(D) the authorized agency to either—

4 “(i) make a determination regarding
5 whether the criminal history record infor-
6 mation received in response to the back-
7 ground check indicates that the provider
8 has a criminal history record that renders
9 the provider unfit to provide care to chil-
10 dren, the elderly, or individuals with dis-
11 abilities and convey that determination to
12 the qualified entity; or

13 “(ii) provide some or all of such crimi-
14 nal history record information to the quali-
15 fied entity for use by the qualified entity in
16 making a fitness determination concerning
17 the provider; and

18 “(E) a qualified entity that receives crimi-
19 nal history record information concerning a pro-
20 vider in response to a background check pursu-
21 ant to this section to—

22 “(i) adhere to a standard of reason-
23 able care concerning the security and con-
24 fidentiality of the information and the pri-
25 vacy rights of the provider; and

1 “(ii) require the qualified entity to
2 make a copy of the criminal history record
3 available, upon request, to the provider,
4 and prohibit such entity from retaining
5 criminal history record information for any
6 period longer than necessary for a final fit-
7 ness determination.

8 “(3) RETENTION OF INFORMATION.—The state-
9 ment required under paragraph (2)(A)—

10 “(A) may be forwarded by the qualified en-
11 tity to the authorized agency or retained by the
12 qualified entity; and

13 “(B) shall be retained by such agency or
14 entity, as appropriate, for not less than 1 year.

15 “(c) GUIDANCE BY THE ATTORNEY GENERAL.—The
16 Attorney General shall—

17 “(1) to the maximum extent practicable, en-
18 courage the use of the best technology available in
19 conducting background checks pursuant to this sec-
20 tion; and

21 “(2) provide guidance to the States concerning
22 the voluntary adoption by the States of standards to
23 guide authorized agencies and qualified entities in
24 making fitness determinations concerning providers
25 based upon criminal history record information.

1 “(d) PENALTY.—Any officer, employee, or authorized
2 representative of a qualified entity who knowingly and
3 willfully—

4 “(1) requests or obtains any criminal history
5 record information pursuant to this section under
6 false pretenses; or

7 “(2) uses criminal history record information
8 for a purpose not authorized by this section,
9 shall be guilty of a misdemeanor and fined not more than
10 \$5,000.

11 “(e) LIMITATIONS ON LIABILITY.—

12 “(1) LIABILITY OF QUALIFIED ENTITIES.—

13 “(A) FAILURE TO REQUEST BACKGROUND
14 CHECK.—A qualified entity shall not be liable in
15 an action for damages solely for the failure of
16 such entity to request a background check on a
17 provider.

18 “(B) WILLFUL VIOLATIONS.—A qualified
19 entity shall not be liable in an action for dam-
20 ages for violating any provision of this section,
21 unless such violation is knowing and willful.

22 “(C) REASONABLE CARE STANDARD.—A
23 qualified entity that exercises reasonable care
24 for the security, confidentiality, and privacy of
25 criminal history record information received in

1 response to a background check pursuant to
2 this section shall not be liable in an action for
3 damages.

4 “(2) LIABILITY OF GOVERNMENTAL ENTI-
5 TIES.—A State or political subdivision thereof, or
6 any agency, officer, or employee thereof, shall not be
7 liable in an action for damages for the failure of a
8 qualified entity (other than itself) to take action ad-
9 verse with respect to a provider who was the subject
10 of a background check.

11 “(3) RELIANCE ON INFORMATION.—An author-
12 ized agency or a qualified entity that reasonably re-
13 lies on criminal history record information received
14 in response to a background check pursuant to this
15 section shall not be liable in an action for damages
16 based upon the inaccuracy or incompleteness of the
17 information.

18 “(f) FEES.—

19 “(1) LIMITATION.—In the case of a background
20 check pursuant to a State requirement adopted after
21 December 20, 1993, conducted with fingerprints on
22 a person who volunteers with a qualified entity, the
23 fees collected by authorized State agencies and the
24 Federal Bureau of Investigation may not exceed
25 \$18, respectively, or the actual cost, whichever is

1 less, of the background check conducted with finger-
2 prints.

3 “(2) STATE FEE SYSTEMS.—The States shall
4 establish fee systems that ensure that fees to non-
5 profit entities for background checks do not discour-
6 age volunteers from participating in child care pro-
7 grams.

8 “(3) AUTHORITY OF FEDERAL BUREAU OF IN-
9 VESTIGATION.—This subsection shall not affect the
10 authority of the Federal Bureau of Investigation or
11 the States to collect fees for conducting background
12 checks of persons who are employed as or apply for
13 positions as paid care providers.”.

14 (b) AUTHORIZATION OF APPROPRIATIONS; CON-
15 FORMING AMENDMENTS.—Section 4 of the National Child
16 Protection Act of 1993 (42 U.S.C. 5119b) is amended—

17 (1) by redesignating subsections (b) and (c) as
18 subsections (a) and (b), respectively; and

19 (2) in subsection (a), as redesignated—

20 (A) in paragraph (1)—

21 (i) in each of subparagraphs (C) and
22 (D), by striking “national criminal history
23 background check system” and inserting
24 “criminal history record repository”; and

1 (ii) by striking subparagraph (E) and
 2 inserting the following:

3 “(E) to assist the State in offsetting the
 4 costs to qualified entities of background checks
 5 under section 3 on volunteer providers.”; and

6 (B) by striking paragraph (2) and insert-
 7 ing the following:

8 “(2) AUTHORIZATION OF APPROPRIATIONS.—
 9 There are authorized to be appropriated for grants
 10 under paragraph (1)—

11 “(A) \$80,000,000 for fiscal year 2001; and

12 “(B) such sums as may be necessary for
 13 each of fiscal years 2002 through 2005.”.

14 **SEC. 4. DEFINITIONS.**

15 Section 5 of the National Child Protection Act of
 16 1993 (42 U.S.C. 5119c) is amended—

17 (1) by striking paragraph (8);

18 (2) by redesignating paragraphs (6) and (7) as
 19 paragraphs (7) and (8), respectively;

20 (3) by inserting after paragraph (5) the fol-
 21 lowing:

22 “(6) the term ‘criminal history record reposi-
 23 tory’ means the State agency designated by the Gov-
 24 ernor or other executive official of a State, or by the
 25 legislature of a State, to perform centralized record-

1 keeping functions for criminal history records and
2 services in the State;” and

3 (4) in paragraph (9)—

4 (A) in subparagraph (A)(iii)—

5 (i) by inserting “or to an elderly per-
6 son or person with a disability” after “to
7 a child”; and

8 (ii) by striking “child care” and in-
9 serting “care”; and

10 (B) in subparagraph (B)(iii)—

11 (i) by inserting “or to an elderly per-
12 son or person with a disability” after “to
13 a child”; and

14 (ii) by striking “child care” and in-
15 serting “care”.

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