

108TH CONGRESS
2^D SESSION

H. R. 4022

To strengthen the Nation's ability to protect its key assets and the life, health, and property of its populace by granting providers of private security services access to the criminal history records available through the National Crime Information Center in connection with their employees and prospective employees, requiring such providers to employ only those employees who pass criminal history records checks, to protect against unauthorized use of such records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 2004

Mr. ANDREWS (for himself and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen the Nation's ability to protect its key assets and the life, health, and property of its populace by granting providers of private security services access to the criminal history records available through the National Crime Information Center in connection with their employees and prospective employees, requiring such providers to employ only those employees who pass criminal history records checks, to protect against unauthorized use of such records, and for other purposes.

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 “Private Security En-
5 hancement Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) One of the legacies of the horrific attacks
9 of September 11, 2001, is the greatly enhanced need
10 for security of the homeland. Meeting this need has
11 imposed serious stresses on government agencies at
12 all levels and entities whose primary task is protec-
13 tion of the Nation’s key assets and the life, health,
14 and property of its populace.

15 (2) President Bush stated, in a February 2003
16 report titled “The National Strategy for the Physical
17 Protection of Critical Infrastructures and Key As-
18 sets” (in this section referred to as the “Report”),
19 that there is an increased need to assess the Na-
20 tion’s vulnerabilities and to provide additional secu-
21 rity for its key assets. Providing such security will
22 require increased cooperation between Government
23 and the private sector.

24 (3) The Report also recognized that terrorists,
25 in the pursuit of their long-term, strategic objectives,

1 will likely continue to attack critical infrastructures
2 and key assets, the vast majority of which are owned
3 and operated by the private sector.

4 (4) Because of enhanced security needs, the use
5 of private security companies in guarding the Na-
6 tion's key assets and the life, health, and property
7 of its populace has increased significantly since Sep-
8 tember 11, 2001, and will continue to do so.

9 (5) Also because of the enhanced security
10 needs, businesses generally have increased their se-
11 curity efforts and the number of internal employees
12 dedicated to securing their facilities.

13 (6) As reliance on private security companies to
14 guard the Nation's key assets and to protect the life,
15 health, and property of its populace continues to
16 grow, the hiring and placement decisions of these
17 companies—which employ more than 500,000 pri-
18 vate security officers nationwide—have become crit-
19 ical, as they determine which individuals will protect
20 the Nation and have access to its key assets. Simi-
21 larly, businesses providing their own internal secu-
22 rity services have experienced a heightened need to
23 improve their internal security measures and to ob-
24 tain more information about the individuals who
25 provide their internal security. It has, therefore, be-

1 come imperative that companies employing or hiring
2 security personnel have access to and be permitted
3 to use a criminal background checking system that
4 is efficient, inclusive, nationwide in scope, depend-
5 able, and technologically advanced, so as to minimize
6 the occurrence of dangerous if not disastrous place-
7 ment and hiring decisions.

8 (7) Companies cannot properly and effectively
9 evaluate their prospective and current employees
10 providing private security services without access to
11 the criminal history records available through the
12 National Crime Information Center (in this section
13 referred to as “NCIC”). Access to the NCIC for the
14 purpose of reviewing the background of current and
15 prospective employees is currently enjoyed by the
16 banking industry, the nuclear power industry, public
17 housing authorities, and others and should be made
18 available to private security companies and to busi-
19 nesses providing their own security so that they can
20 safely and effectively partner with Federal, State,
21 and local governments in the effort to protect the
22 homeland.

23 (8) Given its critical role in the security of the
24 homeland, the Department of Homeland Security,
25 working in conjunction with the Department of Jus-

1 tice, is best suited to act as the clearinghouse for ob-
2 taining and disseminating NCIC criminal history
3 records for the purposes set forth in this section.

4 **SEC. 3. DEFINITIONS.**

5 In this Act, the following definitions shall apply:

6 (1) COVERED EMPLOYEE.—The term “covered
7 employee” means any individual, other than an ac-
8 tive law enforcement officer for any governmental
9 unit, who is—

10 (A) employed by, or seeking employment
11 with, a nongovernmental company that provides
12 security guard services; or

13 (B) employed as an internal security em-
14 ployee by, or seeking employment as an internal
15 security employee with, a nongovernmental
16 company that has more than 50 employees, of
17 which 3 or more are internal security employ-
18 ees.

19 (2) COVERED EMPLOYER.—The term “covered
20 employer” means—

21 (A) any nongovernmental company that—

22 (i) provides security guard services;

23 (ii) for each jurisdiction in which it
24 provides such services, is licensed by such
25 jurisdiction to provide such services, to the

1 extent such jurisdiction permits or requires
2 it to be so licensed; and

3 (iii) provides such services—

4 (I) in interstate or foreign com-
5 merce;

6 (II) at any site where there is lo-
7 cated any element of the Federal Gov-
8 ernment; or

9 (III) for any person engaged in
10 interstate or foreign commerce; or

11 (B) any nongovernmental company that—

12 (i) has more than 50 employees, of
13 which 3 or more are internal security em-
14 ployees;

15 (ii) for each jurisdiction in which it
16 provides internal security services with re-
17 spect to itself, is licensed by such jurisdic-
18 tion to provide such services, to the extent
19 such jurisdiction permits or requires it to
20 be so licensed; and

21 (iii) is either engaged in interstate or
22 foreign commerce or provides any product
23 or service to any element of the Federal
24 Government.

1 (3) INTERNAL SECURITY EMPLOYEE.—The
2 term “internal security employee” means an em-
3 ployee whose primary responsibility is to provide in-
4 ternal security with respect to the company employ-
5 ing such employee.

6 (4) NCIC.—The term “NCIC” means the Na-
7 tional Crime Information Center of the Department
8 of Justice.

9 (5) SECRETARY.—The term “Secretary” means
10 the Secretary of Homeland Security.

11 (6) STATE.—The term “State” includes the
12 District of Columbia, the Commonwealth of Puerto
13 Rico, and any other territory or possession of the
14 United States.

15 **SEC. 4. AUTHORITY TO RECEIVE NCIC INFORMATION.**

16 (a) IN GENERAL.—Subject to the other provisions of
17 this section, the Secretary shall, upon receipt of a request
18 by a covered employer with respect to a covered employee,
19 provide for an NCIC criminal history records check with
20 respect to that covered employee and provide the results
21 of that check to that covered employer.

22 (b) FINGERPRINTS.—A request under subsection (a)
23 shall include the fingerprints of the covered employee,
24 which shall be submitted electronically to the Secretary.
25 The Secretary shall transmit those fingerprints to the At-

1 torney General. To assist the Secretary in complying with
2 subsection (a), the Attorney General shall, notwith-
3 standing any other provision of law, provide for—

4 (1) an NCIC criminal history records check to
5 be carried out with respect to that covered employee;
6 and

7 (2) the results of that check to be transmitted
8 to the Secretary.

9 (c) FEE.—The Secretary may, by regulation, estab-
10 lish and collect a reasonable fee for responding to a re-
11 quest under subsection (a).

12 **SEC. 5. USE OF NCIC INFORMATION BY COVERED EMPLOY-**
13 **ERS.**

14 (a) PROHIBITION.—A covered employer may not em-
15 ploy a covered employee to provide any security service
16 or function unless—

17 (1) the covered employer first obtains the re-
18 sults of an NCIC criminal history records check with
19 respect to that covered employee; and

20 (2) neither the results of that check, nor any
21 other information made available to the covered em-
22 ployer, indicate that the covered employee has any
23 unpardoned conviction under any Federal or State
24 law of any felony or any one or more of the following
25 offenses:

1 (A) Illegally using, carrying, or possessing
2 any firearm or other dangerous weapon.

3 (B) Making or possessing any burglar's in-
4 strument.

5 (C) Buying or receiving stolen property.

6 (D) Unlawful entry of a building.

7 (E) Aiding escape from prison.

8 (F) Unlawfully possessing or distributing
9 any illegal narcotic drug.

10 (G) Picking a pocket or attempting to do
11 so.

12 (H) Recklessly endangering another per-
13 son.

14 (I) Making any terroristic threat.

15 (J) Assaulting another person.

16 (b) LIMITATION.—Nothing in this section prevents a
17 covered employer from making any use in its employment
18 decisions of any such check or any other information, ex-
19 cept to the extent that section 7 or 8 of this Act prohibit
20 such use.

21 (c) DELAYED APPLICABILITY FOR CURRENT EM-
22 PLOYEES.—In the case of a covered employee who is, on
23 the date of the enactment of this Act, employed by a cov-
24 ered employer to provide a security service or function,
25 the prohibition in subsection (a) shall not apply until—

1 (1) the date that is 6 months after the date of
2 the enactment of this Act; or

3 (2) a later date specified by the Secretary, for
4 any case in which the Secretary certifies that the re-
5 sults of the records check could not be obtained
6 within 6 months after the date of the enactment of
7 this Act despite the exercise of reasonable diligence
8 on the part of both the employee and the employer.

9 **SEC. 6. EMPLOYEE RIGHTS.**

10 (a) **WRITTEN CONSENT.**—A covered employer may
11 not make a request under section 4(a) with respect to a
12 covered employee, or obtain the fingerprints under section
13 4(b) of a covered employee, without the written consent
14 of that employee.

15 (b) **FREQUENCY OF REQUESTS.**—A covered employer
16 that makes a request under section 4(a) with respect to
17 a covered employee and thereafter employs that employee
18 for a continuous period may not make another such re-
19 quest with respect to such employee unless—

20 (1) such request is made at least 12 months
21 after the previous request; or

22 (2) good cause exists.

23 (c) **ACCURACY AND COMPLETENESS.**—The Secretary
24 shall provide each covered employee subject to a request
25 under section 4(a) with the opportunity to provide to the

1 NCIC information concerning the accuracy or complete-
2 ness of the results of the check.

3 **SEC. 7. RECORDS MANAGEMENT.**

4 A covered employer receiving any information under
5 section 4 shall ensure that such information is—

6 (1) maintained confidentially;

7 (2) not misused or disseminated to any person
8 not involved in the employment decision with respect
9 to the covered employee; and

10 (3) destroyed, upon deciding whether to employ
11 or continue to employ the covered employee or upon
12 the passage of 180 days after the receipt of such in-
13 formation, whichever occurs first.

14 **SEC. 8. USE OF INFORMATION BY DEPARTMENT OF HOME-**
15 **LAND SECURITY.**

16 In carrying out this Act, the Secretary shall establish
17 procedures to ensure that the Department of Homeland
18 Security uses the results of checks carried out under sec-
19 tion 4 in a manner that—

20 (1) limits the dissemination of such results out-
21 side the Department only to the covered employer;

22 (2) ensures that such results are used only for
23 the purpose of determining the suitability of a cov-
24 ered employee for employment in the private security
25 field; and

1 (3) protects covered employees from misuse of
2 such results.

3 **SEC. 9. REGULATIONS.**

4 The Secretary shall prescribe regulations to carry out
5 this Act.

6 **SEC. 10. CRIMINAL PENALTIES.**

7 Any person who knowingly and intentionally uses any
8 information obtained pursuant to this Act for a purpose
9 other than the purpose of determining the suitability of
10 a covered employee for employment in the private security
11 field shall be imprisoned not more than 2 years or fined
12 under title 18, United States Code, or both.

○