

PRIVATE SECURITY OFFICER QUALITY ASSURANCE ACT OF
1996

SEPTEMBER 24, 1996.—Ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2092]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2092) to expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Private Security Officer Quality Assurance Act of 1996”.

SEC. 2. FINDINGS.

Congress finds that—

- (1) employment of private security officers in the United States is growing rapidly;
- (2) the private security industry provides numerous opportunities for entry-level job applicants, including individuals suffering from unemployment due to economic conditions or dislocations;
- (3) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are only supplemented by private security officers who provide prevention and reporting services in support of, but not in place of, regular sworn police;
- (4) given the growth of large private shopping malls, and the consequent reduction in the number of public shopping streets, the American public is more likely to have contact with private security personnel in the course of a day than with sworn law enforcement officers;
- (5) regardless of the differences in their duties, skill, and responsibilities, the public has difficulty in discerning the difference between sworn law enforcement officers and private security personnel; and
- (6) the American public demands the employment of qualified, well-trained private security personnel as an adjunct, but not a replacement for sworn law enforcement officers.

SEC. 3. BACKGROUND CHECKS.

(a) **IN GENERAL.**—An association of employers of private security officers, designated for the purpose of this section by the Attorney General, may submit fingerprints or other methods of positive identification approved by the Attorney General, to the Attorney General on behalf of any applicant for a State license or certificate of registration as a private security officer or employer of private security officers. In response to such a submission, the Attorney General may, to the extent provided by State law conforming to the requirements of the second paragraph under the heading “Federal Bureau of Investigation” and the subheading “Salaries and Expenses” in title II of Public Law 92–544 (86 Stat. 1115), exchange, for licensing and employment purposes, identification and criminal history records with the State governmental agencies to which such applicant has applied.

(b) **REGULATIONS.**—The Attorney General may prescribe such regulations as may be necessary to carry out this section, including measures relating to the security, confidentiality, accuracy, use, and dissemination of information and audits and recordkeeping and the imposition of fees necessary for the recovery of costs.

(c) **REPORT.**—The Attorney General shall report to the Senate and House Committees on the Judiciary 2 years after the date of enactment of this bill on the number of inquiries made by the association of employers under this section and their disposition.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that States should participate in the background check system established under section 3.

SEC. 5. DEFINITIONS.

As used in this Act—

- (1) the term “employee” includes an applicant for employment;
- (2) the term “employer” means any person that—
 - (A) employs one or more private security officers; or
 - (B) provides, as an independent contractor, for consideration, the services of one or more private security officers (possibly including oneself);
- (3) the term “private security officer”—
 - (A) means—
 - (i) an individual who performs security services, full or part time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes whose primary duty is to perform security services, or
 - (ii) an individual who is an employee of an electronic security system company engaged in one or more of the following activities in the State: burglar alarm technician, fire alarm technician, closed circuit television technician, access control technician, or security system monitor; but
 - (B) does not include—
 - (i) sworn police officers who have law enforcement powers in the State,
 - (ii) attorneys, accountants, and other professionals who are otherwise licensed in the State,

- (iii) employees whose duties are primarily internal audit or credit functions,
- (iv) persons whose duties may incidentally include the reporting or apprehension of shoplifters or trespassers, or
- (v) an individual on active duty in the military service;
- (4) the term “registration permit” means a license, permit, certificate, registration card, or other formal written permission from the State for the person to engage in providing security services;
- (5) the term “security services” means the performance of one or more of the following:
 - (A) the observation or reporting of intrusion, larceny, vandalism, fire or trespass;
 - (B) the deterrence of theft or misappropriation of any goods, money, or other item of value;
 - (C) the observation or reporting of any unlawful activity;
 - (D) the protection of individuals or property, including proprietary information, from harm or misappropriation;
 - (E) the control of access to premises being protected;
 - (F) the secure movement of prisoners;
 - (G) the maintenance of order and safety at athletic, entertainment, or other public activities;
 - (H) the provision of canine services for protecting premises or for the detection of any unlawful device or substance; and
 - (I) the transportation of money or other valuables by armored vehicle; and
- (6) the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

PURPOSE AND SUMMARY

The purpose of H.R. 2092, the “Private Security Officer Quality Assurance Act of 1996,” is to expedite State criminal background checks of applicants for the job of private security officer. The bill authorizes the Attorney General to designate an association of employers of private security officers to submit applicant fingerprints to the Attorney General for the purpose of fingerprint background checks to be conducted by the Federal Bureau of Investigation.

H.R. 2092 also requires the Attorney General to report to the House and Senate Committees on the Judiciary two years after the date of enactment of the bill on the number and disposition of inquiries made by the association of employers. The bill further expresses the sense of Congress that States should enact laws that regulate the training and licensing of private security officers.

BACKGROUND AND NEED FOR THE LEGISLATION

Some private security guard companies, such as the Pinkerton Detective Agency, have existed in the United States since the Civil War era. Over the past fifty years, the private security industry has grown dramatically in size.¹

In 1990, there were approximately 2.4 private security employees for every law enforcement employee. It is estimated that the ratio will continue to grow, and that by the year 2000 private security officers will outnumber sworn law enforcement officers by nearly 3–1. In some cities, the ratio of private security to law enforcement will be as high as 4 or 5–1.²

¹William C. Cunningham et al., *The Hallcrest Report II: Private Security Trends 1970-2000*, 175 (1990).

²*Id.* at 229.

Private security guards are now commonly sighted at shopping malls, parking lots and housing units. Private businesses are not the only organizations who have recognized the value of private security officers. At the 1996 Summer Olympic Games held in Atlanta, Georgia, approximately 5,000 private security officers were hired to supplement the Federal, State and local law enforcement personnel.³

While many private security guards are extremely competent, at times even heroic, background checks for these guards remain spotty. Over two-thirds of the States and the District of Columbia currently require some type of background check on security guards, but many only require checks on criminal history records within their own States. Some States do call for a review of federal criminal records, but this review can take several months.

Private security guards often carry guns or other weapons, and wear uniforms which resemble law enforcement uniforms. Many citizens put their trust in these guards. Unfortunately, there have been numerous instances of citizens who were harmed, including sexual assaults, by private security guards whose pre-employment background checks failed to unearth criminal convictions.⁴

The "Private Security Office Quality Assurance Act" will allow for expedited fingerprint checks for private security officer applicants. This legislation is supported by the National Association of Security Companies and the International Association of Chiefs of Police.

HEARINGS

The Committee's Subcommittee on Crime held one day of hearings H.R. 2092 on March 7, 1996. Testimony was received from Members of Congress, and one witness, Mr. Kevin DiGregory, Deputy Assistant Attorney General, representing the Department of Justice. Additional testimony was received from the National Association of Security Companies.

COMMITTEE CONSIDERATION

On March 21, 1996, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 2092 by a voice vote, a quorum being present. On September 18, 1996, the Full Committee met in open session and ordered reported favorably the bill H.R. 2092 with amendment, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

³John Manners, "Worried But Unthwarted", Time, June 3, 1996 at 16.

⁴Del Jones and Ellen Neuborne, "On Guard: Bad Guys Behind Badge of Honor", U.S.A. Today, September 12, 1996, at B1.

representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2092, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 1996.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2092, the Private Security Officer Quality Assurance Act of 1995, as ordered reported by the House Committee on the Judiciary on September 18, 1996. CBO estimates that enacting H.R. 2092 would not result in any net impact on the federal budget. Because enactment of H.R. 2092 would affect offsetting collections and the spending of such collections, pay-as-you-go procedures would apply.

H.R. 2092 would expedite state reviews of criminal records of applicants for private security employment by permitting the Federal Bureau of Investigation (FBI) to conduct background checks on such applicants. The Attorney General would be responsible for "imposing fees necessary for the recovery of costs" associated with these background checks. Based on information from the FBI and the Department of Justice, CBO expects that the Attorney General would set fees at a level sufficient to recover all costs that the government would incur while conducting background checks. The fees collected would be counted as offsetting collections credited to appropriations, as are existing fees for other background checks. The FBI spends such fees in the same year in which they are collected. Thus, CBO estimates that enacting H.R. 2092 would not result in any net cost to the federal government. This bill also expresses the sense of the Congress that states should participate in the background check system that would be established under this bill.

H.R. 2092 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995

(Public Law 104–4) and would not impose costs on state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JAMES L. BLUM
(For June E. O’Neill, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2092 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section states that the short title of the bill is the “Private Security Officer Quality Assurance Act of 1996.”

Sec. 2—Findings

This section lists several findings by Congress relating to the growth of the private security officer industry, the utility of that industry as a supplement to sworn law enforcement personnel, and the necessity for hiring only qualified, well-trained persons for the job of private security officer.

Sec. 3—Background checks

This section will expedite criminal records checks for applicants for the job of private security officer. This section requires the Attorney General to designate an association of employers of private security officers to submit fingerprints to the Attorney General on behalf of an applicant for the job of private security officer. The Attorney General will direct the Federal Bureau of Investigation to conduct a background fingerprint investigation by matching the applicant’s fingerprints with fingerprints on file with the FBI. This system is similar to the one now in use by the banking and parimutuel industries.

The Attorney General is given authority to prescribe whatever regulations may be necessary to implement these fingerprint checks, including regulations relating to the imposition of fees necessary for the recovery of costs. It is the Committee’s intent that federal funds not be expended for individual background fingerprint checks conducted under this section.

The Attorney General is also directed to report to the House and Senate Committees on the Judiciary two years after the date of enactment of this act on the number and disposition of inquiries made by the association of employers under this section. The Committee intends that this report will also describe the average length of time necessary for each background check processed under regulations prescribed pursuant to this act.

Sec. 4—Sense of Congress

This section states that it is the Sense of Congress that the several States participate in the background check system established under this act.

Sec. 5—Definitions

This section defines several terms listed in the legislation, including “employer,” “employee,” and “security services.”

AGENCY VIEWS

OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 6, 1996.

Hon. BILL MCCOLLUM,
*Chairman, Subcommittee on Crime, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am pleased to respond to your request for the Department of Justice’s views on a number of bills the Subcommittee will soon consider. Our views are provided below.

H.R. 2092—THE PRIVATE SECURITY OFFICER QUALITY ASSURANCE ACT

We applaud the goal of this bill, enhancing the oversight and regulation of private security officers. However, we have several concerns about the background check provisions and the intended scope of the term “private security officer.”

Section 3 permits an association of employers of private security guards to conduct criminal history record checks directly with the Federal Bureau of Investigation. We believe this proposal is unnecessary. FBI criminal history record checks are currently conducted for prospective security guards, private patrolmen, and watchmen pursuant to Pub. L. 92-544 in the 34 states which have enacted appropriate enabling legislation.

Any procedure that would bypass the initial fingerprint check through state criminal record systems is an inefficient use of the FBI and other law enforcement resources. The state authorities handling the applicant fingerprint card should forward to the FBI only those cards for which no disqualifying record or substantive information is identified at the state or local level. The identification of such information obviates the need for a national check, thus resulting in the savings of time and expense attributable to redundant FBI processing.

It should be noted that an individual’s criminal history record at the state level often contains arrests and dispositions that are never reported to the FBI. Further, some state laws prohibit the dissemination of certain nondisqualifying criminal history data—such as non-conviction data or arrest entries for which no disposition has been reported—to state and local agencies making licensing and employment decisions.

Section 4 of the bill expresses a sense of the Congress that the states should enact statutes requiring employer licenses for security services, registration permits with background requirements, and detailed training prerequisites. Also advocated are provisions for recognition of out-of-state licenses, certain employee rights, and

the state creation of advisory boards. We have several observations and suggestions related to this section and Section 5 (definitions).

Throughout the proposal “private security officers” are dealt with as a relatively identifiable and fungible category of employees. However, variations in state laws, assigned duties, and employment status create a wide range of such employees, many of whom resemble office receptionists or mid-level office managers while others are virtual police officers with limited jurisdiction.

“Private security officer” has a much narrower meaning in the law enforcement community than is established by the proposed legislative definition. That proposed definition of a “private security officer” would seemingly include many office receptionists, tavern “bouncers,” parking lot attendants, transit and airline gate personnel, ticket-takers at virtually any facility, non-police park rangers, pool life guards, theater ushers, and firm alarm technicians. The definition unintentionally may even reach certain members of the news media—who may perform the observation or reporting of unlawful activity, full or part time, for consideration as an independent contractor, or as an employee with a primary duty to perform those tasks. Even some Federal Government employees are seemingly within the scope of that definition, if they perform any of the security and safety functions identified and are not sworn police officers or active duty military personnel. We do not believe that the Federal Government should urge the states to regulate the training, qualifications, and other employment aspects of various categories of federal employees.

While the findings initially suggest that the primary problem which the legislation seeks to address involves private shopping mall and other facility security officers and the inability of the public to distinguish such private officers from sworn public police officers, this proposal exceeds that scenario. Even in that narrow area, the states seem qualified to identify any problem and address it, as many jurisdictions already have by mandating large shoulder patches with distinctive markings or other uniform labeling which clarifies an employee’s private sector status.

We have concerns about the perceived need for homogeneous training. Job responsibilities, levels of oversight, exposure to the public, and state-granted powers vary to such a degree that, in our view, no specific minimal training requirements could meet the needs of some security officer assignments without substantially exceeding the level required for others.

The level of specificity of proposed requirements may prove to be both insufficiently flexible and nevertheless inaccurately precise. For example, advocating that a 70% marksmanship score be adopted as a requirement by all states seems rather precise, yet, since no standard for the form of test which should yield that score is provided, the number is insignificant if testing and scoring procedures vary widely. Similarly, prohibiting the “unreasonable limitation” of the right of an involuntarily terminated employee to seek subsequent security officer employment may prove to be so vague that it does not afford additional protection if state labor laws are inadequate, yet it inadvertently could encourage the hiring of unqualified personnel already terminated for cause from a similar position.

Again, we are pleased to assist the Subcommittee's consideration of these bills. Please do not hesitate to contact me if you need any additional assistance.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

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