

107TH CONGRESS
2D SESSION

S. 2238

To permit reviews of criminal records of applicants for private security officer employment.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2002

Mr. LEVIN (for himself, Mr. THOMPSON, Mr. LIEBERMAN, and Mr. McCONNELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To permit reviews of criminal records of applicants for private security officer employment.

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 Offi-
5 cer Employment Standards Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) employment of private security officers in
9 the United States is growing rapidly;

1 (2) private security officers function as an ad-
2 junct to, but not a replacement for, public law en-
3 forcement by helping to reduce and prevent crime;

4 (3) such private security officers protect indi-
5 viduals, property, and proprietary information, and
6 provide protection to such diverse operations as
7 banks, hospitals, research and development centers,
8 manufacturing facilities, defense and aerospace con-
9 tractors, high technology businesses, nuclear power
10 plants, chemical companies, oil and gas refineries,
11 airports, communication facilities and operations, of-
12 fice complexes, schools, residential properties, apart-
13 ment complexes, gated communities, and others;

14 (4) sworn law enforcement officers provide sig-
15 nificant services to the citizens of the United States
16 in its public areas, and are supplemented by private
17 security officers;

18 (5) the threat of additional terrorist attacks re-
19 quires cooperation between public and private sec-
20 tors and demands professional security officers for
21 the protection of people, facilities, and institutions;

22 (6) the trend in the Nation toward growth in
23 such security services has accelerated rapidly;

1 (7) such growth makes available more public
2 sector law enforcement officers to combat serious
3 and violent crimes;

4 (8) the American public deserves the employ-
5 ment of qualified, well-trained private security per-
6 sonnel as an adjunct to sworn law enforcement offi-
7 cers;

8 (9) private security officers and applicants for
9 private security officer positions should be thor-
10 oughly screened and trained; and

11 (10) standards are essential for the selection,
12 training, and supervision of qualified security per-
13 sonnel providing security services.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) **EMPLOYEE.**—The term “employee” includes
17 both a current employee and an applicant for em-
18 ployment.

19 (2) **AUTHORIZED EMPLOYER.**—The term “au-
20 thorized employer” means any person that—

21 (A) provides, as an independent contractor,
22 for consideration, the services of private secu-
23 rity officers; and

1 (B) is authorized by the Attorney General
 2 to obtain information provided by the State or
 3 other authorized entity pursuant to this section.

4 (3) PRIVATE SECURITY OFFICER.— The term
 5 “private security officer”—

6 (A) means an individual who performs se-
 7 curity services, full- or part-time, for consider-
 8 ation as an independent contractor or an em-
 9 ployee, whether armed or unarmed and in uni-
 10 form or plain clothes, whose primary duty is to
 11 perform security services; but

12 (B) does not include—

13 (i) sworn police officers who have law
 14 enforcement powers in the State;

15 (ii) employees whose duties are pri-
 16 marily internal audit or credit functions;

17 (iii) an individual on active duty in
 18 the military service;

19 (iv) employees of electronic security
 20 system companies acting as technicians or
 21 monitors; or

22 (v) employees whose duties primarily
 23 involve the secure movement of prisoners.

24 (4) SECURITY SERVICES.—The term “security
 25 services” means the performance of security services

1 as such services are defined by regulations promul-
2 gated by the Attorney General.

3 **SEC. 4. BACKGROUND CHECKS.**

4 (a) IN GENERAL.—

5 (1) SUBMISSION OF FINGERPRINTS.—An au-
6 thorized employer may submit fingerprints or other
7 means of positive identification of an employee of
8 such employer for purposes of a background check
9 pursuant to this Act.

10 (2) EMPLOYEE RIGHTS.—

11 (A) PERMISSION.—An authorized employer
12 shall obtain written consent from an employee
13 to submit the request for a background check
14 of the employee under this Act.

15 (B) ACCESS.—An employee shall be pro-
16 vided confidential access to information relating
17 to the employee provided pursuant to this Act
18 to the authorized employer.

19 (3) PROVIDING RECORDS.—Upon receipt of a
20 background check request from an authorized em-
21 ployer, submitted through the State identification
22 bureau or other entity authorized by the Attorney
23 General, the Attorney General shall—

1 (A) search the appropriate records of the
2 Criminal Justice Information Services Division
3 of the Federal Bureau of Investigation; and

4 (B) promptly provide any identification
5 and criminal history records resulting from the
6 background checks to the submitting State
7 identification bureau or other entity authorized
8 by the Attorney General.

9 (4) FREQUENCY OF REQUESTS.—An employer
10 may request a background check for an employee
11 only once every 12 months of continuous employ-
12 ment by that employee unless the employer has good
13 cause to submit additional requests.

14 (b) REGULATIONS.—Not later than 180 days after
15 the date of enactment of this Act, the Attorney General
16 shall issue such final or interim final regulations as may
17 be necessary to carry out this Act, including—

18 (1) measures relating to the security, confiden-
19 tiality, accuracy, use, submission, dissemination, and
20 destruction of information and audits, and record-
21 keeping;

22 (2) standards for qualification as an authorized
23 employer; and

24 (3) the imposition of reasonable fees necessary
25 for conducting the background checks.

1 (c) CRIMINAL PENALTY.—Whoever falsely certifies
2 that he meets the applicable standards for an authorized
3 employer or who knowingly and intentionally uses any in-
4 formation obtained pursuant to this Act other than for
5 the purpose of determining the suitability of an individual
6 for employment as a private security officer shall be fined
7 not more than \$50,000 or imprisoned for not more than
8 2 years, or both.

9 (d) USER FEES.—

10 (1) IN GENERAL.—The Director of the Federal
11 Bureau of Investigation may—

12 (A) collect fees pursuant to regulations
13 promulgated under subsection (b) to process
14 background checks provided for by this Act;

15 (B) notwithstanding the provisions of sec-
16 tion 3302 of title 31, United States Code, re-
17 tain and use such fees for salaries and other ex-
18 penses incurred in providing such processing;
19 and

20 (C) establish such fees at a level to include
21 an additional amount to remain available until
22 expended to defray expenses for the automation
23 of fingerprint identification and criminal justice
24 information services and associated costs.

1 (2) STATE COSTS.—Nothing in this Act shall be
2 construed as restricting the right of a State to as-
3 sess a reasonable fee on an authorized employer for
4 the costs to the State of administering this Act.

5 (e) STATE OPT OUT.—A State may decline to partici-
6 pate in the background check system authorized by this
7 Act by enacting a law providing that the State is declining
8 to participate pursuant to this subsection.

9 (f) STATE STANDARDS AND INFORMATION PROVIDED
10 TO EMPLOYER.—

11 (1) ABSENCE OF STATE STANDARD.—If a State
12 participates in the background check system author-
13 ized by this Act and has no State standard for quali-
14 fication to be a private security officer, the State
15 shall notify an authorized employer whether or not
16 an employee has been convicted of a felony, an of-
17 fense involving dishonesty or false statement if the
18 conviction occurred during the previous 10 years, or
19 an offense involving the use or attempted use of
20 physical force against the person of another if the
21 conviction occurred during the previous 10 years.

22 (2) STATE STANDARD.—If a State participates
23 in the background check system authorized by this
24 Act and has State standards for qualification to be
25 a private security officer, the State shall use the in-

1 formation received pursuant to this Act in applying
2 the State standard and shall notify the employer of
3 the results.

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