

108TH CONGRESS
1ST SESSION

S. 769

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

IN THE SENATE OF THE UNITED STATES

APRIL 2, 2003

Mr. LEVIN (for himself, Mr. ALEXANDER, Mr. LIEBERMAN, Mr. McCONNELL, and Mr. SCHUMER) 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 Authorization Act of 2003”.

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, reliable, and respon-
21 sible security officers for the protection of people, fa-
22 cilities, and institutions;

23 (6) the trend in the Nation toward growth in
24 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, including terrorism;

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; and

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

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) EMPLOYEE.—The term “employee” includes
14 both a current employee and an applicant for em-
15 ployment as a private security officer.

16 (2) AUTHORIZED EMPLOYER.—The term “au-
17 thorized employer” means any person that—

18 (A) employs private security officers; and

19 (B) is authorized by regulations promul-
20 gated by the Attorney General to request a
21 criminal history record information search of an
22 employee through a State identification bureau
23 pursuant to this section.

24 (3) PRIVATE SECURITY OFFICER.— The term
25 “private security officer”—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes; but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term “security services” means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term “State identification bureau” means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

1 **SEC. 4. CRIMINAL HISTORY RECORD INFORMATION**

2 **SEARCH.**

3 (a) IN GENERAL.—

4 (1) SUBMISSION OF FINGERPRINTS.—An au-
5 thorized employer may submit to the State identi-
6 fication bureau of a participating State, fingerprints
7 or other means of positive identification, as deter-
8 mined by the Attorney General, of an employee of
9 such employer for purposes of a criminal history
10 record information search pursuant to this Act.

11 (2) EMPLOYEE RIGHTS.—

12 (A) PERMISSION.—An authorized employer
13 shall obtain written consent from an employee
14 to submit to the State identification bureau of
15 a participating State the request to search the
16 criminal history record information of the em-
17 ployee under this Act.

18 (B) ACCESS.—An authorized employer
19 shall provide to the employee confidential access
20 to any information relating to the employee re-
21 ceived by the authorized employer pursuant to
22 this Act.

23 (3) PROVIDING INFORMATION TO THE STATE
24 IDENTIFICATION BUREAU.—Upon receipt of a re-
25 quest for a criminal history record information
26 search from an authorized employer pursuant to this

1 Act, submitted through the State identification bu-
2 reau of a participating State, the Attorney General
3 shall—

4 (A) search the appropriate records of the
5 Criminal Justice Information Services Division
6 of the Federal Bureau of Investigation; and

7 (B) promptly provide any resulting identi-
8 fication and criminal history record information
9 to the submitting State identification bureau re-
10 questing the information.

11 (4) USE OF INFORMATION.—

12 (A) IN GENERAL.—Upon receipt of the
13 criminal history record information from the
14 Attorney General by the State identification bu-
15 reau, the information shall be used only as pro-
16 vided in subparagraph (B).

17 (B) TERMS.—In the case of—

18 (i) a participating State that has no
19 State standards for qualification to be a
20 private security officer, the State shall no-
21 tify an authorized employer as to the fact
22 of whether an employee has been convicted
23 of a felony, an offense involving dishonesty
24 or a false statement if the conviction oc-
25 curred during the previous 10 years, or an

1 offense involving the use or attempted use
 2 of physical force against the person of an-
 3 other if the conviction occurred during the
 4 previous 10 years; or

5 (ii) a participating State that has
 6 State standards for qualification to be a
 7 private security officer, the State shall use
 8 the information received pursuant to this
 9 Act in applying the State standards and
 10 shall only notify the employer of the re-
 11 sults of the application of the State stand-
 12 ards.

13 (5) FREQUENCY OF REQUESTS.—An authorized
 14 employer may request a criminal history record in-
 15 formation search for an employee only once every 12
 16 months of continuous employment by that employee
 17 unless the authorized employer has good cause to
 18 submit additional requests.

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

23 (1) measures relating to the security, confiden-
 24 tiality, accuracy, use, submission, dissemination, de-

1 struction of information and audits, and record-
2 keeping;

3 (2) standards for qualification as an authorized
4 employer; and

5 (3) the imposition of reasonable fees necessary
6 for conducting the background checks.

7 (c) CRIMINAL PENALTY.—Whoever falsely certifies
8 that he meets the applicable standards for an authorized
9 employer or who knowingly and intentionally uses any in-
10 formation obtained pursuant to this Act other than for
11 the purpose of determining the suitability of an individual
12 for employment as a private security officer shall be fined
13 under title 18, United States Code, or imprisoned for not
14 more than 2 years, or both.

15 (d) USER FEES.—

16 (1) IN GENERAL.—The Director of the Federal
17 Bureau of Investigation may—

18 (A) collect fees pursuant to regulations
19 promulgated under subsection (b) to process
20 background checks provided for by this Act;
21 and

22 (B) establish such fees at a level to include
23 an additional amount to defray expenses for the
24 automation of fingerprint identification and

1 criminal justice information services and associ-
2 ated costs.

3 (2) LIMITATIONS.—Any fee collected under this
4 subsection—

5 (A) shall be credited as offsetting collec-
6 tions to finance the activities and services for
7 which the fee is imposed;

8 (B) shall be available for expenditure only
9 to pay the costs of such activities and services;
10 and

11 (C) shall remain available until expended.

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

16 (e) STATE OPT OUT.—A State may decline to partici-
17 pate in the background check system authorized by this
18 Act by enacting a law or issuing an order by the Governor
19 (if consistent with State law) providing that the State is
20 declining to participate pursuant to this subsection.

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