

113TH CONGRESS  
1ST SESSION

# S. 1362

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

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## IN THE SENATE OF THE UNITED STATES

JULY 25, 2013

Mr. SCHUMER (for himself, Mr. HATCH, Ms. KLOBUCHAR, Mr. FRANKEN, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

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 “Child Protection Im-  
5 provements and Electronic Life and Safety Security Sys-  
6 tems Act of 2013”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

9 (1) The Integrated Automated Fingerprint  
10 Identification System of the Federal Bureau of In-

1 investigation maintains fingerprints and criminal his-  
2 tory records on more than 71,000,000 individuals.

3 (2) Congress has worked with the States to  
4 make criminal history background checks available  
5 to organizations seeking to screen employees and  
6 volunteers who work with children, the elderly, and  
7 individuals with disabilities, through the National  
8 Child Protection Act of 1993 (42 U.S.C. 5119 et  
9 seq.), the Volunteers for Children Act (Public Law  
10 105–251; 112 Stat. 1885), the Serve America Act  
11 (Public Law 111–13; 123 Stat. 1460), the Adam  
12 Walsh Child Protection and Safety Act of 2006  
13 (Public Law 109–248; 120 Stat. 587), and statutes  
14 enacted by 48 states in compliance with Public Law  
15 92–544. However, there may still be persons pro-  
16 viding care and services to children who fall outside  
17 these numerous and broad categories of criminal his-  
18 tory background checks authorized by Federal and  
19 State law.

20 (3) The electronic life safety and security sys-  
21 tems industry provides commercial buildings, public  
22 agencies and private residences with alarm, security  
23 and central monitoring systems to help prevent  
24 crime. These systems may be installed by individual

1 employer-owned companies and other private sector  
2 businesses.

3 (4) Although 18 States currently have legisla-  
4 tion, enacted under Public Law 92–544, to authorize  
5 criminal history background checks on individuals in  
6 burglar alarm installation and related professions,  
7 most States do not require a criminal history back-  
8 ground check. To protect lives and property, individ-  
9 uals in the electronic life safety and security systems  
10 industry should undergo a State and national crimi-  
11 nal history background check.

12 **SEC. 3. BACKGROUND CHECKS.**

13 The National Child Protection Act of 1993 (42  
14 U.S.C. 5119 et seq.) is amended—

15 (1) by redesignating section 5 as section 6; and

16 (2) by inserting after section 4 the following:

17 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**  
18 **BACKGROUND CHECKS.**

19 “(a) DEFINITIONS.—In this section—

20 “(1) the term ‘background check designee’  
21 means the entity designated by the Attorney General  
22 under subsection (b)(3) to carry out the duties de-  
23 scribed in subsection (c);

24 “(2) the term ‘covered entity’ means any busi-  
25 ness or organization that provides, or licenses, cer-

1 tifies, or coordinates individuals or organizations to  
2 provide, care, care placement, supervision, treat-  
3 ment, education, training, instruction, or recreation  
4 to children;

5 “(3) the term ‘covered individual’ means an in-  
6 dividual—

7 “(A) who has, seeks to have, or may have  
8 unsupervised access to vulnerable populations  
9 served by a covered entity;

10 “(B) who—

11 “(i) is employed by or volunteers with,  
12 or seeks to be employed by or volunteer  
13 with, a covered entity; or

14 “(ii) owns or operates, or seeks to  
15 own or operate, a covered entity; or

16 “(C) who is an employer or employee in  
17 the electronic life and safety security systems  
18 industry;

19 “(4) the term ‘criminal history review designee’  
20 means the entity designated by the Attorney General  
21 under subsection (b)(2) to carry out the criminal  
22 history review program;

23 “(5) the term ‘criminal history review program’  
24 means the program established under subsection (d);

1           “(6) the term ‘electronic life safety and security  
2 systems industry’ means employers and employees in  
3 businesses that provide installation and central mon-  
4 itoring of fire and burglar alarm systems to public  
5 or private entities, including fire alarms, burglar  
6 alarms, closed-circuit television, biometric systems,  
7 access control systems, personal emergency response  
8 systems, and other crime prevention systems;

9           “(7) the term ‘qualified State program’ means  
10 a program of a State authorized agency that pro-  
11 vides access to national criminal history background  
12 checks, as authorized by Federal or State law;

13           “(8) the term ‘State’ means a State of the  
14 United States, the District of Columbia, the Com-  
15 monwealth of Puerto Rico, American Samoa, the  
16 Virgin Islands, Guam, the Commonwealth of the  
17 Northern Mariana Islands, the Federated States of  
18 Micronesia, the Republic of the Marshall Islands,  
19 and the Republic of Palau; and

20           “(9) the term ‘vulnerable populations’ shall in-  
21 clude elderly persons, disabled persons, and children.

22           “(b) ESTABLISHMENT OF PROGRAM.—

23           “(1) PURPOSE.—The purpose of this subsection  
24 is to facilitate widespread access to State and na-  
25 tional criminal history background checks, not other-

1 wise authorized by Federal or State law, on covered  
2 individuals and on employers and employees in the  
3 electronic life safety and security systems industry.

4 “(2) IN GENERAL.—Not later than 1 year after  
5 the date of enactment of the Child Protection Im-  
6 provements and Electronic Life and Safety Security  
7 Systems Act of 2013, the Attorney General shall es-  
8 tablish—

9 “(A) policies and procedures to carry out  
10 the duties described in subsection (c); and

11 “(B) a criminal history review program in  
12 accordance with subsection (d).

13 “(3) DESIGNEES.—The Attorney General may  
14 designate 1 or more Federal Government agencies to  
15 carry out the duties described in subsection (c).

16 “(c) ACCESS TO STATE AND NATIONAL BACK-  
17 GROUND CHECKS.—

18 “(1) DUTIES.—The Attorney General shall—

19 “(A) inform covered entities and covered  
20 individuals about how to request State and na-  
21 tional background checks—

22 “(i) for covered entities and covered  
23 individuals located in a State with a quali-  
24 fied State program, by referring the cov-

1           ered entity or covered individual to the  
2           State authorized agency; or

3           “(ii) for covered entities and covered  
4           individuals located in a State without a  
5           qualified State program, by providing in-  
6           formation on alternative methods of ob-  
7           taining a State and national background  
8           check;

9           “(B) complete a check of the national  
10          criminal history background check system; and

11          “(C) provide information received in re-  
12          sponse to such national criminal history back-  
13          ground check to the criminal history review des-  
14          ignee.

15          “(2) REQUIRED INFORMATION.—A request for  
16          a State and national criminal history background  
17          check shall include—

18                  “(A) the fingerprints of the covered indi-  
19                  vidual;

20                  “(B) other documents required by State  
21                  law for a State criminal history background  
22                  check; and

23                  “(C) the appropriate fee.

24          “(3) FEES.—The Attorney General shall, in ad-  
25          dition to the fee for the noncriminal justice national

1 criminal history background check authorized under  
2 section 534 of title 28, United States Code—

3 “(A) collect a fee to offset the costs of car-  
4 rying out the duties described in subsection (d),  
5 in an amount equal to the cost of conducting  
6 the criminal history review; and

7 “(B) remit such fee to the Federal Bureau  
8 of Investigation.

9 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

10 “(1) PURPOSE.—The purpose of this subsection  
11 is to provide covered entities with reliable and accu-  
12 rate information regarding the fitness of the covered  
13 individuals to have responsibility for the safety and  
14 well-being of vulnerable populations in their care, or  
15 for the installation and central monitoring of fire  
16 and burglar alarm systems.

17 “(2) REQUIREMENTS.—The Attorney General  
18 or designee shall—

19 “(A) establish procedures to securely re-  
20 ceive criminal history records;

21 “(B) make determinations regarding  
22 whether the criminal history records received in  
23 response to a criminal history background check  
24 conducted under this section indicate that the  
25 covered individual has a criminal history that



1           may bear on the covered individual’s fitness to  
2           provide care to vulnerable populations or to in-  
3           stall and monitor fire and burglar alarm sys-  
4           tems;

5           “(C) convey to the covered entity that sub-  
6           mitted the request for a State and national  
7           criminal history background check—

8                   “(i) the fitness and suitability of the  
9                   covered individual based solely on the cri-  
10                  teria described in paragraph (3); and

11                  “(ii) instructions and guidance that  
12                  the covered entity should consult the Equal  
13                  Employment Opportunity Commission En-  
14                  forcement Guidance #915.002, dated April  
15                  25, 2012, ‘Consideration of Arrest and  
16                  Conviction Records in Employment Deci-  
17                  sions under Title VII of the Civil Rights  
18                  Act of 1964’, or any successor thereto,  
19                  issued by the United States Equal Employ-  
20                  ment Opportunity Commission.

21           “(3) CRIMINAL HISTORY REVIEW CRITERIA.—In  
22           determining whether a criminal history record indi-  
23           cates that a covered individual has a criminal history  
24           that may bear on the fitness of the covered indi-  
25           vidual to provide care to vulnerable populations or to

1 install and monitor fire and burglar alarm systems,  
2 the Attorney General or designee shall employ the  
3 criteria used to evaluate individuals under other  
4 Federal laws, such as the Volunteers for Children  
5 Act (Public Law 105–251; 112 Stat. 1885), the  
6 Serve America Act (Public Law 111–13; 123 Stat.  
7 1460), and the Adam Walsh Child Protection and  
8 Safety Act of 2006 (Public Law 109–248; 120 Stat.  
9 587).

10 “(4) APPLICATION PROCESSING.—

11 “(A) IN GENERAL.—The Attorney General  
12 shall establish the process by which a covered  
13 entity or a covered individual in a State without  
14 a qualified State program may obtain a State  
15 and national criminal history background check.

16 “(B) CHALLENGE TO COMPLETENESS OF  
17 RECORD.—A covered individual may challenge  
18 the completeness of any information in the  
19 criminal history record of the individual by con-  
20 tacting the Federal Bureau of Investigations  
21 under the procedure set out in section 16.34 of  
22 title 28, Code of Federal Regulations, or any  
23 successor thereto.

1           “(5) PARTICIPATION IN PROGRAM.—The Attor-  
2           ney General or designee shall determine whether an  
3           entity is a covered entity.

4           “(6) PRIVACY OF INFORMATION.—

5           “(A) IN GENERAL.—Any entity authorized  
6           to receive or transmit fingerprints or criminal  
7           history records under this section—

8           “(i) shall use the fingerprints, crimi-  
9           nal history records, or information in the  
10          criminal history records only for the pur-  
11          poses specifically set forth in this section;  
12          and

13          “(ii) shall maintain adequate security  
14          measures to ensure the confidentiality of  
15          the fingerprints, the criminal history  
16          records, and the information in the crimi-  
17          nal history records.

18          “(B) RETENTION OF FINGERPRINTS BY  
19          THE FBI.—In accordance with State or Federal  
20          procedures, for the purpose of providing finger-  
21          print verification, criminal investigation or sub-  
22          sequent hit notification services, or for the re-  
23          tention of criminal history, the Federal Bureau  
24          of Investigation may retain any fingerprints

1 submitted to the Federal Bureau of Investiga-  
2 tion under this section.

3 “(7) RULE OF CONSTRUCTION.—Nothing in  
4 this subsection shall be construed to change or re-  
5 place any background check program authorized by  
6 Federal or State law on the day before the date of  
7 enactment of the Child Protection Improvements  
8 and Electronic Life and Safety Security Systems Act  
9 of 2013.”.

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