

115TH CONGRESS  
1ST SESSION

# **S. 705**

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## **AN ACT**

To amend the National Child Protection Act of 1993 to establish a voluntary national criminal history background check system and criminal history review program for certain individuals who, related to their employment, have access to children, the elderly, or individuals with disabilities, 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 “Child Protection Im-  
5 provements Act of 2017”.

6 **SEC. 2. NATIONAL CRIMINAL HISTORY BACKGROUND**

7                    **CHECK AND CRIMINAL HISTORY REVIEW**

8                    **PROGRAM.**

9        The National Child Protection Act of 1993 (34  
10 U.S.C. 40101 et seq.) is amended—

11            (1) in section 3 (34 U.S.C. 40102)—

12                    (A) by striking “provider” each place it  
13 appears and inserting “covered individual”;

14                    (B) by striking “provider’s” each place it  
15 appears and inserting “covered individual’s”;

16                    (C) by amending subsection (a)(3) to read  
17 as follows:

18            “(3)(A) The Attorney General shall establish a  
19 program, in accordance with this section, to provide  
20 qualified entities located in States that do not have  
21 in effect procedures described in paragraph (1), or  
22 qualified entities located in States that do not pro-  
23 hibit the use of the program established under this  
24 paragraph, with access to national criminal history

1 background checks on, and criminal history reviews  
2 of, covered individuals.

3 “(B) A qualified entity described in subpara-  
4 graph (A) may submit to the appropriate designated  
5 entity a request for a national criminal history back-  
6 ground check on, and a criminal history review of,  
7 a covered individual. Qualified entities making a re-  
8 quest under this paragraph shall comply with the  
9 guidelines set forth in subsection (b), and with any  
10 additional applicable procedures set forth by the At-  
11 torney General or by the State in which the entity  
12 is located.”;

13 (D) in subsection (b)—

14 (i) in paragraph (1)(E), by striking  
15 “unsupervised”;

16 (ii) by striking paragraph (2) and in-  
17 serting the following:

18 “(2)(A) that the State, or in a State that does  
19 not have in effect procedures described in subsection  
20 (a)(1), the designated entity, ensures that—

21 “(i) each covered individual who is the sub-  
22 ject of a background check under subsection (a)  
23 is entitled to obtain a copy of any background  
24 check report;

1           “(ii) each covered individual who is the  
2           subject of a background check under subsection  
3           (a) is provided a process by which the covered  
4           individual may appeal the results of the back-  
5           ground check to challenge the accuracy or com-  
6           pleteness of the information contained in the  
7           background report of the covered individual;  
8           and

9           “(iii)(I) each covered individual described  
10          in clause (ii) is given notice of the opportunity  
11          to appeal;

12          “(II) each covered individual described in  
13          clause (ii) will receive instructions on how to  
14          complete the appeals process if the covered indi-  
15          vidual wishes to challenge the accuracy or com-  
16          pleteness of the information contained in the  
17          background report of the covered individual;  
18          and

19          “(III) the appeals process is completed in  
20          a timely manner for each covered individual de-  
21          scribed in clause (ii); and

22          “(B) the State, or in a State that does not have  
23          in effect procedures described in subsection (a)(1),  
24          the designated entity, may allow for a review pro-  
25          cess—

1           “(i) through which the State or designated  
2           entity, as the case may be, may determine that  
3           a covered individual who is the subject of a  
4           background check under subsection (a) is dis-  
5           qualified for a crime specified in subsection  
6           (f)(2)(C); and

7           “(ii) which shall be consistent with title  
8           VII of the Civil Rights Act of 1964 (42 U.S.C.  
9           2000e et seq.);”;

10           (iii) in paragraph (3), by inserting  
11           after “authorized agency” the following:  
12           “or designated entity, as applicable,”; and

13           (iv) in paragraph (4), by inserting  
14           after “authorized agency” the following:  
15           “or designated entity, as applicable,”;

16           (E) in subsection (d), by inserting after  
17           “officer or employee thereof,” the following: “,  
18           nor shall any designated entity nor any officer  
19           or employee thereof,”;

20           (F) by amending subsection (e) to read as  
21           follows:

22           “(e) FEES.—

23           “(1) STATE PROGRAM.—In the case of a back-  
24           ground check conducted pursuant to a State require-  
25           ment adopted after December 20, 1993, conducted

1 with fingerprints on a covered individual, the fees  
2 collected by authorized State agencies and the Fed-  
3 eral Bureau of Investigation may not exceed the ac-  
4 tual cost of the background check conducted with  
5 fingerprints.

6 “(2) FEDERAL PROGRAM.—In the case of a na-  
7 tional criminal history background check and crimi-  
8 nal history review conducted pursuant to the proce-  
9 dures established pursuant to subsection (a)(3), the  
10 fees collected by a designated entity shall be set at  
11 a level that will ensure the recovery of the full costs  
12 of providing all such services. The designated entity  
13 shall remit the appropriate portion of such fee to the  
14 Attorney General, which amount is in accordance  
15 with the amount published in the Federal Register  
16 to be collected for the provision of a criminal history  
17 background check by the Federal Bureau of Inves-  
18 tigation.

19 “(3) ENSURING FEES DO NOT DISCOURAGE  
20 VOLUNTEERS.—A fee system under this subsection  
21 shall be established in a manner that ensures that  
22 fees to qualified entities for background checks do  
23 not discourage volunteers from participating in pro-  
24 grams to care for children, the elderly, or individuals  
25 with disabilities. A fee charged to a qualified entity

1 that is not organized under section 501(c)(3) of the  
2 Internal Revenue Code of 1986 may not be less than  
3 the total sum of the costs of the Federal Bureau of  
4 Investigation and the designated entity.”; and

5 (G) by inserting after subsection (e) the  
6 following:

7 “(f) NATIONAL CRIMINAL HISTORY BACKGROUND  
8 CHECK AND CRIMINAL HISTORY REVIEW PROGRAM.—

9 “(1) NATIONAL CRIMINAL HISTORY BACK-  
10 GROUND CHECK.—Upon a designated entity receiv-  
11 ing notice of a request submitted by a qualified enti-  
12 ty pursuant to subsection (a)(3), the designated en-  
13 tity shall forward the request to the Attorney Gen-  
14 eral, who shall, acting through the Director of the  
15 Federal Bureau of Investigation, complete a finger-  
16 print-based check of the national criminal history  
17 background check system, and provide the informa-  
18 tion received in response to such national criminal  
19 history background check to the appropriate des-  
20 ignated entity. The designated entity may, upon re-  
21 quest from a qualified entity, complete a check of a  
22 State criminal history database.

23 “(2) CRIMINAL HISTORY REVIEW.—

24 “(A) DESIGNATED ENTITIES.—The Attor-  
25 ney General shall designate, and enter into an

1 agreement with, one or more entities to make  
2 determinations described in paragraph (2). The  
3 Attorney General may not designate and enter  
4 into an agreement with a Federal agency under  
5 this subparagraph.

6 “(B) DETERMINATIONS.—A designated en-  
7 tity shall, upon the receipt of the information  
8 described in paragraph (1), make a determina-  
9 tion of fitness described in subsection (b)(4),  
10 using the criteria described in subparagraph  
11 (C).

12 “(C) CRIMINAL HISTORY REVIEW CRI-  
13 TERIA.—A covered individual may be deter-  
14 mined to be unfit under subsection (b)(4) if the  
15 covered individual—

16 “(i) refuses to consent to a criminal  
17 background check under this section;

18 “(ii) knowingly makes a materially  
19 false statement in connection with a crimi-  
20 nal background check under this section;

21 “(iii) is registered, or is required to be  
22 registered, on a State sex offender registry  
23 or repository or the National Sex Offender  
24 Registry established under the Adam



1 Walsh Child Protection and Safety Act of  
2 2006 (34 U.S.C. 20901 et seq.);

3 “(iv) has been convicted of a felony  
4 consisting of—

5 “(I) murder, as described in sec-  
6 tion 1111 of title 18, United States  
7 Code;

8 “(II) child abuse or neglect;

9 “(III) a crime against children,  
10 including child pornography;

11 “(IV) spousal abuse;

12 “(V) a crime involving rape or  
13 sexual assault;

14 “(VI) kidnapping;

15 “(VII) arson;

16 “(VIII) physical assault or bat-  
17 tery; or

18 “(IX) a drug-related offense com-  
19 mitted during the preceding 5 years;

20 “(v) has been convicted of a violent  
21 misdemeanor committed as an adult  
22 against a child, including—

23 “(I) child abuse;

24 “(II) child endangerment;

25 “(III) sexual assault; or

1                   “(IV) of a misdemeanor involving  
2                   child pornography; or

3                   “(vi) in the case of a covered indi-  
4                   vidual who has, seeks to have, or may have  
5                   access to the elderly or individuals with  
6                   disabilities, has been convicted of any  
7                   criminal offense relating to the abuse, ex-  
8                   ploitation, or neglect (as those terms are  
9                   defined in section 2011 of the Social Secu-  
10                  rity Act (42 U.S.C. 1397j)) of an elder or  
11                  an individual with disabilities.”; and

12                  (2) in section 5 (34 U.S.C. 40104)—

13                  (A) by amending paragraph (9) to read as  
14                  follows:

15                  “(9) the term ‘covered individual’ means an in-  
16                  dividual—

17                         “(A) who has, seeks to have, or may have  
18                         access to children, the elderly, or individuals  
19                         with disabilities, served by a qualified entity;  
20                         and

21                         “(B) who—

22                                 “(i) is employed by or volunteers with,  
23                                 or seeks to be employed by or volunteer  
24                                 with, a qualified entity; or

1                   “(ii) owns or operates, or seeks to  
2                   own or operate, a qualified entity;”;

3                   (B) in paragraph (10), by striking “and”  
4                   at the end;

5                   (C) in paragraph (11), by striking the pe-  
6                   riod at the end and inserting “; and”; and

7                   (D) by inserting after paragraph (11) the  
8                   following:

9                   “(12) the term ‘designated entity’ means an en-  
10                  tity designated by the Attorney General under sec-  
11                  tion 3(f)(2)(A).”.

12 **SEC. 3. EFFECTIVE DATE.**

13                  This Act and the amendments made by this Act shall  
14                  be fully implemented by not later than 1 year after the  
15                  date of enactment of this Act.

                  Passed the Senate October 16, 2017.

                  Attest:

*Secretary.*

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