

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5893

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to require the Secretary of Homeland Security to provide for National Crime Information Center criminal history records checks of the employees and prospective employees of providers of private security services and to require such providers to employ only those employees whose records checks do not show a history of certain offenses.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2006

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to require the Secretary of Homeland Security to provide for National Crime Information Center criminal history records checks of the employees and prospective employees of providers of private security services and to require such providers to employ only those employees whose records checks do not show a history of certain offenses.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Private Security Offi-  
3 cer Employment Enhancement Act of 2006”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) One of the legacies of the horrific attacks  
7 of September 11, 2001, is the need for enhanced se-  
8 curity of the United States. Meeting this need has  
9 imposed serious stresses on government agencies at  
10 all levels and entities whose primary task is the pro-  
11 tection of the key assets of the United States and  
12 the life, health, and property of its populace.

13 (2) President Bush stated, in a February 2003  
14 report titled, “The National Strategy for the Phys-  
15 ical Protection of Critical Infrastructures and Key  
16 Assets”, that there is an increased need to assess  
17 the Nation’s vulnerabilities and to provide additional  
18 security for its key assets. Providing such security  
19 will require increased cooperation between the Fed-  
20 eral Government and the private sector.

21 (3) Such Report recognized that terrorists, in  
22 the pursuit of their long-term, strategic objectives,  
23 will likely continue to attack critical infrastructures  
24 and key assets of the United States, the vast major-  
25 ity of which are owned and operated by the private  
26 sector.

1           (4) Because of enhanced security needs, the use  
2 of private security companies in guarding the key as-  
3 sets of the United States and the life, health, and  
4 property of its populace has increased significantly  
5 since September 11, 2001, and will continue to do  
6 so.

7           (5) Because of enhanced security needs, busi-  
8 nesses have increased their security efforts and the  
9 number of internal employees dedicated to securing  
10 their facilities.

11           (6) As reliance on private security companies to  
12 guard the key assets of the United States and to  
13 protect the life, health, and property of its populace  
14 continues to grow, the hiring and placement deci-  
15 sions of such companies (which employ more than  
16 500,000 private security officers nationwide) have  
17 become critical. Such decisions determine who will  
18 protect the United States and have access to its key  
19 assets. Similarly, businesses providing their own in-  
20 ternal security services have experienced a height-  
21 ened need to improve their internal security meas-  
22 ures and to obtain more information about the indi-  
23 viduals who provide their internal security. It has,  
24 therefore, become imperative that companies employ-  
25 ing or hiring security personnel have access to a

1 criminal background checking system that is effi-  
2 cient, inclusive, nationwide in scope, dependable, and  
3 technologically advanced, in order to minimize the  
4 occurrence of dangerous and disastrous placement  
5 and hiring decisions.

6 (7) Companies cannot properly and effectively  
7 evaluate their prospective and current internal secu-  
8 rity employees without access to the criminal history  
9 records available through the National Crime Infor-  
10 mation Center (NCIC). Access to the NCIC for the  
11 purpose of reviewing the background of current and  
12 prospective employees is currently enjoyed by the  
13 banking industry, the nuclear power industry, public  
14 housing authorities, and others, and should be made  
15 available to private security companies and to busi-  
16 nesses providing their own security so that such  
17 companies and businesses can safely and effectively  
18 partner with Federal, State, and local governments  
19 in the effort to protect the United States.

20 (8) Given its critical role in the security of the  
21 United States, the Department of Homeland Secu-  
22 rity, working in conjunction with the Department of  
23 Justice, is best suited to act as the clearinghouse for  
24 obtaining and disseminating NCIC criminal history  
25 records for the purposes set forth in this section.

1 **SEC. 3. IMPROVED CRIMINAL HISTORY RECORDS SEARCH**  
2 **FOR PURPOSES OF EMPLOYMENT OF COV-**  
3 **ERED PRIVATE SECURITY OFFICERS.**

4 Section 6402 of the Intelligence Reform and Ter-  
5 rorism Prevention Act of 2004 (118 Stat. 3755, 28 U.S.C.  
6 534 note) is amended by striking subsection (c) and all  
7 that follows through the end and inserting the following  
8 new subsections:

9 “(c) **REQUIREMENT TO PROVIDE NCIC INFORMA-**  
10 **TION UPON REQUEST.**—

11 “(1) **IN GENERAL.**—The Secretary shall, upon  
12 receipt of a request by a covered employer with re-  
13 spect to a covered employee, provide for an NCIC  
14 criminal history records check with respect to the  
15 covered employee and provide the results of the  
16 check to the covered employer, in accordance with  
17 this section.

18 “(2) **FINGERPRINTS.**—A request under para-  
19 graph (1) shall include the fingerprints of the cov-  
20 ered employee, which shall be submitted electroni-  
21 cally to the Secretary. The Secretary shall transmit  
22 those fingerprints to the Attorney General. To assist  
23 the Secretary in complying with paragraph (1), the  
24 Attorney General shall, notwithstanding any other  
25 provision of law, provide for—

1           “(A) an NCIC criminal history records  
2 check to be carried out with respect to that cov-  
3 ered employee; and

4           “(B) the results of that check to be trans-  
5 mitted to the Secretary.

6           “(3) FEE.—The Secretary may, by regulation,  
7 establish and collect a reasonable fee for conducting  
8 a criminal history records check under paragraph  
9 (1).

10          “(d) USE OF NCIC INFORMATION BY COVERED EM-  
11 PLOYERS.—

12           “(1) PROHIBITION.—

13           “(A) IN GENERAL.—A covered employer  
14 may not employ a covered employee to provide  
15 a security service described in subparagraph  
16 (B), unless—

17           “(i) the covered employer first obtains  
18 the results of an NCIC criminal history  
19 records check with respect to that covered  
20 employee; and

21           “(ii) neither the results of that check,  
22 nor any other information made available  
23 to the covered employer, indicate that the  
24 covered employee has any unpardoned con-  
25 viction under any Federal or State law of

1 any felony or any one or more of the fol-  
2 lowing offenses:

3 “(I) Illegally using, carrying, or  
4 possessing any firearm or other dan-  
5 gerous weapon.

6 “(II) Making or possessing an in-  
7 strument, the primary use of which  
8 would be to facilitate burglary, theft,  
9 or a similar crime.

10 “(III) Buying or receiving stolen  
11 property.

12 “(IV) Unlawful entry of a build-  
13 ing.

14 “(V) Aiding escape from prison.

15 “(VI) Unlawfully possessing or  
16 distributing any illegal narcotic drug.

17 “(VII) Any act involving theft,  
18 including theft by deception.

19 “(VIII) Recklessly endangering  
20 another person.

21 “(IX) Making any threat of ter-  
22 ror.

23 “(X) Any crime of violence  
24 against another individual, including  
25 assault or battery, or any crime of vi-

1                   olence against the property of an indi-  
2                   vidual.

3                   “(XI) Attempting or conspiring  
4                   to commit any of the offenses de-  
5                   scribed in subclauses (I) through (X).

6                   “(XII) Any other offense relevant  
7                   to the ability of the covered employee  
8                   to provide reliable security services, as  
9                   specified by the Secretary by regula-  
10                  tion.

11                  “(B) SECURITY SERVICE DESCRIBED.—  
12                  For purposes of this section, a security service  
13                  is—

14                         “(i) guarding, protecting, or securing  
15                         any asset or personnel of the covered em-  
16                         ployer or any asset or personnel of any  
17                         customer of such employer; or

18                         “(ii) directly or indirectly supervising  
19                         the activities of any other employee of such  
20                         employer who guards, protects, or secures  
21                         any such asset or personnel.

22                  “(2) DELAYED APPLICABILITY FOR CURRENT  
23                  EMPLOYEES.—In the case of a covered employee  
24                  who, as of the effective date described in section 4  
25                  of the Private Security Officer Employment En-

1       hancement Act of 2006, is employed by a covered  
2       employer to provide a security service, the prohibi-  
3       tion under paragraph (1) shall not apply to such em-  
4       ployer with respect to such employee until—

5               “(A) the given date that is six months  
6               after such effective date; or

7               “(B) a later date specified by the Sec-  
8               retary, in the case in which the Secretary cer-  
9               tifies that the results of the records check could  
10              not be obtained by the given date described in  
11              subparagraph (A) despite the exercise of rea-  
12              sonable diligence on the part of both the em-  
13              ployee and the employer.

14             “(3) NO LIABILITY FOR GOOD FAITH DETER-  
15             MINATIONS.—No covered employer shall be liable for  
16             any determination made by such employer in good  
17             faith that an offense identified from a criminal his-  
18             tory records check conducted under subsection (c)  
19             for such employer on a covered employee is within  
20             the scope of offenses described in paragraph  
21             (1)(A)(ii) for purposes of such employer making an  
22             employment decision with respect to such employee.

23             “(4) RULE OF CONSTRUCTION.—Nothing in  
24             paragraph (1) shall be construed as preventing a  
25             covered employer from making an employment deci-

1 sion, with respect to a covered employee, based on  
2 any lawful reason not described in such subsection,  
3 including the reason that the results of a criminal  
4 history records check conducted under subsection  
5 (c)(1) (or any other information made available to  
6 the employer) on such employee indicate that the  
7 employment of the employee would violate any appli-  
8 cable State law.

9 “(5) NON-APPLICATION OF FAIR CREDIT RE-  
10 PORTING ACT.—The provisions of the Fair Credit  
11 Reporting Act (15 U.S.C. 1681 et seq.) shall not  
12 apply to an NCIC criminal history records check  
13 conducted under subsection (c).

14 “(e) EMPLOYEE RIGHTS.—

15 “(1) WRITTEN CONSENT.—A covered employer  
16 may not make a request under subsection (c)(1)  
17 with respect to a covered employee, or obtain the  
18 fingerprints of a covered employee under subsection  
19 (c)(2), without the written consent of that employee.

20 “(2) FREQUENCY OF REQUESTS.—A covered  
21 employer that makes a request under subsection  
22 (c)(1) with respect to a covered employee and there-  
23 after employs that employee for a continuous period  
24 may not make another such request with respect to  
25 such employee unless—

1           “(A) such request is made at least 12  
2 months after the previous request; or

3           “(B) good cause (including for purposes of  
4 a promotion of the covered employee) exists.

5           “(3) ACCURACY AND COMPLETENESS.—The  
6 Secretary shall ensure that each covered employee  
7 subject to a request for an NCIC criminal history  
8 records check under subsection (c)(1) will receive the  
9 results of the check and will have the opportunity to  
10 provide to the head of the National Crime Informa-  
11 tion Center of the Federal Bureau of Investigation  
12 information concerning the accuracy or completeness  
13 of such results. The covered employee involved must  
14 provide such information within 30 days after re-  
15 ceipt of such results.

16           “(f) RECORDS MANAGEMENT.—

17           “(1) IN GENERAL.—A covered employer receiv-  
18 ing any results from a criminal history records check  
19 carried out under subsection (c)(1), with respect to  
20 a covered employee, shall ensure each of the fol-  
21 lowing:

22           “(A) Such results are maintained confiden-  
23 tially.

24           “(B) Such results are not misused or dis-  
25 seminated to any person not involved in the em-

1           employment decision with respect to the covered  
2           employee.

3           “(C) Subject to paragraph (2), such re-  
4           sults are destroyed within one year after the  
5           latter of the following dates, with respect to  
6           such results:

7                   “(i) The first of the following dates:

8                           “(I) The date of the decision  
9                           whether to employ or continue to em-  
10                          ploy the covered employee.

11                          “(II) The date that is one year  
12                          after the date on which the covered  
13                          employer received the results.

14                          “(ii) The date that is one year after  
15                          the final disposition of a claim or pro-  
16                          ceeding relating to the employment of the  
17                          covered employee.

18           “(2) NO DESTRUCTION OF RESULTS IF RE-  
19           LATED CLAIM PENDING.—In no case shall the re-  
20           sults from a criminal history records check carried  
21           out under subsection (c)(1) be destroyed pursuant to  
22           paragraph (1)(C) while a claim or proceeding de-  
23           scribed in clause (ii) of such paragraph is pending.

24           “(g) USE OF INFORMATION BY DEPARTMENT OF  
25           HOMELAND SECURITY.—In carrying out this section, the

1 Secretary shall establish procedures to ensure that the De-  
2 partment of Homeland Security uses the results of crimi-  
3 nal history records checks carried out under subsection  
4 (c)(1) in a manner that—

5           “(1) limits the dissemination of such results  
6 outside the Department only to the covered em-  
7 ployer;

8           “(2) ensures that such results are used only for  
9 the purpose of determining the suitability of a cov-  
10 ered employee for employment in the private security  
11 field; and

12           “(3) protects covered employees from any use  
13 of such results that is in violation of the provisions  
14 of this section.

15           “(h) REGULATIONS.—The Secretary shall prescribe  
16 regulations to carry out this section.

17           “(i) CRIMINAL PENALTIES.—Any person who know-  
18 ingly and intentionally uses any information obtained pur-  
19 suant to this section for a purpose other than the purpose  
20 of determining the suitability of a covered employee for  
21 employment in the private security field shall be impris-  
22 oned not more than two years or fined under title 18,  
23 United States Code, or both.

24           “(j) DEFINITIONS.—For purposes of this section:

1           “(1) COVERED EMPLOYEE.—The term ‘covered  
2 employee’ means any individual, other than an active  
3 law enforcement officer for any governmental unit,  
4 who is—

5           “(A) employed by, or seeking employment  
6 with, a nongovernmental entity that provides  
7 security services; or

8           “(B) employed as an internal security em-  
9 ployee by, or seeking employment as an internal  
10 security employee with, a nongovernmental enti-  
11 ty that has more than 50 employees, of which  
12 three or more are internal security employees.

13           “(2) COVERED EMPLOYER.—The term ‘covered  
14 employer’ means—

15           “(A) any nongovernmental entity that—

16           “(i) provides security services;

17           “(ii) for each jurisdiction in which it  
18 provides such services, is licensed by such  
19 jurisdiction to provide such services, to the  
20 extent such jurisdiction permits or requires  
21 it to be so licensed; and

22           “(iii) provides such services—

23           “(I) in interstate or foreign com-  
24 merce;

1                   “(II) at any site where there is  
2                   located any element of the Federal  
3                   Government; or

4                   “(III) for any person engaged in  
5                   interstate or foreign commerce; or

6                   “(B) any nongovernmental entity that—

7                   “(i) has more than 50 employees, of  
8                   which three or more are internal security  
9                   employees;

10                  “(ii) for each jurisdiction in which it  
11                  provides internal security services with re-  
12                  spect to itself, is licensed by such jurisdic-  
13                  tion to provide such services, to the extent  
14                  such jurisdiction permits or requires it to  
15                  be so licensed; and

16                  “(iii) is either engaged in interstate or  
17                  foreign commerce or provides any product  
18                  or service to any element of the Federal  
19                  Government.

20                  “(3) INTERNAL SECURITY EMPLOYEE.—The  
21                  term ‘internal security employee’ means an employee  
22                  whose primary responsibility is to provide internal  
23                  security with respect to the entity employing such  
24                  employee.

1           “(4) NCIC CRIMINAL HISTORY RECORDS  
2 CHECK.—The term ‘NCIC criminal history records  
3 check’ means a criminal history records check con-  
4 ducted through the databases of the National Crime  
5 Information Center of the Federal Bureau of Inves-  
6 tigation.

7           “(5) SECRETARY.—The term ‘Secretary’ means  
8 the Secretary of Homeland Security.

9           “(6) STATE.—The term ‘State’ includes the 50  
10 States, the District of Columbia, the Commonwealth  
11 of Puerto Rico, and any other territory or possession  
12 of the United States.”.

13 **SEC. 4. EFFECTIVE DATE.**

14           The amendment made by section 3 shall take effect  
15 as of the date of enactment and shall apply to employment  
16 decisions made by covered employers, with respect to cov-  
17 ered employees, beginning on the date that is 180 days  
18 after the date of the enactment of this Act.

○