

**§ 41105. Criminal background checks for applicants for employment in nursing facilities and home health care agencies**

(a)(1) A nursing facility or home health care agency may submit a request to the Attorney General to conduct a search and exchange of records described in subsection (b) regarding an applicant for employment if the employment position is involved in direct patient care.

(2) A nursing facility or home health care agency requesting a search and exchange of records under this section shall submit to the Attorney General through the appropriate State agency or agency designated by the Attorney General a copy of an employment applicant's fingerprints, a statement signed by the applicant authorizing the nursing facility or home health care agency to request the search and exchange of records, and any other identification information not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5) after acquiring the fingerprints, signed statement, and information.

(b) Pursuant to any submission that complies with the requirements of subsection (a), the Attorney General shall search the records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints or other identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the appropriate State agency or agency designated by the Attorney General to receive such information.

(c) Information regarding an applicant for employment in a nursing facility or home health care agency obtained pursuant to this section may be used only by the facility or agency requesting the information and only for the purpose of determining the suitability of the applicant for employment by the facility or agency in a position involved in direct patient care.

(d) The Attorney General may charge a reasonable fee, not to exceed \$50 per request, to any nursing facility or home health care agency requesting a search and exchange of records pursuant to this section.

(e) Not later than 2 years after October 21, 1998, the Attorney General shall submit a report to Congress on the number of requests for searches and exchanges of records made under this section by nursing facilities and home health care agencies and the disposition of such requests.

(f) Whoever knowingly uses any information obtained pursuant to this section for a purpose other than as authorized under subsection (c) shall be fined in accordance with title 18, imprisoned for not more than 2 years, or both.

(g) A nursing facility or home health care agency that, in denying employment for an applicant, reasonably relies upon information provided by the Attorney General pursuant to this section shall not be liable in any action brought by the applicant based on the employment determination resulting from the incompleteness or inaccuracy of the information.

(h) The Attorney General may promulgate such regulations as are necessary to carry out

this section, including regulations regarding the security, confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, the imposition of fees, and any necessary modifications to the definitions contained in subsection (i).

(i) In this section:

(1) The term "home health care agency" means an agency that provides home health care or personal care services on a visiting basis in a place of residence.

(2) The term "nursing facility" means a facility or institution (or a distinct part of an institution) that is primarily engaged in providing to residents of the facility or institution nursing care, including skilled nursing care, and related services for individuals who require medical or nursing care.

(j) This section shall apply without fiscal year limitation.

(Pub. L. 105-277, div. A, §101(b) [title I, §124], Oct. 21, 1998, 112 Stat. 2681-50, 2681-73.)

**Editorial Notes**

**CODIFICATION**

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

**§ 41106. Reviews of criminal records of applicants for private security officer employment**

**(a) Short title**

This section may be cited as the "Private Security Officer Employment Authorization Act of 2004".

**(b) Findings**

Congress finds that—

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

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

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

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

**(c) Definitions**

In this section:

**(1) Employee**

The term “employee” includes both a current employee and an applicant for employment as a private security officer.

**(2) Authorized employer**

The term “authorized employer” means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

**(3) Private security officer**

The term “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 (except for services excluded from coverage under this section if the Attorney General determines by regulation that such exclusion would serve the public interest); 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.

**(d) Criminal history record information search**

**(1) In general**

**(A) Submission of fingerprints**

An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this section.

**(B) Employee rights**

**(i) Permission**

An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of the participating State the request to search the criminal history record information of the employee under this section.

**(ii) Access**

An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this section.

**(C) Providing information to the State identification bureau**

Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this section, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

**(D) Use of information**

**(i) In general**

Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

**(ii) Terms**

In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been—

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this section in applying the State standards and shall only notify the employer of the results of the application of the State standards.

**(E) Frequency of requests**

An authorized employer may request a criminal history record information search

for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

**(2) Regulations**

Not later than 180 days after December 17, 2004, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this section, including—

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

**(3) Criminal penalties for use of information**

Whoever knowingly and intentionally uses any information obtained pursuant to this section other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, or imprisoned for not more than 2 years, or both.

**(4) User fees**

**(A) In general**

The Director of the Federal Bureau of Investigation may—

(i) collect fees to process background checks provided for by this section; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

**(B) Limitations**

Any fee collected under this subsection—

(i) shall, consistent with Public Law 101-515 and Public Law 104-99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

**(C) State costs**

Nothing in this section shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this section.

**(5) State opt out**

A State may decline to participate in the background check system authorized by this section by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

(Pub. L. 108-458, title VI, § 6402, Dec. 17, 2004, 118 Stat. 3755.)

**Editorial Notes**

REFERENCES IN TEXT

Public Law 101-515, referred to in subsec. (d)(4)(B)(i), is Pub. L. 101-515, Nov. 5, 1990, 104 Stat. 2101. For complete classification of this Act to the Code, see Tables.

Public Law 104-99, referred to in subsec. (d)(4)(B)(i), is Pub. L. 104-99, Jan. 26, 1996, 110 Stat. 26. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

**§ 41107. Access to the national crime information databases by tribes**

**(1) In general**

The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements be permitted access to national crime information databases.

**(2) Sanctions**

For purpose of sanctions for noncompliance with requirements of, or misuse of, national crime information databases and information obtained from those databases, a tribal law enforcement agency or official shall be treated as Federal law enforcement agency or official.

**(3) NCIC**

Each tribal justice official serving an Indian tribe with criminal jurisdiction over Indian country shall be considered to be an authorized law enforcement official for purposes of access to the National Crime Information Center of the Federal Bureau of Investigation.

(Pub. L. 111-211, title II, § 233(b), July 29, 2010, 124 Stat. 2279.)

**Editorial Notes**

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

Section is comprised of subsec. (b) of section 233 of Pub. L. 111-211. Subsec. (a) of section 233 amended section 534 of Title 28, Judiciary and Judicial Procedure.

DEFINITIONS

For definitions of “Indian tribe” and “Indian country” used in this section, see section 203(a) of Pub. L. 111-211, set out as a note under section 2801 of Title 25, Indians.

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