

115TH CONGRESS  
2D SESSION

# H. R. 6145

To provide safeguards with respect to the Federal Bureau of Investigation criminal background checks prepared for employment purposes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2018

Mr. SCOTT of Virginia (for himself, Mr. NADLER, Mr. CUMMINGS, and Ms. JACKSON LEE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide safeguards with respect to the Federal Bureau of Investigation criminal background checks prepared for employment purposes, 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 “Fairness and Accuracy  
5 in Employment Background Checks Act of 2018”.

6 **SEC. 2. SAFEGUARDS FOR BACKGROUND CHECKS.**

7 The Attorney General shall establish and enforce pro-  
8 cedures to ensure the prompt release of accurate records  
9 and information exchanged for employment-related pur-

1 poses through the records system created under section  
2 534 of title 28, United States Code.

3 **SEC. 3. REQUIRED PROCEDURES.**

4 The procedures established under section 2 shall in-  
5 clude the following:

6 (1) INACCURATE RECORD OR INFORMATION.—If  
7 the Attorney General determines that a record or in-  
8 formation is inaccurate, the Attorney General shall  
9 promptly correct that record or information or, if  
10 appropriate, promptly make any changes or deletions  
11 to the records or information.

12 (2) INCOMPLETE RECORD OR INFORMATION.—

13 (A) If the Attorney General determines  
14 that a record or information is incomplete or  
15 cannot be verified, the Attorney General shall  
16 attempt to complete or verify the record or in-  
17 formation, and if the Attorney General is un-  
18 able to do so, the Attorney General may  
19 promptly make any changes or deletions to the  
20 record or information.

21 (B) For the purposes of this paragraph, an  
22 incomplete record or information includes a  
23 record or information that indicates there was  
24 an arrest and does not include the disposition  
25 of that arrest.

1           (C) If the record or information is an in-  
2 complete record or information described in  
3 subparagraph (B), the Attorney General shall,  
4 not later than 10 days after the requesting enti-  
5 ty requests the exchange and before the ex-  
6 change is made, obtain the disposition (if any)  
7 of the arrest.

8           (3) NOTIFICATION OF REPORTING JURISDIC-  
9 TION.—The Attorney General shall notify each ap-  
10 propriate reporting jurisdiction of any action taken  
11 under paragraph (1) or (2).

12           (4) OPPORTUNITY TO REVIEW RECORDS OR IN-  
13 FORMATION BY APPLICANT.—In connection with an  
14 exchange of such a record or information, the Attor-  
15 ney General shall—

16           (A) obtain the consent of the applicant to  
17 exchange the record or information with the re-  
18 questing entity;

19           (B) at the time of consent, notify the ap-  
20 plicant that the applicant can obtain a copy of  
21 the record or information;

22           (C) provide to the applicant an opportunity  
23 to obtain a copy of the record or information  
24 upon request and to challenge the accuracy and  
25 completeness of that record or information;

1 (D) promptly notify the requesting entity  
2 of any such challenge;

3 (E) not later than 30 days after the chal-  
4 lenge is made, complete an investigation of the  
5 challenge;

6 (F) provide to the applicant the specific  
7 findings and results of that investigation;

8 (G) promptly make any changes or dele-  
9 tions to the records or information required as  
10 a result of the challenge; and

11 (H) report those changes to the requesting  
12 entity.

13 (5) CERTAIN EXCHANGES PROHIBITED.—An ex-  
14 change shall not include any record or information—

15 (A) about an arrest more than one-year-old  
16 as of the date of the request for the exchange,  
17 that does not also include a disposition (if any)  
18 of that arrest;

19 (B) relating to an adult or juvenile non-se-  
20 rious offense of the sort described in section  
21 20.32(b) of title 28, Code of Federal Regula-  
22 tions, as in effect on July 1, 2009; or

23 (C) to the extent the record or information  
24 is not clearly an arrest or a disposition of an  
25 arrest.

1 **SEC. 4. FEES.**

2       The Attorney General may collect reasonable fees for  
3 all exchanges of records or information for employment-  
4 related purposes through the records system created under  
5 section 534 of title 28, United States Code, to defray the  
6 costs associated with exchanges for those purposes, includ-  
7 ing any costs associated with the investigation of inac-  
8 curate or incomplete records or information.

9 **SEC. 5. REGULATIONS ON REASONABLE PROCEDURES.**

10       Not later than 1 year after the date of the enactment  
11 of this Act, the Attorney General shall issue regulations  
12 to carry out this Act.

13 **SEC. 6. ANNUAL REPORTS ON PROCEDURES.**

14       For each of the first 3 years beginning after the date  
15 of enactment of this Act, the Attorney General shall sub-  
16 mit an annual report to Congress that includes—

17           (1) the number of exchanges of records or in-  
18 formation for employment-related purposes made  
19 with entities in each State through the records sys-  
20 tem created under section 534 of title 28, United  
21 States Code;

22           (2) appropriate statistical information to deter-  
23 mine whether the exchange of records or information  
24 about arrests that did not result in convictions is af-  
25 fecting the employment opportunities of employees  
26 to whom those records or information pertain;

1 (3) any prolonged failure of a reporting jurisdic-  
 2 tion to comply with a request by the Attorney  
 3 General for information about dispositions of ar-  
 4 rests;

5 (4) the percent of missing arrest dispositions lo-  
 6 cated within the time limit required by this Act; and

7 (5) the numbers of successful and unsuccessful  
 8 challenges to the accuracy and completeness of  
 9 records or information, by State where the records  
 10 and information originated.

11 **SEC. 7. REPORT ON STATUTORY AND REGULATORY RE-**  
 12 **STRICTIONS AND DISQUALIFICATIONS BASED**  
 13 **ON CRIMINAL RECORDS.**

14 (a) IN GENERAL.—Not later than one year after the  
 15 date of the enactment of this Act, the Attorney General  
 16 shall report to Congress on all Federal statutes, regula-  
 17 tions, and policies providing employment restrictions and  
 18 disqualifications based on criminal records.

19 (b) IDENTIFICATION OF INFORMATION.—In the re-  
 20 port, the Attorney General shall identify each occupation  
 21 or position to which such restrictions or disqualifications  
 22 apply, and for each such occupation or position, include—

23 (1) a description of the restriction or disquali-  
 24 fication;

1           (2) the duration of the restriction or disquali-  
2           fication;

3           (3) an evaluation of the rationale for the re-  
4           striction or disqualification and its continuing use-  
5           fulness;

6           (4) the procedures, if any, to appeal, waive or  
7           exempt the restriction or disqualification based on a  
8           showing of rehabilitation or other relevant evidence;

9           (5) any information available about the num-  
10          bers of individuals restricted or disqualified on the  
11          basis of a criminal record; and

12          (6) the identity of the Federal agency with ju-  
13          risdiction over the restriction or disqualification.

14 **SEC. 8. DEFINITIONS.**

15          In this Act—

16           (1) the term “for employment-related purposes”  
17           includes for the purpose of screening an individual  
18           for employment or occupational licensing;

19           (2) the term “applicant” means the person to  
20           whom the record or information sought to be ex-  
21           changed pertains;

22           (3) the term “requesting entity” means the per-  
23           son or entity seeking the exchange of records or in-  
24           formation;

1           (4) the term “State” includes the District of  
2           Columbia, Puerto Rico, and each other territory and  
3           possession of the United States; and

4           (5) the term “reporting jurisdiction” includes  
5           any person or entity that provides relevant records  
6           and information to the Attorney General under sec-  
7           tion 534 of title 28, United States Code.

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