

116TH CONGRESS  
1ST SESSION

# H. R. 2851

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

MAY 20, 2019

Mr. SCOTT of Virginia (for himself, Mr. NADLER, Mr. CUMMINGS, Ms. NORTON, Ms. SCHAKOWSKY, Ms. ADAMS, Mr. THOMPSON of Mississippi, Mr. TRONE, Mr. RUSH, Mr. CÁRDENAS, and Mr. RASKIN) 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 2019”.

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

1 and information exchanged for employment-related pur-  
2 poses through the records system created under section  
3 534 of title 28, United States Code.

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

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

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

13 (2) **INCOMPLETE RECORD OR INFORMATION.**—

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

22 (B) For the purposes of this paragraph, an  
23 incomplete record or information includes a  
24 record or information that indicates there was

1 an arrest and does not include the disposition  
2 of that arrest.

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

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

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

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

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

24 (C) provide to the applicant an opportunity  
25 to obtain a copy of the record or information

1 upon request and to challenge the accuracy and  
2 completeness of that record or information;

3 (D) promptly notify the requesting entity  
4 of any such challenge;

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

8 (F) provide to the applicant the specific  
9 findings and results of that investigation;

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

13 (H) report those changes to the requesting  
14 entity.

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

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

21 (B) relating to an adult or juvenile non-se-  
22 rious offense of the sort described in section  
23 20.32(b) of title 28, Code of Federal Regula-  
24 tions, as in effect on July 1, 2009; or

1 (C) to the extent the record or information  
2 is not clearly an arrest or a disposition of an  
3 arrest.

4 **SEC. 4. FEES.**

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

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

13 Not later than 1 year after the date of the enactment  
14 of this Act, the Attorney General shall issue regulations  
15 to carry out this Act.

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

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

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

1 (2) appropriate statistical information to deter-  
2 mine whether the exchange of records or information  
3 about arrests that did not result in convictions is af-  
4 fecting the employment opportunities of employees  
5 to whom those records or information pertain;

6 (3) any prolonged failure of a reporting juris-  
7 diction to comply with a request by the Attorney  
8 General for information about dispositions of ar-  
9 rests;

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

12 (5) the numbers of successful and unsuccessful  
13 challenges to the accuracy and completeness of  
14 records or information, by the State where the  
15 records and information originated.

16 **SEC. 7. REPORT ON STATUTORY AND REGULATORY RE-**  
17 **STRICTIONS AND DISQUALIFICATIONS BASED**  
18 **ON CRIMINAL RECORDS.**

19 (a) **IN GENERAL.**—Not later than one year after the  
20 date of the enactment of this Act, the Attorney General  
21 shall report to Congress on all Federal statutes, regula-  
22 tions, and policies providing employment restrictions and  
23 disqualifications based on criminal records.

24 (b) **IDENTIFICATION OF INFORMATION.**—In the re-  
25 port, the Attorney General shall identify each occupation

1 or position to which such restrictions or disqualifications  
2 apply, and for each such occupation or position, include—

3 (1) a description of the restriction or disquali-  
4 fication;

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

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

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

13 (5) any information available about the num-  
14 bers of individuals restricted or disqualified on the  
15 basis of a criminal record; and

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

18 **SEC. 8. DEFINITIONS.**

19 In this Act—

20 (1) the term “for employment-related purposes”  
21 includes for the purpose of screening an individual  
22 for employment or occupational licensing;

23 (2) the term “applicant” means the person to  
24 whom the record or information sought to be ex-  
25 changed pertains;

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

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

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

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