

# Legi-Scan Alert™

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## News and Legislation Relating to Employment and Background Checks

### News and Federal Legislation:

#### Background Checks

- On June 26<sup>th</sup>, the Transportation Security Administration (TSA) published a final rule in the *Federal Register* (74 FR 30477) concerning the prohibition of public transportation agencies, railroad carriers, and their respective contractors and subcontractors from knowingly making misrepresentations to employees about Federal guidance or regulations concerning criminal history background checks.  
(<http://www.gpo.gov/fdsys/pkg/FR-2009-06-26/pdf/E9-15080.pdf>)
- On June 25<sup>th</sup>, the FBI published a notice of existing information collection under review in the *Federal Register* (74 FR 30324). The FBI seeks public comment on the collection of personal information from applicants seeking access to conduct criminal history background checks via the National Instant Criminal Background Check System (NICS). The FBI will accept comments for 60 days until August 24, 2009.  
(<http://www.gpo.gov/fdsys/pkg/FR-2009-06-25/pdf/E9-15011.pdf>)
- On June 22<sup>nd</sup>, Sen. Frank Lautenberg (D-NJ) introduced the *Denying Firearms and Explosives to Dangerous Terrorists Act of 2009* (S. 1317) that seeks to increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected terrorists. The bill would require an applicant for firearms or explosives licensure to be subject to a criminal history background check through the National Instant Criminal Background Check System.  
([http://thomas.loc.gov/cgi-bin/query/z?c111:s1317:](http://thomas.loc.gov/cgi-bin/query/z?c111:s1317;))
- On June 19<sup>th</sup>, the General Services Administration (GSA) published a notice in the *Federal Register* (74 FR 29212) requesting comments regarding a proposed information collection of personal information to complete criminal history background checks of child care workers accessing GSA owned facilities by the Office of Management and Budget. Comments must be received by July 20<sup>th</sup>, 2009.  
(<http://www.gpo.gov/fdsys/pkg/FR-2009-06-19/pdf/E9-14468.pdf>)
- On June 17<sup>th</sup>, James May, President and CEO of Air Transport Association of America, Inc., testified before the Senate Commerce Subcommittee on Aviation about the role and responsibility of commercial air carriers and employees in aviation security. May noted that a centralized database of pilot records would make it easier to evaluate the backgrounds of applicants for flight deck positions, urging the FAA to determine if such a database can be efficiently implemented.  
(<http://commerce.senate.gov/public/files/MayTestimonyAviationSafety.pdf>)
- On June 16<sup>th</sup>, the Senate Committee on Veterans' Affairs, Chaired by Sen. Akaka (D-HI), reported out a bill (S. 669) introduced by Sen. Richard Burr (R-NC) that provide that VA beneficiaries who are found in need of a fiduciary to manage their VA benefit payments would no longer be reported to NICS unless a judge, magistrate or other judicial authority determines that they are a danger to themselves or others.  
([http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s669rs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s669rs.txt.pdf))
- On June 15<sup>th</sup>, Rep. Bennie Thompson (D-MS) introduced the *Chemical Facility Antiterrorism Act of 2009* (H.R. 2868), a bill that would obligate the Secretary of Homeland Security to issue regulations to require



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covered chemical facilities to conduct criminal history background checks on individuals with unescorted access to restricted areas of covered chemical facilities.

([http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h2868ih.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2868ih.txt.pdf))

- On June 11<sup>th</sup>, the Nuclear Regulatory Committee published an order in the *Federal Register* (74 FR 27832) that requires R.E. Ginna Nuclear Power Plant and Dairyland Power to conduct criminal history background checks on employees with unescorted access to spent nuclear fuel.  
(<http://www.gpo.gov/fdsys/pkg/FR-2009-06-11/pdf/E9-13707.pdf>)
- On May 21<sup>st</sup>, the Government Accountability Office (GAO) sent a letter to Rep. John Conyers, Jr. (D-MI), Rep. Robert C. Scott (D-VA) and Sen. Frank Lautenberg (D-NJ) concerning the number of NICS firearm and explosives criminal history background checks involving Terrorist Watch List records. The letter included an updated report showing that 90% of the names checked were cleared for firearm and explosive licenses while 10% were denied. Among those names checked, 963 appeared on terrorist watch list records. The GAO does not offer specific recommendations to the Congress, but suggests that if the Attorney General is given the discretionary ability to deny the transfer of a firearm or the issuance of a firearm or explosives license or permit to the subject of a terrorist watch list record, then guidelines should be established outlining under what circumstances such authority could be exercised.  
(<http://www.gao.gov/new.items/d09125r.pdf>)

#### E-Verify

- On June 18<sup>th</sup>, the Senate Appropriations Homeland Security subcommittee reported out the FY2010 homeland security appropriations bill (S. 1298). The bill contains a 3-year extension of the E-Verify program. Unlike the House appropriations bill, this constitutes the full extension time requested by the Obama administration. The bill also provides \$136 million, \$34 million above the FY2009 level and \$6.5 million above the Obama administration request, to operate the E-Verify system and further improve its accuracy rates.  
(Bill summary available at <http://appropriations.senate.gov/>)

#### State Legislation:

##### Background Checks

- On June 24<sup>th</sup>, Florida enacted a bill (H.B. 1003) that requires legislative review before the State Department of Law Enforcement may increase the fee for processing criminal history background checks.  
([http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=\\_h1003er.xml&DocumentType=Bill&BillNumber=1003&Session=2009](http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1003er.xml&DocumentType=Bill&BillNumber=1003&Session=2009))
- On June 24<sup>th</sup>, Florida enacted a bill (S.B. 1986) that requires pharmacy employers to sign an affidavit annually at the time of licensure renewal stating that all covered employees have been subject to a criminal history background check or are newly hired and awaiting the results.  
(<http://www.flsenate.gov/data/session/2009/Senate/bills/billtext/pdf/s1986er.pdf>)
- On June 23<sup>rd</sup>, Oregon enacted a bill (S.B. 46) that expands current fingerprint-based criminal history background check requirements for school employees to include school contractors.  
(<http://www.leg.state.or.us/09reg/measpdf/sb0001.dir/sb0046.en.pdf>)
- On June 23<sup>rd</sup>, Oregon enacted a bill (S.B. 66) that permits the Department of Education to require employees and contractors to pass criminal history background checks.  
(<http://www.leg.state.or.us/09reg/measpdf/sb0001.dir/sb0066.en.pdf>)
- On June 21<sup>st</sup>, the Louisiana Senate passed a bill (H.B. 806) that would authorize the Board of Nursing Facility Administrators to conduct criminal history background checks on applicants for issuance or reinstatement of any license, reciprocity request, or any other designation deemed necessary to become a



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nursing home administrator.

<http://www.legis.state.la.us/billdata/streamdocument.asp?did=665516>

- On June 19<sup>th</sup>, the Illinois legislature cleared a bill (H.B. 2474) for the governor's desk that would create a task force to review and report on the statutes, administrative rules, policies, and practices that restrict employment of persons with criminal history backgrounds.  
<http://www.ilga.gov/legislation/96/HB/PDF/09600HB2474enr.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 10) that requires mortgage loan originators to be subject to criminal history background checks and to enroll or register with the Nationwide Mortgage Licensing System and Registry.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB00010F.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 219) that prohibits contact between an employee of a facility that serves the elderly or disabled persons and a patient or resident of the facility until a criminal history background check has been completed.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB02191F.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 846) that provides that an applicant for license renewal for emergency medical services personnel and certain law enforcement officers are not required to re-provide repeat criminal history background information, but rather may provide only information relevant to the period occurring since the date of the applicant's last application.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB00846F.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 960) that provides criminal history background check access to municipalities and counties for sexually oriented business license applicants.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB00960F.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 963) that provides that a person with a prior criminal record may request a licensing authority to issue a criminal history background check evaluation letter regarding their eligibility for a firearms license issued by the authority if the person: 1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license or 2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB00963F.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (S.B. 1056) that authorizes a criminal justice agency to disclose certain criminal history background information to the Guardianship Certification Board and offices of the county clerk.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01056F.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (S.B. 1057) that requires the county clerk to obtain the criminal history background information of persons who are certified to provide guardianship services. The bill provides that the criminal history background check is not required if an individual that holds a certificate or a provisional certificate issued if the Guardianship Certification Board conducted a background check on the person before issuing or renewing the certificate.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01057F.pdf>
- On June 19<sup>th</sup>, Texas enacted a bill (S.B. 1081) that provides access to criminal history background check information by the office of the attorney general concerning an applicant for a position of employment with the office or to serve as a consultant, intern, or volunteer.  
<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01081F.pdf>



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- On June 19<sup>th</sup>, Texas enacted a bill (S.B. 1599) that authorizes the Court Reporters Certification Board to obtain a criminal history background check on applicants or holders of a certification issued by the board. (<http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/SB01599F.pdf>)
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 2917) that authorizes the Department of State Health Services to conduct criminal history background checks on applicants for employment at the Texas Center for Infectious Disease and the South Texas Healthcare System. (<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB02917F.pdf>)
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 3352) that provides for the collection, dissemination, and correction of federal prohibitive person information through judicial determinations on a federal firearm criminal history background check. (<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB03352F.pdf>)
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 3737) that calls for criminal history background checks for employees and applicants for employment at special care facilities. (<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB03737F.pdf>)
- On June 19<sup>th</sup>, Texas enacted a bill (H.B. 4343) that allows the Department of Public Safety to disclose to certain noncriminal justice agencies criminal history record information that is the subject of an order of nondisclosure. (<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB04343F.pdf>)
- On June 18<sup>th</sup>, Connecticut enacted a bill (S.B. 950) that requires an applicant for credit consumer licensure with the Department of Banking to disclose criminal history background information on convictions for the ten-year period prior to the date of the application (<http://www.cga.ct.gov/2009/TOB/S/2009SB-00950-R00-SB.htm>)
- On June 18<sup>th</sup>, Louisiana enacted a bill (H.B. 588) that directs the Louisiana Bureau of Investigation to adopt rules that would allow a person to obtain a certified paper copy of their criminal history background check information. (<http://www.legis.state.la.us/billdata/streamdocument.asp?did=664907>)
- On June 18<sup>th</sup>, Oregon enacted a bill (H.B. 2207) that requires a reciprocal agreement between the Child Care Division and the metropolitan service district for contractors, employees or volunteers who may have unsupervised contact with children to enroll in the Criminal Background Registry. (<http://www.leg.state.or.us/09reg/measpdf/hb2200.dir/hb2207.en.pdf>)
- On June 17<sup>th</sup>, the Delaware Senate passed a bill (S.B. 114) that would authorize the Family Court to conduct national criminal history background checks in civil proceedings involving minor children. ([http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/SB+114/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/SB+114/$file/legis.html?open))
- On June 16<sup>th</sup>, the Louisiana Senate passed a bill (H.B. 168) that would provide for the transfer and allocation of criminal history background check processing fees. The bill would require the local law enforcement agency to send the processing fees to the Bureau of Criminal Identification and Information. (<http://www.legis.state.la.us/billdata/streamdocument.asp?did=665351>)
- On June 16<sup>th</sup>, the Louisiana Senate passed a bill (H.B. 703) that would authorize the Department of Social Services to conduct criminal history background checks on foster and adoptive parent applicants and adult members living in those households. (<http://www.legis.state.la.us/billdata/streamdocument.asp?did=662517>)



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- On June 15<sup>th</sup>, Louisiana enacted a bill (H.B. 432) that expands the scope of current criminal history background checks of non-licensed and licensed ambulance personnel to include all crimes arrested for, convicted of, or pled nolo contendere to and the dates when such crimes were committed.  
(<http://www.legis.state.la.us/billdata/streamdocument.asp?did=662544>)
- On June 15<sup>th</sup>, Louisiana enacted a bill (H.B. 784) that requires the Department of Social Services to search the central registry of justified abuse and neglect to assess potential employees who would be working with children.  
(<http://www.legis.state.la.us/billdata/streamdocument.asp?did=662567>)
- On June 12<sup>th</sup>, New Hampshire enacted a bill (S.B. 202) that allows towns to conduct a criminal history background check on potential employees, obtained via a state records check or both a federal and state records check through the division of state police.  
(<http://www.gencourt.state.nh.us/legislation/2009/SB0202.html>)
- On June 11<sup>th</sup>, Tennessee enacted a bill (H.B. 2316) that requires criminal history background checks on certain prospective employees of the Departments of Human Services and Children's Services.  
(<http://www.capitol.tn.gov/Bills/106/Bill/SB2316.pdf>)
- On June 11<sup>th</sup>, Texas enacted a bill (S.B. 643) that provides for criminal history background checks on employees and volunteers at forensic state-supported living centers for disabled victims in sexually based offenses.  
(<http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB00643F.pdf>)
- On June 10<sup>th</sup>, the Arizona House passed a bill (H.B. 2143) that would require criminal history background checks of mortgage loan originators.  
(<http://www.azleg.gov/legtext/49leg/1r/bills/hb2143h.pdf>)
- On June 10<sup>th</sup>, the New Hampshire legislature cleared a bill (S.B. 95) for the governor's desk that would clarify the requirements for criminal records checks for household members of employees of health care facilities as well as add a definition of "volunteers" for the purposes of the criminal record check required for potential employees in health care facilities.  
(<http://www.gencourt.state.nh.us/legislation/2009/SB0095.html>)
- On June 9<sup>th</sup>, the New York Assembly passed a bill (A.B. 4110) that would require an applicant for employment with the Department of Environment Conservation to disclose any information concerning criminal convictions.  
(<http://assembly.state.ny.us/leg/?bn=A04110&sh=t>)
- On June 2<sup>nd</sup>, the Maine House passed a bill (H.B. 1019) that would require licensed, certified or registered health care providers to secure a criminal history background check prior to hiring or placing a person who will have direct contact with a consumer.  
([http://www.mainelegislature.org/legis/bills/bills\\_124th/billpdfs/HP101901.pdf](http://www.mainelegislature.org/legis/bills/bills_124th/billpdfs/HP101901.pdf))
- On May 19<sup>th</sup>, the Colorado legislature cleared a bill (S.B. 128) for the governor's desk that would require entities that operate a facility that employs a person not licensed to administer medications to conduct a drug-related criminal history background check on each employee prior to employment.  
([http://www.leg.state.co.us/Clitics/CLICS2009A/csl.nsf/fsbillcont3/44BF97664E34C3308725753F0000C3FD?Open&file=128\\_enr.pdf](http://www.leg.state.co.us/Clitics/CLICS2009A/csl.nsf/fsbillcont3/44BF97664E34C3308725753F0000C3FD?Open&file=128_enr.pdf))
- On May 19<sup>th</sup>, Texas enacted a bill (H.B. 2932) that allows the inclusion of certain forensic DNA test results in the state's computerized criminal history records database.



- <http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB02932F.pdf>  
On May 8<sup>th</sup>, West Virginia enacted a bill (H.B. 3314) that makes a criminal history background check part of the process for obtaining a concealed handgun license.  
[http://www.legis.state.wv.us/Bill\\_Status/bills\\_text.cfm?billdoc=HB3314%20ENR%20SUB.htm&yr=2009&sesstype=RS&i=3314](http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=HB3314%20ENR%20SUB.htm&yr=2009&sesstype=RS&i=3314)
- May 6<sup>th</sup>, the California Senate passed a bill (S.B. 237) that would require criminal history background checks of applicants for registration with the Office of Real Estate Appraisers.  
[http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0201-0250/sb\\_237\\_bill\\_20090617\\_amended\\_asm\\_v96.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0201-0250/sb_237_bill_20090617_amended_asm_v96.pdf)

