

106TH CONGRESS
1ST SESSION

H. R. 2122

To require background checks at gun shows, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1999

Mr. MCCOLLUM (for himself and Mr. HYDE) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To require background checks at gun shows, 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 “Mandatory Gun Show
5 Background Check Act”.

6 **SEC. 2. MANDATORY BACKGROUND CHECKS AT GUN**
7 **SHOWS.**

8 (a) FINDINGS.—Congress finds that—

9 (1) more than 4,400 traditional gun shows are
10 held annually across the United States, attracting
11 thousands of attendees per show and hundreds of

1 Federal firearms licensees and nonlicensed firearms
2 sellers, the vast majority of whom are law-abiding
3 individuals with no desire to participate in criminal
4 transactions;

5 (2) traditional gun shows, as well as flea mar-
6 kets and other organized events, at which a large
7 number of firearms are offered for sale by Federal
8 firearms licensees and nonlicensed firearms sellers,
9 form a significant part of the national firearms mar-
10 ket;

11 (3) firearms and ammunition that are exhibited
12 or offered for sale or exchange at gun shows, flea
13 markets, and other organized events move easily in
14 and substantially affect interstate commerce;

15 (4) gun shows, flea markets, and other orga-
16 nized events at which firearms are exhibited or of-
17 fered for sale or exchange, provide a convenient and
18 centralized commercial location at which firearms
19 may be bought and sold, often without background
20 checks and without records that enable gun tracing;

21 (5) at gun shows, flea markets, and other orga-
22 nized events at which guns are exhibited or offered
23 for sale or exchange, criminals and other prohibited
24 persons can obtain guns without background checks

1 and can use such guns that cannot be traced to later
2 commit crimes;

3 (6) firearms associated with gun shows have
4 been transferred illegally to residents of another
5 State by Federal firearms licensees and nonlicensed
6 firearms sellers, and have been involved in subse-
7 quent crimes including drug offenses, crimes of vio-
8 lence, property crimes, and illegal possession of fire-
9 arms by felons and other prohibited persons; and

10 (7) Congress has the power, under the inter-
11 state commerce clause and other provisions of the
12 Constitution of the United States, to ensure, by en-
13 actment of this section, that criminals and other
14 prohibited persons do not obtain firearms at gun
15 shows, flea markets, and other organized events.

16 (b) DEFINITIONS.—Section 921(a) of title 18, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

19 “(35) The term ‘gun show’ means an event which is
20 sponsored to foster the collecting, competitive use, sport-
21 ing use, or any other legal use of firearms, and—

22 “(A) at which 50 or more firearms are offered
23 or exhibited for sale, transfer, or exchange, if 1 or
24 more of the firearms has been shipped or trans-

1 ported in, or the event otherwise affects, interstate
2 or foreign commerce; and

3 “(B) at which there are not less than 10 fire-
4 arm vendors.

5 “(36) The term ‘gun show organizer’ means any per-
6 son who organizes or conducts a gun show.

7 “(37) The term ‘gun show vendor’ means any person
8 who, at a fixed, assigned, or contracted location, exhibits,
9 sells, offers for sale, transfers, or exchanges 1 or more
10 firearms at a gun show.”.

11 (c) REGULATION OF FIREARMS TRANSFERS AT GUN
12 SHOWS.—

13 (1) IN GENERAL.—Chapter 44 of such title is
14 amended by adding at the end the following:

15 **“§ 931. Regulation of firearms transfers at gun shows**

16 “(a)(1) A person who is not a licensed importer, li-
17 censed manufacturer, or licensed dealer, and who desires
18 to be registered as an instant check registrant shall submit
19 to the Secretary an application which—

20 “(A) contains a certification by the applicant
21 that the applicant meets the requirements of sub-
22 paragraphs (A) through (D) of section 923(d)(1);
23 and

24 “(B) contains a photograph and fingerprints of
25 the applicant; and

1 “(C) is in such form as the Secretary shall by
2 regulation prescribe.

3 “(2)(A) The Secretary shall approve an application
4 submitted pursuant to paragraph (1) which meets the re-
5 quirements of paragraph (1). On approval of the applica-
6 tion and payment by the applicant of a fee of \$100 for
7 3 years, and upon renewal of valid registration a fee of
8 \$50 for 3 years, the Secretary shall issue to the applicant
9 an instant check registration, and advise the Attorney
10 General of the United States of the same, which entitles
11 the registrant to contact the national instant criminal
12 background check system established under section 103
13 of the Brady Handgun Violence Prevention Act for infor-
14 mation about any individual desiring to obtain a firearm
15 at a gun show from any transferor who has requested the
16 assistance of the registrant in complying with subsection
17 (c) with respect to the transfer of the firearm, and receive
18 information from the system regarding the individual, dur-
19 ing the 3-year period that begins with the date the reg-
20 istration is issued.

21 “(B) The Secretary shall approve or deny an applica-
22 tion submitted pursuant to paragraph (1) within 60 days
23 after the Secretary receives the application. If the Sec-
24 retary fails to so act within such period, the applicant may

1 bring an action under section 1361 of title 28 to compel
2 the Secretary to so act.

3 “(3) An instant check registrant shall keep all
4 records or documents which the registrant collects pursu-
5 ant to this section during a gun show at a premises, or
6 a portion thereof designated by the registrant, that is open
7 for inspection by the Secretary. The Secretary shall estab-
8 lish by regulation the procedure for the inspection, at a
9 premises or a gun show, of the records required to be kept
10 under this section in a manner for a registrant that is
11 identical to the same procedural rights and protections
12 specified for a licensee under subsections (g)(1)(A),
13 (g)(1)(B), and (j) of section 923. An instant check reg-
14 istrant shall remit to the Secretary all records required
15 to be kept by the registrant under this subsection when
16 the registration is no longer valid, has expired, or has been
17 revoked.

18 “(4)(A) This subsection shall not be construed—

19 “(i) as creating a cause of action against any
20 instant check registrant or any other person, includ-
21 ing the transferor, for any civil liability; or

22 “(ii) as establishing any standard of care.

23 “(B) Notwithstanding any other provision of law, ex-
24 cept to give effect to subparagraph (C), evidence regarding
25 the use or nonuse by a transferor of the services of an

1 instant check registrant under this section shall not be ad-
2 missible as evidence in any proceeding of any court, agen-
3 cy, board, or other entity for the purposes of establishing
4 liability based on a civil action brought on any theory for
5 harm caused by a product or by negligence.

6 “(C)(i) Notwithstanding any other provision of law,
7 a person who is—

8 “(I) an instant check registrant who assists in
9 having a background check performed in accordance
10 with this section;

11 “(II) a licensee who acquires a firearm at a gun
12 show from a nonlicensee, for transfer to another
13 nonlicensee in attendance at the show, for the pur-
14 pose of effectuating a sale, trade, or transfer be-
15 tween the 2 nonlicensees, all in the manner pre-
16 scribed for the acquisition and disposition of fire-
17 arms under this chapter; or

18 “(III) a nonlicensee disposing of a firearm, who
19 utilizes the services of an instant check registrant
20 pursuant to subclause (I) or a licensee pursuant to
21 subclause (II),

22 shall be entitled to immunity from a civil liability action
23 as described in this subparagraph.

24 “(ii) A qualified civil liability action may not be
25 brought in any Federal or State court. The term ‘qualified

1 civil liability action’ means a civil action brought by any
2 person against a person described in clause (i) for dam-
3 ages resulting from the criminal or unlawful misuse of the
4 firearm by the transferee or a third party, but shall not
5 include an action—

6 “(I) brought against a transferor convicted
7 under section 924(h), or a comparable or identical
8 State felony law, by a party directly harmed by the
9 transferee’s criminal conduct, as defined in section
10 924(h); or

11 “(II) brought against a transferor for negligent
12 entrustment or negligence per se.

13 “(4) A registration issued under this subsection may
14 be revoked pursuant to the procedures provided for license
15 revocations under section 923.

16 “(b) It shall be unlawful for any person to organize
17 or conduct a gun show unless the person—

18 “(1) registers with the Secretary in accordance
19 with regulations promulgated by the Secretary,
20 which shall not require the payment of any fee for
21 such registration;

22 “(2) before commencement of the gun show,
23 records and verifies the identity of each individual
24 who is to be a gun show vendor at the gun show by
25 examining, but not retaining a copy of, a valid iden-

1 tification document (as defined in section
2 1028(d)(1)) of the individual containing a photo-
3 graph of the individual; and

4 “(3) maintains a copy of the records described
5 in paragraph (2) at the permanent place of business
6 of the gun show organizer for such period of time
7 and in such form as the Secretary shall require by
8 regulation.

9 “(c)(1) If, at a gun show or the curtilage area of a
10 gun show, a person who is not licensed under section 923
11 makes an offer to another person who is not licensed
12 under section 923 to sell, transfer, or exchange a firearm
13 that is accessible to the person at the gun show or in the
14 curtilage area of the gun show, and such other person,
15 at the gun show or the curtilage area of the gun show,
16 indicates a willingness to accept the offer, it shall be un-
17 lawful for the person to subsequently transfer the firearm
18 to such other person, unless—

19 “(A) the firearm is transferred through a li-
20 censed importer, licensed manufacturer, or licensed
21 dealer in accordance with paragraph (2)(B) and oth-
22 erwise in accordance with law; or

23 “(B)(i) before the completion of the transfer,
24 an instant check registrant contacts the national in-
25 stant criminal background check system established

1 under section 103 of the Brady Handgun Violence
2 Prevention Act;

3 “(ii)(I) the system provides the registrant with
4 a unique identification number; or

5 “(II) 72 hours have elapsed since the registrant
6 contacted the system, and the system has not noti-
7 fied the registrant that the receipt of a firearm by
8 such other person would violate subsection (g) or (n)
9 of section 922; and

10 “(iii) the registrant notifies the person that the
11 registrant has complied with clauses (i) and (ii), or
12 of any receipt by the registrant of a notification
13 from the national instant criminal background check
14 system established under section 103 of the Brady
15 Handgun Violence Prevention Act that the transfer
16 would violate section 922 or State law; and

17 “(iv) the transferor and the registrant have
18 verified the identity of the transferee by examining
19 a valid identification document (as defined in section
20 1028(d)(1) of this title) of the transferee containing
21 a photograph of the transferee.

22 “(2)(A) The rules of paragraphs (2), (3), and (4) of
23 section 922(t) shall apply to firearms transfers assisted
24 by instant check registrants under this section in the same

1 manner in which such rules apply to firearms transfers
2 made by licensees.

3 “(B)(i) For purposes of section 922(t)(1)(B)(ii), the
4 time period that shall apply to the transfer of a firearm
5 as described in paragraph (1) of this subsection shall be
6 72 hours.

7 “(ii) The licensee or registrant may personally deliver
8 or ship the firearm to the prospective transferee in accord-
9 ance with clause (iii) if the gun show has terminated,
10 and—

11 “(I)(aa) 72 consecutive hours has elapsed since
12 the licensee or registrant contacted the system from
13 the gun show and the licensee or registrant has not
14 received notification from the system that receipt of
15 a firearm by the prospective transferee would violate
16 subsection (g) or (n) of section 922 or State law; or

17 “(bb) the licensee or registrant has received no-
18 tification from the system that receipt of a firearm
19 by the prospective transferee would not violate sub-
20 section (g) or (n) of section 922 or State law; and

21 “(II) State and local law would have permitted
22 the licensee or registrant to immediately deliver the
23 firearm to the prospective transferee if the condi-
24 tions described in item (aa) or (bb) had occurred
25 during the gun show.

1 “(iii)(I) The licensee may personally deliver the fire-
2 arm to the prospective transferee at a location other than
3 the business premises of the licensee, without regard to
4 whether the location is in the State specified on the license
5 of the licensee, or may ship the firearm by common carrier
6 to the prospective transferee.

7 “(II) The registrant may personally deliver the fire-
8 arm to a prospective transferee who is a resident of the
9 State of which the registrant is a resident, or may ship
10 the firearm by common carrier to such a prospective trans-
11 feree.

12 “(3) An instant check registrant who agrees to assist
13 a person who is not licensed under section 923 in com-
14 plying with subsection (c) with respect to the transfer of
15 a firearm shall—

16 “(A) enter the name, age, address, and other
17 identifying information on the transferee (or, if the
18 transferee is a corporation or other business entity,
19 the identity and principal and local places of busi-
20 ness of the transferee) as the Secretary may require
21 by regulation into a separate bound record;

22 “(B) record the unique identification number
23 provided by the system on a form specified by the
24 Secretary;

1 “(C) on completion of the functions required by
2 paragraph (1)(B) to be performed by the registrant
3 with respect to the transfer, notify the transferor
4 that the registrant has performed such functions;
5 and

6 “(D) on completion of the background check by
7 the system, retain a record of the background check
8 as part of the permanent business records of the
9 registrant.

10 “(4) This section shall not be construed to permit or
11 authorize the Secretary to impose recordkeeping require-
12 ments on any vendor who is not licensed under section
13 923.

14 “(d) If, at a gun show or the curtilage area of a gun
15 show, a person who is not licensed under section 923
16 makes an offer to another person who is not licensed
17 under section 923 to sell, transfer, or exchange a firearm
18 that is accessible to the person at the gun show or in the
19 curtilage area of the gun show, and such other person,
20 at the gun show or the curtilage area of the gun show,
21 indicates a willingness to accept the offer, it shall be un-
22 lawful for such other person to receive the firearm from
23 the person if the recipient knows that the firearm has been
24 transferred to the recipient in violation of this section.”.

1 (2) PENALTIES.—Section 924(a) of such title is
2 amended by adding at the end the following:

3 “(7)(A) Whoever knowingly violates subsection (b),
4 (c)(1), or (c)(2) of section 931 shall be—

5 “(i) fined under this title, imprisoned not more
6 than 1 year, or both; or

7 “(ii) in the case of a second or subsequent con-
8 viction of such a violation, fined under this title, im-
9 prisoned not more than 5 years, or both.

10 “(B) Whoever knowingly violates subsection (c)(3) or
11 (d) of section 931 shall be fined under this title, impris-
12 oned not more than 3 years, or both.

13 “(C) In addition to any other penalties imposed
14 under this paragraph, the Secretary may, with respect to
15 any person who knowingly violates subsection (b), (c), or
16 (d) of section 931—

17 “(i) impose a civil fine in an amount equal to
18 not more than \$2,500; and

19 “(ii) if the person is registered pursuant to sec-
20 tion 931(a), after notice and opportunity for a hear-
21 ing, suspend for not more than 6 months or revoke
22 the registration of that person under section
23 931(a).”.

24 (3) CONFORMING AMENDMENT.—Section 923(j)
25 of such title is amended in the first sentence by

1 striking “or event” and all that follows through
2 “community”.

3 (4) CLERICAL AMENDMENT.—The section anal-
4 ysis for chapter 44 of such title is amended by add-
5 ing at the end the following:

“931. Regulation of firearms transfers at gun shows.”.

6 (d) INSPECTION AUTHORITY.—Section 923(g)(1) of
7 such title is amended by adding at the end the following:

8 “(E) The Secretary may enter during business hours
9 the place of business of any gun show organizer and any
10 place where a gun show is held, without such reasonable
11 cause or warrant, for the purpose of inspecting or exam-
12 ining the records required by section 923 or 931 and the
13 inventory of licensees conducting business at the gun show
14 in the course of a reasonable inquiry during the course
15 of a criminal investigation of a person or persons other
16 than the organizer or licensee or when such examination
17 may be required for determining the disposition of one or
18 more particular firearms in the course of a bona fide
19 criminal investigation.”.

20 (e) INCREASED PENALTIES FOR SERIOUS RECORD-
21 KEEPING VIOLATIONS BY LICENSEES.—Section 924(a)(3)
22 of such title is amended to read as follows:

23 “(3)(A) Except as provided in subparagraph (B), any
24 licensed dealer, licensed importer, licensed manufacturer,
25 or licensed collector who knowingly makes any false state-

1 ment or representation with respect to the information re-
2 quired by this chapter to be kept in the records of a person
3 licensed under this chapter, or violates section 922(m)
4 shall be fined under this title, imprisoned not more than
5 1 year, or both.

6 “(B) If the violation described in subparagraph (A)
7 is in relation to an offense—

8 “(i) under paragraph (1) or (3) of section
9 922(b), such person shall be fined under this title,
10 imprisoned not more than 5 years, or both; or

11 “(ii) under subsection (a)(6) or (d) of section
12 922, such person shall be fined under this title, im-
13 prisoned not more than 10 years, or both.”.

14 (f) INCREASED PENALTIES FOR VIOLATIONS OF
15 CRIMINAL BACKGROUND CHECK REQUIREMENTS.—

16 (1) PENALTIES.—Section 924(a) of such title is
17 amended—

18 (A) in paragraph (5), by striking “sub-
19 section (s) or (t) of section 922” and inserting
20 “section 922(s)”; and

21 (B) by adding at the end the following:

22 “(8)(A) Whoever knowingly violates section 922(t)
23 shall be fined under this title, imprisoned not more than
24 3 years, or both.

1 “(B) In the case of a second or subsequent conviction
2 under this paragraph, the person shall be fined under this
3 title, imprisoned not more than 5 years, or both.”.

4 (2) ELIMINATION OF CERTAIN ELEMENTS OF
5 OFFENSE.—Section 922(t)(5) of such title is amend-
6 ed by striking “and, at the time” and all that fol-
7 lows through “State law”.

8 (g) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect 180 days after the date of
10 enactment of this Act.

11 **SEC. 3. INSTANT CHECK GUN TAX AND GUN OWNER PRI-**
12 **VACY.**

13 (a) PROHIBITION ON GUN TAX.—

14 (1) IN GENERAL.—Chapter 33 of title 28,
15 United States Code, is amended by adding at the
16 end the following:

17 **“§ 540B. Ban against fee for background check in**
18 **connection with firearm transfer**

19 “No officer, employee, or agent of the United States,
20 including a State or local officer or employee acting on
21 behalf of the United States, may charge or collect any fee
22 in connection with any background check required in con-
23 nection with the transfer of a firearm (as defined in sec-
24 tion 921(a)(3) of title 18).”.

1 (2) TECHNICAL AND CONFORMING AMEND-
2 MENTS.—The section analysis for chapter 33 of title
3 28, United States Code, is amended by inserting
4 after the item relating to section 540A the following:

“540B. Ban against fee for background check in connection with firearm trans-
fer.”.

5 (b) PROTECTION OF GUN OWNER PRIVACY AND
6 OWNERSHIP RIGHTS.—

7 (1) IN GENERAL.—Chapter 44 of title 18,
8 United States Code, is amended by adding at the
9 end the following:

10 **“§ 932. Gun owner privacy and ownership rights**

11 “Notwithstanding any other provision of law, no de-
12 partment, agency, or instrumentality of the United States
13 or officer, employee, or agent of the United States, includ-
14 ing a State or local officer or employee acting on behalf
15 of the United States—

16 “(1) shall perform any national instant criminal
17 background check on any person through the system
18 established pursuant to section 103 of the Brady
19 Handgun Violence Prevention Act (18 U.S.C. 922
20 note) (referred to in this section as the “system”) if
21 that system does not require and result in the imme-
22 diate destruction of all information, in any form
23 whatsoever or through any medium, about such per-
24 son who is determined, through the use of the sys-

1 tem, not to be prohibited by subsection (g) or (h) of
2 section 922 of title 18, United States Code, or by
3 State law, from receiving a firearm, except that this
4 subsection shall not apply to the retention or trans-
5 fer of information relating to—

6 “(A) any unique identification number pro-
7 vided by the national instant criminal back-
8 ground check system pursuant to section
9 922(t)(1)(B)(i) of title 18, United States Code;

10 or

11 “(B) the date on which that number is
12 provided; or

13 “(2) shall continue to operate the system (in-
14 cluding requiring a background check before the
15 transfer of a firearm) unless—

16 “(A) the ‘NICS Index’ complies with the
17 requirements of section 552a(e)(5) of title 5,
18 United States Code; and

19 “(B) the agency responsible for the system
20 and the system’s compliance with Federal law
21 does not invoke the exceptions under sub-
22 sections (j)(2), (k)(2), and (k)(3) of section
23 552a of title 5, United States Code, except if
24 specifically identifiable information is compiled

1 for a particular law enforcement investigation
2 or specific criminal enforcement matter.”.

3 (2) TECHNICAL AND CONFORMING AMEND-
4 MENTS.—The section analysis for chapter 44 of title
5 18, United States Code, is further amended by add-
6 ing at the end the following:

“932. Gun owner privacy and ownership rights.”.

7 (c) CIVIL REMEDIES.—Any person aggrieved by a
8 violation of section 540B of title 28, or 931 of title 18,
9 United States Code, as added by this section, may bring
10 an action in the district court of the United States for
11 the district in which the person resides. Any person who
12 is successful with respect to any such action shall receive
13 actual damages, punitive damages, and such other rem-
14 edies as the court may determine to be appropriate, in-
15 cluding a reasonable attorney’s fee.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the date of enactment of
18 this Act, except that the amendments made by subsection
19 (a) shall take effect as of October 1, 1998.

○