A BILL

[Report No. 103-344]

H. R. 1025

103RD CONGRESS

1ST SESSION

To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

November 10, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.
To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1993

Mr. SCHUMER (for himself, Mr. SENSENBRENNER, Mr. SYMAR, Mr. MAZZOLI, Mr. GIBBONS, Mr. GLICKMAN, Mr. BRYANT, Mr. SAWYER, Mr. STARK, Mr. FAZIO, Mr. STUDDS, Mr. REYNOLDS, Mr. McDERMOTT, Mr. JACOBS, Mr. MANTON, Ms. PELOSI, Mr. PORTER, Mr. TOWNS, Mr. BERMAN, Mr. BORSKI, Mr. BACCHUS of Florida, Mrs. SCHROEDER, Mr. MORAN, Ms. SLAUGHTER, Mr. FILNER, Mr. BOEHLERT, Mr. HALL of Ohio, Mr. BARRETT of Wisconsin, Mr. SHAYS, Mr. SKAGGS, Mrs. ROUKEMA, Mr. KLEIN, Mr. EVANS, Mr. MINETA, Mr. DERRICK, Mr. LIPINSKI, Mr. KLUG, Mr. ANDREWS of Maine, Mr. DEUTSCH, Mr. EDWARDS of California, Mr. YATES, Mr. TORRICELLI, Mr. WHEAT, Mr. TUCKER, Mr. ROEMER, Ms. FURSE, Ms. MOLINARI, Mrs. BYRNE, Mrs. BENTLEY, Mrs. MALONEY, Mr. CARDIN, Mr. GEJDENSON, Mr. MEEHAN, Mr. FINGERHUT, Mr. SANGMEISTER, Mr. NADLER, Mr. MARKEY, Mr. HUGHES, Mr. DELLUMS, Mr. OWENS, Ms. WATERS, Mr. DE LUGO, Mr. HYDE, Mr. STOKES, Mr. WAXMAN, Mr. DURBIN, Mr. ACKERMAN, Mr. BONIOR, Mr. SERRANO, Mr. COYNE, Mr. LANTOS, Mr. MFUME, Mrs. MORELLA, Ms. DELAURO, Mr. ANDREWS of New Jersey, Ms. NORTON, Mr. FALEOMAVAEGA, Mr. HOAGLAND, Mr. MILLER of California, Mr. REED, Mr. HOYER, Mr. HOCHBRUECKNER, Mr. JOHNSTON of Florida, Mr. SABO, Mr. BROWN of California, Mr. LEWIS of Georgia, Mr. FOGLIETTA, Mr. FRANK of Massachusetts, Mr. GUTIERREZ, Mr. GOSS, Mrs. KENNELLY, Mr. BEILENSON, Ms. KAPTUR, Mrs. MINK, Mr. MATSU, Mr. FLAKE, Ms. VEILÀZQUEZ, Mrs. LOWEY, and Mr. WYNN) introduced the following bill; which was referred to the Committee on the Judiciary.
A BILL

To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Brady Handgun Violence Prevention Act”.

+HR 1025 RH
SEC. 2. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NONLICENSEE.

(a) INTERIM PROVISION.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that the Attorney General certifies under section 3(d)(1) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established (except as provided in paragraphs (2) and (3) of such section), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);
“(II) verified the identity of the transferee by examining the identification document presented;

“(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

“(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

“(ii)(I) 5 business days (as defined by days in which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

“(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or
• possession of the handgun by the transferee would violate Federal, State, or local law;

• (B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

• (C)(i) the transferee has presented to the transferor a permit that—

• (I) allows the transferee to possess a handgun; and

• (II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

• (ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;
"(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law, except that this subparagraph shall not apply to a State that, on the date of certification pursuant to section 3(d) of the Brady Handgun Violence Prevention Act, is not in compliance with the timetable established pursuant to section 3(c) of such Act;

"(E) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(F) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

"(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premises of the transferor at which the transfer is to occur are extremely
remote in relation to the chief law enforcement
officer; and

“(iii) there is an absence of telecommunications facilities in the geographical area in
which the business premises are located.

“(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph
(1)(A)(i)(III) shall make a reasonable effort to ascertain
within 5 business days whether the transferee has a crimi-
inal record or whether there is any other legal impediment
to the transferee's receiving a handgun, including research
in whatever State and local recordkeeping systems are
available and in a national system designated by the Attorney General.

“(3) The statement referred to in paragraph
(1)(A)(i)(I) shall contain only—

“(A) the name, address, and date of birth ap-
pearing on a valid identification document (as de-
finite in section 1028(d)(1)) of the transferee contain-
ing a photograph of the transferee and a description
of the identification used;

“(B) a statement that transferee—

“(i) is not under indictment for, and has
not been convicted in any court of, a crime pun-
ishable by imprisonment for a term exceeding 1 year;

“(ii) is not a fugitive from justice;
“(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);
“(iv) has not been adjudicated as a mental defective or been committed to a mental institution;
“(v) is not an alien who is illegally or unlawfully in the United States;
“(vi) has not been discharged from the Armed Forces under dishonorable conditions; and
“(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;
“(C) the date the statement is made; and
“(D) notice that the transferee intends to obtain a handgun from the transferor.
“(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local
law shall immediately communicate all information the
transferor has about the transfer and the transferee to—

“(A) the chief law enforcement officer of the place
of business of the transferor; and

“(B) the chief law enforcement officer of the
place of residence of the transferee.

“(5) Any transferor who receives information, not oth-
erwise available to the public, in a report under this sub-
section shall not disclose such information except to the
transferee, to law enforcement authorities, or pursuant to
the direction of a court of law.

“(6)(A) Any transferor who sells, delivers, or otherwise
transfers a handgun to a transferee shall retain the copy
of the statement of the transferee with respect to the hand-
gun transaction, and shall retain evidence that the trans-
feror has complied with subclauses (III) and (IV) of para-
graph (1)(A)(i) with respect to the statement.

“(B)(i) Unless the chief law enforcement officer to
whom a statement is transmitted under paragraph
(1)(A)(i)(IV) determines that a transaction would violate
Federal, State, or local law—

“(I) the officer shall, within 20 business days
after the date the transferee made the statement on the
basis of which the notice was provided, destroy the
statement and any record containing information derived from the statement;

“(II) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

“(III) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

“(ii) Subparagraph (A) shall not be construed to impose a requirement contrary to State or local law or regulation.

“(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

“(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

“(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

“(8) For purposes of this subsection, the term ‘chief law enforcement officer’ means the chief of police, the sheriff,
or an equivalent officer or the designee of any such individual.

"(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public."

(2) Handgun Defined.—Section 921(a) of such title is amended by adding at the end the following:

"(29) The term ‘handgun’ means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.”.

(b) Permanent Provision.—Section 922 of title 18, United States Code, as amended by subsection (a)(1) of this section, is amended by adding at the end the following:

"(t)(1) Beginning on the date that the Attorney General certifies under section 3(d)(1) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established (except as provided in paragraphs (2) and (3) of such section), a licensed importer, licensed manufacturer, or licensed dealer shall not
transfer a firearm to any other person who is not such a licensee, unless—

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 3 of such Act;

"(B) the system notifies the licensee that the system has not located any record that demonstrates that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section or any State or local law; and

"(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

"(2) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

"(A)(i) such other person has presented to the licensee a permit that—

"(I) allows such other person to possess a firearm; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and
“(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

“(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

“(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because—

“(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

“(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

“(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

“(3) If the national instant criminal background check system notifies the licensee that the information available
to the system does not demonstrate that the receipt of a fire-
arm by such other person would violate subsection (g) or
(n), and the licensee transfers a firearm to such other per-
son, the licensee shall include in the record of the transfer
the unique identification number provided by the system
with respect to the transfer.

“(4) In addition to the authority provided under sec-
tion 923(e), if the licensee knowingly transfers a firearm
to such other person and knowingly fails to comply with
paragraph (1) of this subsection with respect to the transfer
and, at the time such other person most recently proposed
the transfer, the national instant criminal background
check system was operating and information was available
to the system demonstrating that receipt of a firearm by
such other person would violate subsection (g) or (n) of this
section, the Secretary may, after notice and opportunity for
a hearing, suspend for not more than 6 months or revoke
any license issued to the licensee under section 923, and
may impose on the licensee a civil fine of not more than
$5,000.

“(5) Neither a local government nor an employee of
the Federal Government or of any State or local govern-
ment, responsible for providing information to the national
instant criminal background check system shall be liable in
an action at law for damages—
“(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

“(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.”.

(c) **Penalty.**—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “paragraph (2) or (3) of’’; and

(2) by adding at the end the following:

“(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.”.

**SEC. 3. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.**

(a) **Establishment of System.**—The Attorney General of the United States shall establish a national instant criminal background check system that any licensee may contact for information on whether receipt of a firearm by a prospective transferee thereof would violate subsection (g) or (n) of section 922 of title 18, United States Code, or any State or local law.

(b) **Expedit ed Action by the Attorney General.**—The Attorney General shall expedite—
(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(c) PROVISION OF STATE CRIMINAL RECORDS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.—(1) Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(A) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems will communicate with the national system, which shall be based upon the Interstate Identification Index ("III") unless the Attorney General finds that the III will not
provide a satisfactory basis for the national instant
criminal background check system;

(B) investigate the criminal records system of
each State and determine for each State a timetable
by which the State should be able to provide criminal
records on an on line capacity basis to the national
system; and

(C) notify each State of the determinations made
pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of
the State timetable that the State achieve, by the end of
5 years after the date of enactment of this Act, at least 80
percent currency of case dispositions in computerized crimi-

nal history files for all cases in which there has been an
event of activity within the last 5 years and continue to
maintain such a system.

(d) National System Certification.—(1) On the
date that is 30 months after the date of enactment of this
Act, and at any time thereafter, the Attorney General shall
determine whether—

(A) the national system has achieved at least 80
percent currency of case dispositions in computerized
criminal history files for all cases in which there has
been an event of activity within the last 5 years on
a national average basis; and
(B) the States are in compliance with the timetable established pursuant to subsection (c), and, if so, shall certify that the national system is established.

(2) If, on the date of certification in paragraph (1) of this subsection, a State is not in compliance with the timetable established pursuant to subsection (c) of this section, section 922(s) of title 18, United States Code, shall remain in effect in such State and section 922(t) of such title shall not apply to the State. The Attorney General shall certify if a State subject to the provisions of section 922(s) under the preceding sentence achieves compliance with its timetable after the date of certification in paragraph (1) of this subsection, and section 922(s) of title 18, United States Code, shall not apply to such State and section 922(t) of such title shall apply to the State.

(3) Six years after the date of enactment of this Act, the Attorney General shall certify whether or not a State is in compliance with subsection (c)(2) of this section and if the State is not in compliance, section 922(s) of title 18, United States Code, shall apply to the State and section 922(t) of such title shall not apply to the State. The Attorney General shall certify if a State subject to the provisions of section 922(s) under the preceding sentence achieves compliance with the standards in subsection (c)(2) of this sec-
section 922(s) of title 18, United States Code, shall not apply to the State and section 922(t) of such title shall apply to the State.

(e) Notification of Licensees.— On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of the existence and purpose of the system and the means to be used to contact the system.

(f) Administrative Provisions.—

(1) Authority to Obtain Official Information.— Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code, or any State or local law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) Other Authority.— The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to
establish and operate the system in accordance with this section.

(g) Correction of Erroneous System Information.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code, or any State or local law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) Regulations.—After 90 days notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.
(i) Prohibitions Relating to Establishment of Registration Systems With Respect to Firearms.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof maintained by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922 (g) or (n) of title 18, United States Code, from receiving a firearm.

(j) Definitions.—As used in this section:

(1) Licensee.—The term "licensee" means a licensed importer, licensed manufacturer, or licensed dealer under section 923 of title 18, United States Code.

(2) Other terms.—The terms "firearm", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) (3), (9), (10), and (11), respectively, of title 18, United States Code.
SEC. 4. REMEDY FOR ERRONEOUS DENIAL OF HANDGUN.

(a) In General.—Chapter 44 of title 18, United States Code, is amended by inserting after section 925 the following:

"§ 925A. Remedy for erroneous denial of handgun

"Any person who is denied a handgun pursuant to section 922(s) of this title due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 3(a) of the Brady Handgun Violence Prevention Act, and who has exhausted the administrative remedies available for the correction of such erroneous information, may bring an action against any official of the State or political subdivision responsible for providing the erroneous information, or against the United States, as the case may be, for an order directing that the erroneous information be corrected. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney’s fee as part of the costs.”.

(b) Clerical Amendment.—The table of sections for such chapter is amended by inserting after the item relating to section 925 the following:

"925A. Remedy for erroneous denial of handgun.".
SEC. 5. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) IMPROVEMENTS IN STATE RECORDS.—

(1) USE OF FORMULA GRANTS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(A) in paragraph (2) by striking “and” after the semicolon;

(B) in paragraph (3) by striking the period and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(4) the improvement of State record systems and the sharing with the Attorney General of all of the records described in paragraphs (1), (2), and (3) of this subsection and the records required by the Attorney General under section 3 of the Brady Handgun Violence Prevention Act, for the purpose of implementing such Act.”.

(2) ADDITIONAL FUNDING.—

(A) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dis-
positions in computerized criminal history files, make a grant to each State to be used—

(i) for the creation of a computerized criminal history record system or improvement of an existing system;

(ii) to improve accessibility to the national instant criminal background system; and

(iii) upon establishment of the national system, to assist the State in the transmission of criminal records to the national system.

(B) Authorization of Appropriations.—There are authorized to be appropriated for grants under subparagraph (A) a total of $100,000,000 for fiscal year 1992 and all fiscal years thereafter.

(b) Withholding State Funds.—Effective on the date of enactment of this Act the Attorney General may reduce by up to 50 percent the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for such State under section 3(c) of this Act.
(c) WITHHOLDING OF DEPARTMENT OF JUSTICE FUNDS.—If the Attorney General does not certify the national instant criminal background check system pursuant to section 3(d)(1) by—

(1) 30 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal year beginning in the calendar year in which the date that is 30 months after the date of enactment of this Act falls shall be reduced by 5 percent on a monthly basis; and

(2) 42 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal year beginning in the calendar year in which the date that is 42 months after the date of enactment of this Act falls shall be reduced by 10 percent on a monthly basis.