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S. 843

To establish background check procedures for gun shows.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2009

Mr. LAUTENBERG (for himself, Mr. REED, Mr. WHITEHOUSE, Mr. SCHUMER, Mr. KERRY, Mr. KENNEDY, Mr. LEVIN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. CARDIN, Mrs. GILLIBRAND, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To establish background check procedures for gun shows.

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 ''Gun Show Background Check Act of 2009''.

SEC. 2. GUN SHOW BACKGROUND CHECK.

(a) FINDINGS.—Congress finds that—

(1) approximately 5,200 traditional gun shows are held annually across the United States, attracting thousands of attendees per show and hundreds

of Federal firearms licensees and nonlicensed firearms sellers;

(2) traditional gun shows, as well as flea markets and other organized events, at which a large number of firearms are offered for sale by Federal firearms licensees and nonlicensed firearms sellers, form a significant part of the national firearms market;

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

(4) in fact, even before a firearm is exhibited or offered for sale or exchange at a gun show, flea market, or other organized event, the gun, its component parts, ammunition, and the raw materials from which it is manufactured have moved in interstate commerce;

(5) gun shows, flea markets, and other organized events at which firearms are exhibited or offered for sale or exchange, provide a convenient and centralized commercial location at which firearms may be bought and sold anonymously, often without background checks and without records that enable gun tracing;

(6) at gun shows, flea markets, and other organized events at which guns are exhibited or offered for sale or exchange, criminals and other prohibited persons obtain guns without background checks and frequently use guns that cannot be traced to later commit crimes;

(7) since the enactment of the Brady Handgun Violence Prevention Act (Public Law 103–59; 107 Stat. 1536) in 1993, over 100,000,000 background checks have been performed by Federal firearms licensees, denying guns to more than 1,600,000 illegal buyers;

(8) many persons who buy and sell firearms at gun shows, flea markets, and other organized events cross State lines to attend these events and engage in the interstate transportation of firearms obtained at these events;

(9) gun violence is a pervasive, national problem that is exacerbated by the availability of guns at gun shows, flea markets, and other organized events;

(10) firearms associated with gun shows have been transferred illegally to residents of another State by Federal firearms licensees and nonlicensed firearms sellers, and have been involved in subsequent crimes including drug offenses, crimes of vio-

lence, property crimes, and illegal possession of firearms by felons and other prohibited persons; and

(11) Congress has the power, under the interstate commerce clause and other provisions of the Constitution of the United States, to ensure, by enactment of this Act, that criminals and other prohibited persons do not obtain firearms at gun shows, flea markets, and other organized events.

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

"(36) GUN SHOW.—The term 'gun show' means any event—

"(A) at which 50 or more firearms are offered or exhibited for sale, transfer, or exchange, if 1 or more of the firearms has been shipped or transported in, or otherwise affects, interstate or foreign commerce; and

"(B) at which—

"(i) not fewer than 20 percent of the exhibitors are firearm exhibitors;

"(ii) there are not fewer than 10 firearm exhibitors; or

"(iii) 50 or more firearms are offered for sale, transfer, or exchange.

"(37) GUN SHOW PROMOTER.—The term 'gun show promoter' means any person who organizes, plans, promotes, or operates a gun show.

"(38) GUN SHOW VENDOR.—The term 'gun show vendor' means any person who exhibits, sells, offers for sale, transfers, or exchanges 1 or more firearms at a gun show, regardless of whether or not the person arranges with the gun show promoter for a fixed location from which to exhibit, sell, offer for sale, transfer, or exchange 1 or more firearms.".

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

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

"§ 932. Regulation of firearms transfers at gun shows

"(a) REGISTRATION OF GUN SHOW PROMOTERS.—It shall be unlawful for any person to organize, plan, promote, or operate a gun show unless that person—

"(1) registers with the Attorney General in accordance with regulations promulgated by the Attorney General; and

"(2) pays a registration fee, in an amount determined by the Attorney General.

"(b) RESPONSIBILITIES OF GUN SHOW PROMOTERS.—It shall be unlawful for any person to organize, plan, promote, or operate a gun show unless that person—

"(1) before commencement of the gun show, verifies the identity of each gun show vendor participating in the gun show by examining a valid identification document (as defined in section 1028(d)(3)) of the vendor containing a photograph of the vendor;

"(2) before commencement of the gun show, requires each gun show vendor to sign—

"(A) a ledger with identifying information concerning the vendor; and

"(B) a notice advising the vendor of the obligations of the vendor under this chapter;

"(3) notifies each person who attends the gun show of the requirements of this chapter, in accordance with such regulations as the Attorney General shall prescribe; and

"(4) maintains a copy of the records described in paragraphs (1) and (2) at the permanent place of business of the gun show promoter for such period of time and in such form as the Attorney General shall require by regulation.

"(c) RESPONSIBILITIES OF TRANSFERORS OTHER THAN LICENSEES.—

"(1) IN GENERAL.—If any part of a firearm transaction takes place at a gun show, it shall be unlawful for any person who is not licensed under this chapter to transfer a firearm to another person who is not licensed under this chapter, unless the firearm is transferred through a licensed importer, licensed manufacturer, or licensed dealer in accordance with subsection (e).

"(2) CRIMINAL BACKGROUND CHECKS.—A person who is subject to the requirement of paragraph (1)—

"(A) shall not transfer the firearm to the transferee until the licensed importer, licensed manufacturer, or licensed dealer through which the transfer is made under subsection (e) makes the notification described in subsection (e)(3)(A); and

"(B) notwithstanding subparagraph (A), shall not transfer the firearm to the transferee if the licensed importer, licensed manufacturer, or licensed dealer through which the transfer is made under subsection (e) makes the notification described in subsection (e)(3)(B).

"(3) ABSENCE OF RECORDKEEPING REQUIREMENTS.—Nothing in this section shall permit or au-

thorize the Attorney General to impose record-keeping requirements on any nonlicensed vendor.

"(d) RESPONSIBILITIES OF TRANSFEREES OTHER THAN LICENSEES.—

"(1) IN GENERAL.—If any part of a firearm transaction takes place at a gun show, it shall be unlawful for any person who is not licensed under this chapter to receive a firearm from another person who is not licensed under this chapter, unless the firearm is transferred through a licensed importer, licensed manufacturer, or licensed dealer in accordance with subsection (e).

"(2) CRIMINAL BACKGROUND CHECKS.—A person who is subject to the requirement of paragraph (1)—

"(A) shall not receive the firearm from the transferor until the licensed importer, licensed manufacturer, or licensed dealer through which the transfer is made under subsection (e) makes the notification described in subsection (e)(3)(A); and

"(B) notwithstanding subparagraph (A), shall not receive the firearm from the transferor if the licensed importer, licensed manufacturer, or licensed dealer through which the transfer is

made under subsection (e) makes the notification described in subsection (e)(3)(B).

"(e) RESPONSIBILITIES OF LICENSEES.—A licensed importer, licensed manufacturer, or licensed dealer who agrees to assist a person who is not licensed under this chapter in carrying out the responsibilities of that person under subsection (c) or (d) with respect to the transfer of a firearm shall—

"(1) enter such information about the firearm as the Attorney General may require by regulation into a separate bound record;

"(2) record the transfer on a form specified by the Attorney General;

"(3) comply with section 922(t) as if transferring the firearm from the inventory of the licensed importer, licensed manufacturer, or licensed dealer to the designated transferee (although a licensed importer, licensed manufacturer, or licensed dealer complying with this subsection shall not be required to comply again with the requirements of section 922(t) in delivering the firearm to the nonlicensed transferor), and notify the nonlicensed transferor and the nonlicensed transferee—

"(A) of such compliance; and

"(B) if the transfer is subject to the requirements of section 922(t)(1), of any receipt by the licensed importer, licensed manufacturer, or licensed dealer of a notification from the national instant criminal background check system that the transfer would violate section 922 or would violate State law;

"(4) not later than 10 days after the date on which the transfer occurs, submit to the Attorney General a report of the transfer, which report—

"(A) shall be on a form specified by the Attorney General by regulation; and

"(B) shall not include the name of or other identifying information relating to any person involved in the transfer who is not licensed under this chapter;

"(5) if the licensed importer, licensed manufacturer, or licensed dealer assists a person other than a licensee in transferring, at 1 time or during any 5 consecutive business days, 2 or more pistols or revolvers, or any combination of pistols and revolvers totaling 2 or more, to the same nonlicensed person, in addition to the reports required under paragraph (4), prepare a report of the multiple transfers, which report shall be—

"(A) prepared on a form specified by the Attorney General; and

"(B) not later than the close of business on the date on which the transfer occurs, forwarded to—

"(i) the office specified on the form described in subparagraph (A); and

"(ii) the appropriate State law enforcement agency of the jurisdiction in which the transfer occurs; and

"(6) retain a record of the transfer as part of the permanent business records of the licensed importer, licensed manufacturer, or licensed dealer.

"(f) RECORDS OF LICENSEE TRANSFERS.—If any part of a firearm transaction takes place at a gun show, each licensed importer, licensed manufacturer, and licensed dealer who transfers 1 or more firearms to a person who is not licensed under this chapter shall, not later than 10 days after the date on which the transfer occurs, submit to the Attorney General a report of the transfer, which report—

"(1) shall be in a form specified by the Attorney General by regulation;

"(2) shall not include the name of or other identifying information relating to the transferee; and

"(3) shall not duplicate information provided in any report required under subsection (e)(4).

"(g) FIREARM TRANSACTION DEFINED.—In this section, the term 'firearm transaction'—

"(1) includes the offer for sale, sale, transfer, or exchange of a firearm; and

"(2) does not include the mere exhibition of a firearm.".

(2) PENALTIES.—Section 924(a) of title 18, United States Code, is amended by adding at the end the following:

"(8)(A) Whoever knowingly violates section 932(a) shall be fined under this title, imprisoned not more than 5 years, or both.

"(B) Whoever knowingly violates subsection (b) or (c) of section 932, shall be—

"(i) fined under this title, imprisoned not more than 2 years, or both; and

"(ii) in the case of a second or subsequent conviction, fined under this title, imprisoned not more than 5 years, or both.

"(C) Whoever willfully violates section 932(d), shall be—

"(i) fined under this title, imprisoned not more than 2 years, or both; and

"(ii) in the case of a second or subsequent conviction, fined under this title, imprisoned not more than 5 years, or both.

"(D) Whoever knowingly violates subsection (e) or (f) of section 932 shall be fined under this title, imprisoned not more than 5 years, or both.

"(E) In addition to any other penalties imposed under this paragraph, the Attorney General may, with respect to any person who knowingly violates any provision of section 932—

"(i) if the person is registered pursuant to section 932(a), after notice and opportunity for a hearing, suspend for not more than 6 months or revoke the registration of that person under section 932(a); and

"(ii) impose a civil fine in an amount equal to not more than $10,000.".

(3) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 44 of title 18, United States Code, is amended—

(A) in the chapter analysis, by adding at the end the following:

"Sec. 932. Regulation of firearms transfers at gun shows.";

and

(B) in the first sentence of section 923(j), by striking "a gun show or event" and inserting "an event".

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

"(E) Notwithstanding subparagraph (B), the Attorney General may enter during business hours the place of business of any gun show promoter and any place where a gun show is held for the purposes of examining the records required by sections 923 and 932 and the inventory of licensees conducting business at the gun show. Such entry and examination shall be conducted for the purposes of determining compliance with this chapter by gun show promoters and licensees conducting business at the gun show and shall not require a showing of reasonable cause or a warrant.".

(e) INCREASED PENALTIES FOR SERIOUS RECORDKEEPING VIOLATIONS BY LICENSEES.—Section 924(a)(3) of title 18, United States Code, is amended to read as follows:

"(3)(A) Except as provided in subparagraph (B), any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter, or violates section 922(m) shall be fined under this title, imprisoned not more than 1 year, or both.

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

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

"(ii) under subsection (a)(6) or (d) of section 922, such person shall be fined under this title, imprisoned not more than 10 years, or both.".

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

(1) PENALTIES.—Section 924(a) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking ''subsection (s) or (t) of section 922'' and inserting ''section 922(s)''; and

(B) by adding at the end the following:

''(9) Whoever knowingly violates section 922(t) shall be fined under this title, imprisoned not more than 5 years, or both.''.

(2) ELIMINATION OF CERTAIN ELEMENTS OF OFFENSE.—Section 922(t)(5) of title 18, United States Code, is amended by striking ''and, at the time'' and all that follows through ''State law''.

(g) EFFECTIVE DATE.—This Act and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

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