

Calendar No. 25

113TH CONGRESS
1ST SESSION

S. 374

To ensure that all individuals who should be prohibited from buying a firearm are listed in the national instant criminal background check system and require a background check for every firearm sale.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2013

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 12, 2013

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To ensure that all individuals who should be prohibited from buying a firearm are listed in the national instant criminal background check system and require a background check for every firearm sale.

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 “Protecting Responsible~~
5 ~~Gun Sellers Act of 2013”.~~

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Congress supports and respects the right to
4 bear arms found in the Second Amendment to the
5 Constitution of the United States.

6 (2) Congress supports the existing prohibition
7 on a national firearms registry.

8 (3) There are deficits in the background check
9 system in effect before the date of enactment of this
10 Act and the Department of Justice should make it
11 a top priority to work with States to swiftly input
12 missing records, including mental health records.

13 (4) If the citizens of the United States agree
14 that in order to promote safe and responsible gun
15 ownership criminals and the mentally ill should be
16 prohibited from possessing firearms, it should be in-
17 cumbent upon all citizens to ensure weapons are not
18 being transferred to such people.

19 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

20 (a) *SHORT TITLE.*—*This Act may be cited as the “Fix*
21 *Gun Checks Act of 2013”.*

22 (b) *TABLE OF CONTENTS.*—*The table of contents for*
23 *this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—ENSURING THAT ALL INDIVIDUALS WHO SHOULD BE PROHIBITED FROM BUYING A GUN ARE LISTED IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Sec. 101. Reauthorization of NICS Act Record Improvement Program grants.

Sec. 102. Penalties for States that do not make data electronically available to the National Instant Criminal Background Check System.

Sec. 103. Clarification that Federal court information is to be made available to the National Instant Criminal Background Check System.

TITLE II—REQUIRING A BACKGROUND CHECK FOR EVERY FIREARM SALE

Sec. 201. Purpose.

Sec. 202. Firearms transfers.

Sec. 203. Lost and stolen reporting.

Sec. 204. Effective date.

1 **TITLE I—ENSURING THAT ALL**
 2 **INDIVIDUALS WHO SHOULD**
 3 **BE PROHIBITED FROM BUY-**
 4 **ING A GUN ARE LISTED IN**
 5 **THE NATIONAL INSTANT**
 6 **CRIMINAL BACKGROUND**
 7 **CHECK SYSTEM**

8 **SEC. 101. REAUTHORIZATION OF NICS ACT RECORD IM-**
 9 **PROVEMENT PROGRAM GRANTS.**

10 (a) *IN GENERAL.*—Section 102(b) of the NICS Im-
 11 *provement Amendments Act of 2007 (18 U.S.C. 922 note)*
 12 *is amended—*

13 (1) *in paragraph (1)(C)—*

14 (A) *by striking clauses (ii) and (iii); and*

15 (B) *by redesignating clauses (iv), (v), and*

16 *(vi) as clauses (ii), (iii), and (iv), respectively;*

17 *and*

1 (2) *by striking paragraph (2) and inserting the*
2 *following:*

3 “(2) *SCOPE.—*

4 “(A) *IN GENERAL.—The Attorney General,*
5 *in determining the compliance of a State under*
6 *this section or section 104 for the purpose of*
7 *granting a waiver or imposing a loss of Federal*
8 *funds, shall assess the total percentage of records*
9 *provided by the State concerning any event oc-*
10 *curring within the time period established by the*
11 *Attorney General under subparagraph (B),*
12 *which would disqualify a person from possessing*
13 *a firearm under subsection (g) or (n) of section*
14 *922 of title 18, United States Code.*

15 “(B) *REGULATIONS.—Not later than 1 year*
16 *after the date of enactment of the Fix Gun*
17 *Checks Act of 2013, the Attorney General shall,*
18 *through regulation, establish the time period de-*
19 *scribed in subparagraph (A).”.*

20 (b) *IMPLEMENTATION ASSISTANCE TO STATES.—Sec-*
21 *tion 103 of the NICS Improvement Amendments Act of*
22 *2007 (18 U.S.C. 922 note) is amended—*

23 (1) *by striking subsection (a)(1) and inserting*
24 *the following:*

1 “(1) *IN GENERAL.*—From amounts made avail-
2 able to carry out this section and subject to section
3 102(b)(1)(B), the Attorney General shall make grants
4 to States and Indian tribal governments, in a man-
5 ner consistent with the National Criminal History
6 Improvement Program, which shall be used by the
7 States and Indian tribal governments, in conjunction
8 with units of local government and State and local
9 courts to—

10 “(A) establish and plan information and
11 identification technologies for firearms eligibility
12 determinations; and

13 “(B) make improvements or upgrade infor-
14 mation and identification technologies for fire-
15 arms eligibility determinations.”;

16 (2) *by striking subsections (b) and (c) and in-*
17 *serting the following:*

18 “(b) *USE OF GRANT AMOUNTS.*—

19 “(1) *IN GENERAL.*—Grants awarded to States or
20 Indian tribes under subsection (a)(1) may only be
21 used to—

22 “(A) create electronic systems, which pro-
23 vide accurate and up-to-date information that is
24 directly related to checks under the National In-
25 stant Criminal Background Check System (re-

1 *ferred to in this section as ‘NICS’), including*
2 *court disposition and corrections records;*

3 “(B) *assist States in establishing or enhanc-*
4 *ing their own capacities to perform NICS back-*
5 *ground checks;*

6 “(C) *supply accurate and timely informa-*
7 *tion to the Attorney General concerning final*
8 *dispositions of criminal records to databases*
9 *accessed by NICS;*

10 “(D) *supply accurate and timely informa-*
11 *tion to the Attorney General concerning the iden-*
12 *tity of persons who are prohibited from obtain-*
13 *ing a firearm under section 922(g)(4) of title 18,*
14 *United States Code, to be used by the Federal*
15 *Bureau of Investigation solely to conduct NICS*
16 *background checks;*

17 “(E) *supply accurate and timely court or-*
18 *ders and records of misdemeanor crimes of do-*
19 *mestic violence for inclusion in Federal and*
20 *State law enforcement databases used to conduct*
21 *NICS background checks; and*

22 “(F) *collect and analyze data needed to*
23 *demonstrate levels of State compliance with this*
24 *Act.*

25 “(2) *ADDITIONAL USES.—*

1 “(A) *IN GENERAL.*—*In addition to the uses*
2 *described in paragraph (1)—*

3 “(i) *a grant awarded under subsection*
4 *(a)(1)(A) may be used to assist States in es-*
5 *tablishing or enhancing a relief from dis-*
6 *abilities program in accordance with sec-*
7 *tion 105; and*

8 “(ii) *a grant awarded under subsection*
9 *(a)(1)(B) may be used to maintain the re-*
10 *lief from disabilities program in accordance*
11 *with section 105.*

12 “(B) *LIMITATION.*—*Not less than 3 percent*
13 *and no more than 10 percent of each grant*
14 *awarded under subsection (a)(1)(B) shall be used*
15 *for the purpose described in subparagraph (A)(i).*

16 “(c) *ELIGIBILITY.*—*To be eligible for a grant under*
17 *section 103(a)(1)(B), a State shall certify, to the satisfac-*
18 *tion of the Attorney General, that the State has imple-*
19 *mented a relief from disabilities program in accordance*
20 *with section 105.”; and*

21 (3) *by striking subsection (e) and inserting the*
22 *following:*

23 “(e) *AUTHORIZATION OF APPROPRIATIONS.*—

24 “(1) *IN GENERAL.*—*There are to be authorized to*
25 *be appropriated to carry out this section*

1 \$100,000,000 for each of fiscal years 2014 through
2 2018.

3 “(2) *LIMITATIONS.*—

4 “(A) *USE OF AMOUNTS AUTHORIZED.*—Of
5 the amounts authorized to be appropriated for
6 each fiscal year under paragraph (1), not more
7 than 30 percent may be used to carry out sub-
8 section (a)(1)(B) .

9 “(B) *ALLOCATIONS.*—A State may not be
10 awarded more than 2 grants under subsection
11 (a)(1)(B).”.

12 **SEC. 102. PENALTIES FOR STATES THAT DO NOT MAKE**
13 **DATA ELECTRONICALLY AVAILABLE TO THE**
14 **NATIONAL INSTANT CRIMINAL BACKGROUND**
15 **CHECK SYSTEM.**

16 (a) *IN GENERAL.*—Section 104(b) of the NICS Im-
17 provement Amendments Act of 2007 (18 U.S.C. 922 note)
18 is amended by striking paragraphs (1) and (2) and insert-
19 ing the following:

20 “(1) *DISCRETIONARY REDUCTION.*—

21 “(A) During the 2-year period beginning on
22 the date on which the Attorney General publishes
23 final rules required under section 102(b)(2)(B),
24 the Attorney General may withhold not more
25 than 3 percent of the amount that would other-

1 *wise be allocated to a State under section 505 of*
2 *the Omnibus Crime Control and Safe Streets Act*
3 *of 1968 (42 U.S.C. 3755) if the State provides*
4 *less than 50 percent of the records required to be*
5 *provided under sections 102 and 103.*

6 “(B) *During the 3-year period after the ex-*
7 *piration of the period described in subparagraph*
8 *(A), the Attorney General may withhold 4 per-*
9 *cent of the amount that would otherwise be allo-*
10 *cated to a State under section 505 of the Omni-*
11 *bus Crime Control and Safe Streets Act of 1968*
12 *(42 U.S.C. 3755) if the State provides less than*
13 *70 percent of the records required to be provided*
14 *under sections 102 and 103.*

15 “(2) *MANDATORY REDUCTION.—After the expira-*
16 *tion of the period referred to in paragraph (1)(B), the*
17 *Attorney General shall withhold 5 percent of the*
18 *amount that would otherwise be allocated to a State*
19 *under section 505 of the Omnibus Crime Control and*
20 *Safe Streets Act of 1968 (42 U.S.C. 3755), if the*
21 *State provides less than 90 percent of the records re-*
22 *quired to be provided under sections 102 and 103.”.*

23 “(b) *REPORTING OF STATE COMPLIANCE.—Not later*
24 *than 1 year after the date of enactment of this Act, and*
25 *every year thereafter, the Attorney General shall publish,*

1 *and make available on a publicly accessible website, a re-*
 2 *port that ranks the States by the ratio of number of records*
 3 *submitted by each State under sections 102 and 103 of the*
 4 *NICS Improvement Amendments Act of 2007 (18 U.S.C.*
 5 *922 note) to the estimated total number of available records*
 6 *of the State.*

7 **SEC. 103. CLARIFICATION THAT FEDERAL COURT INFORMA-**
 8 **TION IS TO BE MADE AVAILABLE TO THE NA-**
 9 **TIONAL INSTANT CRIMINAL BACKGROUND**
 10 **CHECK SYSTEM.**

11 *Section 103(e)(1) of the Brady Handgun Violence Pre-*
 12 *vention Act (18 U.S.C. 922 note), is amended by adding*
 13 *at the end the following:*

14 *“(F) APPLICATION TO FEDERAL COURTS.—*

15 *In this paragraph—*

16 *“(i) the terms ‘department of agency of*
 17 *the United States’ and ‘Federal department*
 18 *or agency’ include a Federal court; and*

19 *“(ii) for purposes of any request, sub-*
 20 *mission, or notification, the Director of the*
 21 *Administrative Office of the United States*
 22 *Courts shall perform the functions of the*
 23 *head of the department or agency.”.*

1 **TITLE II—REQUIRING A BACK-**
 2 **GROUND CHECK FOR EVERY**
 3 **FIREARM SALE**

4 **SEC. 201. PURPOSE.**

5 *The purpose of this title is to extend the Brady Law*
 6 *background check procedures to all sales and transfers of*
 7 *firearms.*

8 **SEC. 202. FIREARMS TRANSFERS.**

9 *(a) IN GENERAL.—Section 922 of title 18, United*
 10 *States Code, is amended—*

11 *(1) by repealing subsection (s);*

12 *(2) by redesignating subsection (t) as subsection*
 13 *(s);*

14 *(3) in subsection (s), as redesignated—*

15 *(A) in paragraph (3)(C)(ii), by striking*
 16 *“(as defined in subsection (s)(8))”; and*

17 *(B) by adding at the end the following:*

18 *“(7) In this subsection, the term ‘chief law en-*
 19 *forcement officer’ means the chief of police, the sheriff,*
 20 *or an equivalent officer or the designee of any such*
 21 *individual.”; and*

22 *(4) by inserting after subsection (s), as redesi-*
 23 *gnated, the following:*

24 *“(t)(1) Beginning on the date that is 180 days after*
 25 *the date of enactment of this subsection, it shall be unlawful*

1 *for any person who is not licensed under this chapter to*
2 *transfer a firearm to any other person who is not licensed*
3 *under this chapter, unless a licensed importer, licensed*
4 *manufacturer, or licensed dealer has first taken possession*
5 *of the firearm for the purpose of complying with subsection*
6 *(s). Upon taking possession of the firearm, the licensee shall*
7 *comply with all requirements of this chapter as if the li-*
8 *cencee were transferring the firearm from the licensee's in-*
9 *ventory to the unlicensed transferee.*

10 “(2) Paragraph (1) shall not apply to—

11 “(A) *bona fide gifts between spouses, between*
12 *parents and their children, between siblings, or be-*
13 *tween grandparents and their grandchildren;*

14 “(B) *a transfer made from a decedent's estate,*
15 *pursuant to a legal will or the operation of law;*

16 “(C) *a temporary transfer of possession that oc-*
17 *curs between an unlicensed transferor and an unli-*
18 *censed transferee, if —*

19 “(i) *the temporary transfer of possession oc-*
20 *curs in the home or curtilage of the unlicensed*
21 *transferor;*

22 “(ii) *the firearm is not removed from that*
23 *home or curtilage during the temporary transfer;*
24 *and*

1 “(iii) the transfer has a duration of less
2 than 7 days; and

3 “(D) a temporary transfer of possession without
4 transfer of title made in connection with lawful hunt-
5 ing or sporting purposes if the transfer occurs—

6 “(i) at a shooting range located in or on
7 premises owned or occupied by a duly incor-
8 porated organization organized for conservation
9 purposes or to foster proficiency in firearms and
10 the firearm is, at all times, kept within the
11 premises of the shooting range;

12 “(ii) at a target firearm shooting competi-
13 tion under the auspices of or approved by a
14 State agency or nonprofit organization and the
15 firearm is, at all times, kept within the premises
16 of the shooting competition; and

17 “(iii) while hunting or trapping, if—

18 “(I) the activity is legal in all places
19 where the unlicensed transferee possesses the
20 firearm;

21 “(II) the temporary transfer of posses-
22 sion occurs during the designated hunting
23 season; and

24 “(III) the unlicensed transferee holds
25 any required license or permit.

1 “(3) For purposes of this subsection, the term ‘trans-
2 *fer*’—

3 “(A) shall include a sale, gift, loan, return from
4 *pawn or consignment, or other disposition; and*

5 “(B) shall not include temporary possession of
6 *the firearm for purposes of examination or evaluation*
7 *by a prospective transferee while in the presence of the*
8 *prospective transferee.*

9 “(4)(A) Notwithstanding any other provision of this
10 *chapter, the Attorney General may implement this sub-*
11 *section with regulations.*

12 “(B) Regulations promulgated under this para-
13 *graph—*

14 “(i) shall include a provision setting a max-
15 *imum fee that may be charged by licensees for services*
16 *provided in accordance with paragraph (1); and*

17 “(ii) shall include a provision requiring a record
18 *of transaction of any transfer that occurred between*
19 *an unlicensed transferor and unlicensed transferee ac-*
20 *cordance with paragraph (1).”.*

21 (b) *TECHNICAL AND CONFORMING AMENDMENTS.—*

22 (1) *SECTION 922.—Section 922(y)(2) of title 18,*
23 *United States Code, is amended, in the matter pre-*
24 *ceding subparagraph (A), by striking “, (g)(5)(B),*
25 *and (s)(3)(B)(v)(II)” and inserting “and (g)(5)(B)”.*

1 (2) *SECTION 925A.*—*Section 925A of title 18,*
2 *United States Code, is amended, in the matter pre-*
3 *ceding paragraph (1), by striking “subsection (s) or*
4 *(t) of section 922” and inserting “section 922(s)”.*

5 **SEC. 203. LOST AND STOLEN REPORTING.**

6 (a) *IN GENERAL.*—*Section 922 of title 18, United*
7 *States Code, is amended by adding at the end—*
8 *“(aa) It shall be unlawful for any person who lawfully*
9 *possesses or owns a firearm that has been shipped or trans-*
10 *ported in, or has been possessed in or affecting, interstate*
11 *or foreign commerce, to fail to report the theft or loss of*
12 *the firearm, within 24 hours after the person discovers the*
13 *theft or loss, to the Attorney General and to the appropriate*
14 *local authorities.”.*

15 (b) *PENALTY.*—*Section 924(a)(1) of title 18, United*
16 *States Code, is amended by striking subparagraph (B) and*
17 *inserting the following:*

18 *“(B) knowingly violates subsection (a)(4), (f),*
19 *(k), (q), or (aa) of section 922;”.*

20 **SEC. 204. EFFECTIVE DATE.**

21 *The amendments made by this Act shall take effect 180*
22 *days after the date of enactment of this Act.*

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A BILL

To ensure that all individuals who should be prohibited from buying a firearm are listed in the national instant criminal background check system and require a background check for every firearm sale.

March 12, 2013

Reported with an amendment