

Calendar No. 21

103D CONGRESS
1ST SESSION

S. 414

A BILL

To amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

MARCH 3, 1993

Read the second time and placed on the calendar

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To amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, JANUARY 5), 1993

Mr. METZENBAUM (for himself, Mr. MITCHELL, Mrs. KASSEBAUM, Mr. KOHL, Mr. CHAFEE, Mr. KENNEDY, Mr. SIMON, Mr. PELL, Mr. WELLSTONE, Mr. AKAKA, Mr. GLENN, Mr. LEVIN, Mr. HARKIN, Mr. LAUTENBERG, Ms. MOSELEY-BRAUN, Mrs. BOXER, Mr. HATFIELD, Mr. FEINGOLD, Mr. DODD, Mrs. FEINSTEIN, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. BRADLEY, Mrs. MURRAY, Mr. INOUE, Mr. WARNER, Ms. MIKULSKI, Mr. KERRY, and Mr. SARBANES) introduced the following bill; which was read the first time

MARCH 3, 1993

Read the second time and placed on the calendar

A BILL

To amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Brady Handgun Vio-
3 lence Prevention Act”.

4 **SEC. 2. FEDERAL FIREARMS LICENSEE REQUIRED TO CON-**
5 **DUCT CRIMINAL BACKGROUND CHECK BE-**
6 **FORE TRANSFER OF FIREARM TO**
7 **NONLICENSEE.**

8 (a) INTERIM PROVISION.—

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

12 “(s)(1) Beginning on the date that is ninety days
13 after the date of enactment of this subsection and ending
14 on the day before the date that the Attorney General cer-
15 tifies under section 3 of the Brady Handgun Violence Pre-
16 vention Act that the national instant criminal background
17 check system is established (except as provided in para-
18 graphs (2) and (3) of such section), it shall be unlawful
19 for any licensed importer, licensed manufacturer, or li-
20 censed dealer to sell, deliver, or transfer a handgun to an
21 individual who is not licensed under section 923, unless—

22 “(A) after the most recent proposal of such
23 transfer by the transferee—

24 “(i) the transferor has—

1 “(I) received from the transferee a
2 statement of the transferee containing the
3 information described in paragraph (3);

4 “(II) verified the identity of the trans-
5 feree by examining the identification docu-
6 ment presented;

7 “(III) within one day after the trans-
8 feree furnishes the statement, provided no-
9 tice of the contents of the statement to the
10 chief law enforcement officer of the place
11 of residence of the transferee; and

12 “(IV) within one day after the trans-
13 feree furnishes the statement, transmitted
14 a copy of the statement to the chief law
15 enforcement officer of the place of resi-
16 dence of the transferee; and

17 “(ii)(I) five business days (as defined by
18 days in which State offices are open) have
19 elapsed from the date the transferor furnished
20 notice of the contents of the statement to the
21 chief law enforcement officer, during which pe-
22 riod the transferor has not received information
23 from the chief law enforcement officer that re-
24 ceipt or possession of the handgun by the trans-

1 feree would be in violation of Federal, State, or
2 local law; or

3 “(II) the transferor has received notice
4 from the chief law enforcement officer that the
5 officer has no information indicating that re-
6 ceipt or possession of the handgun by the trans-
7 feree would violate Federal, State, or local law;

8 “(B) the transferee has presented to the trans-
9 feror a written statement, issued by the chief law en-
10 forcement officer of the place of residence of the
11 transferee during the ten-day period ending on the
12 date of the most recent proposal of such transfer by
13 the transferee, stating that the transferee requires
14 access to a handgun because of a threat to the life
15 of the transferee or of any member of the household
16 of the transferee;

17 “(C)(i) the transferee has presented to the
18 transferor a permit that—

19 “(I) allows the transferee to possess a
20 handgun; and

21 “(II) was issued not more than five years
22 earlier by the State in which the transfer is to
23 take place; and

24 “(ii) the law of the State provides that such a
25 permit is to be issued only after an authorized gov-

1 ernment official has verified that the information
2 available to such official does not indicate that pos-
3 session of a handgun by the transferee would be in
4 violation of the law;

5 “(D) the law of the State requires that, before
6 any licensed importer, licensed manufacturer, or li-
7 censed dealer completes the transfer of a handgun to
8 an individual who is not licensed under section 923,
9 an authorized government official verify that the in-
10 formation available to such official does not indicate
11 that possession of a handgun by the transferee
12 would be in violation of law, except that this sub-
13 paragraph shall not apply to a State that, on the
14 date of certification pursuant to section 3 of the
15 Brady Handgun Violence Prevention Act, is not in
16 compliance with the timetable established pursuant
17 to section 3 of such Act;

18 “(E) the Secretary has approved the transfer
19 under section 5812 of the Internal Revenue Code of
20 1986; or

21 “(F) on application of the transferor, the Sec-
22 retary has certified that compliance with subpara-
23 graph (A)(i)(III) is impracticable because—

24 “(i) the ratio of the number of law enforce-
25 ment officers of the State in which the transfer

1 is to occur to the number of square miles of
2 land area of the State does not exceed 0.0025;

3 “(ii) the business premises of the trans-
4 feror at which the transfer is to occur are ex-
5 tremely remote in relation to the chief law en-
6 forcement officer; and

7 “(iii) there is an absence of telecommuni-
8 cations facilities in the geographical area in
9 which the business premises are located.

10 “(2) A chief law enforcement officer to whom a trans-
11 feror has provided notice pursuant to paragraph
12 (1)(A)(i)(III) shall make a reasonable effort to ascertain
13 within five business days whether the transferee has a
14 criminal record or whether there is any other legal impedi-
15 ment to the transferee’s receiving a handgun, including
16 research in whatever State and local recordkeeping sys-
17 tems are available and in a national system designated by
18 the Attorney General.

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

21 “(A) the name, address, and date of birth ap-
22 pearing on a valid identification document (as de-
23 fined in section 1028(d)(1)) of the transferee con-
24 taining a photograph of the transferee and a de-
25 scription of the identification used;

1 “(B) a statement that transferee—

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

6 “(ii) is not a fugitive from justice;

7 “(iii) is not an unlawful user of or addicted
8 to any controlled substance (as defined in sec-
9 tion 102 of the Controlled Substances Act);

10 “(iv) has not been adjudicated as a mental
11 defective or been committed to a mental institu-
12 tion;

13 “(v) is not an alien who is illegally or un-
14 lawfully in the United States;

15 “(vi) has not been discharged from the
16 Armed Forces under dishonorable conditions;
17 and

18 “(vii) is not a person who, having been a
19 citizen of the United States, has renounced
20 such citizenship;

21 “(C) the date the statement is made; and

22 “(D) notice that the transferee intends to ob-
23 tain a handgun from the transferor.

24 “(4) Any transferor of a handgun who, after such
25 transfer, receives a report from a chief law enforcement

1 officer containing information that receipt or possession
2 of the handgun by the transferee violates Federal, State,
3 or local law shall immediately communicate all information
4 the transferor has about the transfer and the transferee
5 to—

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

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

10 “(5) Any transferor who receives information, not
11 otherwise available to the public, in a report under this
12 subsection shall not disclose such information except to
13 the transferee, to law enforcement authorities, or pursuant
14 to the direction of a court of law.

15 “(6)(A) Any transferor who sells, delivers, or other-
16 wise transfers a handgun to a transferee shall retain the
17 copy of the statement of the transferee with respect to
18 the handgun transaction, and shall retain evidence that
19 the transferor has complied with subclauses (III) and (IV)
20 of paragraph (1)(A)(i) with respect to the statement.

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

1 “(i) the officer shall, within twenty business
2 days after the date the transferee made the state-
3 ment on the basis of which the notice was provided,
4 destroy the statement and any record containing in-
5 formation derived from the statement;

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

10 “(iii) the information contained in the state-
11 ment shall not be used for any purpose other than
12 to carry out this subsection.

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

17 “(A) for failure to prevent the sale or transfer
18 of a handgun to a person whose receipt or posses-
19 sion of the handgun is unlawful under this section;
20 or

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

24 “(8) For purposes of this subsection, the term ‘chief
25 law enforcement officer’ means the chief of police, the

1 sheriff, or an equivalent officer or the designee of any such
2 individual.

3 “(9) The Secretary shall take necessary actions to en-
4 sure that the provisions of this subsection are published
5 and disseminated to licensed dealers, law enforcement offi-
6 cials, and the public.”.

7 (2) HANDGUN DEFINED.—Section 921(a) of
8 such title is amended by adding at the end the fol-
9 lowing:

10 “(29) The term ‘handgun’ means—

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

14 “(B) any combination of parts from which a
15 firearm described in subparagraph (A) can be as-
16 sembled.”.

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

21 “(t)(1) Beginning on the date that the Attorney Gen-
22 eral certifies under section 3 of the Brady Handgun Vio-
23 lence Prevention Act that the national instant criminal
24 background check system is established (except as pro-
25 vided in paragraphs (2) and (3) of such section), a li-

1 censed importer, licensed manufacturer, or licensed dealer
2 shall not transfer a firearm to any other person who is
3 not such a licensee, unless—

4 “(A) before the completion of the transfer, the
5 licensee contacts the national instant criminal back-
6 ground check system established under section 3 of
7 such Act;

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

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

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

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

22 “(I) allows such other person to possess a
23 firearm; and

1 “(II) was issued not more than five years
2 earlier by the State in which the transfer is to
3 take place; and

4 “(ii) the law of the State provides that such a
5 permit is to be issued only after an authorized gov-
6 ernment official has verified that the information
7 available to such official does not indicate that pos-
8 session of a firearm by such other person would be
9 in violation of law;

10 “(B) the Secretary has approved the transfer
11 under section 5812 of the Internal Revenue Code of
12 1986; or

13 “(C) on application of the transferor, the Sec-
14 retary has certified that compliance with paragraph
15 (1)(A) is impracticable because—

16 “(i) the ratio of the number of law enforce-
17 ment officers of the State in which the transfer
18 is to occur to the number of square miles of
19 land area of the State does not exceed 0.0025;

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

1 “(iii) there is an absence of telecommuni-
2 cations facilities in the geographical area in
3 which the business premises are located.

4 “(3) If the national instant criminal background
5 check system notifies the licensee that the information
6 available to the system does not demonstrate that the re-
7 ceipt of a firearm by such other person would violate sub-
8 section (g) or (n), and the licensee transfers a firearm to
9 such other person, the licensee shall include in the record
10 of the transfer the unique identification number provided
11 by the system with respect to the transfer.

12 “(4) In addition to the authority provided under sec-
13 tion 923(e), if the licensee knowingly transfers a firearm
14 to such other person and knowingly fails to comply with
15 paragraph (1) of this subsection with respect to the trans-
16 fer and, at the time such other person most recently pro-
17 posed the transfer, the national instant criminal back-
18 ground check system was operating and information was
19 available to the system demonstrating that receipt of a
20 firearm by such other person would violate subsection (g)
21 or (n) of this section, the Secretary may, after notice and
22 opportunity for a hearing, suspend for not more than six
23 months or revoke any license issued to the licensee under
24 section 923, and may impose on the licensee a civil fine
25 of not more than \$5,000.

1 “(5) Neither a local government nor an employee of
2 the Federal Government or of any State or local govern-
3 ment, responsible for providing information to the national
4 instant criminal background check system shall be liable
5 in an action at law for damages—

6 “(A) for failure to prevent the sale or transfer
7 of a handgun to a person whose receipt or posses-
8 sion of the handgun is unlawful under this section;
9 or

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

13 (c) PENALTY.—Section 924(a) of title 18, United
14 States Code, is amended—

15 (1) in paragraph (1), by striking “paragraph
16 (2) or (3) of”; and

17 (2) by adding at the end the following:

18 “(5) Whoever knowingly violates subsection (s) or (t)
19 of section 922 shall be fined not more than \$1,000, impris-
20 oned for not more than 1 year, or both.”.

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

23 (a) ESTABLISHMENT OF SYSTEM.—The Attorney
24 General of the United States shall establish a national in-
25 stant criminal background check system that any licensee

1 may contact for information on whether receipt of a fire-
2 arm by a prospective transferee thereof would violate sub-
3 section (g) or (n) of section 922 of title 18, United States
4 Code, or any State or local law.

5 (b) EXPEDITED ACTION BY THE ATTORNEY GEN-
6 ERAL.—The Attorney General shall expedite—

7 (1) the upgrading and indexing of State crimi-
8 nal history records in the Federal criminal records
9 system maintained by the Federal Bureau of Inves-
10 tigation;

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

16 (3) the current revitalization initiatives by the
17 Federal Bureau of Investigation for technologically
18 advanced fingerprint and criminal records identifica-
19 tion.

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

24 (A) determine the type of computer hardware
25 and software that will be used to operate the na-

1 tional instant criminal background check system and
2 the means by which State criminal records systems
3 will communicate with the national system;

4 (B) investigate the criminal records system of
5 each State and determine for each State a timetable
6 by which the State should be able to provide crimi-
7 nal records on an on line capacity basis to the
8 national system;

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

11 (2) The Attorney General shall require as a part of
12 the State timetable that the State achieve, by the end of
13 five years after the date of enactment of this Act, at least
14 80 percent currency of case dispositions in computerized
15 criminal history files for all cases in which there has been
16 an event of activity within the last five years and continue
17 to maintain such a system.

18 (d) NATIONAL SYSTEM CERTIFICATION.—(1) On the
19 date that is thirty months after the date of enactment of
20 this Act, and at any time thereafter, the Attorney General
21 shall determine whether—

22 (A) the national system has achieved at least
23 80 percent currency of case dispositions in comput-
24 erized criminal history files for all cases in which

1 there has been an event of activity within the last
2 five years on a national average basis; and

3 (B) the States are in compliance with the time-
4 table established pursuant to subsection (c),
5 and, if so, shall certify that the national system is estab-
6 lished.

7 (2) If, on the date of certification in paragraph (1)
8 of this subsection, a State is not in compliance with the
9 timetable established pursuant to subsection (c) of this
10 section, section 922(s) of title 18, United States Code,
11 shall remain in effect in such State and section 922(t) of
12 such title shall not apply to the State. The Attorney Gen-
13 eral shall certify if a State subject to the provisions of
14 section 922(s) under the preceding sentence achieves com-
15 pliance with its timetable after the date of certification
16 in paragraph (1) of this subsection, and section 922(s) of
17 title 18, United States Code, shall not apply to such State
18 and section 922(t) of such title shall apply to the State.

19 (3) Six years after the date of enactment of this Act,
20 the Attorney General shall certify whether or not a State
21 is in compliance with subsection (c)(2) of this section and
22 if the State is not in compliance, section 922(s) of title
23 18, United States Code, shall apply to the State and sec-
24 tion 922(t) of such title shall not apply to the State. The
25 Attorney General shall certify if a State subject to the pro-

1 visions of section 922(s) under the preceding sentence
2 achieves compliance with the standards in subsection
3 (c)(2) of this section, and section 922(s) of title 18, United
4 States Code, shall not apply to the State and section
5 922(t) of such title shall apply to the State.

6 (e) NOTIFICATION OF LICENSEES.—On establish-
7 ment of the system under this section, the Attorney Gen-
8 eral shall notify each licensee and the chief law enforce-
9 ment officer of each State of the existence and purpose
10 of the system and the means to be used to contact the
11 systems

12 (f) ADMINISTRATIVE PROVISIONS.—

13 (1) AUTHORITY TO OBTAIN OFFICIAL INFORMA-
14 TION.—Notwithstanding any other law, the Attorney
15 General may secure directly from any department or
16 agency of the United States such information on
17 persons for whom receipt of a firearm would violate
18 subsection (g) or (n) of section 922 of title 18,
19 United States Code, or any State or local law, as is
20 necessary to enable the system to operate in accord-
21 ance with this section. On request of the Attorney
22 General, the head of such department or agency
23 shall furnish such information to the system.

24 (2) OTHER AUTHORITY.—The Attorney General
25 shall develop such computer software, design and ob-

1 tain such telecommunications and computer hard-
2 ware, and employ such personnel, as are necessary
3 to establish and operate the system in accordance
4 with this section.

5 (g) CORRECTION OF ERRONEOUS SYSTEM INFORMA-
6 TION.—If the system established under this section in-
7 forms an individual contacting the system that receipt of
8 a firearm by a prospective transferee would violate sub-
9 section (g) or (n) of section 922 of title 18, United States
10 Code, or any State or local law, the prospective transferee
11 may request the Attorney General to provide the prospec-
12 tive transferee with the reasons therefor. Upon receipt of
13 such a request, the Attorney General shall immediately
14 comply with the request. The prospective transferee may
15 submit to the Attorney General information that to cor-
16 rect, clarify, or supplement records of the system with re-
17 spect to the prospective transferee. After receipt of such
18 information, the Attorney General shall immediately con-
19 sider the information, investigate the matter further, and
20 correct all erroneous Federal records relating to the pro-
21 spective transferee and give notice of the error to any Fed-
22 eral department or agency or any State that was the
23 source of such erroneous records.

24 (h) REGULATIONS.—After ninety days notice to the
25 public and an opportunity for hearing by interested par-

1 ties, the Attorney General shall prescribe regulations to
2 ensure the privacy and security of the information of the
3 system established under this section.

4 (i) PROHIBITION RELATING TO ESTABLISHMENT OF
5 REGISTRATION SYSTEMS WITH RESPECT TO FIRE-
6 ARMS.—No department, agency, officer, or employee of
7 the United States may—

8 (1) require that any record or portion thereof
9 maintained by the system established under this sec-
10 tion be recorded at or transferred to a facility
11 owned, managed, or controlled by the United States
12 or any State or political subdivision thereof; or

13 (2) use the system established under this sec-
14 tion to establish any system for the registration of
15 firearms, firearm owners, or firearm transactions or
16 dispositions, except with respect to persons, prohib-
17 ited by section 922(g) or (n) of title 18, United
18 States Code, from receiving a firearm.

19 (j) DEFINITIONS.—As used in this section:

20 (1) LICENSEE.—The term “licensee” means a
21 licensed importer, licensed manufacturer, or licensed
22 dealer under section 923 of title, 18, United States
23 Code.

24 (2) OTHER TERMS.—The terms “firearm”, “li-
25 censed importer”, “licensed manufacturer”, and “li-

1 censed dealer” have the meanings stated in section
2 921(a) (3), (9), (10), and (11), respectively, of title
3 18, United States Code.

4 **SEC. 4. FUNDING FOR IMPROVEMENT OF CRIMINAL**
5 **RECORDS.**

6 (a) IMPROVEMENTS IN STATE RECORDS.—

7 (1) USE OF FORMULA GRANTS.—Section 509(b)
8 of title I of the Omnibus Crime Control and Safe
9 Streets Act of 1968 (42 U.S.C. 3759(b)) is amend-
10 ed—

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

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

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

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

24 (2) ADDITIONAL FUNDING.—

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

9 (i) for the creation of a computerized
10 criminal history record system or improve-
11 ment of an existing system;

12 (ii) to improve accessibility to the na-
13 tional instant criminal background system;
14 and

15 (iii) upon establishment of the na-
16 tional system, to assist the State in the
17 transmittal of criminal records to the na-
18 tional system.

19 (B) AUTHORIZATION OF APPROPRIA-
20 TIONS.—There are authorized to be appro-
21 priated for grants under subparagraph (A) a
22 total of \$100,000,000 for fiscal year 1994 and
23 all fiscal years thereafter.

24 (b) WITHHOLDING STATE FUNDS.—Effective on the
25 date of enactment of this Act the Attorney General may

1 reduce by up to 50 percent the allocation to a State for
2 a fiscal year under title I of the Omnibus Crime Control
3 and Safe Streets Act of 1968 of a State that is not in
4 compliance with the timetable established for such State
5 under section 3 of this Act.

6 (c) WITHHOLDING OF DEPARTMENT OF JUSTICE
7 FUNDS.—If the Attorney General does not certify the na-
8 tional instant criminal background check system pursuant
9 to section 3(d)(1) by—

10 (1) thirty months after the date of enactment
11 of this Act the general administrative funds appro-
12 priated to the Department of Justice for the fiscal
13 year beginning in the calendar year in which the
14 date that is thirty months after the date of enact-
15 ment of this Act falls shall be reduced by 5 percent
16 on a monthly basis; and

17 (2) forty-two months after the date of enact-
18 ment of this Act the general administrative funds
19 appropriated to the Department of Justice for the
20 fiscal year beginning in the calendar year in which
21 the date that is forty-two months after the date of
22 enactment of this Act falls shall be reduced by 10
23 percent on a monthly basis.

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