

112TH CONGRESS  
1ST SESSION

# S. 436

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 2, 2011

Mr. SCHUMER (for himself and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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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.

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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Fix Gun Checks Act of 2011”.

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

Sec. 1. Short title and 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. Penalties for States that do not make data electronically available to the National Instant Criminal Background Check System.

Sec. 102. Requirement that Federal agencies certify that they have submitted to the National Instant Criminal Background Check System all records identifying persons prohibited from purchasing firearms under Federal law.

Sec. 103. Adjudicated as a mental defective; mental health assessment plan.

Sec. 104. Clarification of the definition of drug abusers and drug addicts who are prohibited from possessing firearms.

**TITLE II—REQUIRING A BACKGROUND CHECK FOR EVERY FIREARM SALE**

Sec. 201. Purpose.

Sec. 202. Firearms transfers.

Sec. 203. 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. PENALTIES FOR STATES THAT DO NOT MAKE  
9 DATA ELECTRONICALLY AVAILABLE TO THE  
10 NATIONAL INSTANT CRIMINAL BACKGROUND  
11 CHECK SYSTEM.**

12 Section 104(b) of the NICS Improvement Amend-  
13 ments Act of 2007 (18 U.S.C. 922 note) is amended to  
14 read as follows:

15 “(b) PENALTIES.—

1           “(1) DISCRETIONARY REDUCTION.—For each of  
2 fiscal years 2011 and 2012, the Attorney General  
3 may withhold not more than 3 percent of the  
4 amount that would otherwise be allocated to a State  
5 under section 505 of the Omnibus Crime Control  
6 and Safe Streets Act of 1968 (42 U.S.C. 3755) if  
7 the State provides less than 50 percent of the  
8 records required to be provided under sections 102  
9 and 103.

10           “(2) MANDATORY REDUCTION.—

11           “(A) FISCAL YEARS 2013 TO 2017.—For  
12 each of fiscal years 2013 through 2017, the At-  
13 torney General shall withhold 15 percent of the  
14 amount that would otherwise be allocated to a  
15 State under section 505 of the Omnibus Crime  
16 Control and Safe Streets Act of 1968 (42  
17 U.S.C. 3755) if the State provides less than 75  
18 percent of the records required to be provided  
19 under sections 102 and 103.

20           “(B) SUBSEQUENT YEARS.—During fiscal  
21 year 2018, and each fiscal year thereafter, the  
22 Attorney General shall withhold 25 percent of  
23 the amount that would otherwise be allocated to  
24 a State under section 505 of the Omnibus  
25 Crime Control and Safe Streets Act of 1968

1 (42 U.S.C. 3755), if the State provides less  
2 than 90 percent of the records required to be  
3 provided under sections 102 and 103.

4 “(3) WAIVER BY ATTORNEY GENERAL.—If a  
5 State provides substantial evidence, as determined  
6 by the Attorney General, that the State is making  
7 a reasonable effort to comply with the requirements  
8 of sections 102 and 103, including an inability to  
9 comply due to court order or other legal restriction,  
10 the Attorney General may reduce the percentage of  
11 the amount that would otherwise be allocated to a  
12 State under section 505 of the Omnibus Crime Con-  
13 trol and Safe Streets Act of 1968 (42 U.S.C. 3755)  
14 withheld—

15 “(A) under paragraph (2)(A) to be not less  
16 than 5 percent; and

17 “(B) under paragraph (2)(B) to be not  
18 less than 15 percent.

19 “(4) TRANSFER OF WITHHELD FUNDS.—Any  
20 funds withheld by the Attorney General under this  
21 subsection shall be transferred to the appropriations  
22 account appropriated under the heading ‘STATE AND  
23 LOCAL LAW ENFORCEMENT ASSISTANCE’ under the  
24 heading ‘OFFICE OF JUSTICE PROGRAMS’ under the  
25 heading ‘DEPARTMENT OF JUSTICE’.

1           “(5) SENSE OF CONGRESS.—It is the sense of  
2 Congress that any funds transferred under para-  
3 graph (4) should be used to carry out the activities  
4 described in the NICS Improvement Amendments  
5 Act of 2007 (18 U.S.C. 922 note).”.

6 **SEC. 102. REQUIREMENT THAT FEDERAL AGENCIES CER-**  
7 **TIFY THAT THEY HAVE SUBMITTED TO THE**  
8 **NATIONAL INSTANT CRIMINAL BACKGROUND**  
9 **CHECK SYSTEM ALL RECORDS IDENTIFYING**  
10 **PERSONS PROHIBITED FROM PURCHASING**  
11 **FIREARMS UNDER FEDERAL LAW.**

12           Section 103(e)(1) of the Brady Handgun Violence  
13 Prevention Act (18 U.S.C. 922 note) is amended by add-  
14 ing at the end the following:

15           “(F) SEMIANNUAL CERTIFICATION AND  
16 REPORTING.—

17           “(i) IN GENERAL.—The head of each  
18 Federal department or agency shall submit  
19 to the Attorney General a written certifi-  
20 cation indicating whether the department  
21 or agency has provided to the Attorney  
22 General the pertinent information con-  
23 tained in any record of any person that the  
24 department or agency was in possession of  
25 during the time period addressed by the

1 report demonstrating that the person falls  
2 within a category described in subsection  
3 (g) or (n) of section 922 of title 18, United  
4 States Code.

5 “(ii) SUBMISSION DATES.—The head  
6 of a Federal department or agency shall  
7 submit a certification under clause (i)—

8 “(I) not later than July 31 of  
9 each year, which shall address any  
10 record the department or agency was  
11 in possession of during the period be-  
12 ginning on January 1 of the year and  
13 ending on June 30 of the year; and

14 “(II) not later than January 31  
15 of each year, which shall address any  
16 record the department or agency was  
17 in possession of during the period be-  
18 ginning on July 1 of the previous year  
19 and ending on December 31 of the  
20 previous year.

21 “(iii) CONTENTS.—A certification re-  
22 quired under clause (i) shall state, for the  
23 applicable period—

24 “(I) the number of records of the  
25 Federal department or agency dem-

1           onstrating that a person fell within  
2           each of the categories described in  
3           section 922(g) of title 18, United  
4           States Code;

5                   “(II) the number of records of  
6           the Federal department or agency  
7           demonstrating that a person fell with-  
8           in the category described in section  
9           922(n) of title 18, United States  
10          Code; and

11                   “(III) for each category of  
12          records described in subclauses (I)  
13          and (II), the total number of records  
14          of the Federal department or agency  
15          that have been provided to the Attor-  
16          ney General.”.

17 **SEC. 103. ADJUDICATED AS A MENTAL DEFECTIVE; MENTAL**  
18 **HEALTH ASSESSMENT PLAN.**

19          (a) DEFINITION.—Section 921(a) of title 18, United  
20 States Code, is amended by adding at the end the fol-  
21 lowing:

22                   “(36) The term ‘adjudicated as a mental defec-  
23          tive’ includes an order by a court, board, commis-  
24          sion, or other lawful authority that a person, in re-  
25          sponse to marked subnormal intelligence, mental ill-

1       ness or incompetency, be compelled to receive serv-  
2       ices—

3               “(A) including counseling, medication, or  
4               testing to determine compliance with prescribed  
5               medications; and

6               “(B) not including testing for use of alco-  
7               hol or for abuse of any controlled substance or  
8               other drug.”.

9       (b) **MENTAL HEALTH ASSESSMENT PLAN FOR INSTI-**  
10 **TUTIONS OF HIGHER EDUCATION.**—Part B of title I of  
11 the Higher Education Act of 1965 (20 U.S.C. 1011 et  
12 seq.) is amended by adding at the end the following:

13 **“SEC. 124. MENTAL HEALTH ASSESSMENT PLAN FOR INSTI-**  
14 **TUTIONS OF HIGHER EDUCATION.**

15       “(a) **RESTRICTION ON ELIGIBILITY.**—Each college,  
16 university, or postsecondary institution that receives Fed-  
17 eral funds under this Act or any form of financial assist-  
18 ance under any Federal program, including participation  
19 in any federally funded or guaranteed student loan pro-  
20 gram, shall develop and implement, not later than 1 year  
21 from the date of enactment of this section, a mental health  
22 assessment plan that, at a minimum, includes—

23               “(1) a framework through which such college,  
24 university, or postsecondary institution will address  
25 the risks posed by students, including full-time stu-

1 dents and part-time students, who, as a result of ap-  
2 parent mental illness or incompetency, pose a safety  
3 risk to themselves or others;

4 “(2) the establishment of a team that will as-  
5 sess the mental health needs of, and safety risks  
6 posed by, any such student, consisting of—

7 “(A) educators;

8 “(B) administrators;

9 “(C) counselors; or

10 “(D) other qualified members of the edu-  
11 cational community;

12 “(3) a procedure for reporting such students to  
13 the team described in paragraph (2);

14 “(4) a procedure for making voluntary referrals  
15 for such students to on- and off-campus mental  
16 health resources;

17 “(5) a procedure for making involuntary refer-  
18 rals for such students to State or local mental health  
19 authorities for mandatory evaluation, which shall in-  
20 clude reporting such referrals to a State agency re-  
21 sponsible for identifying persons described in section  
22 922(g)(4) of title 18, United States Code; and

23 “(6) a procedure for informing and educating  
24 the families of students who have been identified as  
25 posing safety risks to themselves or others.

1       “(b) INFORMATION AVAILABILITY.—Each college,  
 2 university, or postsecondary institution that provides the  
 3 plan described in subsection (a) shall make available to  
 4 the students, faculty, and staff at such college, university,  
 5 or postsecondary institution, a copy of the mental health  
 6 assessment plan required under subsection (a).”.

7 **SEC. 104. CLARIFICATION OF THE DEFINITION OF DRUG**  
 8 **ABUSERS AND DRUG ADDICTS WHO ARE PRO-**  
 9 **HIBITED FROM POSSESSING FIREARMS.**

10       (a) INFERENCES OF ABUSE.—Section 921 of title 18,  
 11 United States Code, is amended by adding at the end the  
 12 following:

13       “(c) UNLAWFUL USER OF ANY CONTROLLED SUB-  
 14 STANCE.—

15               “(1) IN GENERAL.—An inference that a person  
 16 is an unlawful user of a controlled substance (as de-  
 17 fined in section 102 of the Controlled Substances  
 18 Act (21 U.S.C. 802)) may be drawn based on—

19                       “(A) a conviction for the use or possession  
 20 of a controlled substance within the past 5  
 21 years;

22                       “(B) an arrest for the use or possession of  
 23 a controlled substance within the past 5 years;

24                       “(C) an arrest for the possession of drug  
 25 paraphernalia within the past 5 years, if testing

1 has demonstrated the paraphernalia contained  
2 traces of a controlled substance;

3 “(D) a drug test administered within the  
4 past 5 years demonstrating that the person had  
5 used a controlled substance unlawfully; or

6 “(E) an admission to using or possessing  
7 a controlled substance unlawfully within the  
8 past 5 years.

9 “(2) MEMBERS OF ARMED FORCES.—For a cur-  
10 rent or former member of the Armed Forces, an in-  
11 ference that a person is an unlawful user of a con-  
12 trolled substance may be drawn based on discipli-  
13 nary or other administrative action within the past  
14 5 years based on confirmed use of a controlled sub-  
15 stance, including a court-martial conviction, non-  
16 judicial punishment, or an administrative discharge  
17 based on use of a controlled substance or drug reha-  
18 bilitation failure.”.

19 (b) APPLICATION TO FEDERAL COURTS.—Section  
20 103(e)(1) of the Brady Handgun Violence Prevention Act  
21 (18 U.S.C. 922 note), as amended by this section 102,  
22 is amended—

23 (1) in subparagraph (C), by inserting “(includ-  
24 ing any record of a Federal court of any person or-

1       dered into a diversion program as described in sec-  
2       tion 921(a)(37))” after “any person”; and

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

4                       “(G)     APPLICATION     TO     FEDERAL  
5       COURTS.—In this paragraph—

6                       “(i) the terms ‘department or agency  
7                       of the United States’ and ‘Federal depart-  
8                       ment or agency’ include a Federal court;  
9                       and

10                      “(ii) for purposes of any request, sub-  
11                      mission, or notification, the Director of the  
12                      Administrative Office of the United States  
13                      Courts shall perform the functions of the  
14                      head of the department or agency.”.

15       (c) DEFINITION.—Section 921(a) of title 18, United  
16       States Code, as amended by section 103(a), is amended  
17       by adding at the end the following:

18                      “(37) The term ‘addicted to any controlled sub-  
19                      stance’ includes a person ordered by a court into a  
20                      diversion program designed for abusers of or addicts  
21                      to controlled substances as part of a criminal or ju-  
22                      venile delinquency proceeding, regardless of whether  
23                      the person was convicted, whether the court made a  
24                      finding of guilt, or whether the program accepts par-

1 participants who are abusers of or addicted to sub-  
 2 stances other than controlled substances.”.

3 (d) CONFORMING AMENDMENT TO NICS IMPROVE-  
 4 MENT AMENDMENTS ACT.—Section 102(b)(1)(C)(iii) of  
 5 the NICS Improvement Amendments Act of 2007 (18  
 6 U.S.C. 922 note) is amended by striking “(as such” and  
 7 all that follows through “adjudications,”.

8 **TITLE II—REQUIRING A BACK-**  
 9 **GROUND CHECK FOR EVERY**  
 10 **FIREARM SALE**

11 **SEC. 201. PURPOSE.**

12 The purpose of this title is to extend the Brady Law  
 13 background check procedures to all sales and transfers of  
 14 firearms.

15 **SEC. 202. FIREARMS TRANSFERS.**

16 (a) IN GENERAL.—Chapter 44 of title 18, United  
 17 States Code, is amended by adding at the end the fol-  
 18 lowing:

19 **“§ 932. Background checks for firearm transfers by**  
 20 **unlicensed persons**

21 “(a) DEFINITIONS.—In this section—

22 “(1) the term ‘unlicensed transferee’ means a  
 23 person who—

24 “(A) is not licensed under this chapter;

25 and

1           “(B) desires to received a firearm from an  
2           unlicensed transferor; and

3           “(2) the term ‘unlicensed transferor’ means a  
4           person who—

5           “(A) is not licensed under this chapter;  
6           and

7           “(B) desires to transfer a firearm to an  
8           unlicensed transferee.

9           “(b) RESPONSIBILITIES OF TRANSFERORS OTHER  
10          THAN LICENSEES.—

11           “(1) IN GENERAL.—It shall be unlawful for an  
12          unlicensed transferor to transfer a firearm to an un-  
13          licensed transferee, unless the firearm is trans-  
14          ferred—

15           “(A)(i) through a licensed dealer under  
16          subsection (d);

17           “(ii) through a law enforcement agency  
18          under subsection (e);

19           “(iii) after inspecting a permit that con-  
20          firms a background check under subsection (f);

21          or

22           “(iv) in accordance with an exception de-  
23          scribed in subsection (g); and

24          “(B) in accordance with paragraph (2).

1           “(2) CRIMINAL BACKGROUND CHECKS.—Except  
2 as provided in subsection (g), an unlicensed trans-  
3 feror—

4           “(A) subject to subparagraph (B), may not  
5 transfer a firearm to an unlicensed transferee  
6 until—

7           “(i) the licensed dealer through which  
8 the transfer is made under subsection (d)  
9 makes a notification described in sub-  
10 section (d)(3)(A);

11           “(ii) the law enforcement agency  
12 through which the transfer is made under  
13 subsection (e) makes a notification de-  
14 scribed in subsection (e)(4)(A); or

15           “(iii) the unlicensed transferee has  
16 presented a permit that confirms that a  
17 background check has been conducted, as  
18 described in subsection (f); and

19           “(B) may not transfer a firearm to an un-  
20 licensed transferee if—

21           “(i) the licensed dealer through which  
22 the transfer is made under subsection (d)  
23 makes the notification described in sub-  
24 section (d)(3)(B); or

1           “(ii) the law enforcement agency  
2           through which the transfer is made under  
3           subsection (e) makes the notification de-  
4           scribed in subsection (e)(3)(B).

5           “(3) ABSENCE OF RECORDKEEPING REQUIRE-  
6           MENTS.—Nothing in this section shall permit or au-  
7           thorize the Attorney General to impose record-  
8           keeping requirements on any unlicensed transferor.

9           “(c) RESPONSIBILITIES OF TRANSFEREES OTHER  
10          THAN LICENSEES.—

11           “(1) IN GENERAL.—It shall be unlawful for an  
12          unlicensed transferee to receive a firearm from an  
13          unlicensed transferor, unless the firearm is trans-  
14          ferred—

15           “(A)(i) through a licensed dealer under  
16          subsection (d);

17           “(ii) through a law enforcement agency  
18          under subsection (e);

19           “(iii) after inspecting a permit that con-  
20          firms a background check in accordance with  
21          subsection (f); or

22           “(iv) in accordance with an exception de-  
23          scribed in subsection (g); and

24           “(B) in accordance with paragraph (2).

1           “(2) CRIMINAL BACKGROUND CHECKS.—Except  
2 as provided in subsection (g), an unlicensed trans-  
3 feree—

4           “(A) subject to subparagraph (B), may not  
5 receive a firearm from an unlicensed transferor  
6 until—

7           “(i) the licensed dealer through which  
8 the transfer is made under subsection (d)  
9 makes a notification described in sub-  
10 section (d)(3)(A);

11           “(ii) the law enforcement agency  
12 through which the transfer is made under  
13 subsection (e) makes a notification de-  
14 scribed in subsection (e)(4)(A); or

15           “(iii) the unlicensed transferee has  
16 presented a permit that confirms that a  
17 background check described in subsection  
18 (f) has been conducted; and

19           “(B) may not receive a firearm from an-  
20 other unlicensed transferor if—

21           “(i) the licensed dealer through which  
22 the transfer is made under subsection (d)  
23 makes a notification described in sub-  
24 section (d)(3)(B); or

1                   “(ii) the law enforcement agency  
2                   through which the transfer is made under  
3                   subsection (e) makes a notification de-  
4                   scribed in subsection (e)(4)(B).

5           “(d) BACKGROUND CHECKS THROUGH LICENSED  
6 DEALERS.—A licensed dealer who agrees to assist in the  
7 transfer of a firearm between unlicensed transferor and  
8 an unlicensed transferee shall—

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

12                  “(2) record the transfer on a form specified by  
13                  the Attorney General;

14                  “(3) comply with section 922(t) as if transfer-  
15                  ring the firearm from the inventory of the licensed  
16                  dealer to the unlicensed transferee (except that a li-  
17                  censed dealer assisting in the transfer of a firearm  
18                  under this subsection shall not be required to comply  
19                  again with the requirements of section 922(t) in de-  
20                  livering the firearm to the unlicensed transferee) and  
21                  notify the unlicensed transferor and unlicensed  
22                  transferee—

23                               “(A) of such compliance; and

24                               “(B) if the transfer is subject to the re-  
25                               quirements of section 922(t)(1), of any receipt

1 by the licensed dealer of a notification from the  
2 national instant criminal background check sys-  
3 tem that the transfer would violate section 922  
4 or State law;

5 “(4) not later than 31 days after the date on  
6 which the transfer occurs, submit to the Attorney  
7 General a report of the transfer, which—

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

10 “(B) shall not include the name of or other  
11 identifying information relating to the unli-  
12 censed transferor or unlicensed transferee;

13 “(5) if the licensed dealer assists an unlicensed  
14 transferor in transferring, at the same time or dur-  
15 ing any 5 consecutive business days, 2 or more pis-  
16 tols or revolvers, or any combination of pistols and  
17 revolvers totaling 2 or more, to the same unlicensed  
18 transferee, in addition to the reports required under  
19 paragraph (4), prepare a report of the multiple  
20 transfers, which shall—

21 “(A) be prepared on a form specified by  
22 the Attorney General; and

23 “(B) not later than the close of business  
24 on the date on which the transfer requiring the

1 report under this paragraph occurs, be sub-  
2 mitted to—

3 “(i) the office specified on the form  
4 described in subparagraph (A); and

5 “(ii) the appropriate State law en-  
6 forcement agency of the jurisdiction in  
7 which the transfer occurs; and

8 “(6) retain a record of the transfer as part of  
9 the permanent business records of the licensed deal-  
10 er.

11 “(e) BACKGROUND CHECKS THROUGH LAW EN-  
12 FORCEMENT AGENCIES.—A State or local law enforce-  
13 ment agency that agrees to assist an unlicensed transferor  
14 in carrying out the responsibilities of the unlicensed trans-  
15 feror under subsection (b) with respect to the transfer of  
16 a firearm shall—

17 “(1)(A) contact the national instant criminal  
18 background check system under section 922(t); and

19 “(B)(i) receive an identification number as de-  
20 scribed in section 922(t)(1)(B)(i); or

21 “(ii) wait the period described in  
22 922(t)(1)(B)(ii);

23 “(2) conduct such other checks as the agency  
24 considers appropriate to determine whether the re-

1 receipt or possession of the firearm by the unlicensed  
2 transferee would violate section 922 or State law;

3 “(3) verify the identity of the unlicensed trans-  
4 feree by—

5 “(A) examining a valid identification docu-  
6 ment (as defined in section 1028(d)) of the un-  
7 licensed transferee containing a photograph of  
8 the unlicensed transferee; or

9 “(B) confirming that the unlicensed trans-  
10 feror has examined a valid identification docu-  
11 ment described in subparagraph (A);

12 “(4) notify the unlicensed transferor and trans-  
13 feree—

14 “(A) of the compliance by the law enforce-  
15 ment agency with the requirements under para-  
16 graphs (1), (2), and (3); and

17 “(B) of any receipt by the law enforcement  
18 agency of a notification from the national in-  
19 stant criminal background check system or  
20 other information that the transfer would vio-  
21 late section 922 or would violate State law;

22 “(5) not later than 31 days after the date on  
23 which the transfer occurs, submit to the Attorney  
24 General a report of the transfer, which—

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

3           “(B) shall not include the name of or other  
4           identifying information relating to the unli-  
5           censed transferor or unlicensed transferee;

6           “(6) if the law enforcement agency assists an  
7           unlicensed transferor in transferring, at the same  
8           time or during any 5 consecutive business days, 2 or  
9           more pistols or revolvers, or any combination of pis-  
10          tols and revolvers totaling 2 or more, to the same  
11          unlicensed transferee, in addition to the reports re-  
12          quired under paragraph (5), prepare a report of the  
13          multiple transfers, which shall be—

14                 “(A) prepared on a form specified by the  
15                 Attorney General; and

16                 “(B) not later 24 hours after the transfer  
17                 requiring the report under this paragraph oc-  
18                 curs, submitted to—

19                         “(i) the office specified on the form  
20                         described in subparagraph (A); and

21                         “(ii) the appropriate State law en-  
22                         forcement agency of the jurisdiction in  
23                         which the transfer occurs; and

1           “(7) maintain records of the transfer at such  
2           place, and in such form, as the Attorney General  
3           may prescribe.

4           “(f) PURCHASE PERMITS CONFIRMING BACKGROUND  
5 CHECKS.—An unlicensed transferor may transfer a fire-  
6 arm to an unlicensed transferee if the unlicensed trans-  
7 feror verifies that—

8           “(1) the unlicensed transferee has presented a  
9           valid permit or license that allows the unlicensed  
10          transferee to possess, acquire, or carry a firearm;

11          “(2) the permit or license was issued not more  
12          than 5 years before the date on which the permit or  
13          license is presented under paragraph (1) by a law  
14          enforcement agency in the State in which the trans-  
15          fer is to take place;

16          “(3) the law of the State provides that the per-  
17          mit or license is to be issued only after a law en-  
18          forcement official has verified that neither the na-  
19          tional instant criminal background check system nor  
20          other information indicates that possession of a fire-  
21          arm by the unlicensed transferee would be in viola-  
22          tion of Federal, State, or local law; and

23          “(4) if the permit or license does not include a  
24          photograph of the unlicensed transferee, the unli-  
25          censed transferor has examined a valid identification

1 document (as defined in section 1028(d)) of the unli-  
2 censed transferee containing a photograph of the un-  
3 licensed transferee.

4 “(g) EXCEPTIONS.—Unless prohibited by any other  
5 provision of law, subsections (b) and (c) shall not apply  
6 to any transfer of a firearm between an unlicensed trans-  
7 feror and unlicensed transferee, if—

8 “(1) the transfer is a bona fide gift between im-  
9 mediate family members, including spouses, parents,  
10 children, siblings, grandparents, and grandchildren;

11 “(2) the transfer occurs by operation of law, or  
12 because of the death of another person for whom the  
13 unlicensed transferor is an executor or administrator  
14 of an estate or a trustee of a trust created in a will;

15 “(3) the transfer is temporary and occurs while  
16 in the home of the unlicensed transferee, if—

17 “(A) the unlicensed transferee is not other-  
18 wise prohibited from possessing firearms; and

19 “(B) the unlicensed transferee believes  
20 that possession of the firearm is necessary to  
21 prevent imminent death or great bodily harm to  
22 the unlicensed transferee;

23 “(4) the transfer is approved by the Attorney  
24 General under section 5812 of the Internal Revenue  
25 Code of 1986; or

1           “(5) upon application of the unlicensed trans-  
2           feror, the Attorney General determined that compli-  
3           ance with subsection (b) is impracticable because—

4                   “(A) the ratio of the number of law en-  
5                   forcement officers of the State in which the  
6                   transfer is to occur to the number of square  
7                   miles of land area of the State does not exceed  
8                   0.0025;

9                   “(B) the location at which the transfer is  
10                  to occur is extremely remote in relation to the  
11                  chief law enforcement officer (as defined in sec-  
12                  tion 922(s)(8)); and

13                  “(C) there is an absence of telecommuni-  
14                  cations facilities in the geographical area in  
15                  which the unlicensed transferor is located; or

16           “(6) the transfer is a temporary transfer of  
17           possession without transfer of title that takes  
18           place—

19                   “(A) at a shooting range located in or on  
20                   premises owned or occupied by a duly incor-  
21                   porated organization organized for conservation  
22                   purposes or to foster proficiency in firearms;

23                   “(B) at a target firearm shooting competi-  
24                   tion under the auspices of or approved by a  
25                   State agency or nonprofit organization; or

1           “(C) while hunting, fishing, or trapping,  
2           if—

3                   “(i) the activity is legal in all places  
4                   where the unlicensed transferee possesses  
5                   the firearm; and

6                   “(ii) the unlicensed transferee holds  
7                   any required license or permit.

8           “(h) PROCESSING FEES.—A licensed dealer or law  
9 enforcement agency that processes the transfer of a fire-  
10 arm under this section may assess and collect a fee, in  
11 an amount not to exceed \$15, with respect to each firearm  
12 transfer processed.

13           “(i) RECORDS.—Nothing in subsection (e)(7) shall be  
14 construed to authorize the Attorney General to inspect  
15 records described in such subsection or to require that the  
16 records be transferred to a facility owned, managed, or  
17 controlled by the United States.”.

18           (b) PENALTIES.—Section 924(a)(5) of title 18,  
19 United States Code, is amended by inserting “or section  
20 932” after “section 922”.

21           (c) CONFORMING AMENDMENT.—The table of sec-  
22 tions for chapter 44 of title 18, United States Code, is  
23 amended by adding at the end the following:

“932. Background checks for firearm transfers by unlicensed persons.”.

1 **SEC. 203. EFFECTIVE DATE.**

2       The amendments made by this Act shall take effect

3 180 days after the date of enactment of this Act.

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