

107TH CONGRESS  
1ST SESSION

# S. 767

To extend Brady background checks to gun shows, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 24, 2001

Mr. REED (for himself, Mr. CORZINE, Mr. KENNEDY, Mrs. CLINTON, Mr. DURBIN, Mrs. FEINSTEIN, Mr. LEVIN, Mr. TORRICELLI, Mr. KERRY, Mr. CHAFEE, Mrs. BOXER, Mr. SCHUMER, Ms. MIKULSKI, Mr. WELLSTONE, Mr. GRAHAM, Mr. INOUE, Mr. CARPER, Mr. WYDEN, Mr. SARBANES, Mr. AKAKA, and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To extend Brady background checks to gun shows, and for other purposes.

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 “Gun Show Background  
5       Check Act of 2001”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) more than 4,400 traditional gun shows are  
9       held annually across the United States, attracting

1 thousands of attendees per show and hundreds of  
2 Federal firearms licensees and nonlicensed firearms  
3 sellers;

4 (2) traditional gun shows, as well as flea mar-  
5 kets and other organized events, at which a large  
6 number of firearms are offered for sale by Federal  
7 firearms licensees and nonlicensed firearms sellers,  
8 form a significant part of the national firearms mar-  
9 ket;

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

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

20 (5) gun shows, flea markets, and other orga-  
21 nized events at which firearms are exhibited or of-  
22 fered for sale or exchange, provide a convenient and  
23 centralized commercial location at which firearms  
24 may be bought and sold anonymously, often without

1 background checks and without records that enable  
2 gun tracing;

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

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

14 (8) gun violence is a pervasive, national prob-  
15 lem that is exacerbated by the availability of guns at  
16 gun shows, flea markets, and other organized events;

17 (9) firearms associated with gun shows have  
18 been transferred illegally to residents of another  
19 State by Federal firearms licensees and nonlicensed  
20 firearms sellers, and have been involved in subse-  
21 quent crimes including drug offenses, crimes of vio-  
22 lence, property crimes, and illegal possession of fire-  
23 arms by felons and other prohibited persons; and

24 (10) Congress has the power, under the inter-  
25 state commerce clause and other provisions of the

1 Constitution of the United States, to ensure, by en-  
 2 actment of this Act, that criminals and other prohib-  
 3 ited persons do not obtain firearms at gun shows,  
 4 flea markets, and other organized events.

5 **SEC. 3. EXTENSION OF BRADY BACKGROUND CHECKS TO**  
 6 **GUN SHOWS.**

7 (a) DEFINITIONS.—Section 921(a) of title 18, United  
 8 States Code, is amended by adding at the end the fol-  
 9 lowing:

10 “(35) GUN SHOW.—The term ‘gun show’ means any  
 11 event—

12 “(A) at which 50 or more firearms are offered  
 13 or exhibited for sale, transfer, or exchange, if 1 or  
 14 more of the firearms has been shipped or trans-  
 15 ported in, or otherwise affects, interstate or foreign  
 16 commerce; and

17 “(B) at which—

18 “(i) not less than 20 percent of the exhibi-  
 19 tors are firearm exhibitors;

20 “(ii) there are not less than 10 firearm ex-  
 21 hibitors; or

22 “(iii) 50 or more firearms are offered for  
 23 sale, transfer, or exchange.

1       “(36) GUN SHOW PROMOTER.—The term ‘gun show  
2 promoter’ means any person who organizes, plans, pro-  
3 motes, or operates a gun show.

4       “(37) GUN SHOW VENDOR.—The term ‘gun show  
5 vendor’ means any person who exhibits, sells, offers for  
6 sale, transfers, or exchanges 1 or more firearms at a gun  
7 show, regardless of whether or not the person arranges  
8 with the gun show promoter for a fixed location from  
9 which to exhibit, sell, offer for sale, transfer, or exchange  
10 1 or more firearms.”

11       (b) REGULATION OF FIREARMS TRANSFERS AT GUN  
12 SHOWS.—

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

16       **“§ 931. Regulation of firearms transfers at gun shows**

17       “(a) REGISTRATION OF GUN SHOW PROMOTERS.—  
18 It shall be unlawful for any person to organize, plan, pro-  
19 mote, or operate a gun show unless that person—

20           “(1) registers with the Secretary in accordance  
21 with regulations promulgated by the Secretary; and

22           “(2) pays a registration fee, in an amount de-  
23 termined by the Secretary.

1       “(b) RESPONSIBILITIES OF GUN SHOW PRO-  
 2 MOTERS.—It shall be unlawful for any person to organize,  
 3 plan, promote, or operate a gun show unless that person—

4           “(1) before commencement of the gun show,  
 5 verifies the identity of each gun show vendor partici-  
 6 pating in the gun show by examining a valid identi-  
 7 fication document (as defined in section 1028(d)(1))  
 8 of the vendor containing a photograph of the vendor;

9           “(2) before commencement of the gun show, re-  
 10 quires each gun show vendor to sign—

11           “(A) a ledger with identifying information  
 12 concerning the vendor; and

13           “(B) a notice advising the vendor of the  
 14 obligations of the vendor under this chapter;  
 15 and

16           “(3) notifies each person who attends the gun  
 17 show of the requirements of this chapter, in accord-  
 18 ance with such regulations as the Secretary shall  
 19 prescribe; and

20           “(4) maintains a copy of the records described  
 21 in paragraphs (1) and (2) at the permanent place of  
 22 business of the gun show promoter for such period  
 23 of time and in such form as the Secretary shall re-  
 24 quire by regulation.

1       “(c) RESPONSIBILITIES OF TRANSFERORS OTHER  
2 THAN LICENSEES.—

3               “(1) IN GENERAL.—If any part of a firearm  
4 transaction takes place at a gun show, it shall be  
5 unlawful for any person who is not licensed under  
6 this chapter to transfer a firearm to another person  
7 who is not licensed under this chapter, unless the  
8 firearm is transferred through a licensed importer,  
9 licensed manufacturer, or licensed dealer in accord-  
10 ance with subsection (e).

11               “(2) CRIMINAL BACKGROUND CHECKS.—A per-  
12 son who is subject to the requirement of paragraph  
13 (1)—

14                       “(A) shall not transfer the firearm to the  
15 transferee until the licensed importer, licensed  
16 manufacturer, or licensed dealer through which  
17 the transfer is made under subsection (e)  
18 makes the notification described in subsection  
19 (e)(3)(A); and

20                       “(B) notwithstanding subparagraph (A),  
21 shall not transfer the firearm to the transferee  
22 if the licensed importer, licensed manufacturer,  
23 or licensed dealer through which the transfer is  
24 made under subsection (e) makes the notifica-  
25 tion described in subsection (e)(3)(B).

1           “(3) ABSENCE OF RECORDKEEPING REQUIRE-  
 2           MENTS.—Nothing in this section shall permit or au-  
 3           thorize the Secretary to impose recordkeeping re-  
 4           quirements on any nonlicensed vendor.

5           “(d) RESPONSIBILITIES OF TRANSFEREES OTHER  
 6           THAN LICENSEES.—

7           “(1) IN GENERAL.—If any part of a firearm  
 8           transaction takes place at a gun show, it shall be  
 9           unlawful for any person who is not licensed under  
 10          this chapter to receive a firearm from another per-  
 11          son who is not licensed under this chapter, unless  
 12          the firearm is transferred through a licensed im-  
 13          porter, licensed manufacturer, or licensed dealer in  
 14          accordance with subsection (e).

15          “(2) CRIMINAL BACKGROUND CHECKS.—A per-  
 16          son who is subject to the requirement of paragraph  
 17          (1)—

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

24                 “(B) notwithstanding subparagraph (A),  
 25                 shall not receive the firearm from the transferor



1 if the licensed importer, licensed manufacturer,  
2 or licensed dealer through which the transfer is  
3 made under subsection (e) makes the notifica-  
4 tion described in subsection (e)(3)(B).

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

11 “(1) enter such information about the firearm  
12 as the Secretary may require by regulation into a  
13 separate bound record;

14 “(2) record the transfer on a form specified by  
15 the Secretary;

16 “(3) comply with section 922(t) as if transfer-  
17 ring the firearm from the inventory of the licensed  
18 importer, licensed manufacturer, or licensed dealer  
19 to the designated transferee (although a licensed im-  
20 porter, licensed manufacturer, or licensed dealer  
21 complying with this subsection shall not be required  
22 to comply again with the requirements of section  
23 922(t) in delivering the firearm to the nonlicensed  
24 transferor), and notify the nonlicensed transferor  
25 and the nonlicensed transferee—

1 “(A) of such compliance; and

2 “(B) if the transfer is subject to the re-  
3 quirements of section 922(t)(1), of any receipt  
4 by the licensed importer, licensed manufacturer,  
5 or licensed dealer of a notification from the na-  
6 tional instant criminal background check sys-  
7 tem that the transfer would violate section 922  
8 or would violate State law;

9 “(4) not later than 10 days after the date on  
10 which the transfer occurs, submit to the Secretary a  
11 report of the transfer, which report—

12 “(A) shall be on a form specified by the  
13 Secretary by regulation; and

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

18 “(5) if the licensed importer, licensed manufac-  
19 turer, or licensed dealer assists a person other than  
20 a licensee in transferring, at 1 time or during any  
21 5 consecutive business days, 2 or more pistols or re-  
22 volvers, or any combination of pistols and revolvers  
23 totaling 2 or more, to the same nonlicensed person,  
24 in addition to the reports required under paragraph

1       (4), prepare a report of the multiple transfers, which  
2       report shall be—

3               “(A) prepared on a form specified by the  
4       Secretary; and

5               “(B) not later than the close of business  
6       on the date on which the transfer occurs, for-  
7       warded to—

8               “(i) the office specified on the form  
9       described in subparagraph (A); and

10              “(ii) the appropriate State law en-  
11       forcement agency of the jurisdiction in  
12       which the transfer occurs; and

13       “(6) retain a record of the transfer as part of  
14       the permanent business records of the licensed im-  
15       porter, licensed manufacturer, or licensed dealer.

16       “(f) RECORDS OF LICENSEE TRANSFERS.—If any  
17       part of a firearm transaction takes place at a gun show,  
18       each licensed importer, licensed manufacturer, and li-  
19       censed dealer who transfers 1 or more firearms to a person  
20       who is not licensed under this chapter shall, not later than  
21       10 days after the date on which the transfer occurs, sub-  
22       mit to the Secretary a report of the transfer, which  
23       report—

24              “(1) shall be in a form specified by the Sec-  
25       retary by regulation;

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

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

6           “(g) FIREARM TRANSACTION DEFINED.—In this sec-  
7     tion, the term ‘firearm transaction’—

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

10          “(2) does not include the mere exhibition of a  
11     firearm.”.

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

15          “(7)(A) Whoever knowingly violates section 931(a)  
16     shall be fined under this title, imprisoned not more than  
17     5 years, or both.

18          “(B) Whoever knowingly violates subsection (b) or (c)  
19     of section 931, shall be—

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

22               “(ii) in the case of a second or subsequent con-  
23     viction, such person shall be fined under this title,  
24     imprisoned not more than 5 years, or both.

1 “(C) Whoever willfully violates section 931(d), shall  
2 be—

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

5 “(ii) in the case of a second or subsequent con-  
6 viction, such person shall be fined under this title,  
7 imprisoned not more than 5 years, or both.

8 “(D) Whoever knowingly violates subsection (e) or (f)  
9 of section 931 shall be fined under this title, imprisoned  
10 not more than 5 years, or both.

11 “(E) In addition to any other penalties imposed  
12 under this paragraph, the Secretary may, with respect to  
13 any person who knowingly violates any provision of section  
14 931—

15 “(i) if the person is registered pursuant to sec-  
16 tion 931(a), after notice and opportunity for a hear-  
17 ing, suspend for not more than 6 months or revoke  
18 the registration of that person under section 931(a);  
19 and

20 “(ii) impose a civil fine in an amount equal to  
21 not more than \$10,000.”.

22 (3) TECHNICAL AND CONFORMING AMEND-  
23 MENTS.—Chapter 44 of title 18, United States  
24 Code, is amended—

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

“931. Regulation of firearms transfers at gun shows.”;

3 and

4 (B) in the first sentence of section 923(j),  
 5 by striking “a gun show or event” and inserting  
 6 “an event”; and

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

9 “(E) Notwithstanding subparagraph (B), the Sec-  
 10 retary may enter during business hours the place of busi-  
 11 ness of any gun show promoter and any place where a  
 12 gun show is held for the purposes of examining the records  
 13 required by sections 923 and 931 and the inventory of  
 14 licensees conducting business at the gun show. Such entry  
 15 and examination shall be conducted for the purposes of  
 16 determining compliance with this chapter by gun show  
 17 promoters and licensees conducting business at the gun  
 18 show and shall not require a showing of reasonable cause  
 19 or a warrant.”.

20 (d) INCREASED PENALTIES FOR SERIOUS RECORD-  
 21 KEEPING VIOLATIONS BY LICENSEES.—Section 924(a)(3)  
 22 of title 18, United States Code, is amended to read as  
 23 follows:

24 “(3)(A) Except as provided in subparagraph (B), any  
 25 licensed dealer, licensed importer, licensed manufacturer,

1 or licensed collector who knowingly makes any false state-  
 2 ment or representation with respect to the information re-  
 3 quired by this chapter to be kept in the records of a person  
 4 licensed under this chapter, or violates section 922(m)  
 5 shall be fined under this title, imprisoned not more than  
 6 1 year, or both.

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

9 “(i) under paragraph (1) or (3) of section  
 10 922(b), such person shall be fined under this title,  
 11 imprisoned not more than 5 years, or both; or

12 “(ii) under subsection (a)(6) or (d) of section  
 13 922, such person shall be fined under this title, im-  
 14 prisoned not more than 10 years, or both.”.

15 (e) INCREASED PENALTIES FOR VIOLATIONS OF  
 16 CRIMINAL BACKGROUND CHECK REQUIREMENTS.—

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

19 (A) in paragraph (5), by striking “sub-  
 20 section (s) or (t) of section 922” and inserting  
 21 “section 922(s)”; and

22 (B) by adding at the end the following:

23 “(8) Whoever knowingly violates section 922(t) shall  
 24 be fined under this title, imprisoned not more than 5  
 25 years, or both.”.

1           (2) ELIMINATION OF CERTAIN ELEMENTS OF  
 2           OFFENSE.—Section 922(t)(5) of title 18, United  
 3           States Code, is amended by striking “and, at the  
 4           time” and all that follows through “State law”.

5           (f) GUN OWNER PRIVACY AND PREVENTION OF  
 6           FRAUD AND ABUSE OF SYSTEM INFORMATION.—Section  
 7           922(t)(2)(C) of title 18, United States Code, is amended  
 8           by inserting before the period at the end the following:  
 9           “, as soon as possible, consistent with the responsibility  
 10          of the Attorney General under section 103(h) of the Brady  
 11          Handgun Violence Prevention Act to ensure the privacy  
 12          and security of the system and to prevent system fraud  
 13          and abuse, but in no event later than 90 days after the  
 14          date on which the licensee first contacts the system with  
 15          respect to the transfer”.

16          (g) EFFECTIVE DATE.—This Act and the amend-  
 17          ments made by this Act shall take effect 180 days after  
 18          the date of enactment of this Act.

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