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H. R. 1025

IN THE SENATE OF THE UNITED STATES

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Read the first time

AN ACT

To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

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 “Brady Handgun Vio-
5 lence Prevention Act”.

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

5 (a) INTERIM PROVISION.—

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

9 “(s)(1) Beginning on the date that is 90 days after
10 the date of enactment of this subsection and ending on
11 the day before the date that is 60 months after such date
12 of enactment it shall be unlawful for any licensed im-
13 porter, licensed manufacturer, or licensed dealer to sell,
14 deliver, or transfer a handgun to an individual who is not
15 licensed under section 923, unless—

16 “(A) after the most recent proposal of such
17 transfer by the transferee—

18 “(i) the transferor has—

19 “(I) received from the transferee a
20 statement of the transferee containing the
21 information described in paragraph (3);

22 “(II) verified the identity of the trans-
23 feree by examining the identification docu-
24 ment presented;

25 “(III) within 1 day after the trans-
26 feree furnishes the statement, provided no-

1 tice of the contents of the statement to the
2 chief law enforcement officer of the place
3 of residence of the transferee; and

4 “(IV) within 1 day after the trans-
5 feree furnishes the statement, transmitted
6 a copy of the statement to the chief law
7 enforcement officer of the place of resi-
8 dence of the transferee; and

9 “(ii)(I) 5 business days (as defined by days
10 in which State offices are open) have elapsed
11 from the date the transferor furnished notice of
12 the contents of the statement to the chief law
13 enforcement officer, during which period the
14 transferor has not received information from
15 the chief law enforcement officer that receipt or
16 possession of the handgun by the transferee
17 would be in violation of Federal, State, or local
18 law; or

19 “(II) the transferor has received notice
20 from the chief law enforcement officer that the
21 officer has no information indicating that re-
22 ceipt or possession of the handgun by the trans-
23 feree would violate Federal, State, or local law;

24 “(B) the transferee has presented to the trans-
25 feror a written statement, issued by the chief law en-

1 forcement officer of the place of residence of the
2 transferee during the 10-day period ending on the
3 date of the most recent proposal of such transfer by
4 the transferee, stating that the transferee requires
5 access to a handgun because of a threat to the life
6 of the transferee or of any member of the household
7 of the transferee;

8 “(C)(i) the transferee has presented to the
9 transferor a permit that—

10 “(I) allows the transferee to possess a
11 handgun; and

12 “(II) was issued not more than 5 years
13 earlier by the State in which the transfer is to
14 take place; and

15 “(ii) the law of the State provides that such a
16 permit is to be issued only after an authorized gov-
17 ernment official has verified that the information
18 available to such official does not indicate that pos-
19 session of a handgun by the transferee would be in
20 violation of the law;

21 “(D) the law of the State requires that, before
22 any licensed importer, licensed manufacturer, or li-
23 censed dealer completes the transfer of a handgun to
24 an individual who is not licensed under section 923,
25 an authorized government official verify that the in-

1 formation available to such official does not indicate
2 that possession of a handgun by the transferee
3 would be in violation of law;

4 “(E) the Secretary has approved the transfer
5 under section 5812 of the Internal Revenue Code of
6 1986; or

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

10 “(i) the ratio of the number of law enforce-
11 ment officers of the State in which the transfer
12 is to occur to the number of square miles of
13 land area of the State does not exceed 0.0025;

14 “(ii) the business premises of the trans-
15 feror at which the transfer is to occur are ex-
16 tremely remote in relation to the chief law en-
17 forcement officer; and

18 “(iii) there is an absence of telecommuni-
19 cations facilities in the geographical area in
20 which the business premises are located.

21 “(2) A chief law enforcement officer to whom a trans-
22 feror has provided notice pursuant to paragraph
23 (1)(A)(i)(III) shall make a reasonable effort to ascertain
24 within 5 business days whether the transferee has a crimi-
25 nal record or whether there is any other legal impediment

1 to the transferee’s receiving a handgun, including research
2 in whatever State and local recordkeeping systems are
3 available and in a national system designated by the Attor-
4 ney General.

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

7 “(A) the name, address, and date of birth ap-
8 pearing on a valid identification document (as de-
9 fined in section 1028(d)(1)) of the transferee con-
10 taining a photograph of the transferee and a de-
11 scription of the identification used;

12 “(B) a statement that transferee—

13 “(i) is not under indictment for, and has
14 not been convicted in any court of, a crime pun-
15 ishable by imprisonment for a term exceeding 1
16 year;

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

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

21 “(iv) has not been adjudicated as a mental
22 defective or been committed to a mental institu-
23 tion;

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

1 “(vi) has not been discharged from the
2 Armed Forces under dishonorable conditions;
3 and

4 “(vii) is not a person who, having been a
5 citizen of the United States, has renounced
6 such citizenship;

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

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

10 “(4) Any transferor of a handgun who, after such
11 transfer, receives a report from a chief law enforcement
12 officer containing information that receipt or possession
13 of the handgun by the transferee violates Federal, State,
14 or local law shall immediately communicate all information
15 the transferor has about the transfer and the transferee
16 to—

17 “(A) the chief law enforcement officer of the
18 place of business of the transferor; and

19 “(B) the chief law enforcement officer of the
20 place of residence of the transferee.

21 “(5) Any transferor who receives information, not
22 otherwise available to the public, in a report under this
23 subsection shall not disclose such information except to
24 the transferee, to law enforcement authorities, or pursuant
25 to the direction of a court of law.

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

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

11 “(i) the officer shall, within 20 business days
12 after the date the transferee made the statement on
13 the basis of which the notice was provided, destroy
14 the statement and any record containing information
15 derived from the statement;

16 “(ii) the information contained in the statement
17 shall not be conveyed to any person except a person
18 who has a need to know in order to carry out this
19 subsection; and

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

23 “(C) If a chief law enforcement officer determines
24 that an individual is ineligible to receive a handgun and
25 the individual requests the officer to provide the reasons

1 for the determination, the officer shall provide such rea-
2 sons to the individual within 20 business days after receipt
3 of the request.

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

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

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

15 “(8) For purposes of this subsection, the term ‘chief
16 law enforcement officer’ means the chief of police, the
17 sheriff, or an equivalent officer or the designee of any such
18 individual.

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

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

1 “(29) The term ‘handgun’ means—

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

5 “(B) any combination of parts from which a
6 firearm described in subparagraph (A) can be as-
7 sembled.”.

8 (b) PERMANENT PROVISION.—Section 922 of title
9 18, United States Code, as amended by subsection (a)(1)
10 of this section, is amended by adding at the end the follow-
11 ing:

12 “(t)(1) Beginning on the date that is 30 days after
13 the Attorney General notifies licencees under section 3(e)
14 of the Brady Handgun Violence Prevention Act that the
15 national instant criminal background check system is es-
16 tablished, a licensed importer, licensed manufacturer, or
17 licensed dealer shall not transfer a firearm to any other
18 person who is not such a licensee, unless—

19 “(A) before the completion of the transfer, the
20 licensee contacts the national instant criminal back-
21 ground check system established under section 3 of
22 such Act;

23 “(B)(i) the system provides the licensee with a
24 unique identification number; or

1 “(ii) 1 business day (as defined in subsection
2 (s)(8)(B)) has elapsed since the end of the business
3 day on which the licensee contacted the system, and
4 the system has not notified the licensee that the re-
5 ceipt of the handgun by such other person would vio-
6 late subsection (g) or (n) of this section or any State
7 or local law; and

8 “(C) the transferor has verified the identity of
9 the transferee by examining a valid identification
10 document (as defined in section 1028(d)(1) of this
11 title) of the transferee containing a photograph of
12 the transferee.

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

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

17 “(I) allows such other person to possess a
18 firearm; and

19 “(II) was issued not more than 5 years
20 earlier by the State in which the transfer is to
21 take place; and

22 “(ii) the law of the State provides that such a
23 permit is to be issued only after an authorized gov-
24 ernment official has verified that the information
25 available to such official does not indicate that pos-

1 session of a firearm by such other person would be
2 in violation of law;

3 “(B) the Secretary has approved the transfer
4 under section 5812 of the Internal Revenue Code of
5 1986; or

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

9 “(i) the ratio of the number of law enforce-
10 ment officers of the State in which the transfer
11 is to occur to the number of square miles of
12 land area of the State does not exceed 0.0025;

13 “(ii) the business premises of the licensee
14 at which the transfer is to occur are extremely
15 remote in relation to the chief law enforcement
16 officer (as defined in subsection (s)(8)); and

17 “(iii) there is an absence of telecommuni-
18 cations facilities in the geographical area in
19 which the business premises are located.

20 “(3) If the national instant criminal background
21 check system notifies the licensee that the information
22 available to the system does not demonstrate that the re-
23 ceipt of a firearm by such other person would violate sub-
24 section (g) or (n), and the licensee transfers a firearm to
25 such other person, the licensee shall include in the record

1 of the transfer the unique identification number provided
2 by the system with respect to the transfer.

3 “(4) In addition to the authority provided under sec-
4 tion 923(e), if the licensee knowingly transfers a firearm
5 to such other person and knowingly fails to comply with
6 paragraph (1) of this subsection with respect to the trans-
7 fer and, at the time such other person most recently pro-
8 posed the transfer, the national instant criminal back-
9 ground check system was operating and information was
10 available to the system demonstrating that receipt of a
11 firearm by such other person would violate subsection (g)
12 or (n) of this section, the Secretary may, after notice and
13 opportunity for a hearing, suspend for not more than 6
14 months or revoke any license issued to the licensee under
15 section 923, and may impose on the licensee a civil fine
16 of not more than \$5,000.

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

22 “(A) for failure to prevent the sale or transfer
23 of a handgun to a person whose receipt or posses-
24 sion of the handgun is unlawful under this section;
25 or

1 “(B) for preventing such a sale or transfer to
2 a person who may lawfully receive or possess a
3 handgun.”.

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

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

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

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

12 **SEC. 3. NATIONAL INSTANT CRIMINAL BACKGROUND**
13 **CHECK SYSTEM.**

14 (a) ESTABLISHMENT OF SYSTEM.—Not later than 60
15 months after the date of the enactment of this Act, the
16 Attorney General of the United States shall establish a
17 national instant criminal background check system that
18 any licensee may contact for information on whether re-
19 ceipt of a firearm by a prospective transferee thereof
20 would violate subsection (g) or (n) of section 922 of title
21 18, United States Code, or any State or local law.

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

24 (1) the upgrading and indexing of State crimi-
25 nal history records in the Federal criminal records

1 system maintained by the Federal Bureau of Inves-
2 tigation;

3 (2) the development of hardware and software
4 systems to link State criminal history check systems
5 into the national instant criminal background check
6 system established by the Attorney General pursuant
7 to this section; and

8 (3) the current revitalization initiatives by the
9 Federal Bureau of Investigation for technologically
10 advanced fingerprint and criminal records identifica-
11 tion.

12 (c) PROVISION OF STATE CRIMINAL RECORDS TO
13 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
14 SYSTEM.—Not later than 6 months after the date of en-
15 actment of this Act, the Attorney General shall—

16 (1) determine the type of computer hardware
17 and software that will be used to operate the na-
18 tional instant criminal background check system and
19 the means by which State criminal records systems
20 will communicate with the national system, which
21 shall be based upon the Interstate Identification
22 Index (“III”) unless the Attorney General finds that
23 the III will not provide a satisfactory basis for the
24 national instant criminal background check system;

1 (2) investigate the criminal records system of
2 each State and determine for each State a timetable
3 by which the State should be able to provide crimi-
4 nal records on an on line capacity basis to the na-
5 tional system; and

6 (3) notify each State of the determinations
7 made pursuant to paragraphs (1) and (2).

8 (d) OPERATION OF THE SYSTEM.—

9 (1) GENERAL RULE.—If a licensee contacts the
10 national instant criminal background check system
11 with respect to a firearm transfer, the system shall,
12 during the contact or by return contact without
13 delay—

14 (A) review available criminal history
15 records to determine whether receipt of a fire-
16 arm by the prospective transferee would violate
17 subsection (g) or (n) of section 922 of title 18,
18 United States Code, or any State or local law;
19 and

20 (B)(i) if the receipt would not be such a
21 violation—

22 (I) assign a unique identification
23 number to the transfer;

24 (II) provide the licensee with the iden-
25 tification number; and

1 (III) immediately destroy all records
2 of the system with respect to the contact
3 (other than the identification number and
4 the date the number was assigned) and all
5 records of the system relating to the trans-
6 feree or the transfer or derived therefrom;
7 or

8 (ii) if the receipt would be such a viola-
9 tion—

10 (I) notify the licensee that the receipt
11 would be such a violation; and

12 (II) maintain the records created by
13 the system with respect to the proposed
14 transfer.

15 (2) SPECIAL RULE.—If a licensee contacts the
16 national instant criminal background check system
17 with respect to a firearms transfer and the system
18 is unable to comply with paragraph (1) during the
19 contact or by return contact without delay, then the
20 system shall comply with paragraph (1) not later
21 than the end of the next business day.

22 (e) NOTIFICATION OF LICENSEES.—On establish-
23 ment of the system under this section, the Attorney Gen-
24 eral shall notify each licensee and the chief law enforce-
25 ment officer of each State of the existence and purpose

1 of the system and the means to be used to contact the
2 system.

3 (f) ADMINISTRATIVE PROVISIONS.—

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

15 (2) OTHER AUTHORITY.—The Attorney General
16 shall develop such computer software, design and ob-
17 tain such telecommunications and computer hard-
18 ware, and employ such personnel, as are necessary
19 to establish and operate the system in accordance
20 with this section.

21 (g) CORRECTION OF ERRONEOUS SYSTEM INFORMA-
22 TION.—If the system established under this section in-
23 forms an individual contacting the system that receipt of
24 a firearm by a prospective transferee would violate sub-
25 section (g) or (n) of section 922 of title 18, United States

1 Code, or any State or local law, the prospective transferee
2 may request the Attorney General to provide the prospec-
3 tive transferee with the reasons therefor. Upon receipt of
4 such a request, the Attorney General shall immediately
5 comply with the request. The prospective transferee may
6 submit to the Attorney General information to correct,
7 clarify, or supplement records of the system with respect
8 to the prospective transferee. After receipt of such infor-
9 mation, the Attorney General shall immediately consider
10 the information, investigate the matter further, and cor-
11 rect all erroneous Federal records relating to the prospec-
12 tive transferee and give notice of the error to any Federal
13 department or agency or any State that was the source
14 of such erroneous records.

15 (h) REGULATIONS.—After 90 days notice to the pub-
16 lic and an opportunity for hearing by interested parties,
17 the Attorney General shall prescribe regulations to ensure
18 the privacy and security of the information of the system
19 established under this section.

20 (i) PROHIBITIONS RELATING TO ESTABLISHMENT OF
21 REGISTRATION SYSTEMS WITH RESPECT TO FIRE-
22 ARMS.—No department, agency, officer, or employee of
23 the United States may—

24 (1) require that any record or portion thereof
25 maintained by the system established under this sec-

1 tion be recorded at or transferred to a facility
2 owned, managed, or controlled by the United States
3 or any State or political subdivision thereof; or

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

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

11 (1) LICENSEE.—The term “licensee” means a
12 licensed importer, licensed manufacturer, or licensed
13 dealer under section 923 of title 18, United States
14 Code.

15 (2) OTHER TERMS.—The terms “firearm”, “li-
16 censed importer”, “licensed manufacturer”, and “li-
17 censed dealer” have the meanings stated in section
18 921(a) (3), (9), (10), and (11), respectively, of title
19 18, United States Code.

20 **SEC. 4. REMEDY FOR ERRONEOUS DENIAL OF HANDGUN.**

21 (a) IN GENERAL.—Chapter 44 of title 18, United
22 States Code, is amended by inserting after section 925 the
23 following:

1 **“§ 925A. Remedy for erroneous denial of handgun**

2 “Any person who is denied a handgun pursuant to
3 section 922(s) of this title due to the provision of erro-
4 neous information relating to the person by any State or
5 political subdivision thereof, or by the national instant
6 criminal background check system established under sec-
7 tion 3(a) of the Brady Handgun Violence Prevention Act,
8 and who has exhausted the administrative remedies avail-
9 able for the correction of such erroneous information, may
10 bring an action against any official of the State or political
11 subdivision responsible for providing the erroneous infor-
12 mation, or against the United States, as the case may be,
13 for an order directing that the erroneous information be
14 corrected. In any action under this section, the court, in
15 its discretion, may allow the prevailing party a reasonable
16 attorney’s fee as part of the costs.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 for such chapter is amended by inserting after the item
19 relating to section 925 the following:

“925A. Remedy for erroneous denial of handgun.”.

20 **SEC. 5. FUNDING FOR IMPROVEMENT OF CRIMINAL**
21 **RECORDS.**

22 (a) USE OF FORMULA GRANTS.—Section 509(b) of
23 title I of the Omnibus Crime Control and Safe Streets Act
24 of 1968 (42 U.S.C. 3759(b)) is amended—

1 (1) in paragraph (2) by striking “and” after
2 the semicolon;

3 (2) in paragraph (3) by striking the period and
4 inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(4) the improvement of State record systems
8 and the sharing with the Attorney General of all of
9 the records described in paragraphs (1), (2), and (3)
10 of this subsection and the records required by the
11 Attorney General under section 3 of the Brady
12 Handgun Violence Prevention Act, for the purpose
13 of implementing such Act.”.

14 (b) ADDITIONAL FUNDING.—

15 (1) GRANTS FOR THE IMPROVEMENT OF CRIMI-
16 NAL RECORDS.—The Attorney General, through the
17 Bureau of Justice Statistics, shall, subject to appro-
18 priations and with preference to States that as of
19 the date of enactment of this Act have the lowest
20 percent currency of case dispositions in computer-
21 ized criminal history files, make a grant to each
22 State to be used—

23 (A) for the creation of a computerized
24 criminal history record system or improvement
25 of an existing system;

1 (B) to improve accessibility to the national
2 instant criminal background system; and

3 (C) upon establishment of the national sys-
4 tem, to assist the State in the transmittal of
5 criminal records to the national system.

6 (2) AUTHORIZATION OF APPROPRIATIONS.—

7 There are authorized to be appropriated for grants
8 under paragraph (1) a total of \$100,000,000 for fis-
9 cal year 1992 and all fiscal years thereafter.

Passed the House of Representatives November 10,
1993.

Attest: DONNALD K. ANDERSON,
Clerk.