

114TH CONGRESS
2D SESSION

S. 2934

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

IN THE SENATE OF THE UNITED STATES

MAY 16, 2016

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

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 2016”.

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

Sec. 1. Short title; table of contents.

**TITLE I—ENSURING THAT ALL INDIVIDUALS WHO SHOULD BE
PROHIBITED FROM BUYING A GUN ARE LISTED IN THE NA-
TIONAL 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.

Sec. 104. Clarification that Federal court information is to be made available to the National Instant Criminal Background Check System.

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

Sec. 201. Purpose.

Sec. 202. Firearms transfers.

Sec. 203. Lost and stolen reporting.

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 102(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) IMPLEMENTATION PLAN.—

1 “(1) IN GENERAL.—Within 1 year after the
2 date of the enactment of this subsection, the Attor-
3 ney General, in coordination with the States, shall
4 establish, for each State or Indian tribal govern-
5 ment, a plan to ensure maximum coordination and
6 automation of the reporting of records or making of
7 records available to the National Instant Criminal
8 Background Check System established under section
9 103 of the Brady Handgun Violence Prevention Act,
10 during a 4-year period specified in the plan.

11 “(2) BENCHMARK REQUIREMENTS.—Each such
12 plan shall include annual benchmarks, including
13 qualitative goals and quantitative measures, to en-
14 able the Attorney General to assess implementation
15 of the plan.

16 “(3) PENALTIES FOR NONCOMPLIANCE.—

17 “(A) IN GENERAL.—During the 4-year pe-
18 riod covered by such a plan, the Attorney Gen-
19 eral shall withhold the following percentage of
20 the amount that would otherwise be allocated to
21 a State under section 505 of the Omnibus
22 Crime Control and Safe Streets Act of 1968
23 (42 U.S.C. 3755) if the State does not meet the
24 benchmark established under paragraph (2) for
25 the following year in the period:

1 “(i) 10 percent, in the case of the 1st
2 year in the period.

3 “(ii) 11 percent, in the case of the
4 2nd year in the period.

5 “(iii) 13 percent, in the case of the
6 3rd year in the period.

7 “(iv) 15 percent, in the case of the
8 4th year in the period.

9 “(B) FAILURE TO ESTABLISH A PLAN.—A
10 State with respect to which a plan is not estab-
11 lished under paragraph (1) shall be treated as
12 having not met any benchmark established
13 under paragraph (2).”.

14 **SEC. 102. REQUIREMENT THAT FEDERAL AGENCIES CER-**
15 **TIFY THAT THEY HAVE SUBMITTED TO THE**
16 **NATIONAL INSTANT CRIMINAL BACKGROUND**
17 **CHECK SYSTEM ALL RECORDS IDENTIFYING**
18 **PERSONS PROHIBITED FROM PURCHASING**
19 **FIREARMS UNDER FEDERAL LAW.**

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

23 “(F) SEMIANNUAL CERTIFICATION AND
24 REPORTING.—

1 “(i) IN GENERAL.—The head of each
2 Federal department or agency shall submit
3 to the Attorney General a written certifi-
4 cation indicating whether the department
5 or agency has provided to the Attorney
6 General the pertinent information con-
7 tained in any record of any person that the
8 department or agency was in possession of
9 during the time period addressed by the
10 certification demonstrating that the person
11 falls within a category described in sub-
12 section (g) or (n) of section 922 of title 18,
13 United States Code.

14 “(ii) SUBMISSION DATES.—The head
15 of a Federal department or agency shall
16 submit a certification under clause (i)—

17 “(I) not later than July 31 of
18 each year, which shall address any
19 record the department or agency was
20 in possession of during the period be-
21 ginning on January 1 of the year and
22 ending on June 30 of the year; and

23 “(II) not later than January 31
24 of each year, which shall address any
25 record the department or agency was

1 in possession of during the period be-
2 ginning on July 1 of the previous year
3 and ending on December 31 of the
4 previous year.

5 “(iii) CONTENTS.—A certification re-
6 quired under clause (i) shall state, for the
7 applicable period—

8 “(I) the number of records of the
9 Federal department or agency dem-
10 onstrating that a person fell within
11 each of the categories described in
12 section 922(g) of title 18, United
13 States Code;

14 “(II) the number of records of
15 the Federal department or agency
16 demonstrating that a person fell with-
17 in the category described in section
18 922(n) of title 18, United States
19 Code; and

20 “(III) for each category of
21 records described in subclauses (I)
22 and (II), the total number of records
23 of the Federal department or agency
24 that have been provided to the Attor-
25 ney General.”.

1 **SEC. 103. ADJUDICATED AS A MENTAL DEFECTIVE.**

2 (a) IN GENERAL.—Section 921(a) of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(36) The term ‘adjudicated as a mental defective’
6 shall—

7 “(A) have the meaning given the term in sec-
8 tion 478.11 of title 27, Code of Federal Regulations,
9 or any successor thereto; and

10 “(B) include an order by a court, board, com-
11 mission, or other lawful authority that a person, in
12 response to mental illness, incompetency, or marked
13 subnormal intelligence, be compelled to receive serv-
14 ices—

15 “(i) including counseling, medication, or
16 testing to determine compliance with prescribed
17 medications; and

18 “(ii) not including testing for use of alco-
19 hol or for abuse of any controlled substance or
20 other drug.

21 “(37) The term ‘committed to a mental institution’
22 shall have the meaning given the term in section 478.11
23 of title 27, Code of Federal Regulations, or any successor
24 thereto.”.

25 (b) LIMITATION.—An individual who has been adju-
26 dicated as a mental defective before the date that is 180

1 days after the date of enactment of this Act may not apply
2 for relief from disability under section 101(c)(2) of the
3 NICS Improvement Amendments Act of 2007 (18 U.S.C.
4 922 note) on the basis that the individual does not meet
5 the requirements in section 921(a)(36) of title 18, United
6 States Code, as added by subsection (a).

7 (c) NICS IMPROVEMENT AMENDMENTS ACT OF
8 2007.—Section 3 of the NICS Improvement Amendments
9 Act of 2007 (18 U.S.C. 922 note) is amended by striking
10 paragraph (2) and inserting the following:

11 “(2) MENTAL HEALTH TERMS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), the terms ‘adjudicated as a
14 mental defective’ and ‘committed to a mental
15 institution’ shall have the meanings given the
16 terms in section 921(a) of title 18, United
17 States Code.

18 “(B) EXCEPTION.—For purposes of sec-
19 tions 102 and 103, the terms ‘adjudicated as a
20 mental defective’ and ‘committed to a mental
21 institution’ shall have the same meanings as on
22 the day before the date of enactment of the Fix
23 Gun Checks Act of 2016 until the end of the
24 2-year period beginning on such date of enact-
25 ment.”.

1 **SEC. 104. CLARIFICATION THAT FEDERAL COURT INFOR-**
 2 **MATION IS TO BE MADE AVAILABLE TO THE**
 3 **NATIONAL INSTANT CRIMINAL BACKGROUND**
 4 **CHECK SYSTEM.**

5 Section 103(e)(1) of the Brady Handgun Violence
 6 Protection Act (18 U.S.C. 922 note), as amended by sec-
 7 tion 102 of this Act, is amended by adding at the end
 8 the following:

9 “(G) APPLICATION TO FEDERAL
 10 COURTS.—In this paragraph—

11 “(i) the terms ‘department or agency
 12 of the United States’ and ‘Federal depart-
 13 ment or agency’ include a Federal court;
 14 and

15 “(ii) for purposes of any request, sub-
 16 mission, or notification, the Director of the
 17 Administrative Office of the United States
 18 Courts shall perform the functions of the
 19 head of the department or agency.”.

20 **TITLE II—REQUIRING A BACK-**
 21 **GROUND CHECK FOR EVERY**
 22 **FIREARM SALE**

23 **SEC. 201. PURPOSE.**

24 The purpose of this title is to extend the Brady Law
 25 background check procedures to all sales and transfers of
 26 firearms.

1 **SEC. 202. FIREARMS TRANSFERS.**

2 (a) IN GENERAL.—Section 922 of title 18, United
3 States Code, is amended—

4 (1) by striking subsection (s) and redesignating
5 subsection (t) as subsection (s);

6 (2) in subsection (s), as so redesignated—

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

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

10 “(7) In this subsection, the term ‘chief law en-
11 forcement officer’ means the chief of police, the
12 sheriff, or an equivalent officer or the designee of
13 any such individual.”; and

14 (3) by inserting after subsection (s), as so re-
15 designated, the following:

16 “(t)(1) It shall be unlawful for any person who is not
17 a licensed importer, licensed manufacturer, or licensed
18 dealer to transfer a firearm to any other person who is
19 not so licensed, unless a licensed importer, licensed manu-
20 facturer, or licensed dealer has first taken possession of
21 the firearm for the purpose of complying with subsection
22 (s). Upon taking possession of the firearm, the licensee
23 shall comply with all requirements of this chapter as if
24 the licensee were transferring the firearm from the inven-
25 tory of the licensee to the unlicensed transferee.

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

1 “(A) a transfer of a firearm by or to any law
2 enforcement agency or any law enforcement officer,
3 armed private security professional, or member of
4 the armed forces, to the extent the officer, profes-
5 sional, or member is acting within the course and
6 scope of employment and official duties;

7 “(B) a transfer that is a loan or bona fide gift
8 between spouses, between domestic partners, be-
9 tween parents and their children, between siblings,
10 or between grandparents and their grandchildren;

11 “(C) a transfer to an executor, administrator,
12 trustee, or personal representative of an estate or a
13 trust that occurs by operation of law upon the death
14 of another person;

15 “(D) a temporary transfer that is necessary to
16 prevent imminent death or great bodily harm, if the
17 possession by the transferee lasts only as long as im-
18 mediately necessary to prevent the imminent death
19 or great bodily harm;

20 “(E) a transfer that is approved by the Attor-
21 ney General under section 5812 of the Internal Rev-
22 enue Code of 1986; or

23 “(F) a temporary transfer if the transferor has
24 no reason to believe that the transferee will use or
25 intends to use the firearm in a crime or is prohibited

1 from possessing firearms under State or Federal
2 law, and the transfer takes place and the trans-
3 feree's possession of the firearm is exclusively—

4 “(i) at a shooting range or in a shooting
5 gallery or other area designated and built for
6 the purpose of target shooting;

7 “(ii) while hunting, trapping, or fishing, if
8 the hunting, trapping, or fishing is legal in all
9 places where the transferee possesses the fire-
10 arm and the transferee holds all licenses or per-
11 mits required for such hunting, trapping, or
12 fishing; or

13 “(iii) while in the presence of the trans-
14 feror.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) SECTION 922.—Section 922(y)(2) of such
17 title is amended in the matter preceding subpara-
18 graph (A), by striking “, (g)(5)(B), and
19 (s)(3)(B)(v)(II)” and inserting “and (g)(5)(B)”.

20 (2) SECTION 925A.—Section 925A of such title
21 is amended in the matter preceding paragraph (1),
22 by striking “subsection (s) or (t) of section 922”
23 and inserting “section 922(s)”.

1 (c) **EFFECTIVE DATE.**—The amendment made by
2 subsection (a)(4) shall take effect 180 days after the date
3 of the enactment of this Act.

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

5 (a) **IN GENERAL.**—Section 922 of title 18, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 “(aa) It shall be unlawful for any person who lawfully
9 possesses or owns a firearm that has been shipped or
10 transported in, or has been possessed in or affecting, inter-
11 state or foreign commerce, to fail to report the theft or
12 loss of the firearm, within 48 hours after the person dis-
13 covers the theft or loss, to the Attorney General and to
14 the appropriate local authorities.”.

15 (b) **PENALTY.**—Section 924(a)(1)(B) of such title is
16 amended to read as follows:

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

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