

103^D CONGRESS
1ST SESSION

H. R. 3125

To provide for the identification of felons and persons adjudicated mentally incompetent on driver's licenses and certain identification documents through a magnetic strip containing coded information and through the establishment of a national system for the identification of such persons, and to impose criminal penalties on any federally licensed firearms dealer who sells a handgun to a person without using a device to read the magnetic strip on the driver's license or identification document of the person.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 1993

Mr. BARTLETT of Maryland (for himself, Mr. CRANE, Mr. GOODLATTE, and Mr. SMITH of Michigan) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the identification of felons and persons adjudicated mentally incompetent on driver's licenses and certain identification documents through a magnetic strip containing coded information and through the establishment of a national system for the identification of such persons, and to impose criminal penalties on any federally licensed firearms dealer who sells a handgun to a person without using a device to read the magnetic strip on the driver's license or identification document of the person.

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 “Felon Identification
5 and Police Safety Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) State laws requiring a waiting period before
9 the purchase of a firearm have endangered the lives
10 of law-abiding Americans by preventing them from
11 protecting themselves, as demonstrated by the fol-
12 lowing examples:

13 (A) In 1991, Bonnie Elmasri of Wisconsin
14 tried to get a handgun to protect herself from
15 her estranged husband, but he returned home
16 and killed her and her 2 children before the 48-
17 hour waiting period required by State law had
18 expired.

19 (B) In 1990, Catherine Latta of North
20 Carolina tried to buy a firearm but was told by
21 police that it would take her 2 to 4 weeks to
22 get the necessary permit. After telling the clerk
23 she “would be dead by then,” she illegally
24 bought a handgun on the street. 5 hours later
25 she was attacked again by the man who had al-

1 ready robbed, assaulted, and raped her. She
2 used her handgun to protect herself by shooting
3 and killing him. Had she not had a handgun,
4 the outcome would have been much different.

5 (C) Residents of Los Angeles were forced
6 to wait 15 days during the 1991 riots before
7 they could legally buy a firearm for protection,
8 in spite of the fact that police were admitting
9 that they could not protect the people.

10 (2) A point-of-sale instant background check
11 can easily lead to a gun owner registration system.
12 Commenting on the Virginia State instant check sys-
13 tem, the Congressional Office of Technology Assess-
14 ment said “The Virginia transaction log does not in-
15 clude the names of firearm purchasers, but the po-
16 tential exists regardless of legal prohibitions.”.

17 (3) Laws requiring a waiting period before the
18 purchase of a firearm have not prevented crime
19 rates in various States that have enacted such laws
20 from increasing far above the national average in-
21 crease in crime rates.

22 (4) Police cannot protect, and are not legally
23 responsible for protecting, individual citizens, as evi-
24 denced by the following:

1 (A) The courts have consistently ruled that
2 the police do not have an obligation to protect
3 individuals, only the public in general. In War-
4 ren v. District of Columbia Metropolitan Police
5 Department (D.C. App. 444 A. 2d 1 (1981)),
6 the court stated “courts have without exception
7 concluded that when a municipality or other
8 governmental entity undertakes to furnish po-
9 lice services, it assumes a duty only to the pub-
10 lic at large and not to individual members of
11 the community”.

12 (B) Former Florida Attorney General Jim
13 Smith told Florida legislators that police re-
14 sponded to only 200,000 of 700,000 calls for
15 help to Dade County authorities.

16 (C) The Department of Justice found that,
17 in 1989, there were 168,881 crimes of violence
18 which were not responded to by police within 1
19 hour.

20 (D) Currently, there are about 150,000 po-
21 lice officers on duty to protect a population of
22 more than 250,000,000 Americans.

1 **SEC. 3. SYSTEM FOR IDENTIFYING FELONS AND PERSONS**
2 **ADJUDICATED MENTALLY INCOMPETENT.**

3 (a) IN GENERAL.—The laws and procedures of a
4 State are of the type described in this subsection if the
5 laws and procedures, in substance, provide the following:

6 (1) RECORDS CHECK REQUIRED BEFORE ISSU-
7 ANCE OF DRIVER'S LICENSE AND IDENTIFICATION
8 DOCUMENTS; USE OF MAGNETIC STRIPS TO IDEN-
9 TIFY PROHIBITED PERSONS.—Before the State
10 transportation agency issues, reissues, or reinstates
11 a license, the agency shall—

12 (A) conduct a record check to determine
13 whether the applicant therefor is a prohibited
14 person by examining the State list referred to
15 in paragraph (4) of this subsection and the na-
16 tional list referred to in subsection (b)(1); and

17 (B) affix to the license of the person a
18 magnetic strip on which is encoded information
19 that—

20 (i) identifies the licensee as a prohib-
21 ited person or as a nonprohibited person;
22 and

23 (ii) may be discerned only through the
24 use of an electronic device that—

25 (I) is read only;

1 (II) does not have storage or
2 communication capabilities; and

3 (III) signals the user of the de-
4 vice with—

5 (aa) a green light if the de-
6 vice reads a magnetic strip that
7 does not identify the person as a
8 prohibited person; and

9 (bb) a red light if the device
10 reads a magnetic strip that iden-
11 tifies the person as a prohibited
12 person.

13 (2) EFFECTS OF FELONY CONVICTION OR AD-
14 JUDICATION OF MENTAL INCOMPETENCY.—

15 (A) SEIZURE AND VOIDING OF DRIVER'S
16 LICENSE.—If a State court convicts a person of
17 a crime punishable by imprisonment for a term
18 exceeding 1 year or adjudicates a person as
19 mentally incompetent, the court shall seize any
20 license issued to the person by the State trans-
21 portation agency, and any such license shall be
22 void.

23 (B) ISSUANCE OF NEW LICENSE UPON RE-
24 QUEST.—Upon request of a person referred to
25 in subparagraph (A), the State transportation

1 agency shall issue to the person (if otherwise el-
2 igible therefor) another such license affixed to
3 which is a magnetic strip identifying the person
4 as a prohibited person.

5 (3) FUNDING OF RECORDS CHECKS.—

6 (A) INCREASE IN FINES IMPOSED UPON
7 CONVICTED FELONS.—Any person convicted in
8 the State of a crime punishable by imprison-
9 ment for a term exceeding 1 year shall, in addi-
10 tion to any sentence imposed under any other
11 provision of State law, be fined an amount suf-
12 ficient to cover the expenses of criminal records
13 checks conducted pursuant to paragraph
14 (1)(A), taking all such convictions into account
15 on an annual basis.

16 (B) SURCHARGE IMPOSED ON PROHIBITED
17 PERSONS TO OBTAIN A DRIVER'S LICENSE.—In
18 addition to any fee required to be paid by a per-
19 son to obtain a license, the State transportation
20 agency shall require a prohibited person to pay
21 surcharge in an amount determined by the
22 State to be sufficient to cover the expenses of
23 criminal records checks conducted by the agen-
24 cy pursuant to paragraph (1)(A), taking into

1 account fines imposed under subparagraph (B)
2 of this paragraph.

3 (4) REQUIREMENT TO MAINTAIN AND UPDATE
4 COMPUTERIZED LIST OF PROHIBITED PERSONS.—
5 The State shall create and maintain a computerized
6 list of all persons who are prohibited persons by rea-
7 son of a conviction or adjudication in the State, and,
8 within 2 years after the date of the enactment of
9 this Act, shall achieve and maintain at least 80 per-
10 cent currency of case dispositions in the computer-
11 ized list for all cases in which there has been an
12 entry of activity within the then immediately preced-
13 ing 5 years.

14 (b) DUTIES OF THE ATTORNEY GENERAL.—The At-
15 torney General of the United States shall—

16 (1) create a national, computerized list of pro-
17 hibited persons;

18 (2) incorporate State criminal history records
19 into the Federal criminal records system maintained
20 by the Federal Bureau of Investigation;

21 (3) develop hardware and software systems to
22 link State lists referred to in subsection (a)(4) with
23 the national list referred to in paragraph (1) of this
24 subsection; and

1 (4) provide any responsible State agency with
2 access to the national list, upon request.

3 (c) PROCEDURES FOR CORRECTING ERRONEOUS
4 RECORDS.—

5 (1) REQUEST FOR INFORMATION.—Any person
6 identified as a prohibited person in records main-
7 tained under this section may request the Attorney
8 General of the United States to notify the person of
9 the reasons therefor.

10 (2) COMPLIANCE WITH REQUEST.—Within 5
11 days after receipt of a request under paragraph (1),
12 the Attorney General shall comply with the request.

13 (3) SUBMISSION OF ADDITIONAL INFORMA-
14 TION.—Any person described in paragraph (1) may
15 submit to the Attorney General information to cor-
16 rect, clarify, or supplement records maintained
17 under this section with respect to the person.

18 (4) CONSIDERATION AND USE OF ADDITIONAL
19 INFORMATION.—Within 5 days after receipt of such
20 information, the Attorney General shall consider the
21 information, investigate the matter further, correct
22 any and all erroneous Federal records relating to
23 such person, and notify any Federal department or
24 agency or any State that was the source of the erro-
25 neous records of the errors.

1 (d) JUDICIAL REVIEW.—Any person erroneously
2 identified as a prohibited person in records maintained
3 pursuant to this section may bring an action in any United
4 States district court against the United States, or any
5 State or political subdivision thereof which is the source
6 of the erroneous information, for damages (including con-
7 sequential damages), injunctive relief, and such other re-
8 lief as the court deems appropriate. If the person prevails
9 in the action, the court shall allow the person a reasonable
10 attorney’s fee as part of the costs.

11 (e) DEFINITIONS.—As used in this section:

12 (1) LICENSE.—The term “license” means a li-
13 cense or permit to operate a motor vehicle on the
14 roads and highways of the State, and any identifica-
15 tion document issued by a State transportation
16 agency solely for purposes of identification.

17 (2) PROHIBITED PERSON.—The term “prohib-
18 ited person” means a person who—

19 (A) has been convicted of a crime punish-
20 able under Federal or State law by imprison-
21 ment for a term exceeding 1 year; or

22 (B)(i) has been adjudicated mentally in-
23 competent; and

24 (ii)(I) has not been restored to capacity by
25 court order; or

1 (II) has been so restored to capacity for
2 less than 5 years.

3 (3) STATE TRANSPORTATION AGENCY.—The
4 term “State transportation agency” means the State
5 agency responsible for issuing a license, permit, or
6 identification document described in paragraph (1).

7 (f) JUSTICE ASSISTANCE FUNDS WITHHELD FROM
8 CERTAIN STATES UNLESS CERTAIN LAWS AND PROCE-
9 DURES ARE IN EFFECT.—2 years after the date of the
10 enactment of this Act, the Director of the Bureau of Jus-
11 tice Assistance shall reduce by 25 percent the annual allo-
12 cation to a State for a fiscal year under title I of the Om-
13 nibus Crime Control and Safe Streets Act of 1968 if the
14 State has in effect, as of such date of enactment, a waiting
15 period, or a system for identifying felons, before the pur-
16 chase of a handgun, and the State does not, by the end
17 of such 2-year period, have in effect all of the laws and
18 procedures of the type described in subsection (a). If, at
19 any time after such 2-year period, any State has in effect
20 a waiting period before the purchase of a handgun, or a
21 system for identifying felons or persons adjudicated men-
22 tally incompetent other than as provided pursuant to laws
23 and procedures of the type described in subsection (a), the
24 Director of the Bureau of Justice Assistance shall reduce
25 by 25 percent the annual allocation to the State for a fis-

1 cal year under title I of the Omnibus Crime Control and
2 Safe Streets Act of 1968.

3 **SEC. 4. LICENSED FIREARMS DEALERS REQUIRED TO**
4 **CHECK MAGNETIC STRIP ON DRIVER'S LI-**
5 **CENSE OF ANY PERSON ATTEMPTING TO**
6 **PURCHASE A HANDGUN.**

7 (a) PROHIBITION.—Section 922 of title 18, United
8 States Code, is amended by adding at the end the follow-
9 ing:

10 “(s)(1) It shall be unlawful for any licensed dealer
11 knowingly to—

12 “(A) sell a handgun to any person not licensed
13 under section 923, unless the licensed dealer has
14 used an electronic device described in section
15 3(a)(1)(B)(ii) of Felon Identification and Police
16 Safety Act of 1993 to read the magnetic strip af-
17 fixed to an identification document issued to the per-
18 son by the transportation agency of the State in
19 which the premises of the licensed dealer is located;
20 or

21 “(B) fail to notify local law enforcement au-
22 thorities, within 72 hours, of any person attempting
23 to purchase a handgun who is identified as a prohib-
24 ited person through the use of such a device.

25 “(2) As used in paragraph (1):

1 “(A) The term ‘handgun’ means a firearm
2 which has a short stock and is designed to be
3 held and fired by the use of a single hand.

4 “(B) The term ‘identification document’
5 means a license or permit to operate a motor
6 vehicle, and any identification document issued
7 solely for purposes of identification.

8 “(C) The term ‘transportation agency’
9 means the agency responsible for issuing com-
10 mercial or noncommercial identification docu-
11 ments.

12 “(3) Paragraph (1) shall not apply in any State that
13 does not have in effect the laws and procedures required
14 by section 3(a) of the Felon Identification and Police Safe-
15 ty Act of 1993.”.

16 (b) PENALTY.—Section 924(a) of such title is amend-
17 ed—

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

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

21 “(5) Any licensed dealer who violates section 922(s)
22 shall be imprisoned not more than 1 year, fined not more
23 than \$1,000, or both.”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section apply to conduct engaged in after the 2-year

1 period that begins with the date of the enactment of this
2 Act.

○