To require criminal background checks on all firearms transactions occurring at events that provide a venue for the sale, offer for sale, transfer, or exchange of firearms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

October 31, 2003

Mr. McCain (for himself, Mr. Reed, Mr. DeWine, Mr. Lieberman, Mr. Chafee, Mr. Lautenberg, and Mr. Schumer) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require criminal background checks on all firearms transactions occurring at events that provide a venue for the sale, offer for sale, transfer, or exchange of firearms, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Gun Show Loophole Closing Act of 2003”.

4 SEC. 2. DEFINITIONS.

5 Section 921(a) of title 18, United States Code, is amended by adding at the end the following:
“(36) SPECIAL FIREARMS EVENT.—The term ‘special firearms event’—

“(A) means any event at which 75 or more firearms are offered or exhibited for sale, exchange, or transfer, if 1 or more of the firearms has been shipped or transported in, or otherwise affects, interstate or foreign commerce;

“(B) does not include an offer or exhibit of firearms for sale, exchange, or transfer by an individual from the personal collection of that individual, at the private residence of that individual, if the individual is not required to be licensed under section 923 or 932; and

“(C) does not include an offer or exhibit of firearms for sale, exchange, or transfer at events conducted and attended by permanent or annual dues paying members, and their immediate family, of private, not-for-profit organizations whose primary purpose is owning and maintaining real property for the purpose of hunting activities.

“(37) SPECIAL FIREARMS EVENT LICENSEE.—The term ‘special firearms event licensee’ means any person who has obtained and holds a valid license in compliance with section 932(d) and who is author-
ized to contact the national instant criminal background check system on behalf of another individual, who is not licensed under this chapter, for the purpose of conducting a background check for a potential firearms transfer at a special firearms event in accordance with section 932(c).

“(38) SPECIAL FIREARMS EVENT VENDOR.—
The term ‘special firearms event vendor’ means any person who is not required to be licensed under section 923 and who exhibits, sells, offers for sale, transfers, or exchanges 1 or more firearms at a special firearms event, regardless of whether or not the person arranges with the special firearms event promoter for a fixed location from which to exhibit, sell, offer for sale, transfer, or exchange 1 or more firearms.”.

SEC. 3. REGULATION OF FIREARMS TRANSFERS AT SPECIAL FIREARMS EVENTS.

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

“§932. Regulation of firearms transfers at special firearms events

“(a) SPECIAL FIREARMS EVENTS OPERATORS.—
“(1) Notification to Attorney General of Special Firearms Event Operators.—

“(A) In General.—It shall be unlawful for any person to operate a special firearms event unless that person notifies the Attorney General in accordance with regulations promulgated by the Attorney General.

“(B) Fees.—The Attorney General shall be prohibited from imposing or collecting any fee from special firearms event operators in connection with the notification requirement in subparagraph (A).

“(2) Responsibilities of Special Firearms Events Operators.—It shall be unlawful for a special firearms events operator to organize, plan, promote, or operate a special firearms event unless that operator—

“(A) not later than 30 days before the commencement of the special firearms event, notifies the Attorney General, in writing, of the date, time, duration, and location of the special firearms event, and the special firearms event vendors planning to participate;

“(B) before the commencement of the special firearms event, or in the case of a vendor
who arrives after the commencement of the event, upon the arrival of the vendor, verifies the identity of each special firearms event vendor participating in the special firearms event by examining a valid identification document (as defined in section 1028(d)(2)) of the vendor containing a photograph of the vendor;

“(C) before the commencement of the special firearms event, or in the case of a vendor who arrives after the commencement of the event, upon the arrival of the vendor, requires each special firearms event vendor to sign—

“(i) a ledger with identifying information concerning the vendor; and

“(ii) a notice advising the vendor of the obligations of the vendor under this chapter;

“(D) notifies each person who attends the special firearms event of the requirements of this chapter, in accordance with such regulations as the Attorney General shall prescribe;

“(E) not later than 5 days after the last day of the special firearms event, submits to the Attorney General a copy of the ledger and notice described in subparagraph (C)(i); and
"(F) maintains a copy of the records described in subparagraphs (B) and (C) at the permanent place of business of the operator for such period of time and in such form as the Attorney General shall require by regulation.

"(b) Responsibilities of Transferors Other Than Licensees.—

"(1) In general.—If any part of a firearm transaction takes place at a special firearms event, or on the curtilage of the event, it shall be unlawful for any person who is not licensed under this chapter to transfer a firearm to another person who is not licensed under this chapter, unless the firearm is transferred through a licensed importer, licensed manufacturer, licensed dealer, or a special firearms event licensee in accordance with subsection (c).

"(2) Criminal background checks.—A person who is subject to the requirement of paragraph (1) shall not—

"(A) transfer the firearm to the transferee until the licensed importer, licensed manufacturer, licensed dealer, or a special firearms event licensee through which the transfer is made makes the notification described in subsection (c)(2)(A); or
“(B) transfer the firearm to the transferee if the person has been notified under subsection (c)(2)(B) that the transfer would violate section 922 or State law.

“(3) Absence of Recordkeeping Requirements.—Nothing in this section shall permit or authorize the Attorney General to impose recordkeeping requirements on any nonlicensed special firearms event vendor.

“(c) Responsibilities of Licensees.—A licensed importer, licensed manufacturer, licensed dealer, or special firearms event licensee who agrees to assist a person who is not licensed under this chapter in carrying out the responsibilities of that person under subsection (b) with respect to the transfer of a firearm shall—

“(1) except as provided in paragraph (2), comply with section 922(t) as if transferring the firearm from the inventory of the licensed importer, licensed manufacturer, or licensed dealer to the designated transferee (although a licensed importer, licensed manufacturer, or licensed dealer complying with this subsection shall not be required to comply again with the requirements of section 922(t) in delivering the firearm to the nonlicensed transferor);
“(2) not later than 3 business days (meaning days on which State offices are open) after the date of the agreement to purchase, or if the event is held in a State that has been certified by the Attorney General under section 4 of the Gun Show Loophole Closing Act of 2003, not later than 24 hours after such date (or 3 business days after such date if additional information is required in order to verify disqualifying information from a State that has not been certified by the Attorney General), notify the nonlicensed transferor and the nonlicensed transferee—

“(A) of any response from the national criminal background check system, or if the licensee has had no response from the national criminal background check system within the applicable time period under this paragraph, notify the nonlicensed transferor that no response has been received and that the transfer may proceed; and

“(B) of any receipt by the licensed importer, licensed manufacturer, or licensed dealer of a notification from the national instant criminal background check system that the
transfer would violate section 922 or would violate State law;

“(3) in the case of a transfer at one time or during any 5 consecutive business days, of 2 or more pistols or revolvers, or any combination of pistols and revolvers totaling 2 or more, to the same non-licensed person, in addition to the record keeping requirements described in paragraph (4), prepare a report of the multiple transfers, which report shall be—

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

“(B) not later than the close of business on the date on which the multiple transfer occurs, forwarded to—

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

“(ii) the appropriate State law enforcement agency of the jurisdiction in which the transfer occurs; and

“(4) comply with all record keeping requirements under this chapter.

“(d) SPECIAL FIREARMS EVENT LICENSE.—

“(1) IN GENERAL.—The Attorney General shall issue a special firearms event license to a person
who submits an application for a special firearms event license in accordance with this subsection.

“(2) APPLICATION.—The application required by paragraph (1) shall be approved if—

“(A) the applicant is 21 years of age or over;

“(B) the application includes a photograph and the fingerprints of the applicant;

“(C) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under subsection (g) or (n) of section 922;

“(D) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

“(E) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any
material fact, in connection with the application; and

“(F) the applicant certifies that—

“(i) the applicant meets the requirements of subparagraphs (A) through (D) of section 923(d)(1);

“(ii) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located; and

“(iii) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met.

“(3) APPLICATION AND APPROVAL.—

“(A) IN GENERAL.—Upon the approval of an application under this subsection and payment by the applicant of a fee of $200 for 3 years, and upon renewal of a valid registration and payment of a fee of $90 for 3 years, the Attorney General shall issue to the applicant an instant check registration, and advise the Attorney General of that registration.

“(B) NICS.—A special firearms event licensee may contact the national instant crimi-
nal background check system established under section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) for information about any individual desiring to obtain a firearm at a special firearms event from any special firearms event vendor who has requested the assistance of the registrant in complying with subsection (c) with respect to the transfer of the firearm, during the 3-year period that begins on the date on which the registration is issued.

“(4) REQUIREMENTS.—The requirements for a special firearms event licensee shall not exceed the requirements for a licensed dealer and the record keeping requirements shall be the same.

“(5) RESTRICTIONS.—

“(A) BACKGROUND CHECKS.—A special firearms event licensee may have access to the national instant criminal background check system to conduct a background check only at a special firearms event and only on behalf of another person.

“(B) TRANSFER OF FIREARMS.—A special firearms event licensee shall not transfer a firearm at a special firearms event.
“(e) FIREARM TRANSACTION DEFINED.—In this section, the term ‘firearm transaction’—

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

“(2) does not include—

“(A) the mere exhibition of a firearm; or

“(B) the sale, transfer, or exchange of firearms between immediate family members, including parents, children, siblings, grandparents, and grandchildren.”.

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

“(8)(A) Whoever knowingly violates section 932(a)(1) or 932(b)—

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

“(ii) in the case of a second or subsequent conviction, shall be fined under this title, imprisoned not more than 5 years, or both.

“(B) Whoever knowingly violates section 932(a)(2) or 932(e) shall be fined under this title, imprisoned not more than 5 years, or both.
“(C) Whoever knowingly violates section 932(a)(3) shall be fined under this title, imprisoned not more than 2 years, or both.

“(D) In addition to any other penalties imposed under this paragraph, the Attorney General may, with respect to any person who violates any provision of section 932—

“(i) if the person is registered pursuant to section 932(a), after notice and opportunity for a hearing, suspend for not more than 6 months or revoke the registration of that person under section 932(a); and

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

(c) UNLAWFUL ACTS.—Section 922(b) of title 18, United States Code, is amended in the matter preceding paragraph (1), by striking “or licensed collector” and inserting “licensed collector, or special firearms event licensee”.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

Chapter 44 of title 18, United States Code, is amended in the chapter analysis, by adding at the end the following:

“932. Regulation of firearms transfers at special firearms events.”.
SEC. 4. STATE OPTION FOR 24-HOUR BACKGROUND CHECKS AT SPECIAL FIREARMS EVENTS FOR STATES WITH COMPUTERIZED DISQUALIFYING RECORDS.

(a) In General.—Effective 3 years after the date of enactment of this Act, a State may apply to the Attorney General for certification of the 24-hour verification authority of that State.

(b) Certification.—The Attorney General shall certify a State for 24-hour verification authority only upon a clear showing by the State, and certification by the Bureau of Justice Statistics, that—

(1) not less than 95 percent of all records containing information that would disqualify an individual under subsections (g) and (n) of section 922 of title 18, United States Code, or under State law, is available on computer records in the State, and is searchable under the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note);

(2) not less than 95 percent of all records containing information that would disqualify an individual under paragraphs (8) and (9) of subsection 922(g) of title 18, United States Code, or under State law, is available on computer records in the
State, and is searchable under the national instant
criminal background check system established under
section 103 of the Brady Handgun Violence Protec-
tion Act (18 U.S.C. 922 note); and

(3) the chief judicial officer of the State re-
quires the courts of the State to use the toll-free
telephone number described in subsection (d)(1) to
immediately notify the National Instant Criminal
Background Check System each time a restraining
order (as described in section 922(g)(8) of title 18,
United States Code) is issued, lifted, or otherwise
removed by order of the court.

(c) CLARIFICATIONS.—

(1) DISQUALIFYING INFORMATION.—Disquali-
fying information for each State under subsection
(b) shall include the disqualifying records for that
State generated during the 30 years preceding the
date of application to the Attorney General for cer-
tification.

(2) TOLL-FREE TELEPHONE NUMBER.—Upon a
showing by the State that a court of the State has
developed computer systems which permit the court
to immediately electronically notify the National In-
stant Criminal Background Check System with re-
spect to the issuance or lifting of restraining orders,
the use of the toll-free telephone number described
in subsection (d)(1) shall no longer be required
under subsection (b)(3).

(d) Notification Infrastructure.—Before certi-
fying any State under subsection (b), the Attorney Gen-
eral shall—

(1) create a toll-free telephone number through
which State and local courts may immediately notify
the National Instant Background Check System
whenever a restraining order (as described in section
922(g)(8) of title 18, United States Code) is issued,
lifted, or otherwise removed by order of the court;
and

(2) encourage States to develop computer sys-
tems that permit courts to immediately electronically
notify the National Instant Criminal Background
Check System whenever a restraining order (as de-
scribed in section 922(g)(8) of title 18, United
States Code) has been issued, lifted, or otherwise re-
moved by order of the court.

(e) 24-Hour Provision.—Upon certification by the
Attorney General, the 24-hour provision in section
932(e)(2) of title 18, United States Code, shall apply to
the verification process (for transfers between unlicensed
persons) in that State unless additional information is re-
quired in order to verify disqualifying information from
a State that has not been certified by the Attorney Gen-
eral, in which case the 3 business day limit shall apply.

(f) Annual Review.—The Director of the Bureau
of Justice Statistics shall annually review the certifications
under this section.

(g) Revocation.—The Attorney General shall re-
voke the certification required under this section for any
State that is not in compliance with subsection (b).

SEC. 5. Inspection Authority.

Section 923(g)(1)(B), of title 18, United States Code,
is amended by striking “or licensed dealer” and inserting
“licensed dealer, or special firearms event operator”.

SEC. 6. Increased Penalties for Serious Record-
Keeping Violations by Licensees.

Section 924(a)(3) of title 18, United States Code, is
amended to read as follows:

“(3)(A) Except as provided in subparagraph
(B), any licensed dealer, licensed importer, licensed
manufacturer, licensed collector, or special firearms
event licensee who knowingly makes any false state-
ment or representation with respect to the informa-
tion required by this chapter to be kept in the
records of a person licensed under this chapter, or
violates section 922(m) shall be fined under this
title, imprisoned not more than 1 year, or both.

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

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

“(ii) under subsection (a)(6) or (d) of sec-
tion 922, such person shall be fined under this
title, imprisoned not more than 10 years, or
both.”.

SEC. 7. INCREASED PENALTIES FOR VIOLATIONS OF CRIMI-
NAL BACKGROUND CHECK REQUIREMENTS.

Section 924(a) of title 18, United States Code, as
amended by section 3(b), is further amended—

(1) in paragraph (5), by striking “subsection
(s) or (t) of section 922” and inserting “section
922(s)”; and

(2) by adding at the end the following:

“(9) Whoever knowingly violates section 922(t)
shall be fined under this title, imprisoned not more
than 5 years, or both.”.
SEC. 8. RULE OF INTERPRETATION.

A provision of State law is not inconsistent with this Act or an amendment made by this Act if the provision imposes a regulation or prohibition of greater scope or a penalty of greater severity than any prohibition or penalty imposed by this Act or an amendment made by this Act.

SEC. 9. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.