

109TH CONGRESS
1ST SESSION

H. R. 3540

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 HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. CASTLE (for himself, Mrs. McCARTHY, Mr. KIRK, and Mr. SHAYS) introduced the following bill; which was 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 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 Loophole
5 Closing Act of 2005”.

6 **SEC. 2. DEFINITIONS.**

7 Section 921(a) of title 18, United States Code, is
8 amended by adding at the end the following:

1 “(36) SPECIAL FIREARMS EVENT.—The term ‘spe-
2 cial firearms event’—

3 “(A) means any event at which 75 or more fire-
4 arms are offered or exhibited for sale, exchange, or
5 transfer, if 1 or more of the firearms has been
6 shipped or transported in, or otherwise affects, inter-
7 state or foreign commerce;

8 “(B) does not include an offer or exhibit of fire-
9 arms for sale, exchange, or transfer by an individual
10 from the personal collection of that individual, at the
11 private residence of that individual, if the individual
12 is not required to be licensed under section 923 or
13 932; and

14 “(C) does not include an offer or exhibit of fire-
15 arms for sale, exchange, or transfer at events con-
16 ducted and attended by permanent or annual dues
17 paying members, and their immediate family, of pri-
18 vate, not-for-profit organizations whose primary pur-
19 pose is owning and maintaining real property for the
20 purpose of hunting activities.

21 “(37) SPECIAL FIREARMS EVENT LICENSEE.—The
22 term ‘special firearms event licensee’ means any person
23 who has obtained and holds a valid license in compliance
24 with section 932(d) and who is authorized to contact the
25 national instant criminal background check system on be-

1 half of another individual, who is not licensed under this
 2 chapter, for the purpose of conducting a background check
 3 for a potential firearms transfer at a special firearms
 4 event in accordance with section 932(c).

5 “(38) SPECIAL FIREARMS EVENT VENDOR.—The
 6 term ‘special firearms event vendor’ means any person
 7 who is not required to be licensed under section 923 and
 8 who exhibits, sells, offers for sale, transfers, or exchanges
 9 1 or more firearms at a special firearms event, regardless
 10 of whether or not the person arranges with the special fire-
 11 arms event promoter for a fixed location from which to
 12 exhibit, sell, offer for sale, transfer, or exchange 1 or more
 13 firearms.”.

14 **SEC. 3. REGULATION OF FIREARMS TRANSFERS AT SPE-**
 15 **CIAL FIREARMS EVENTS.**

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

19 **“§ 932. Regulation of firearms transfers at special**
 20 **firearms events**

21 “(a) SPECIAL FIREARMS EVENTS OPERATORS.—

22 “(1) NOTIFICATION TO ATTORNEY GENERAL OF
 23 SPECIAL FIREARMS EVENT OPERATORS.—

24 “(A) IN GENERAL.—It shall be unlawful
 25 for any person to operate a special firearms

1 event unless that person notifies the Attorney
2 General in accordance with regulations promul-
3 gated by the Attorney General.

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

9 “(2) RESPONSIBILITIES OF SPECIAL FIREARMS
10 EVENTS OPERATORS.—It shall be unlawful for a spe-
11 cial firearms events operator to organize, plan, pro-
12 mote, or operate a special firearms event unless that
13 operator—

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

20 “(B) before the commencement of the spe-
21 cial firearms event, or in the case of a vendor
22 who arrives after the commencement of the
23 event, upon the arrival of the vendor, verifies
24 the identity of each special firearms event ven-
25 dor participating in the special firearms event

1 by examining a valid identification document
2 (as defined in section 1028(d)(2)) of the vendor
3 containing a photograph of the vendor;

4 “(C) before the commencement of the spe-
5 cial firearms event, or in the case of a vendor
6 who arrives after the commencement of the
7 event, upon the arrival of the vendor, requires
8 each special firearms event vendor to sign—

9 “(i) a ledger with identifying informa-
10 tion concerning the vendor; and

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

14 “(D) notifies each person who attends the
15 special firearms event of the requirements of
16 this chapter, in accordance with such regula-
17 tions as the Attorney General shall prescribe;

18 “(E) not later than 5 days after the last
19 day of the special firearms event, submits to the
20 Attorney General a copy of the ledger and no-
21 tice described in subparagraph (C)(i); and

22 “(F) maintains a copy of the records de-
23 scribed in subparagraphs (B) and (C) at the
24 permanent place of business of the operator for

1 such period of time and in such form as the At-
2 torney General shall require by regulation.

3 “(b) RESPONSIBILITIES OF TRANSFERORS OTHER
4 THAN LICENSEES.—

5 “(1) IN GENERAL.—If any part of a firearm
6 transaction takes place at a special firearms event,
7 or on the curtilage of the event, it shall be unlawful
8 for any person who is not licensed under this chap-
9 ter to transfer a firearm to another person who is
10 not licensed under this chapter, unless the firearm
11 is transferred through a licensed importer, licensed
12 manufacturer, licensed dealer, or a special firearms
13 event licensee in accordance with subsection (c).

14 “(2) CRIMINAL BACKGROUND CHECKS.—A per-
15 son who is subject to the requirement of paragraph
16 (1) shall not—

17 “(A) transfer the firearm to the transferee
18 until the licensed importer, licensed manufac-
19 turer, licensed dealer, or a special firearms
20 event licensee through which the transfer is
21 made makes the notification described in sub-
22 section (c)(2)(A); or

23 “(B) transfer the firearm to the transferee
24 if the person has been notified under subsection

1 (c)(2)(B) that the transfer would violate section
2 922 or State law.

3 “(3) ABSENCE OF RECORDKEEPING REQUIRE-
4 MENTS.—Nothing in this section shall permit or au-
5 thorize the Attorney General to impose record-
6 keeping requirements on any nonlicensed special
7 firearms event vendor.

8 “(c) RESPONSIBILITIES OF LICENSEES.—A licensed
9 importer, licensed manufacturer, licensed dealer, or special
10 firearms event licensee who agrees to assist a person who
11 is not licensed under this chapter in carrying out the re-
12 sponsibilities of that person under subsection (b) with re-
13 spect to the transfer of a firearm shall—

14 “(1) except as provided in paragraph (2), com-
15 ply with section 922(t) as if transferring the firearm
16 from the inventory of the licensed importer, licensed
17 manufacturer, or licensed dealer to the designated
18 transferee (although a licensed importer, licensed
19 manufacturer, or licensed dealer complying with this
20 subsection shall not be required to comply again
21 with the requirements of section 922(t) in delivering
22 the firearm to the nonlicensed transferor);

23 “(2) not later than 3 business days (meaning
24 days on which State offices are open) after the date
25 of the agreement to purchase, or if the event is held

1 in a State that has been certified by the Attorney
2 General under section 4 of the Gun Show Loophole
3 Closing Act of 2004, not later than 24 hours after
4 such date (or 3 business days after such date if ad-
5 ditional information is required in order to verify
6 disqualifying information from a State that has not
7 been certified by the Attorney General), notify the
8 nonlicensed transferor and the nonlicensed trans-
9 feree—

10 “(A) of any response from the national
11 criminal background check system, or if the li-
12 censee has had no response from the national
13 criminal background check system within the
14 applicable time period under this paragraph,
15 notify the nonlicensed transferor that no re-
16 sponse has been received and that the transfer
17 may proceed; and

18 “(B) of any receipt by the licensed im-
19 porter, licensed manufacturer, or licensed dealer
20 of a notification from the national instant
21 criminal background check system that the
22 transfer would violate section 922 or would vio-
23 late State law;

24 “(3) in the case of a transfer at one time or
25 during any 5 consecutive business days, of 2 or more

1 pistols or revolvers, or any combination of pistols
2 and revolvers totaling 2 or more, to the same non-
3 licensed person, in addition to the record keeping re-
4 quirements described in paragraph (4), prepare a re-
5 port of the multiple transfers, which report shall
6 be—

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

9 “(B) not later than the close of business
10 on the date on which the multiple transfer oc-
11 curs, forwarded to—

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

14 “(ii) the appropriate State law en-
15 forcement agency of the jurisdiction in
16 which the transfer occurs; and

17 “(4) comply with all record keeping require-
18 ments under this chapter.

19 “(d) SPECIAL FIREARMS EVENT LICENSE.—

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

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

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

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

5 “(C) the applicant (including, in the case
6 of a corporation, partnership, or association,
7 any individual possessing, directly or indirectly,
8 the power to direct or cause the direction of the
9 management and policies of the corporation,
10 partnership, or association) is not prohibited
11 from transporting, shipping, or receiving fire-
12 arms or ammunition in interstate or foreign
13 commerce under subsection (g) or (n) of section
14 922;

15 “(D) the applicant has not willfully vio-
16 lated any of the provisions of this chapter or
17 regulations issued thereunder;

18 “(E) the applicant has not willfully failed
19 to disclose any material information required,
20 or has not made any false statement as to any
21 material fact, in connection with the applica-
22 tion; and

23 “(F) the applicant certifies that—

1 “(i) the applicant meets the require-
2 ments of subparagraphs (A) through (D)
3 of section 923(d)(1);

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

8 “(iii) the business will not be con-
9 ducted under the license until the require-
10 ments of State and local law applicable to
11 the business have been met.

12 “(3) APPLICATION AND APPROVAL.—

13 “(A) IN GENERAL.—Upon the approval of
14 an application under this subsection and pay-
15 ment by the applicant of a fee of \$200 for 3
16 years, and upon renewal of a valid registration
17 and payment of a fee of \$90 for 3 years, the
18 Attorney General shall issue to the applicant an
19 instant check registration, and advise the Attor-
20 ney General of that registration.

21 “(B) NICS.—A special firearms event li-
22 censee may contact the national instant crimi-
23 nal background check system established under
24 section 103 of the Brady Handgun Violence
25 Prevention Act (18 U.S.C. 922 note) for infor-

1 mation about any individual desiring to obtain
2 a firearm at a special firearms event from any
3 special firearms event vendor who has requested
4 the assistance of the registrant in complying
5 with subsection (c) with respect to the transfer
6 of the firearm, during the 3-year period that
7 begins on the date on which the registration is
8 issued.

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

13 “(5) RESTRICTIONS.—

14 “(A) BACKGROUND CHECKS.—A special
15 firearms event licensee may have access to the
16 national instant criminal background check sys-
17 tem to conduct a background check only at a
18 special firearms event and only on behalf of an-
19 other person.

20 “(B) TRANSFER OF FIREARMS.—A special
21 firearms event licensee shall not transfer a fire-
22 arm at a special firearms event.

23 “(e) FIREARM TRANSACTION DEFINED.—In this sec-
24 tion, the term ‘firearm transaction’—

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

3 “(2) does not include—

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

5 “(B) the sale, transfer, or exchange of fire-
6 arms between immediate family members, in-
7 cluding parents, children, siblings, grand-
8 parents, and grandchildren.”.

9 (b) PENALTIES.—Section 924(a) of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 “(8) (A) Whoever knowingly violates section
13 932(a)(1) or 932(b)—

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

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

19 “(B) Whoever knowingly violates section 932(a)(2) or
20 932(c) shall be fined under this title, imprisoned not more
21 than 5 years, or both.

22 “(C) Whoever knowingly violates section 932(a)(3)
23 shall be fined under this title, imprisoned not more than
24 2 years, or both.

1 “(D) In addition to any other penalties imposed
 2 under this paragraph, the Attorney General may, with re-
 3 spect to any person who violates any provision of section
 4 932—

5 “(i) if the person is registered pursuant to sec-
 6 tion 932(a), after notice and opportunity for a hear-
 7 ing, suspend for not more than 6 months or revoke
 8 the registration of that person under section 932(a);
 9 and

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

12 (c) UNLAWFUL ACTS.—Section 922(b) of title 18,
 13 United States Code, is amended in the matter preceding
 14 paragraph (1), by striking “or licensed collector” and in-
 15 serting “licensed collector, or special firearms event li-
 16 censee”.

17 (d) TECHNICAL AND CONFORMING AMENDMENTS.—
 18 Chapter 44 of title 18, United States Code, is amended
 19 in the chapter analysis, by adding at the end the following:
 “932. Regulation of firearms transfers at special firearms events.”.

20 **SEC. 4. STATE OPTION FOR 24-HOUR BACKGROUND**
 21 **CHECKS AT SPECIAL FIREARMS EVENTS FOR**
 22 **STATES WITH COMPUTERIZED DISQUALI-**
 23 **FYING RECORDS.**

24 (a) IN GENERAL.—Effective 3 years after the date
 25 of enactment of this Act, a State may apply to the Attor-

1 ney General for certification of the 24-hour verification
2 authority of that State.

3 (b) CERTIFICATION.—The Attorney General shall
4 certify a State for 24-hour verification authority only upon
5 a clear showing by the State, and certification by the Bu-
6 reau of Justice Statistics, that—

7 (1) not less than 95 percent of all records con-
8 taining information that would disqualify an indi-
9 vidual under subsections (g) and (n) of section 922
10 of title 18, United States Code, or under State law,
11 is available on computer records in the State, and is
12 searchable under the national instant criminal back-
13 ground check system established under section 103
14 of the Brady Handgun Violence Prevention Act (18
15 U.S.C. 922 note);

16 (2) not less than 95 percent of all records con-
17 taining information that would disqualify an indi-
18 vidual under paragraphs (8) and (9) of subsection
19 922(g) of title 18, United States Code, or under
20 State law, is available on computer records in the
21 State, and is searchable under the national instant
22 criminal background check system established under
23 section 103 of the Brady Handgun Violence Protec-
24 tion Act (18 U.S.C. 922 note); and

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

9 (c) CLARIFICATIONS.—

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

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

1 (d) NOTIFICATION INFRASTRUCTURE.—Before certi-
2 fying any State under subsection (b), the Attorney Gen-
3 eral shall—

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

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

18 (e) 24-HOUR PROVISION.—Upon certification by the
19 Attorney General, the 24-hour provision in section
20 932(e)(2) of title 18, United States Code, shall apply to
21 the verification process (for transfers between unlicensed
22 persons) in that State unless additional information is re-
23 quired in order to verify disqualifying information from
24 a State that has not been certified by the Attorney Gen-
25 eral, in which case the 3 business day limit shall apply.

1 (f) ANNUAL REVIEW.—The Director of the Bureau
2 of Justice Statistics shall annually review the certifications
3 under this section.

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

7 **SEC. 5. INSPECTION AUTHORITY.**

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

11 **SEC. 6. INCREASED PENALTIES FOR SERIOUS RECORD-**
12 **KEEPING VIOLATIONS BY LICENSEES.**

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

15 “(3) (A) Except as provided in subparagraph (B),
16 any licensed dealer, licensed importer, licensed manufac-
17 turer, licensed collector, or special firearms event licensee
18 who knowingly makes any false statement or representa-
19 tion with respect to the information required by this chap-
20 ter to be kept in the records of a person licensed under
21 this chapter, or violates section 922(m) shall be fined
22 under this title, imprisoned not more than 1 year, or both.

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

1 “(i) under paragraph (1) or (3) of section
2 922(b), such person shall be fined under this title,
3 imprisoned not more than 5 years, or both; or

4 “(ii) under subsection (a)(6) or (d) of section
5 922, such person shall be fined under this title, im-
6 prisoned not more than 10 years, or both.”.

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

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

11 (1) in paragraph (5), by striking “subsection
12 (s) or (t) of section 922” and inserting “section
13 922(s)”; and

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

15 “(9) Whoever knowingly violates section 922(t) shall
16 be fined under this title, imprisoned not more than 5
17 years, or both.”.

18 **SEC. 8. RULE OF INTERPRETATION.**

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

1 **SEC. 9. EFFECTIVE DATE.**

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

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