To require criminal background checks on all firearms transactions occurring at gun shows.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2009

Mr. Castle (for himself, Mrs. McCarthy of New York, Mr. Israel, Mr. Kirk, Mr. Connolly of Virginia, and Mr. Smith of New Jersey) 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 gun shows.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Gun Show Loophole Closing Act of 2009”.

SEC. 2. GUN SHOW BACKGROUND CHECK.

(a) FINDINGS.—The Congress finds that—

(1) approximately 5,200 traditional gun shows are held annually across the United States, attract-
ing thousands of attendees per show and hundreds
of Federal firearms licensees and unlicensed fire-
arms sellers; and

(2) gun shows at which firearms are exhibited
or offered for sale or exchange provide a convenient
and centralized commercial location where criminals
and other prohibited persons obtain firearms without
background checks and without records that enable
firearm tracing.

(b) DEFINITIONS.—Section 921(a) of title 18, United
States Code, is amended by adding at the end the fol-
lowing:

“(36) GUN SHOW.—The term ‘gun show’—

“(A) means any event at which 50 or more fire-
arms 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, inter-
state or foreign commerce;

“(B) does not include an offer or exhibit of fire-
arms 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; and

“(C) does not include an offer or exhibit of fire-
arms for sale, exchange, or transfer at events—
“(i) where not more than 100 firearms are offered or exhibited for sale, exchange or transfer;

“(ii) that are conducted by private, not-for-profit organizations whose primary purpose is owning and maintaining real property for the purpose of hunting activities; and

“(iii) that are attended only by permanent or annual dues-paying members of the organizations, and the members of the immediate families of the dues-paying members.

“(37) Gun Show Vendor.—The term ‘gun show vendor’ means a person who is not licensed under section 923 and who exhibits, sells, offers for sale, transfers, or exchanges a firearm at a gun show, regardless of whether or not the person arranges with the gun show operator for a fixed location from which to exhibit, sell, offer for sale, transfer, or exchange the firearm.”.

(c) Regulation of Firearms Transfers at Gun Shows.—

(1) In general.—Chapter 44 of such title is amended by adding at the end the following:
§ 932. Regulation of firearms transfers at gun shows

“(a) Registration of Gun Show Operators.— It shall be unlawful for a person to operate a gun show, unless—

“(1) the person has attained 21 years of age;

“(2) the person (and, if the person is a corporation, partnership, or association, each 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 by subsection (g) or (n) of section 922 from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce;

“(3) the person has not willfully violated any provision of this chapter or regulation issued under this chapter;

“(4) the person has registered with the Attorney General as a gun show operator, in accordance with regulations promulgated by the Attorney General, and as part of the registration—

“(A) has provided the Attorney General with a photograph and the fingerprints of the person; and

“(B) has certified that the person meets the requirements of subparagraphs (A) through (D) of section 923(d)(1);
“(5) the person has not willfully failed to disclose any material information required, and has not made any false statement as to any material fact, in connection with the registration; and

“(6) the person has paid the Attorney General a fee for the registration, in an amount determined by the Attorney General.

“(b) Responsibilities of Gun Show Operators.—

“(1) In general.—It shall be unlawful for a person to operate a gun show, unless the person—

“(A) not later than 30 days before the commencement of the gun show, notifies the Attorney General, in writing, of the date, time, duration, and location of the gun show, and the identity of each person who will be a gun show vendor at the gun show;

“(B) before commencement of the gun show—

“(i) verifies the identity of each individual who will be a gun show vendor at the gun show by examining a valid identification document (as defined in section 1028(d)(3)) of the individual containing a photograph of the individual; and
“(ii) requires each such individual to

sign—

“(I) a ledger, and enter into the

ledger identifying information con-

cerning the individual; and

“(II) a notice which sets forth

the obligations of a gun show vendor

under this chapter; and

“(C) notifies each person who attends the
gun show of the requirements of this chapter,
in accordance with such regulations as the At-
torney General shall prescribe.

“(2) RECORDKEEPING.—A person who oper-

ates, or has operated, a gun show shall maintain

records demonstrating compliance with paragraph

(1)(B), at such place, for such period of time, and

in such form as the Attorney General shall require

by regulation, or transmit the records to the Attor-

ney General.

“(c) BACKGROUND CHECK REQUIRED BEFORE

TRANSFER OF FIREARM BETWEEN UNLICENSED PER-

SONS.—It shall be unlawful for a person who is not li-

censed under this chapter to transfer possession of, or title
to, a firearm at, or on the curtilage of, a gun show, to

another person who is not so licensed, or for a person who
is not so licensed to receive possession of, or title to, a firearm at, or on the curtilage of, a gun show from another person who is not so licensed, unless a licensed importer, licensed manufacturer, or licensed dealer—

“(1) has entered into a separate bound record the make, model, and serial number of the firearm, and such other information about the transaction as the Attorney General may require by regulation; and

“(2) has notified the prospective transferor and prospective transferee of the firearm that the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act has provided the licensee with a unique identification number, indicating that receipt of the firearm by the prospective transferee would not violate section 922 of this title or State law.

“(d) RECORDKEEPING REQUIREMENTS.—

“(1) IN GENERAL.—A licensee who provides a notice pursuant to subsection (c)(2) with respect to the transfer of a firearm shall—

“(A) not later than 10 days after the date of the transfer, submit to the Attorney General a report of the transfer, which report shall specify the make, model, and serial number of
the firearm, and contain such other information and be on such form, as the Attorney General shall require by regulation, except that the report shall not include the name of or other identifying information relating to any person involved in the transfer who is not licensed under this chapter; and

“(B) retain a record of the transfer, including the same information as would be required if the transfer were from the inventory of the licensee, as part of the permanent business records of the licensee.

“(2) LIMITATION.—The Attorney General may not impose any recordkeeping requirement on any gun show vendor by reason of this section.”.

(2) PENALTIES.—Section 924(a) of such title is amended by adding at the end the following:

“(8)(A) Whoever knowingly violates subsection (a) or (d) of section 932 shall be fined under this title, imprisoned not more than 5 years, or both.

“(B) Whoever knowingly violates subsection (b) or (c) of section 932, shall be—

“(i) fined under this title, imprisoned not more than 2 years, or both; and
“(ii) in the case of a second or subsequent conviction, fined under this title, imprisoned not more than 5 years, or both.

“(C) In addition to any other penalties imposed under this paragraph, the Attorney General may, with respect to any person who knowingly 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.”.

(3) CLERICAL AMENDMENT.—The table of contents for chapter 44 of such title is amended by adding at the end the following:

“Sec. 932. Regulation of firearms transfers at gun shows.”.

(d) INSPECTION AUTHORITY.—Section 923(g)(1) of such title is amended by adding at the end the following:

“(E) Notwithstanding subparagraph (B) of this paragraph, the Attorney General may enter during business hours any place where a gun show operator operates a gun show or is required to maintain records pursuant to section 932(b)(2), for purposes of examining the
records required by sections 923 and 932 and the inventory of licensees conducting business at the gun show. The entry and examination shall be conducted for the purposes of determining compliance with this chapter by gun show operators and licensees conducting business at the gun show, and shall not require a showing of reasonable cause or a warrant.”

(e) Reports of Multiple Sales Assisted by Licensees at Gun Shows.—Section 923(g)(3)(A) of such title is amended by inserting “or provides pursuant to section 932(c)(2) notice with respect to,” after “sells or otherwise disposes of,”.

(f) Increased Penalties for Serious Record-keeping Violations by Licensees.—Section 924(a)(3) of such title is amended to read as follows:

“(3)(A) Except as provided in subparagraph (B), any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly makes any false statement or representation with respect to the information 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 section 922, such person shall be fined under this title, imprisoned not more than 10 years, or both.”.

(g) Increased Penalties for Violations of Criminal Background Check Requirements.—

(1) Penalties.—Section 924(a)(5) of such title is amended—

(A) by striking “subsection (s) or (t) of section 922” and inserting “section 922(t)”;

and

(B) by striking “1” and inserting “5”.

(2) Elimination of Certain Elements of Offense.—Section 922(t)(5) of such title is amended by striking “and, at the time” and all that follows through “State law”.

(h) Authority To Hire Personnel To Inspect Gun Shows.—The Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may hire at least 40 addi-
tional Industry Operations Investigators for the purpose
of carrying out inspections of gun shows (as defined in
section 921(a)(36) of title 18, United States Code).

(i) Report to the Congress.—The Director of the
Bureau of Alcohol, Tobacco, Firearms, and Explosives
shall submit biennial reports to the Congress on how fire-
arms (as defined in section 921(a)(3) of title 18, United
States Code) are sold at gun shows (as defined in para-
graph (36) of such section), how this section is being car-
rried out, whether firearms are being sold without back-
ground checks conducted by the national instant criminal
background check system established under section 103
of the Brady Handgun Violence Prevention Act, what re-
sources are needed to carry out this section, and any rec-
ommendations for improvements to ensure that firearms
are not sold without the background checks.

(j) Effective Date.—This section and the amend-
ments made by this section shall take effect 180 days after
the date of enactment of this Act.