

117TH CONGRESS
2D SESSION

S. 4238

To prevent gun trafficking.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2022

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prevent gun trafficking.

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 “Hadiya Pendleton and
5 Nyasia Pryear-Yard Gun Trafficking and Crime Preven-
6 tion Act of 2022”.

7 **SEC. 2. FIREARMS TRAFFICKING.**

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

11 **“§ 932. Trafficking in firearms**

12 “(a) DEFINITIONS.—In this section—

1 “(1) the term ‘actual buyer’ means the indi-
2 vidual for whom a firearm is being purchased, re-
3 ceived, or acquired; and

4 “(2) the term ‘term of imprisonment exceeding
5 1 year’ does not include any offense classified by the
6 applicable jurisdiction as a misdemeanor and punish-
7 able by a term of imprisonment of 2 years or less.

8 “(b) OFFENSES.—It shall be unlawful for any person,
9 regardless of whether anything of value is exchanged—

10 “(1) to ship, transport, transfer, or otherwise
11 dispose to a person, 2 or more firearms in or affect-
12 ing interstate or foreign commerce, if the transferor
13 knows or has reasonable cause to believe that the
14 use, carrying, or possession of a firearm by the re-
15 cipient would be in violation of, or would result in
16 a violation of, any Federal, State, or local law pun-
17 ishable by a term of imprisonment exceeding 1 year;

18 “(2) to receive from a person, 2 or more fire-
19 arms in or affecting interstate or foreign commerce,
20 if the recipient knows or has reasonable cause to be-
21 lieve that such receipt would be in violation of, or
22 would result in a violation of, any Federal, State, or
23 local law punishable by a term of imprisonment ex-
24 ceeding 1 year;

1 “(3) to make a statement to a licensed im-
2 porter, licensed manufacturer, or licensed dealer re-
3 lating to the purchase, receipt, or acquisition from
4 a licensed importer, licensed manufacturer, or li-
5 censed dealer of 2 or more firearms that have moved
6 in or affected interstate or foreign commerce that—

7 “(A) is material to—

8 “(i) the identity of the actual buyer of
9 the firearms; or

10 “(ii) the intended trafficking of the
11 firearms; and

12 “(B) the person knows or has reasonable
13 cause to believe is false; or

14 “(4) to direct, promote, or facilitate conduct
15 specified in paragraph (1), (2), or (3).

16 “(c) GIFT EXCEPTIONS.—Subsection (b) shall not
17 apply to a firearm that is—

18 “(1) lawfully acquired by a person to be given
19 as a gift to another person not prohibited from pos-
20 sessing a firearm under Federal or State law; or

21 “(2) lawfully received or otherwise acquired—

22 “(A) by a court-appointed trustee, receiver,
23 or conservator for, or on behalf of, an estate or
24 creditor; or

1 “(B) by a person to carry out a bequest,
 2 or an acquisition by intestate succession under
 3 the laws of the State of residence of the person.

4 “(d) PENALTIES.—

5 “(1) IN GENERAL.—Subject to paragraph (2),
 6 any person who violates, or conspires to violate, sub-
 7 section (b) shall be fined under this title, imprisoned
 8 for not more than 20 years, or both.

9 “(2) ORGANIZER ENHANCEMENT.—If an indi-
 10 vidual violates subsection (b) in concert with 5 or
 11 more other individuals, and the individual planned
 12 the violation or recruited or directed one of the other
 13 individuals to commit the violation—

14 “(A) the maximum term of imprisonment
 15 shall be 25 years; and

16 “(B) if a firearm involved in the violation
 17 is a machinegun or destructive device, or is
 18 equipped with a firearm silencer or muffler, the
 19 maximum term of imprisonment shall be 35
 20 years.

21 “(3) LICENSEES.—

22 “(A) CRIMINAL PENALTIES FOR KNOWING
 23 FACILITATION OF TRAFFICKING THROUGH SALE
 24 OR DELIVERY OF FIREARMS.—If a licensed
 25 manufacturer, licensed importer, licensed col-

lector, or licensed dealer knowingly facilitates a violation of subsection (b), the licensee shall be fined \$20,000 per trafficked firearm sold or delivered by the licensee, imprisoned for not more than 10 years, or both.

“(B) CIVIL PENALTIES FOR SALE OR DELIVERY OF FIREARMS WITH RECKLESS DISREGARD OF TRAFFICKING.—In the case of any licensed manufacturer, licensed importer, licensed collector, or licensed dealer who recklessly disregards that a person is acquiring 2 or more firearms from the licensee in violation of or with intent to violate subsection (b), the Attorney General shall, after notice and opportunity for a hearing, impose a civil penalty that is not less than \$5,000 and not more than \$10,000 per trafficked firearm sold or delivered by the licensee.

“(C) LICENSE SUSPENSION OR REVOCATION.—If the Attorney General determines, after notice and opportunity for a hearing, that firearms were acquired by or from a licensed manufacturer, licensed importer, licensed collector, or licensed dealer in violation of subsection (b) and the licensee knew, had reason-

able cause to believe, or recklessly disregarded
that the firearms were acquired in violation of
that subsection, the Attorney General—

“(i) may suspend or revoke the license
issued to the licensee under this chapter
for not more than 1 year; and

“(ii) if the license issued to the li-
censee under this chapter has previously
been suspended or revoked under clause
(i), may revoke the license for not more
than 5 years.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

The table of sections for chapter 44 of title 18, United
States Code, is amended by adding at the end the fol-
lowing:

“932. Trafficking in firearms.”.

(c) DIRECTIVE TO SENTENCING COMMISSION.—

(1) IN GENERAL.—Pursuant to its authority
under section 994(p) of title 28, United States Code,
the United States Sentencing Commission shall re-
view and, if appropriate, amend the Federal sen-
tencing guidelines and policy statements applicable
to persons convicted of offenses under section 932 of
title 18, United States Code (as added by subsection
(a)).

1 (2) REQUIREMENTS.—In carrying out this sub-
2 section, the Commission shall—

3 (A) review the penalty structure that the
4 Federal sentencing guidelines currently provide
5 based on the number of firearms involved in the
6 offense; and

7 (B) determine whether any changes to that
8 penalty structure are appropriate in order to
9 carry out the intent of Congress that those pen-
10 alties reflect—

11 (i) the gravity of the offense;

12 (ii) the number of trafficked firearms
13 purchased by or from the defendant;

14 (iii) the extent of the defendant's
15 knowledge about the overall scheme to
16 traffic firearms;

17 (iv) the amount of money or value of
18 nonmonetary compensation provided to the
19 defendant for the defendant's participa-
20 tion; and

21 (v) the defendant's culpability, includ-
22 ing—

23 (I) as mitigating factors, whether
24 the defendant—

1 (aa) is a relative or current
2 or former intimate partner of an-
3 other individual involved in a
4 conspiracy to traffic firearms;

5 (bb) is a domestic violence
6 survivor; or

7 (cc) has been otherwise ex-
8 ploited by personal affection, fear
9 of reprisals, or economic need to
10 commit an offense under section
11 932 of title 18, United States
12 Code (as added by subsection
13 (a)); and

14 (II) as aggravating factors,
15 whether—

16 (aa) the trafficked firearms
17 were used in additional crimes;

18 (bb) a person was injured or
19 killed with the trafficked fire-
20 arms; or

21 (cc) the defendant was pre-
22 viously convicted of a firearms-
23 related offense.

24 (d) DIRECTIVE TO THE ATTORNEY GENERAL.—Not
25 later than 2 years after the date of enactment of this Act,

1 and annually thereafter, the Attorney General shall submit
2 to the Committee on the Judiciary of the Senate and the
3 Committee on the Judiciary of the House of Representa-
4 tives a report containing the following information:

5 (1) For the prior 12-month period—

6 (A) the number of investigations initiated
7 for violations of section 932 of title 18, United
8 States Code (as added by subsection (a));

9 (B) the number of Federal firearm licens-
10 ees or other individuals or entities—

11 (i) that were criminally charged with
12 a violation described in subparagraph (A);

13 or

14 (ii) against whom a civil penalty case
15 was initiated for a violation described in
16 subparagraph (A); and

17 (C) the number of investigations described
18 in subparagraph (A) referred to the Attorney
19 General from the Bureau of Alcohol, Tobacco,
20 Firearms, and Explosives, the Federal Bureau
21 of Investigation, or any other Federal law en-
22 forcement agency that did not result in criminal
23 charges or the initiation of a civil penalty case.

24 (2) To the extent the information is available,
25 the average length of the sentences of imprisonment

1 and average fines imposed on individuals, entities,
 2 and Federal firearm licensees convicted of violations
 3 of section 932 of title 18, United States Code, (as
 4 added by subsection (a)) during the prior 12-month
 5 period.

6 (3) A narrative describing the firearm traf-
 7 ficking schemes prosecuted under section 932 of title
 8 18, United States Code, (as added by subsection (a))
 9 during the prior 12-month period, including—

10 (A) the sources of firearms;

11 (B) the roles of various defendants in the
 12 scheme;

13 (C) the number of firearms trafficked; and

14 (D) a description of any trafficking prac-
 15 tices or trends common among various firearm
 16 trafficking schemes.

17 **SEC. 3. REMOVING RELIEF FROM DISABILITIES EXCEPTION**
 18 **FOR LICENSEES INDICTED FOR FIREARMS**
 19 **TRAFFICKING.**

20 Section 925(b) of title 18, United States Code, is
 21 amended by inserting “other than firearms trafficking
 22 under section 932,” after “indicted for a crime punishable
 23 by imprisonment for a term exceeding one year,”.

1 **SEC. 4. ELIMINATION OF OBLIGATORY STAY OF EFFECTIVE**
2 **DATE OF LICENSE REVOCATION.**

3 Section 923(f)(2) of title 18, United States Code, is
4 amended by striking the period at the end of the second
5 sentence and inserting the following: “unless the revoca-
6 tion is based in whole or in part on a violation of section
7 932, in which case, the Attorney General may only stay
8 the effective date of the revocation upon a showing by the
9 holder that good cause exists to do so.”.

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