

Calendar No. 341

103D CONGRESS
1ST SESSION

S. 1785

A BILL

To amend the Brady Handgun Violence Prevention Act to establish standards for determining whether the national instant criminal background check system is operational and to amend section 503(a) of title I of the Omnibus Safe Streets and Crime Control Act of 1968 to require a State to certify that the State has established a plan under which the State will provide to the Department of Justice notice of the adjudication of any person as a mental defective or the commitment of any person to a mental institution.

NOVEMBER 24 (legislative day, NOVEMBER 23), 1993

Ordered to be placed on the Calendar

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 24 (legislative day, NOVEMBER 23), 1993

Mr. DOLE introduced the following bill; which was read twice and ordered to be placed on the Calendar

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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. AMENDMENT OF THE BRADY HANDGUN VIO-**
4 **LENCE PREVENTION ACT.**

5 (a) SECTION 922 OF TITLE 18, UNITED STATES
6 CODE.—Section 922 of title 18, United States Code, as
7 added by the Brady Handgun Violence Prevention Act, is
8 amended—

9 (1) in subsection (s)(1) by striking “ending on
10 the day before the date that is 60 months after such
11 date of enactment,” and inserting “ending either on
12 the day before the date that is 48 months after such
13 date of enactment, unless the Attorney General ex-
14 tends the date by 12 additional months, or on the
15 day that the Attorney General notifies the licensees
16 under section 103(e)(1) of the Brady Handgun Vio-
17 lence Prevention Act, whichever occurs earlier,”; and

18 (2) by amending subsection (t) to read as fol-
19 lows:

20 “(t)(1) Beginning on the date that is 30 days after
21 the Attorney General notifies licensees under section
22 103(e)(1) of the Brady Handgun Violence Prevention Act
23 that the national instant criminal background check sys-
24 tem is established, and upon notification by the Attorney
25 General to licensees that the system is operational and ca-

1 pable of supplying information immediately (during which
2 30-day period subsection (s) shall remain in effect), a li-
3 censed importer, licensed manufacturer, or licensed dealer
4 shall not transfer a firearm to any other person who is
5 not licensed under this chapter, unless—

6 “(A) before the completion of the transfer, the
7 licensee contacts the national instant criminal back-
8 ground check system established under section 103
9 of that Act;

10 “(B)(i) the system provides the licensee with a
11 unique identification number; or

12 “(ii) 3 business days (meaning a day on which
13 State offices are open) have elapsed since the li-
14 censee contacted the system, and the system has not
15 notified the licensee that the receipt of a firearm by
16 such other person would violate subsection (g) or (n)
17 of this section or State law; and

18 “(C) the transferor has verified the identity of
19 the transferee by examining a valid identification
20 document (as defined in section 1028(d)(1) of this
21 title) of the transferee containing a photograph of
22 the transferee.

23 “(2) If receipt of a firearm would not violate section
24 922 (g) or (n) or State law, the system shall immediately

1 “(A) assign a unique identification number to
2 the transfer;

3 “(B) provide the licensee with the number; and

4 “(C) destroy all records of the system with re-
5 spect to the call (other than the identifying number
6 and the date the number was assigned) and all
7 records of the system relating to the person or the
8 transfer.

9 “(3) Paragraph (1) shall not apply to a firearm
10 transfer between a licensee and another person if—

11 “(A)(i) such other person has presented to the
12 licensee a permit that—

13 “(I) allows such other person to possess,
14 acquire, or carry a firearm; and

15 “(II) was issued not more than 5 years
16 earlier by the State in which the transfer is to
17 take place; and

18 “(ii) the law of the State provides that such a
19 permit is to be issued only after an authorized gov-
20 ernment official has verified that the information
21 available to such official does not indicate that pos-
22 session of a firearm by such other person would be
23 in violation of law;

1 “(B) the Secretary has approved the transfer
2 under section 5812 of the Internal Revenue Code of
3 1986; or

4 “(C) on application of the transferor, the Sec-
5 retary has certified that compliance with paragraph
6 (1)(A) is impracticable because—

7 “(i) the ratio of the number of law enforce-
8 ment officers of the State in which the transfer
9 is to occur to the number of square miles of
10 land area of the State does not exceed 0.0025;

11 “(ii) the business premises of the licensee
12 at which the transfer is to occur are extremely
13 remote in relation to the chief law enforcement
14 officer (as defined in subsection (s)(8)); and

15 “(iii) there is an absence of telecommuni-
16 cations facilities in the geographical area in
17 which the business premises are located.

18 “(4) If the national instant criminal background
19 check system notifies the licensee that the information
20 available to the system does not demonstrate that the re-
21 ceipt of a firearm by such other person would violate sub-
22 section (g) or (n) or State law, and the licensee transfers
23 a firearm to such other person, the licensee shall include
24 in the record of the transfer the unique identification num-
25 ber provided by the system with respect to the transfer.

1 “(5) If the licensee knowingly transfers a firearm to
2 such other person and knowingly fails to comply with
3 paragraph (1) of this subsection with respect to the trans-
4 fer and, at the time such other person most recently pro-
5 posed the transfer, the national instant criminal back-
6 ground check system was operating and information was
7 available to the system demonstrating that receipt of a
8 firearm by such other person would violate subsection (g)
9 or (n) of this section or State law, the Secretary may, after
10 notice and opportunity for a hearing, suspend for not more
11 than 6 months or revoke any license issued to the licensee
12 under section 923, and may impose on the licensee a civil
13 fine of not more than \$5,000.

14 “(6) Neither a local government nor an employee of
15 the Federal Government or of any State or local govern-
16 ment, responsible for providing information to the national
17 instant criminal background check system shall be liable
18 in an action at law for damages—

19 “(A) for failure to prevent the sale or transfer
20 of a firearm to a person whose receipt or possession
21 of the firearm is unlawful under this section; or

22 “(B) for preventing such a sale or transfer to
23 a person who may lawfully receive or possess a fire-
24 arm.”.

1 (b) NATIONAL INSTANT CRIMINAL BACKGROUND
2 CHECK SYSTEM.—Section 103 of the Brady Handgun Vi-
3 olence Prevention Act is amended to read as follows:

4 **“SEC. 103. NATIONAL INSTANT CRIMINAL BACKGROUND**
5 **CHECK SYSTEM.**

6 “(a) DETERMINATION OF TIMETABLES.—Not later
7 than 6 months after the date of enactment of this Act,
8 the Attorney General shall—

9 “(1) determine the type of computer hardware
10 and software that will be used to operate the na-
11 tional instant criminal background check system and
12 the means by which State criminal records systems
13 and the telephone or electric device of licensees that
14 will communicate with the national system;

15 “(2) investigate the criminal records system of
16 each State and determine for each State a timetable
17 by which the State should be able to provide crimi-
18 nal records on an on-line capacity basis to the
19 national system; and

20 “(3) notify each State of the determinations
21 made pursuant to paragraphs (1) and (2).

22 “(b) ESTABLISHMENT OF SYSTEM.—

23 “(1) DETERMINATIONS.—Not later than the
24 date that is 24 months after the date of enactment
25 of this Act, the Attorney General shall—

1 “(A) determine whether—

2 “(i) the equipment used to link State
3 criminal history records systems to the na-
4 tional criminal history records system and
5 the equipment necessary to operate the na-
6 tional instant criminal background check
7 system are operational; and

8 “(ii) any group of States that—

9 “(I) have at least 80 percent of
10 the population of the United States;
11 and

12 “(II) have reported during a 12-
13 month period at least 80 percent of
14 the number of crimes of violence re-
15 ported by all of the States during that
16 period,

17 have achieved and maintained at an aver-
18 age of at least 60 percent currency of fel-
19 ony case dispositions in computerized
20 criminal history files for all cases in which
21 there has been an event or activity within
22 the last 5 years; and

23 “(B) if such determinations are made in
24 the affirmative, certify that the national system
25 is established.

1 “(2) ESTABLISHMENT.—The Attorney General
2 shall establish a national instant criminal back-
3 ground check system that any licensee may contact,
4 by telephone and by other electronic means in addi-
5 tion to the telephone, for information, to be supplied
6 immediately, on whether receipt of a firearm by a
7 prospective transferee would violate section 922 of
8 title 18, United States Code, or State law.

9 “(c) EXPEDITED ACTION BY THE ATTORNEY GEN-
10 ERAL.—The Attorney General shall expedite—

11 “(1) the upgrading and indexing of State crimi-
12 nal history records in the Federal criminal records
13 system maintained by the Federal Bureau of Inves-
14 tigation;

15 “(2) the development of hardware and software
16 systems to link State criminal history check systems
17 into the national instant criminal background check
18 system established by the Attorney General pursuant
19 to this section; and

20 “(3) the current revitalization initiatives by the
21 Federal Bureau of Investigation for technologically
22 advanced fingerprint and criminal records identifica-
23 tion.

24 “(d) NOTIFICATION OF LICENSEES.—

1 “(1) SYSTEM ESTABLISHED.—On establishment
2 of the system under this section, the Attorney Gen-
3 eral shall notify each licensee and the chief law en-
4 forcement officer of each State of the existence and
5 purpose of the system and the means to be used to
6 contact the system.

7 “(2) COMPLIANCE WITH TIMETABLE.—At any
8 time at which the Attorney General determines that
9 a State is in compliance with the timetable set for
10 that State under section (a), the Attorney General
11 shall notify each licensee in the State and the chief
12 law enforcement officer of the State of the deter-
13 mination.

14 “(e) ADMINISTRATIVE PROVISIONS.—

15 “(1) AUTHORITY TO OBTAIN OFFICIAL INFOR-
16 MATION.—Notwithstanding any other law, the Attor-
17 ney General may secure directly from any depart-
18 ment or agency of the United States such informa-
19 tion on persons for whom receipt of a firearm would
20 violate subsection (g) or (n) of section 922 of title
21 18, United States Code, or State law as is necessary
22 to enable the system to operate in accordance with
23 this section. On request of the Attorney General, the
24 head of such department or agency shall furnish
25 such information to the system.

1 “(2) OTHER AUTHORITY.—The Attorney Gen-
2 eral shall develop such computer software, design
3 and obtain such telecommunications and computer
4 hardware, and employ such personnel, as are nec-
5 essary to establish and operate the system in accord-
6 ance with this section.

7 “(f) WRITTEN REASONS PROVIDED ON REQUEST.—
8 If the national instant criminal background check system
9 determines that an individual is ineligible to receive a fire-
10 arm and the individual requests the system to provide the
11 reasons for the determination, the system shall provide
12 such reasons to the individual, in writing, within 5 busi-
13 ness days after the date of the request.

14 “(g) CORRECTION OF ERRONEOUS SYSTEM INFOR-
15 MATION.—A prospective transferee may submit to the At-
16 torney General information that to correct, clarify, or sup-
17 plement records of the system with respect to the prospec-
18 tive transferee. After receipt of such information, the At-
19 torney General shall immediately consider the information,
20 investigate the matter further, and correct all erroneous
21 Federal records relating to the prospective transferee and
22 give notice of the error to any Federal department or
23 agency or any State that was the source of such erroneous
24 records.

1 “(h) REGULATIONS.—After 90 days’ notice to the
2 public and an opportunity for hearing by interested par-
3 ties, the Attorney General shall prescribe regulations to
4 ensure the privacy and security of the information of the
5 system established under this section.

6 “(i) PROHIBITION RELATING TO ESTABLISHMENT
7 OF REGISTRATION SYSTEMS WITH RESPECT TO FIRE-
8 ARMS.—No department, agency, officer, or employee of
9 the United States may—

10 “(1) require that any record or portion thereof
11 generated by the system established under this sec-
12 tion be recorded at or transferred to a facility
13 owned, managed, or controlled by the United States
14 or any State or political subdivision thereof; or

15 “(2) use the system established under this sec-
16 tion to establish any system for the registration of
17 firearms, firearm owners, or firearm transactions or
18 dispositions, except with respect to persons, prohib-
19 ited by section 922 (g) or (n) of title 18, United
20 States Code, or State law from receiving a firearm.

21 “(j) DEFINITIONS.—As used in this section:

22 (1) LICENSEE.—The term “licensee” means a
23 licensed importer (as defined in section 921(a)(9) of
24 title 18, United States Code), a licensed manufac-
25 turer (as defined in section 921(a)(10) of that title),

1 or a licensed dealer (as defined in section 921(a)(11)
2 of that title).

3 “(2) OTHER TERMS.—The terms “firearm”,
4 “handgun”, “licensed importer”, “licensed manufac-
5 turer”, and “licensed dealer” have the meanings
6 stated in section 921(a) of title 18, United States
7 Code, as amended by subsection (a)(2).

8 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated, which may be appro-
10 priated from the Violent Crime Reduction Trust Fund es-
11 tablished by section 1115 of title 31, United States Code,
12 such sums as are necessary to enable the Attorney General
13 to carry out this section.”.

14 (c) NOTIFICATION OF ADJUDICATIONS OF PERSONS
15 AS MENTAL DEFECTIVES AND COMMITMENTS TO MEN-
16 TAL INSTITUTIONS.—Section 503(a) of title I of the Om-
17 nibus Safe Streets and Crime Control Act of 1968 (42
18 U.S.C. 3753(a)) is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(12) A certification that the State has estab-
21 lished a plan under which the State will provide to
22 the Department of Justice, without fee—

23 “(A) within 30 days after the date on
24 which any person in the State is adjudicated as
25 a mental defective or committed to a mental in-

1 stitution, notice of the adjudication or commit-
2 ment; and

3 “(B) within 30 days after the date on
4 which the Department of Justice requests it, a
5 copy of the certified record of the adjudication
6 or commitment.”.