

112TH CONGRESS
1ST SESSION

S. 35

To establish background check procedures for gun shows.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. LAUTENBERG (for himself, Mr. REED, Mr. MENENDEZ, Mr. KERRY, Mrs. FEINSTEIN, Mr. WHITEHOUSE, Mr. LEVIN, Mr. SCHUMER, Mr. DURBIN, Mrs. BOXER, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish background check procedures for gun shows.

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 Background
5 Check Act of 2011”.

6 **SEC. 2. GUN SHOW BACKGROUND CHECK.**

7 (a) FINDINGS.—Congress finds that—

8 (1) approximately 5,200 traditional gun shows
9 are held annually across the United States, attract-
10 ing thousands of attendees per show and hundreds

1 of Federal firearms licensees and nonlicensed fire-
2 arms sellers;

3 (2) traditional gun shows, as well as flea mar-
4 kets and other organized events, at which a large
5 number of firearms are offered for sale by Federal
6 firearms licensees and nonlicensed firearms sellers,
7 form a significant part of the national firearms mar-
8 ket;

9 (3) firearms and ammunition that are exhibited
10 or offered for sale or exchange at gun shows, flea
11 markets, and other organized events move easily in
12 and substantially affect interstate commerce;

13 (4) in fact, even before a firearm is exhibited or
14 offered for sale or exchange at a gun show, flea mar-
15 ket, or other organized event, the gun, its component
16 parts, ammunition, and the raw materials from
17 which it is manufactured have moved in interstate
18 commerce;

19 (5) gun shows, flea markets, and other orga-
20 nized events at which firearms are exhibited or of-
21 fered for sale or exchange, provide a convenient and
22 centralized commercial location at which firearms
23 may be bought and sold anonymously, often without
24 background checks and without records that enable
25 gun tracing;

1 (6) at gun shows, flea markets, and other orga-
2 nized events at which guns are exhibited or offered
3 for sale or exchange, criminals and other prohibited
4 persons obtain guns without background checks and
5 frequently use guns that cannot be traced to later
6 commit crimes;

7 (7) since the enactment of the Brady Handgun
8 Violence Prevention Act (Public Law 103–59; 107
9 Stat. 1536) in 1993, over 100,000,000 background
10 checks have been performed by Federal firearms li-
11 censees, denying guns to more than 1,600,000 illegal
12 buyers;

13 (8) many persons who buy and sell firearms at
14 gun shows, flea markets, and other organized events
15 cross State lines to attend these events and engage
16 in the interstate transportation of firearms obtained
17 at these events;

18 (9) gun violence is a pervasive, national prob-
19 lem that is exacerbated by the availability of guns at
20 gun shows, flea markets, and other organized events;

21 (10) firearms associated with gun shows have
22 been transferred illegally to residents of another
23 State by Federal firearms licensees and nonlicensed
24 firearms sellers, and have been involved in subse-
25 quent crimes including drug offenses, crimes of vio-

1 lence, property crimes, and illegal possession of fire-
2 arms by felons and other prohibited persons; and

3 (11) Congress has the power, under the inter-
4 state commerce clause and other provisions of the
5 Constitution of the United States, to ensure, by en-
6 actment of this Act, that criminals and other prohib-
7 ited persons do not obtain firearms at gun shows,
8 flea markets, and other organized events.

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

12 “(36) GUN SHOW.—The term ‘gun show’ means
13 any event—

14 “(A) at which 50 or more firearms are of-
15 fered or exhibited for sale, transfer, or ex-
16 change, if 1 or more of the firearms has been
17 shipped or transported in, or otherwise affects,
18 interstate or foreign commerce; and

19 “(B) at which—

20 “(i) not fewer than 20 percent of the
21 exhibitors are firearm exhibitors;

22 “(ii) there are not fewer than 10 fire-
23 arm exhibitors; or

24 “(iii) 50 or more firearms are offered
25 for sale, transfer, or exchange.

1 “(37) GUN SHOW PROMOTER.—The term ‘gun
2 show promoter’ means any person who organizes,
3 plans, promotes, or operates a gun show.

4 “(38) GUN SHOW VENDOR.—The term ‘gun
5 show vendor’ means any person who exhibits, sells,
6 offers for sale, transfers, or exchanges 1 or more
7 firearms at a gun show, regardless of whether or not
8 the person arranges with the gun show promoter for
9 a fixed location from which to exhibit, sell, offer for
10 sale, transfer, or exchange 1 or more firearms.”.

11 (c) REGULATION OF FIREARMS TRANSFERS AT GUN
12 SHOWS.—

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

16 **“§ 932. Regulation of firearms transfers at gun shows**

17 “(a) REGISTRATION OF GUN SHOW PROMOTERS.—
18 It shall be unlawful for any person to organize, plan, pro-
19 mote, or operate a gun show unless that person—

20 “(1) registers with the Attorney General in ac-
21 cordance with regulations promulgated by the Attor-
22 ney General; and

23 “(2) pays a registration fee, in an amount de-
24 termined by the Attorney General.

1 “(b) RESPONSIBILITIES OF GUN SHOW PRO-
 2 MOTERS.—It shall be unlawful for any person to organize,
 3 plan, promote, or operate a gun show unless that person—

4 “(1) before commencement of the gun show,
 5 verifies the identity of each gun show vendor partici-
 6 pating in the gun show by examining a valid identi-
 7 fication document (as defined in section 1028(d)(3))
 8 of the vendor containing a photograph of the vendor;

9 “(2) before commencement of the gun show, re-
 10 quires each gun show vendor to sign—

11 “(A) a ledger with identifying information
 12 concerning the vendor; and

13 “(B) a notice advising the vendor of the
 14 obligations of the vendor under this chapter;

15 “(3) notifies each person who attends the gun
 16 show of the requirements of this chapter, in accord-
 17 ance with such regulations as the Attorney General
 18 shall prescribe; and

19 “(4) maintains a copy of the records described
 20 in paragraphs (1) and (2) at the permanent place of
 21 business of the gun show promoter for such period
 22 of time and in such form as the Attorney General
 23 shall require by regulation.

24 “(c) RESPONSIBILITIES OF TRANSFERORS OTHER
 25 THAN LICENSEES.—

1 “(1) IN GENERAL.—If any part of a firearm
2 transaction takes place at a gun show, it shall be
3 unlawful for any person who is not licensed under
4 this chapter to transfer a firearm to another person
5 who is not licensed under this chapter, unless the
6 firearm is transferred through a licensed importer,
7 licensed manufacturer, or licensed dealer in accord-
8 ance with subsection (e).

9 “(2) CRIMINAL BACKGROUND CHECKS.—A per-
10 son who is subject to the requirement of paragraph
11 (1)—

12 “(A) shall not transfer the firearm to the
13 transferee until the licensed importer, licensed
14 manufacturer, or licensed dealer through which
15 the transfer is made under subsection (e)
16 makes the notification described in subsection
17 (e)(3)(A); and

18 “(B) notwithstanding subparagraph (A),
19 shall not transfer the firearm to the transferee
20 if the licensed importer, licensed manufacturer,
21 or licensed dealer through which the transfer is
22 made under subsection (e) makes the notifica-
23 tion described in subsection (e)(3)(B).

24 “(3) ABSENCE OF RECORDKEEPING REQUIRE-
25 MENTS.—Nothing in this section shall permit or au-

1 thorize the Attorney General to impose record-
2 keeping requirements on any nonlicensed vendor.

3 “(d) RESPONSIBILITIES OF TRANSFEREES OTHER
4 THAN LICENSEES.—

5 “(1) IN GENERAL.—If any part of a firearm
6 transaction takes place at a gun show, it shall be
7 unlawful for any person who is not licensed under
8 this chapter to receive a firearm from another per-
9 son who is not licensed under this chapter, unless
10 the firearm is transferred through a licensed im-
11 porter, licensed manufacturer, or licensed dealer in
12 accordance with subsection (e).

13 “(2) CRIMINAL BACKGROUND CHECKS.—A per-
14 son who is subject to the requirement of paragraph
15 (1)—

16 “(A) shall not receive the firearm from the
17 transferor until the licensed importer, licensed
18 manufacturer, or licensed dealer through which
19 the transfer is made under subsection (e)
20 makes the notification described in subsection
21 (e)(3)(A); and

22 “(B) notwithstanding subparagraph (A),
23 shall not receive the firearm from the transferor
24 if the licensed importer, licensed manufacturer,
25 or licensed dealer through which the transfer is

1 made under subsection (e) makes the notifica-
2 tion described in subsection (e)(3)(B).

3 “(e) RESPONSIBILITIES OF LICENSEES.—A licensed
4 importer, licensed manufacturer, or licensed dealer who
5 agrees to assist a person who is not licensed under this
6 chapter in carrying out the responsibilities of that person
7 under subsection (e) or (d) with respect to the transfer
8 of a firearm shall—

9 “(1) enter such information about the firearm
10 as the Attorney General may require by regulation
11 into a separate bound record;

12 “(2) record the transfer on a form specified by
13 the Attorney General;

14 “(3) comply with section 922(t) as if transfer-
15 ring the firearm from the inventory of the licensed
16 importer, licensed manufacturer, or licensed dealer
17 to the designated transferee (although a licensed im-
18 porter, licensed manufacturer, or licensed dealer
19 complying with this subsection shall not be required
20 to comply again with the requirements of section
21 922(t) in delivering the firearm to the nonlicensed
22 transferor), and notify the nonlicensed transferor
23 and the nonlicensed transferee—

24 “(A) of such compliance; and

1 “(B) if the transfer is subject to the re-
2 quirements of section 922(t)(1), of any receipt
3 by the licensed importer, licensed manufacturer,
4 or licensed dealer of a notification from the na-
5 tional instant criminal background check sys-
6 tem that the transfer would violate section 922
7 or would violate State law;

8 “(4) not later than 10 days after the date on
9 which the transfer occurs, submit to the Attorney
10 General a report of the transfer, which report—

11 “(A) shall be on a form specified by the
12 Attorney General by regulation; and

13 “(B) shall not include the name of or other
14 identifying information relating to any person
15 involved in the transfer who is not licensed
16 under this chapter;

17 “(5) if the licensed importer, licensed manufac-
18 turer, or licensed dealer assists a person other than
19 a licensee in transferring, at 1 time or during any
20 5 consecutive business days, 2 or more pistols or re-
21 volvers, or any combination of pistols and revolvers
22 totaling 2 or more, to the same nonlicensed person,
23 in addition to the reports required under paragraph
24 (4), prepare a report of the multiple transfers, which
25 report shall be—

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

3 “(B) not later than the close of business
4 on the date on which the transfer occurs, for-
5 warded to—

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

8 “(ii) the appropriate State law en-
9 forcement agency of the jurisdiction in
10 which the transfer occurs; and

11 “(6) retain a record of the transfer as part of
12 the permanent business records of the licensed im-
13 porter, licensed manufacturer, or licensed dealer.

14 “(f) RECORDS OF LICENSEE TRANSFERS.—If any
15 part of a firearm transaction takes place at a gun show,
16 each licensed importer, licensed manufacturer, and li-
17 censed dealer who transfers 1 or more firearms to a person
18 who is not licensed under this chapter shall, not later than
19 10 days after the date on which the transfer occurs, sub-
20 mit to the Attorney General a report of the transfer, which
21 report—

22 “(1) shall be in a form specified by the Attor-
23 ney General by regulation;

1 “(2) shall not include the name of or other
2 identifying information relating to the transferee;
3 and

4 “(3) shall not duplicate information provided in
5 any report required under subsection (e)(4).

6 “(g) FIREARM TRANSACTION DEFINED.—In this sec-
7 tion, the term ‘firearm transaction’—

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

10 “(2) does not include the mere exhibition of a
11 firearm.”.

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

15 “(8)(A) Whoever knowingly violates section
16 932(a) shall be fined under this title, imprisoned not
17 more than 5 years, or both.

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

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

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

1 “(C) Whoever willfully violates section 932(d),
2 shall be—

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

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

8 “(D) Whoever knowingly violates subsection (e)
9 or (f) of section 932 shall be fined under this title,
10 imprisoned not more than 5 years, or both.

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

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

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

22 (3) TECHNICAL AND CONFORMING AMEND-
23 MENTS.—Chapter 44 of title 18, United States
24 Code, is amended—

1 (A) in the table of sections, by adding at
2 the end the following:

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

3 and

4 (B) in the first sentence of section 923(j),
5 by striking “a gun show or event” and inserting
6 “an event”.

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

9 “(E) Notwithstanding subparagraph (B),
10 the Attorney General may enter during business
11 hours the place of business of any gun show
12 promoter and any place where a gun show is
13 held for the purposes of examining the records
14 required by sections 923 and 932 and the in-
15 ventory of licensees conducting business at the
16 gun show. Such entry and examination shall be
17 conducted for the purposes of determining com-
18 pliance with this chapter by gun show pro-
19 moters and licensees conducting business at the
20 gun show and shall not require a showing of
21 reasonable cause or a warrant.”.

22 (e) INCREASED PENALTIES FOR SERIOUS RECORD-
23 KEEPING VIOLATIONS BY LICENSEES.—Section 924(a)(3)
24 of title 18, United States Code, is amended to read as
25 follows:

1 “(3)(A) Except as provided in subparagraph
2 (B), any licensed dealer, licensed importer, licensed
3 manufacturer, or licensed collector who knowingly
4 makes any false statement or representation with re-
5 spect to the information required by this chapter to
6 be kept in the records of a person licensed under
7 this chapter, or violates section 922(m) shall be
8 fined under this title, imprisoned not more than 1
9 year, or both.

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

12 “(i) under paragraph (1) or (3) of section
13 922(b), such person shall be fined under this
14 title, imprisoned not more than 5 years, or
15 both; or

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

20 (f) INCREASED PENALTIES FOR VIOLATIONS OF
21 CRIMINAL BACKGROUND CHECK REQUIREMENTS.—

22 (1) PENALTIES.—Section 924(a) of title 18,
23 United States Code, is amended—

1 (A) in paragraph (5), by striking “sub-
2 section (s) or (t) of section 922” and inserting
3 “section 922(s)”; and

4 (B) by adding at the end the following:

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

8 (2) ELIMINATION OF CERTAIN ELEMENTS OF
9 OFFENSE.—Section 922(t)(5) of title 18, United
10 States Code, is amended by striking “and, at the
11 time” and all that follows through “State law”.

12 (g) EFFECTIVE DATE.—This Act and the amend-
13 ments made by this section shall take effect 180 days after
14 the date of enactment of this Act.

○