

117TH CONGRESS
2D SESSION

H. R. 8740

To establish reasonable controls on firearms manufacturers and importers,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 23, 2022

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which
was referred to the Committee on the Judiciary

A BILL

To establish reasonable controls on firearms manufacturers
and importers, 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 “Firearm Industry
5 Crime and Trafficking Accountability Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) The firearm industry has engaged in dan-
9 gerous business practices, flooding American com-
10 munities with weapons of war like AR–15s and other

1 semiautomatic weapons. Despite these practices, the
2 firearm industry is not required to monitor its dis-
3 tribution to ensure that its products are not used for
4 unlawful purposes.

5 (2) A study conducted by the Bureau of Alco-
6 hol, Tobacco, Firearms, and Explosives (ATF) found
7 that 5 percent of licensed dealers sell about 90 per-
8 cent of guns used in crimes (also known as “crime
9 guns”). Firearm manufacturers, through trace data
10 provided by the ATF, often know exactly which deal-
11 ers and distributors disproportionately sell these
12 crime guns.

13 (3) Despite these indicators of diversion, fire-
14 arm manufacturers have failed to adequately curtail
15 their distribution practices and sought to evade any
16 responsibility for preventing the widespread misuse
17 of their products—rejecting ATF resources and fail-
18 ing to effect change at the top of the distribution
19 pyramid.

20 (4) Firearm manufacturers also sell dangerous
21 firearms to distributors and retailers who, according
22 to ATF data, can fail to comply with Federal fire-
23 arms law. The trace analysis of 2,000 firearms deal-
24 ers cited by the ATF found that half of the dealers
25 sold firearms to customers without conducting the

1 background checks required by Federal law. Fire-
2 arms dealers often flouted Federal laws and regula-
3 tions, sold weapons to convicted felons and domestic
4 abusers, lied to investigators, and falsified records.

5 **SEC. 3. REQUIREMENT TO CREATE REASONABLE CON-**
6 **TROLS AND MONITORING SYSTEM.**

7 Each manufacturer or importer of firearms in or af-
8 fecting interstate commerce shall implement reasonable
9 controls to prevent, and create and maintain a monitoring
10 database to retain essential facts concerning, the criminal
11 diversion or potential misuse of their products.

12 **SEC. 4. PROHIBITED ACTIVITIES.**

13 It shall be unlawful for any manufacturer or importer
14 of firearms in or affecting interstate commerce to—

15 (1) supply a firearm to a distributor or retailer
16 of the firearm, knowing or having reasonable cause
17 to believe that the distributor or retailer has failed
18 to implement reasonable controls or engaged in dis-
19 tribution, sales, or other practices likely to result in
20 a high risk of criminal diversion or misuse;

21 (2) fail to investigate or inquire as to the dis-
22 tribution practices of such a distributor or retailer,
23 knowing or having reasonable cause to believe that
24 the distributor or retailer has failed to implement
25 reasonable controls or engaged in distribution, sales,

1 or other practices likely to result in a high risk of
2 criminal diversion or misuse; or

3 (3) supply a quantity of firearms to a State or
4 distribution area, knowing or having reasonable
5 cause to believe that the quantity exceeds the lawful
6 demand for firearms in the State or distribution
7 area.

8 **SEC. 5. REQUIRED ACTIVITIES.**

9 Each manufacturer or importer of firearms in or af-
10 fecting interstate commerce shall—

11 (1) report to the Director on any pattern, dis-
12 tribution, or repeated instances of a distributor or
13 retailer of a firearm whom the firearm manufacturer
14 or importer knows or has reasonable cause to believe
15 has failed to implement reasonable controls or en-
16 gaged in distribution, sales, or other practices likely
17 to result in a high risk of criminal diversion or mis-
18 use;

19 (2) report to the Director annually, in such
20 form and manner as the Director shall prescribe, all
21 instances of criminal diversion or misuse of a prod-
22 uct distributed or sold by the manufacturer or im-
23 porter, as the case may be, of which the manufac-
24 turer or importer, as the case may be, is aware, and

1 shall include in the report an itemization of the fire-
2 arms involved by category; and

3 (3) keep for a period of 5 years all trace
4 records, relevant communications, and other relevant
5 information pertaining to the monitoring database of
6 the manufacturer or importer, as the case may be.

7 **SEC. 6. EXEMPTIONS.**

8 (a) IN GENERAL.—Sections 3 through 5 shall not
9 apply to a manufacturer who manufactures fewer than
10 3,000 firearms per year.

11 (b) WAIVER AUTHORITY.—The Director may waive
12 the applicability of such sections to a manufacturer who
13 manufactures not more than 6,000 firearms per year, on
14 finding that the provision of such a waiver will not harm
15 public safety, except that the Director may not provide
16 such a waiver to a manufacturer who manufactures a
17 semiautomatic firearm or any copy, duplicate, variant, or
18 altered facsimile with the capability of a semiautomatic
19 firearm.

20 **SEC. 7. DEFINITIONS.**

21 In this Act:

22 (1) ATF.—The term “ATF” means the Bureau
23 of Alcohol, Tobacco, Firearms, and Explosives.

24 (2) CRIMINAL DIVERSION.—The term “criminal
25 diversion” means the unlawful sale or distribution of

1 a firearm by, to, or through a firearm trafficker,
2 straw purchaser, or person prohibited by law from
3 possessing a firearm, and any transfer or possession
4 of a firearm in violation of law.

5 (3) DIRECTOR.—The term “Director” means
6 the Director or the Acting Director of ATF.

7 (4) ESSENTIAL FACTS.—The term “essential
8 facts” means crime gun trace data, information on
9 distributor or retailer compliance with ATF inspec-
10 tions, information on distributor or retailer compli-
11 ance with State inspections, where applicable, infor-
12 mation concerning distributor or retailer compliance
13 with applicable background check requirements with
14 respect to firearms sold by the manufacturer or im-
15 porter, and such other information as the Director
16 may deem useful in preventing criminal diversion or
17 misuse of firearms.

18 (5) FIREARM.—The term “firearm” has the
19 meaning given the term in section 921(a)(3) of title
20 18, United States Code.

21 (6) IMPORTER.—The term “importer” has the
22 meaning given the term in section 921(a)(9) of title
23 18, United States Code.

1 (7) MANUFACTURER.—The term “manufac-
2 turer” has the meaning given the term in section
3 921(a)(10) of title 18, United States Code.

4 (8) MONITORING DATABASE.—The term “moni-
5 toring database” means a system capable of incor-
6 porating and analyzing—

7 (A) information obtained from gun trace
8 data, ATF notifications, dealer inspections, and
9 State and local law enforcement notifications;
10 and

11 (B) such other information as the Director
12 may deem important and useful.

13 (9) REASONABLE CONTROLS.—The term “rea-
14 sonable controls” means procedures or practices de-
15 signed to prevent the unlawful sale or distribution of
16 a firearm, including by preventing such a sale to a
17 firearm trafficker, straw purchaser, person prohib-
18 ited by Federal or State law from possessing a fire-
19 arm, or person who the seller knows or has reason-
20 able cause to believe will use a firearm unlawfully or
21 for self-harm.

22 (10) SEMIAUTOMATIC FIREARM.—The term
23 “semiautomatic firearm” means any repeating fire-
24 arm which utilizes a portion of the energy of a firing
25 cartridge or shell to extract the fired cartridge case

1 or shell and chamber the next round, and which re-
2 quires a separate pull of the trigger to fire each car-
3 tridge or shell.

4 (11) STRAW PURCHASER.—The term “straw
5 purchaser” means a person who, in connection with
6 the acquisition or attempted acquisition of a firearm,
7 makes any false or fictitious oral or written state-
8 ment intended to conceal that the purchase is being
9 made on behalf of a third party, unless the acquisi-
10 tion or attempted acquisition is for the purpose of
11 making a bona fide gift to a third party who is not
12 prohibited by law from possessing or receiving a fire-
13 arm. For purposes of the preceding sentence, a gift
14 to a third party is not a bona fide gift if the third
15 party has offered or given the purchaser a service or
16 thing of value to acquire the firearm for the third
17 party.

18 **SEC. 8. PENALTIES.**

19 (a) ADMINISTRATIVE REMEDIES.—With respect to
20 each violation of section 3, 4, or 5, the Director shall, after
21 notice and opportunity for hearing, subject the violator to
22 a civil penalty, in an amount to be determined by the Di-
23 rector which shall be—

24 (1) in the case of the 1st such violation by the
25 violator, not less than \$150,000 and not more than

1 1 percent of the gross annual revenue of the viola-
2 tor;

3 (2) in the case of the 2nd such violation, not
4 less than \$300,000 and not more than 2 percent of
5 the gross annual revenue of the violator; or

6 (3) in the case of the 3rd or subsequent such
7 violation, not less than \$1,000,000 and not more
8 than 6 percent of the gross annual revenue of the
9 violator.

10 (b) JUDICIAL REMEDIES IN THE CASE OF KNOWING
11 VIOLATIONS.—

12 (1) IN GENERAL.—In the case of a violation of
13 section 4 or 5 that the Director determines was com-
14 mitted knowingly, the Director shall also bring a
15 civil action against the violator in the United States
16 District Court for the District of Columbia. If the
17 Director proves the violation by a preponderance of
18 the evidence, the court shall order the Director to
19 place the violator under an ATF monitoring system
20 to prevent criminal diversion of the products of the
21 violator, for not more than 5 years.

22 (2) LICENSE SUSPENSION FOR VIOLATION
23 WHILE SUBJECT TO ATF MONITORING SYSTEM.—If
24 the Director determines that, while subject to such
25 a monitoring system, the violator has knowingly vio-

1 lated section 4 or 5, the Director may bring a civil
2 action in the United States District Court for the
3 District of Columbia. If the Director proves the vio-
4 lation by a preponderance of the evidence, the court
5 shall order the Director to suspend for 3 months any
6 license issued to the violator under chapter 44 of
7 title 18, United States Code.

8 **SEC. 9. ADMINISTRATIVE PROVISIONS.**

9 (a) REQUEST FOR RECORDS.—On request of the Di-
10 rector, a manufacturer or importer of firearms shall pro-
11 vide the Director with such records as the Director deter-
12 mines will assist the Director in ensuring compliance with
13 this Act.

14 (b) AVAILABILITY OF TRACE DATA.—The Director
15 may make available to a manufacturer or importer of fire-
16 arms any data requested by the manufacturer or importer,
17 as the case may be, from the National Tracing Center or
18 the Director of Industry Operations.

19 (c) PROVISION OF INFORMATION TO OTHER FED-
20 ERAL LAW ENFORCEMENT AGENCIES, OR STATE OR
21 LOCAL GOVERNMENTS.—On request of a Federal law en-
22 forcement agency, the Director shall provide information
23 obtained under this Act to the agency, and may provide
24 the information to State and local law enforcement au-
25 thorities.

1 **SEC. 10. ANNUAL REPORT TO CONGRESS.**

2 The Director shall submit to the Congress, and make
3 easily accessible to the public on the website of the ATF,
4 annual reports summarizing the information reported pur-
5 suant to section 5(2), which shall include copies of the
6 reports made pursuant to section 5(2) and supporting eco-
7 nomic analyses.

8 **SEC. 11. TRADE SECRETS AND CONFIDENTIAL INFORMA-**
9 **TION.**

10 This Act shall not be interpreted to require the disclo-
11 sure of information that is exempt from public disclosure
12 under section 552 of title 5, United States Code (com-
13 monly known as the “Freedom of Information Act”).

14 **SEC. 12. REGULATIONS.**

15 Within 18 months after the date of the enactment
16 of this Act, the Director shall promulgate final regulations
17 necessary to implement the preceding provisions of this
18 Act, including regulations necessary to ensure that manu-
19 facturers and importers of firearms comply with sections
20 3 through 5. In promulgating regulations to enforce sec-
21 tion 4(3), the Director shall take into account factors such
22 as population, reports of lost and stolen firearms, types
23 of firearms used in crimes, firearms traced to distributors
24 and retailers in other States, and firearm traces.

1 **SEC. 13. EFFECTIVE DATE.**

2 The preceding provisions of this Act shall take effect
3 on the date final regulations are promulgated under sec-
4 tion 11.

5 **SEC. 14. REPEAL OF CERTAIN LIMITATIONS ON THE BU-**
6 **REAU OF ALCOHOL, TOBACCO, FIREARMS**
7 **AND EXPLOSIVES.**

8 (a) REPEAL OF CERTAIN LIMITATIONS ON THE USE
9 OF DATABASE INFORMATION OF THE BUREAU OF ALCO-
10 HOL, TOBACCO, FIREARMS AND EXPLOSIVES.—

11 (1) The matter under the heading “Bureau of
12 Alcohol, Tobacco, Firearms and Explosives—Sala-
13 ries and Expenses” in title II of division B of the
14 Consolidated and Further Continuing Appropria-
15 tions Act, 2012 (18 U.S.C. 923 note; Public Law
16 112–55; 125 Stat. 609–610) is amended by striking
17 the 6th proviso.

18 (2) The 6th proviso under the heading “Bureau
19 of Alcohol, Tobacco, Firearms and Explosives—Sala-
20 ries and Expenses” in title II of division B of the
21 Consolidated Appropriations Act, 2010 (18 U.S.C.
22 923 note; Public Law 111–117; 123 Stat. 3128–
23 3129) is amended by striking “beginning in fiscal
24 year 2010 and thereafter” and inserting “in fiscal
25 year 2010”.

1 (3) The 6th proviso under the heading “Bureau
2 of Alcohol, Tobacco, Firearms and Explosives—Sala-
3 ries and Expenses” in title II of division B of the
4 Omnibus Appropriations Act, 2009 (18 U.S.C. 923
5 note; Public Law 111–8; 123 Stat. 574–576) is
6 amended by striking “beginning in fiscal year 2009
7 and thereafter” and inserting “in fiscal year 2009”.

8 (4) The 6th proviso under the heading “Bureau
9 of Alcohol, Tobacco, Firearms and Explosives—Sala-
10 ries and Expenses” in title II of division B of the
11 Consolidated Appropriations Act, 2008 (18 U.S.C.
12 923 note; Public Law 110–161; 121 Stat. 1903–
13 1904) is amended by striking “beginning in fiscal
14 year 2008 and thereafter” and inserting “in fiscal
15 year 2008”.

16 (5) The 6th proviso under the heading “Bureau
17 of Alcohol, Tobacco, Firearms and Explosives—Sala-
18 ries and Expenses” in title I of the Science, State,
19 Justice, Commerce, and Related Agencies Appro-
20 priations Act, 2006 (18 U.S.C. 923 note; Public
21 Law 109–108; 119 Stat. 2295–2296) is amended by
22 striking “with respect to any fiscal year”.

23 (6) The 6th proviso under the heading “Bureau
24 of Alcohol, Tobacco, Firearms and Explosives—Sala-
25 ries and Expenses” in title I of division B of the

1 Consolidated Appropriations Act, 2005 (18 U.S.C.
2 923 note; Public Law 108–447; 118 Stat. 2859–
3 2860) is amended by striking “with respect to any
4 fiscal year”.

5 (b) ELIMINATION OF PROHIBITION ON PROCESSING
6 OF FREEDOM OF INFORMATION ACT REQUESTS ABOUT
7 ARSON OR EXPLOSIVES INCIDENTS OR FIREARM
8 TRACES.—Section 644 of division J of the Consolidated
9 Appropriations Resolution, 2003 (5 U.S.C. 552 note; Pub-
10 lic Law 108–7; 117 Stat. 473) is repealed.

11 (c) REPEAL OF LIMITATIONS ON IMPOSITION OF RE-
12 QUIREMENT THAT FIREARMS DEALERS CONDUCT PHYS-
13 ICAL CHECK OF FIREARMS INVENTORY.—The 5th proviso
14 under the heading “Bureau of Alcohol, Tobacco, Firearms
15 and Explosives—Salaries and Expenses” in title II of divi-
16 sion B of the Consolidated and Further Continuing Appro-
17 priations Act, 2013 (18 U.S.C. 923 note; Public Law 113–
18 6; 127 Stat. 248) is amended by striking “and any fiscal
19 year thereafter”.

20 (d) ELIMINATION OF PROHIBITION ON CONSOLIDA-
21 TION OR CENTRALIZATION IN THE DEPARTMENT OF JUS-
22 TICE OF FIREARMS ACQUISITION AND DISPOSITION
23 RECORDS MAINTAINED BY FEDERAL FIREARMS LICENS-
24 EES.—The matter under the heading “Bureau of Alcohol,
25 Tobacco, Firearms and Explosives—Salaries and Ex-

1 penses'' in title II of division B of the Consolidated and
2 Further Continuing Appropriations Act, 2012 (18 U.S.C.
3 923 note; Public Law 112–55; 125 Stat. 609) is amended
4 by striking the 1st proviso.

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