

117TH CONGRESS
1ST SESSION

H. R. 3820

To enforce the requirement that the National Instant Criminal Background Check System make a final disposition of requests to correct its records within 60 days, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2021

Mr. EMMER (for himself, Mr. HICE of Georgia, Mr. DESJARLAIS, Mr. NORMAN, Ms. TENNEY, Mr. STEUBE, Mr. VAN DREW, Mr. LAMALFA, Mr. DONALDS, Mr. MANN, Mr. STAUBER, Mr. BUCSHON, Mr. BABIN, Mrs. CAMMACK, Mr. FEENSTRA, Mr. TIFFANY, Mr. GRAVES of Louisiana, Mr. MCCLINTOCK, Mr. JACKSON, Mr. NEWHOUSE, Mrs. HARSHBARGER, Mr. FULCHER, Mrs. FISCHBACH, Mr. YOUNG, Mr. MOONEY, Mr. SMITH of Nebraska, Mr. KUSTOFF, Mr. WEBER of Texas, Mr. POSEY, Ms. HERRELL, Mr. DUNCAN, Mr. CARTER of Georgia, Mr. JOYCE of Pennsylvania, Mr. TONY GONZALES of Texas, Mr. HAGEDORN, Mr. AUSTIN SCOTT of Georgia, Mr. ROSENDALE, Mr. KELLER, Mr. ADERHOLT, Mr. NUNES, Mr. RICE of South Carolina, Mr. GROTHMAN, Ms. STEFANIK, Mr. CARL, Mr. C. SCOTT FRANKLIN of Florida, Ms. CHENEY, Mr. BIGGS, Mr. BUDD, and Mr. HARRIS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To enforce the requirement that the National Instant Criminal Background Check System make a final disposition of requests to correct its records within 60 days, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Firearm Due Process
3 Protection Act”.

4 **SEC. 2. ENFORCEMENT OF DEADLINE FOR FINAL DISPOSI-**
5 **TION OF REQUESTS TO CORRECT RECORDS**
6 **OF THE NATIONAL INSTANT CRIMINAL BACK-**
7 **GROUND CHECK SYSTEM; DUE PROCESS PRO-**
8 **TECTIONS.**

9 Section 925A of title 18, United States Code, is
10 amended—

11 (1) by inserting “(a) IN GENERAL.—” before
12 “Any person”;

13 (2) by inserting “or aggrieved by a violation of
14 the penultimate sentence of section 103(g) of the
15 Brady Handgun Violence Prevention Act” after “(s)
16 or (t) of section 922”;

17 (3) by striking the last sentence; and

18 (4) by adding after and below the end the fol-
19 lowing:

20 “(b) PROCEDURAL RULES.—

21 “(1) EXPEDITED HEARING.—The court shall
22 hold a hearing on an action brought under sub-
23 section (a), within 30 days after the action is
24 brought.

25 “(2) BURDEN OF PROOF.—At such a hearing,
26 the respondent shall bear the burden of proving by

1 clear and convincing evidence that the individual is
 2 ineligible to receive or possess a firearm.

3 “(c) REMEDIES.—

4 “(1) IN GENERAL.—The court shall assess
 5 against the respondent reasonable attorney fees and
 6 other litigation costs reasonably incurred in an ac-
 7 tion brought under subsection (a) in which the com-
 8 plainant has substantially prevailed.

9 “(2) SUBSTANTIALLY PREVAILED.—For pur-
 10 poses of this section, a complainant has substantially
 11 prevailed if the complainant has obtained relief
 12 through—

13 “(A) a judicial order;

14 “(B) an enforceable written agreement or
 15 consent decree; or

16 “(C) a voluntary or unilateral change in
 17 position by the United States, if the complain-
 18 ant’s claim is not insubstantial.”.

19 **SEC. 3. ANNUAL REPORTS TO THE CONGRESS ON DISPOSI-**
 20 **TION OF CHALLENGES TO ACCURACY OF**
 21 **RECORDS OF THE NATIONAL INSTANT CRIMI-**
 22 **NAL BACKGROUND CHECK SYSTEM.**

23 The Director of the Federal Bureau of Investigation
 24 shall submit annually to the Committee on the Judiciary
 25 of the House of Representatives and the Committee on

1 the Judiciary of the Senate a written report that speci-
2 fies—

3 (1) the total number of challenges to the accu-
4 racy of the records of the National Instant Criminal
5 Background Check System (in this section referred
6 to as the “NICS system”) established under section
7 103 of the Brady Handgun Violence Prevention Act
8 that were received by the NICS system during the
9 year covered by the report;

10 (2) the total number of the challenges that were
11 processed to final disposition by the NICS system;

12 (3) the total number of the challenges with re-
13 spect to which the initial determination of the NICS
14 system was reversed, and with respect to those chal-
15 lenges, the total number in which each reason for
16 the initial determination was made;

17 (4) the total number of the challenges with re-
18 spect to which the initial determination of the NICS
19 system was not reversed, and with respect to those
20 challenges, the total number in which each reason
21 for not doing so was made; and

22 (5) the average length of time needed to com-
23 plete the processing of the challenges referred to in
24 paragraph (2).

1 **SEC. 4. SENSE OF THE CONGRESS.**

2 It is the sense of the Congress that—

3 (1) the right of the people to keep and bear
4 arms is a fundamental component of self-govern-
5 ment, self-defense, and the preservation of individual
6 liberty;

7 (2) deprivation of the constitutional right to
8 bear arms requires due process under the Fifth and
9 Fourteenth Amendments to the Constitution of the
10 United States;

11 (3) ignoring appeals of determinations made by
12 the National Instant Criminal Background Check
13 System (NICS) violates due process; and

14 (4) NICS should have the burden of showing a
15 valid reason for the denial of this constitutional
16 right.

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