

HJR

9



HOUSE JOINT RESOLUTION NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES CROFT, James, Dyson, Green, Brice, Therriault, Berkowitz, Foster, Harris, Coghill, Hudson, Morgan, Halcro, Austerman, Ogan, Kott, Cowdery, Phillips, Smalley

Introduced: 1/27/99

Referred: State Affairs, Judiciary

A RESOLUTION

1 **Urging the President of the United States and the Congress to act to ensure that**
2 **federal agencies do not retain records relating to lawful purchase or ownership**
3 **of firearms gathered through the Brady Handgun Bill instant check system.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **WHEREAS** the Second Amendment to the Constitution of the United States protects
6 the right of all citizens to keep and bear arms; and

7 **WHEREAS** Art I, sec. 19, Constitution of the State of Alaska, clarifies that the right
8 to keep and bear arms is an individual right in Alaska; and

9 **WHEREAS** the intent of H.R. 1025, known as the Brady Handgun Bill, when passed
10 by the Congress was to create an instant criminal background check system that kept records
11 only on individuals who are prohibited from lawfully owning firearms; and

12 **WHEREAS** the Brady Handgun Bill specifically states that, when a call to the instant
13 check system reveals that a person may lawfully own firearms, "the system shall . . . destroy
14 all records of the system with respect to the call (other than the identifying number and the
15 date the number was assigned) and all records of the system relating to the person or the
16 transfer." (18 U.S.C. 922(t)(2)(C)); and

1 **WHEREAS** the Federal Bureau of Investigation (FBI) has indicated an intent to keep
2 records gathered through the Brady Handgun Bill instant check system regarding lawful
3 owners of firearms in its data banks for "audit purposes"; and

4 **WHEREAS** the actions of the FBI are contrary to both the letter and the spirit of the
5 Brady Handgun Bill and further erode the constitutional right of Alaskans to keep and bear
6 arms;

7 **BE IT RESOLVED** that the Alaska State Legislature respectfully urges the President
8 of the United States to prevent federal agencies from maintaining information regarding lawful
9 owners of firearms in violation of the Brady Handgun Bill; and be it

10 **FURTHER RESOLVED** that the Alaska State Legislature respectfully urges the
11 Congress to make any necessary statutory changes to prevent federal agencies from
12 maintaining information regarding the lawful possession of firearms.

13 **COPIES** of this resolution shall be sent to the Honorable Bill Clinton, President of the
14 United States; the Honorable Al Gore, Jr., Vice-President of the United States and President
15 of the U.S. Senate; the Honorable Trent Lott, Majority Leader of the U.S. Senate; the
16 Honorable Dennis Hastert, Speaker of the U.S. House of Representatives; and to the
17 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the
18 Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.



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**NRA STATEMENT
IN SUPPORT OF
HOUSE JOINT RESOLUTION 9**

Submitted by:
Brian Judy, Alaska State Liaison
February 18, 1999

On behalf of the more than 18,000 NRA members who live in Alaska, I urge strong support for House Joint Resolution 9.

In 1993, the National Rifle Association worked closely with Congress in drafting the law which created the National Instant Check System (NICS) in an effort to ensure the privacy of firearm owners. One of the provisions which was of paramount importance to NRA was the destruction of records required under 18 USC §922(r)(2). This law requires that the instant check "system shall...destroy all records of the system with respect to the call and all records of the system relating to the person or the transfer." The ONLY exception to this requirement is specific authorization to retain a unique transaction identification number and transaction date.

Legislative intent clearly requires the immediate destruction of all personal information pertaining to law-abiding firearm purchasers who are not found to be prohibited from possessing a firearm under federal law.

This is further evidenced by another section of the NICS bill which went on to specify that: "No department, agency, officer, or employee of the United States may (1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States...; or (2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited...from receiving a firearm." (§103(l) Public Law 103-159, 107 Stat 1542 (11/30/93))

Clearly, only information on the bad guys, those who are prohibited from possessing firearms, is allowed to be maintained under the provisions of the law.

History has shown, over and over again, how firearm registration systems have led to firearm confiscation mandates. Law-abiding firearm owners clearly understand that the creation of a gun registration system is a major step toward the destruction of the Second Amendment.

The National Rifle Association urges support for House Joint Resolution 9. Passage of this resolution will send a strong message to Washington D.C. that federal bureaucrats are not, and should not act, above the law and that the integrity of the Second Amendment must be preserved.

of this section; and

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

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall -

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

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if -

(A) (i) such other person has presented to the licensee a permit that -

(I) allows such other person to possess or acquire a firearm; and

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

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

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

(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1) (A) is impracticable because -

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of

**Testimony of the Alaska Outdoor Council on HJR 9,
By Dick Bishop, vice president
Feb. 18, 1999 before the House State Affairs Committee**

Madam Chair, I'm Dick Bishop of Fairbanks, vice president of, and part-time lobbyist for the Alaska Outdoor Council, on whose behalf I am testifying.

The AOC is vitally interested in the safe and ethical exercise of the individual right to keep and bear arms.

The Outdoor Council strongly supports HJR 9. We thank Representative Croft for introducing the measure, and his cosponsors for their strong bipartisan support. This is an issue that knows no party lines.

Regulations mandating retention of data on lawful firearms purchases under the so-called Brady Bill's instant check provisions are a cynical subversion of the clear meaning of that law. The law's provision mandating destruction of those records does not mean some Tuesday next week, or 6 months later.

The purpose of the instant check is to determine if a firearms purchase is legal. Once that determination is made, there is no rationale under the law for retaining that record. The purpose of the law has been fulfilled when attempted illegal purchases are forestalled.

As anyone who has worked in or with government knows, it is all too easy for bureaucracies to overlook or ignore statutory requirements and regulations. The 6-month destruction deadline easily becomes no deadline, through neglect, or for an ulterior motive. Or it might be revised in a future regulation, to one year, or 5 years, -- or permanent retention.

There's not much good to be said about the Brady bill, but at least it was agreed that it was not to be the first step in an all out gun registration system. We applaud the National Rifle Association's legal challenge to this foot in the door regulation.

I wonder who decided there should be 6-month data retention? It appears to fit right in with President Clinton's patronizing political campaign to demonize all gunowners.

The Alaska Outdoor Council urges the Legislature to promptly pass HJR 9. We also recommend that you transmit the resolution to every state legislature and every governor, in addition to the distribution outlined in the resolution.

Thank you for your efforts, and for this opportunity to testify.

28 CFR s 25.9

28 C.F.R. § 25.9

**CODE OF FEDERAL REGULATIONS
TITLE 28--JUDICIAL
ADMINISTRATION
CHAPTER I--DEPARTMENT OF
JUSTICE
PART 25--DEPARTMENT OF JUSTICE
INFORMATION SYSTEMS
SUBPART A--THE NATIONAL
INSTANT CRIMINAL BACKGROUND
CHECK SYSTEM**

Current through January 1, 1999; 63 FR
72352

§ 25.9 Retention and destruction of records in
the system.

(a) The NICS will retain NICS Index records that indicate that receipt of a firearm by the individuals to whom the records pertain would violate Federal or state law. The NICS will retain such records indefinitely, unless they are canceled by the originating agency. In cases where a firearms disability is not permanent, e.g., a disqualifying restraining order, the NICS will automatically purge the pertinent record when it is no longer disqualifying. Unless otherwise removed, records contained in the NCIC and III files that are accessed during a background check will remain in those files in accordance with established policy.

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) The Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN). In cases of allowed transfers, all information in the

Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed after not more than six months after the transfer is allowed. Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. The NICS will not be used to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922(g) or (n) or by state law.

(2) The Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the Audit Log pertaining to allowed transfers may only be used by the FBI for the purpose of conducting audits of the use and performance of the NICS. Such information, however, may be retained and used as long as needed to pursue cases of identified misuse of the system. The NICS, including the NICS Audit Log, may not be used by any department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions. The Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages

(regardless of media) relating to a background check that results in an allowed transfer; and

(2) All information (regardless of media) contained in the NICS Audit Log relating to a background check that results in an allowed transfer.

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions; and

(2) All other records relating to the person or the transfer created as a result of a NICS check that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions.

<General Materials (GM) - References,
Annotations, or Tables>

28 C. F. R. § 25.9

28 CFR § 25.9

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REPRESENTATIVE ERIC CROFT

MEMO

To: Representative Pete Kott, Chairman
House Judiciary Committee

From: Representative Eric Croft 

Date: 22 February '99

Re.: HJR 9

On February 18th, HJR 9, a resolution addressing the unlawful retention of gun records, was heard and passed unanimously from the House State Affairs Committee. Among those testifying was Brian Judy, Liaison for the National Rifle Association. Mr. Judy was very direct in his presentation, stating that he urged "strong support for House Joint Resolution 9."

Given the importance of having our voice join other state government voices in sending a strong message to the nation's capitol, I request the opportunity for a hearing at the earliest possible date.

Enclosed is a copy of the bill, sponsor statement, and other background information. Please let me know if I can provide anything further.





REPRESENTATIVE ERIC CROFT

Sponsor Statement

HJR 9

Preventing the Unlawful Retention of Gun Owner Records

When the United State Congress passed the Brady Bill in 1993 to establish a system to keep firearms out of the hands of criminals, it was clear that this system was not to be used by government as a way to monitor legitimate firearm ownership by law-abiding Americans.

The Brady Bill established the "national instant criminal background check system" to check criminal backgrounds during firearm purchases. In order to ensure that non-criminal records were not retained, language was included that directly addressed this fundamental issue. Under the section referring to lawful firearm purchases, the code clearly states the intent to "destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer."¹

The problem arose when the Administration gave this clear statutory language a novel interpretation. Final regulations purporting to implement the Brady Bill state that all information regarding legitimate firearm purchases would be retained for "audit" purposes and "will be destroyed after not more than six months after the transfer is allowed."²

By extending the holding of non-criminal records for up to one hundred and eighty days, the Administration has violated both the spirit and letter of the original Brady Bill.

HJR 9 urges the President of the United States and the Congress to prevent federal agencies from using the Brady Bill Act as a vehicle to unlawfully collect data about legitimate firearm owners. HJR 9 also requests that necessary statutory changes be implemented to ensure this does not occur again in the future.

The sponsor and co-sponsors of HJR 9 respectfully ask you to join us in seeing that this message is clearly heard at our nation's capitol.

¹ 18 USC Sec. 922 (t)(2)(c)

² 28 CFR Sec. 25.9 (a) (1)

