

HJR

17

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HJR 17
 (H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: All Departments
 Title: Destroy Brady Bill Records BRU: _____
 Sponsor: Rep. Hayes Component: _____
 Requester: House Judiciary Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have any fiscal impact.

Prepared by: Heather Nobrega

Phone 465-4990

Representative Norman Rokeberg, House Judiciary Committee
 Committee Chair

Date 4/27/01

House Committees

Labor & Commerce
Military & Veterans Affairs
State Affairs
Regulation Review

Alaska State Legislature Representative Joe Hayes

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Representative Joe Hayes Sponsor Statement

HJR 17- Destroy Brady Bill Records

When the United States 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 17 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 17 also requests that necessary statutory changes be implemented to ensure this does not occur again in the future.

I respectfully ask you to join me 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)

Alaska Civil Liberties Union

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February 28, 2001

ALASKA CIVIL LIBERTIES UNION STATEMENT IN SUPPORT OF HOUSE JOINT RESOLUTION NO. 17

The Alaska Civil Liberties Union (AkCLU) strongly supports the passage of House Joint Resolution Number Seventeen. The AkCLU believes that the privacy of an individual is directly affected by the collection, maintenance, use and dissemination of personal information by government agencies and the private sector. The increasing use of computers and sophisticated information technology has substantially magnified the harm to individual privacy that can occur from any collection, use, maintenance or dissemination of personal information. The AkCLU supports HJR 17 because it urges the government to destroy lawfully collected information once that information is no longer necessary to carry out the government's purpose.

Government agencies and the private sector possess billions of records containing personal information, and there is often no provision or plan for disposal of that information in such a way that the privacy of the individual is protected. The collection and use of such enormous quantities of personal information raise a number of privacy and civil liberties concerns. Presently, many government agencies have nearly unrestrained access to each other's computerized record systems containing personal, sensitive information. Although much of the information is initially given voluntarily by individuals to government agencies, those agencies then match and verify separate record systems for purposes unrelated to their initial collection.

There is a danger in the aggregation and linking of multiple agency databases. Databases maintained for purposes of the Brady Bill in the Department of Justice and the Federal Bureau of Investigation may become or already are linked to other agency databases such as those maintained by the Internal Revenue Service, the Immigration and Naturalization Services, Health and Human Services or other agencies. The government, including state government, is increasingly moving towards the instant linkage of separate databases in order to verify information. Information collected for purposes of the Brady Bill should be destroyed consistent with the intent of the law. It should not be maintained nor spread to other databases.

It is nearly impossible for individuals to control information about themselves once it is in the hands of the government. Computer-driven techniques such as data matching and front-end verification make it possible for information to be stored in decentralized databases but then matched, merged or verified with information in one or more separate databases. A centralized national data bank is no longer necessary given the new technologies.

HJR 17 position paper -- AkCLU
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The Alaska Civil Liberties Union supports efforts on the part of government entities and the private sector to properly dispose of information collected provided that such information is originally gathered for a necessary and legitimate purpose. The fact that an agency may have been justified in collecting such information does not justify maintaining the information if it is not necessary for a lawful government purpose. The AkCLU urges the members of the legislature to pass HJR 17.

Please feel free to contact me if you have any questions or civil liberties concerns. Thank you very much for your consideration of this matter.

Very truly yours,

Jennifer Rudinger
Executive Director

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

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

END OF DOCUMENT

§ 4.24 General disclosures required.

(v) * * *

(3) Must be placed as follows, unless otherwise specified by Commission rules, provided that where a two-part document is used pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, all supplemental information must be provided in the second part of the two-part document:

3. Section 4.25 is amended by revising paragraph (c)(5) introductory text to read as follows:

§ 4.25 Performance disclosures.

(c) * * *

(5) With respect to commodity trading advisors and investor pools for which performance is not required to be disclosed pursuant to § 4.25(c)(3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part document pursuant to the rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, such summary description may be provided in the second part of the two-part document:

Dated: October 26, 1998.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-29102 Filed 10-29-98; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF JUSTICE**28 CFR Part 25**

[AG Order No. 2186-98]

RIN 1105-AA51

National Instant Criminal Background Check System Regulation

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice (DOJ) is publishing a final rule implementing the National Instant Criminal Background Check System (NICS) pursuant to the Brady Handgun Violence Prevention Act ("Brady Act"), to provide notice of the establishment of the NICS, to establish policies and procedures for ensuring the privacy and security of this system, and to

implement a NICS appeals policy for persons denied acquisition of a firearm based on information in the NICS that they believe to be erroneous or incomplete.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Emmet A. Rathbun, Unit Chief, Federal Bureau of Investigation, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147, telephone number (304) 625-2000.

SUPPLEMENTARY INFORMATION: This rule finalizes two notices of proposed rulemaking: the National Instant Criminal Background Check System Regulation published in the Federal Register on June 4, 1998 (63 FR 30430), and the National Instant Criminal Background Check System User Fee Regulation, published in the Federal Register on August 17, 1998 (63 FR 43893). The FBI accepted comments on the proposed rules from interested parties until September 16, 1998, and approximately 2,000 comments were received.

In publishing this final rule, the Department also is giving notice, pursuant to section 103(d) of the Brady Act, Public Law 103-159, 107 Stat. 1536, to Federal Firearm Licensees (FFLs) and the chief law enforcement officer of each state that the NICS is established as of October 31, 1998. With limited exceptions, FFLs are required by the Brady Act to begin contacting the system beginning on November 30, 1998, thirty days after the establishment of the system, before they may transfer a firearm to a non-licensee. FFLs shall contact the NICS by contacting either the FBI NICS Operations Center or a state point of contact (POC) for the NICS, as specified by the Bureau of Alcohol, Tobacco, and Firearms (ATF), United States Department of the Treasury. The ATF will notify each FFL of the method by which FFLs must contact the NICS in their state.

Significant Comments or Changes**The NICS User Fee**

The largest number of comments pertained to the FBI's proposed user fee to be charged FFLs that contact the FBI NICS Operations Center directly for a NICS background check. All of those who commented on the proposed user fee opposed the fee. This issue was the subject of Congressional action since the time of the initial publication of the proposed NICS rule. The Omnibus Appropriations Act for fiscal year 1999 provided additional monies to the FBI to fund the operation of the NICS and prohibited the FBI from charging a fee for NICS checks. Accordingly, the FBI

will not be charging the user fee set forth in the proposed NICS user fee regulation. This does not preclude state or local agencies acting as POCs for the NICS from charging such fees as may be appropriate under state or local law.

The NICS Audit Log

A significant number of comments were received opposing the retention by the NICS of a temporary log of background check transactions that allow a firearm transfer to proceed. Most of these comments expressed an opinion that such a log would constitute a national firearms registry, the establishment of which is prohibited by the Brady Act.

The FBI will not establish a federal firearms registry. The FBI is expressly barred from doing so by section 103(i) of the Brady Act. In order to meet her responsibility to maintain the integrity of Department systems, however, the Attorney General must establish an adequate system of oversight and review. Consequently, the FBI has proposed to retain records of approved transactions in an audit log for a limited period of time solely for the purpose of satisfying the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system. Although the Brady Act mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within which records of approvals must be destroyed. The Department attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS.

The NICS Audit Log will contain information relating to each NICS background check requested by FFLs and will allow the FBI to audit use of the system by FFLs and POCs. By auditing the system, the FBI can identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, and protect against the invasions of privacy that would result from such misuse. Audits can also determine whether potential handgun purchasers or FFLs have stolen the identity of innocent and unsuspecting individuals or otherwise submitted false identification information, in order to thwart the name check system. The Audit Log will also allow the FBI to perform quality control checks on the

system's operation by reviewing the accuracy of the responses given by the NICS record examiners to gun dealers.

Under the proposed rule, personally identified information in the NICS Audit Log associated with allowed transfers would be destroyed after eighteen months. Because of the numerous comments objecting to this retention period as too long, the Department reexamined the time period needed to perform audits of the NICS. In light of the statutory requirement that records for allowed transfers be destroyed, and the countervailing statutory requirement to provide for system privacy and security, the Department determined that the general retention period for records of allowed transfers in the NICS Audit Log should be the minimum reasonable period for performing audits on the system, but in no event more than six months. Section 25.9(b) in the final rule was revised to reflect this and to provide that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system. The Department further determined that the FBI shall work toward reducing the retention period to the shortest practicable period of time less than six months that will allow basic security audits of the NICS. By February 28, 1999, the Department will issue a notice of a proposed revision of the regulation setting forth a further reduced period of retention that will be observed by the system.

Various comments expressed concern that the Audit Log would allow POCs and law enforcement agencies access to records of approved transfers. This is not a well-founded concern because only the FBI will be able to access information in the transaction log. Section 25.9(b)(1) of the final rule was revised to provide explicitly that such information is available only to the FBI, and only for the purposes of conducting audits of the use and performance of the NICS or pursuing cases of misuse of the system.

There were also suggestions in the comments that more specific language be added to the final rule setting forth requirements for the FBI to ensure that transaction logs of the separate National Crime Information Center (NCIC) record system also be destroyed to the extent they reflect allowed firearm transfers. The NCIC information system is separate from the NICS. Nonetheless, the FBI has taken steps to preclude transaction logging of personally identified information in either NCIC or the Interstate Identification Index (III) that would pertain to allowed firearm transactions. Thus, the only logging of

this information by the FBI is in the NICS Audit Log. Similar steps will be taken to prevent such logging in the future FBI information systems NCIC 2000 and the Integrated Automated Fingerprint Identification System (IAFIS) as soon as practicable, but in no event more than one year after those systems come on-line in July 1999. For NICS disaster recovery, a tape of each weekly, full system backup will be maintained in an off-site location for up to six months. Full system backup tapes will also be stored locally to recycle the off-site storage. The FBI keeps no systematic paper copies of transactions.

Finally, comments were received from state and local law enforcement agencies that will serve as POCs seeking clarification that none of the information about NICS checks in state record systems that they maintain pursuant to state law will be subject to the record destruction requirement. The proposed rule provided: (1) that POC records of inquiry and response messages relating to the initiation and result of a NICS check that allows a transfer must be destroyed; and (2) that POC records of NICS checks that the POC processes that are part of a state record system created and maintained in accordance with state law are not subject to the Brady Act record destruction requirement. Sections 25.9(d)(1) and (2) of the final rule were revised to make it clear that the referenced state records of allowed transfers would not be subject to the Brady Act record destruction requirement if they are part of a record system created and maintained pursuant to independent state law regarding firearms transfers. The reason for this clarification is to avoid interfering with state regulation of firearms. If a state is performing a gun eligibility check under state law, and state law requires or allows the retention of the records of those checks, the state's retention of records of the concurrent performance of a NICS check would not add any more information about gun ownership than the state already retains under its own law.

NICS Checks on Pawnshop Redemptions and Gunsmith Transactions

A significant number of comments on this rule pertained to conducting background checks on firearms redeemed from pawnshops and firearms that were the subject of repair or modification by a gunsmith. Although the Brady Act requires the Attorney General to establish a national instant criminal background check system, it is the Secretary of Treasury through the

ATF who defines what constitutes a firearms transfer, how long a background check is valid, which firearm permits constitute a substitute or alternative to a background check, and the recordkeeping requirements for FFLs. The ATF has issued proposed regulations dealing with these issues. (63 FR 8379). Questions and comments about these matters should be directed to the ATF.

A number of comments from the pawnbrokers' industry addressed the circumstances that will develop when a person redeems a firearm from pawn but the firearm cannot be transferred back to the individual because of a disqualifying word found by the NICS check. The U.S. Department of Treasury Fiscal Year 1999 appropriations legislation includes a provision to allow pawnbrokers the option of requesting a NICS background check at the time a person offers the firearm for pawn. An additional check would still be necessary at the time of redemption. NICS will be made available to pawnbrokers for this purpose. No change in the rule is necessary to address this.

Use of State Points of Contact

Some comments questioned the legality of using state POCs to process NICS checks in light of the Supreme Court's decision in *Printz v. United States*, (17 S. Ct. 2365 (1997)), which held that Congress could not compel the states to perform Brady checks. In response to these comments we note that the states that will act as POCs for the NICS are not being required to do so by Federal law or regulation, but will do so voluntarily pursuant to their own state authority. The final rule's definition of a POC acknowledges that a state or local agency serving that function will be doing so by express or implied authority pursuant to state statute or executive order.

Some commenters objected to the use of state or local law enforcement agencies as NICS POCs even if such agencies do so voluntarily. The FBI considers the use of POCs (serving as intermediaries between FFLs and the system) to be an appropriate means to implement the Brady Act. Fostering state and local participation in the NICS is entirely consistent with both our federal form of government and with practices under the Brady Act's interim provision. Moreover, state and local authorities are likely to have readier access to more detailed information than a single centralized processor, such as the FBI, thus resulting in fewer system misses of disqualified persons and enhancing system responsiveness

(i) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(ii) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that—

(i) allows the transferee to possess or acquire a handgun; and

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

(iii) 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 handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

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

(F) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(iii) 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 square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(iii) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local record-keeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 102B(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who is illegally or unlawfully in the United States;

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(B)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (iii)

and (iv) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(iv) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(iii);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(1)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

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

NICS PROVISIONS OF BRADY

(l) 3 business days (meaning a day, on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 102B(d)(1) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate section 922(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 square miles of land area of the State does not exceed 0.0025;

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

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection

(g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.

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

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

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.

(3) Paragraph (1) shall not apply to—

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that—

(i) is manually operated by bolt, pump, lever, or slide action;

(ii) has been rendered permanently inoperable; or

(iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect.

(4) Paragraph (1) shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for use purposes of testing or experimentation authorized by the Secretary.

(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection.

(3) This subsection shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Freedom of religion, of speech, and of the press. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.⁹

ARTICLE II.

Right to keep and bear arms. A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.¹⁰

ARTICLE III.

Quartering of soldiers. No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.¹¹

ARTICLE IV.

Searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹²

ARTICLE V.

Rights of accused in criminal proceedings; due process; eminent domain. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.¹³

ARTICLE VI.

Right to speedy trial, witnesses, etc. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be

9. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

10. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

11. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

12. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

13. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

age v. Scavenius, 539 P.2d 1169 (Alaska 1975).

Denial of new trial. — The trial court did not commit an abuse of discretion in denying the state's motion for new trial, where the jury's determination of just compensation was within the range of the testimony. State v. 45,621 Square Feet of Land, 475 P.2d 1161 (Alaska 1970).

Jury's award of \$0.00 as just compensation to a property owner for the taking of an easement was not patently inadequate or violative of constitutional provisions pertaining to eminent domain. Scavenius v. City of Anchorage, 539 P.2d 1161 (Alaska 1975).

The taking of an easement does constitute an appropriation of the owner's property regardless of its minuscule effect. But where the property owner failed to object to instructions expressly permitting the entry of an award of no compensation and the difference between an award of \$0.00 compensation and a

nominal sum to which the property owner would have been entitled is de minimus, the failure to award compensation per se did not require reversal. Scavenius v. City of Anchorage, 539 P.2d 1161 (Alaska 1975).

Inconsistent verdict. — State was entitled to a new trial on the amount of just compensation required for the taking of an abutting landowner's right of access to a controlled access highway, where the jury's answers to special interrogatories were internally inconsistent and inconsistent with the general verdict and the jury's conclusion that the remaining property was worth more after the taking than the entire parcel was worth before the taking was irreconcilable with its conclusion that the remainder received no special benefit from the highway project. State v. Lewis, 785 P.2d 24 (Alaska 1990).

Collateral references. — 26 Am.Jur.2d, Eminent Domain, §§ 7, 13 to 24.

29A C.J.S., Eminent Domain, §§ 4, 21 to 26.

Use or improvement of highway as establishing grade necessary to entitle abutting owner to compensation on subsequent change. 2 ALR3d 985.

Restrictive covenant or right to enforcement thereof as compensable property right. 4 ALR3d 1137.

Zoning as a factor in determination of damages in eminent domain. 9 ALR3d 291.

Deduction of benefits in determining compensation or damages in proceedings involving opening, widening or otherwise altering highway. 13 ALR3d 1149.

Restrictive covenant, existence of, as element in fixing value of property condemned. 22 ALR3d 961.

Eminent domain: right to enter land for preliminary survey or examination. 29 ALR3d 1104.

Attaching or planning in anticipation of improvement taking or damaging of property affected. 37 ALR3d 77.

Cost of substitute facilities as measure of compensation paid to state or municipality for condemnations of public property. 40 ALR3d 143.

Measure of damages for condemnation of cemetery lands. 42 ALR3d 1314.

Traffic noise and vibration from highway as element of damages in eminent domain. 51 ALR3d 860.

Condemned property's location in relation to proposed site of building complex or similar improvement as factor fixing compensation. 51 ALR3d 1050.

Goodwill or "going concern" value as element of lessee's compensation for taking leasehold in eminent domain. 58 ALR3d 566.

Loss of liquor license as compensable in condemnation proceeding. 58 ALR3d 581.

Compensation for diminution in value of remainder of property resulting from taking or use of adjoining

land of others for the same undertaking. 59 ALR3d 488.

Consideration of fact that landowner's remaining land will be subject to special assessment in fixing severance damages. 59 ALR3d 534.

Determination of just compensation for condemnation of billboards or other advertising signs. 73 ALR3d 1122.

Right to condemn property owned or used by private educational, charitable or religious organization. 80 ALR3d 833.

Goodwill as element of damages for condemnation of property on which private business is conducted. 81 ALR3d 198.

Recovery of value of improvements made with knowledge of impending condemnation. 98 ALR3d 504.

Zoning regulations limiting use of property near airport as taking of property. 18 ALR4th 542.

Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR4th 756.

Airport operations or flight of aircraft as constituting taking or damaging of property. 22 ALR4th 863.

Eminent domain: compensability of loss of view from owner's property — state cases. 25 ALR4th 671.

Seizure of property as evidence in criminal prosecution or investigation as compensable taking. 44 ALR4th 360.

Validity, construction, and application of state relocation assistance laws. 49 ALR4th 491.

Inverse condemnation state court class actions. 49 ALR4th 618.

Court appointment of attorney to represent, without compensation, indigent in civil action. 52 ALR4th 1063.

Eminent domain: industrial park or similar development as public use justifying condemnation of private property. 62 ALR4th 1183.

Section 19. Right to Keep and Bear Arms. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.

Effect of amendments. — The amendment, effective December 30, 1994 (18th Legislature's Legislative Resolve No. 45), added the second sentence.

NOTES TO DECISIONS

Section 20. Quartering Soldiers. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

Collateral references. — 54 Am.Jur.2d, Military and Civil Defense, § 280.

Section 21. Construction. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

NOTES TO DECISIONS

Right of self-representation has been so retained by the people. — See *McCracken v. State*, 518 P.2d 85 (Alaska 1974).

A prisoner has a right to represent himself in post-conviction relief proceedings. *McCracken v. State*, 518 P.2d 85 (Alaska 1974).

The right to counsel should not be used to bar self-representation. *McCracken v. State*, 518 P.2d 85 (Alaska 1974).

The right to self-representation is not absolute. *McCracken v. State*, 518 P.2d 85 (Alaska 1974).

Collateral references. — 16 Am.Jur.2d, Constitutional Law, §§ 7, 280.

Section 22. Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section. [Approved August 22, 1972]

Cross references. — For the unprivileged nature of communications to physicians or other licensed practitioners in an effort to unlawfully procure controlled substances, see AS 11.71.360.

Statute prohibiting felon from residing in dwelling containing firearm. — Application of AS 11.61.200(a)(10), prohibiting a felon from residing in a dwelling knowing there is a firearm in the dwelling, does not infringe on the constitutional right to keep and bear arms. *Morgan v. State*, 943 P.2d 1208 (Alaska Ct. App. 1997).

acquiring, having, carrying, or using firearms or weapons. 39 ALR4th 967.

Sufficiency of prior conviction to support prosecution under state statute prohibiting persons under indictment for, or convicted of, crime from acquiring, having, carrying, or using firearms or weapons. 39 ALR4th 983.

Validity of state statute proscribing possession or carrying of knife. 47 ALR4th 651.

Validity of state gun control legislation under state constitutional provisions securing the right to bear arms. 86 ALR4th 931.

Federal constitutional right to bear arms. 37 ALR Fed. 696.

6 C.J.S., Armed Services, § 7.

Qualifications on right of self-representation in post-conviction proceedings. — See *McCracken v. State*, 518 P.2d 85 (Alaska 1974).

Criminal R. 39(b) construed in light of this section. — See *McCracken v. State*, 518 P.2d 85 (Alaska 1974).

Applied in *James v. State*, 739 P.2d 1314 (Alaska Ct. App. 1987); *Garrison v. State*, 762 P.2d 465 (Alaska Ct. App. 1988).

Quoted in *Falke v. Fairbanks N. Star Borough*, 648 P.2d 597 (Alaska 1982).

16 C.J.S., Constitutional Law, §§ 53, 58; 16A C.J.S., Constitutional Law, § 445.

Effective dates. — This section took effect October 14, 1972 (7th Legislature's HCS SJR 68 (1972).)

Opinions of attorney general. — A legislative auditor may not examine confidential records on file

for state income tax returns and submitted by employees and employees of Labor in connection with of the State Employment Security persons receiving assistance from Health and Social Services under Assistance and Aid to families children were eligible. Such data is protection intended to be afforded under this section of the state constitution. Att'y Gen. No. 8.

- I. General Consideration.
- II. Application.
 - A. Illegal Substances.
 - B. Children.
 - C. Sexual Conduct.
 - D. Professional — Client Relationship.
 - E. State Authority.
 - F. Documents.
 - G. Right of Privacy in Speech.
- III. Practice and Procedure.

I. GENERAL CONSIDERATION

History of right to privacy. 525 P.2d 524 (Alaska 1974).

The effect of this section among the specifically enumerated constitution. *Ravin v. State*, 1975; *Woods & Rohde, Inc. v. State*, 565 P.2d 138 (Alaska 1977).

Scope to be afforded right of privacy. The fact that privacy is among the rights in the Alaska Constitution itself, yield answers concerning accorded to this right of privacy. P.2d 494 (Alaska 1975).

The contours of Alaska's right to privacy are not yet firmly established. of necessity must vary dependent on the context and the often competing interests of the individual. *State v. Glas*, 1978).

The test for what interests Alaska's constitutional right person has exhibited an action of privacy and, second, one that society is prepared to protect. *Hilbers v. Municipality of Anchorage*, 31 (Alaska 1980).

Alaska's constitution, under the right to privacy, contains an explicit right to privacy. *Woods & Rohde, Inc. v. State*, P.2d 138 (Alaska 1977).

While the federal right to privacy is broad, the federal right to privacy is broad reading of the due process clause or from "emanating from" constitutional provisions, the right guaranteed by an explicit i.e., this section. *Falcon v. State*, Comm'n, 570 P.2d 469 (Alaska 1978).

Thus, state right is broad. — It is clear from both decisional law that the right of privacy of Alaskan citizens is broader than the federal constitutional right. *State v. State*, Dep't of Labor

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H.R.1025

**To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers...
(Enrolled Bill (Sent to President))**

SEC. 106. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) USE OF FORMULA GRANTS- Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended--

- (1) in paragraph (2) by striking 'and' after the semicolon;
- (2) in paragraph (3) by striking the period and inserting '; and'; and
- (3) by adding at the end the following new paragraph:

'(4) the improvement of State record systems and the sharing with the Attorney General of all of the records described in paragraphs (1), (2), and (3) of this subsection and the records required by the Attorney General under section 103 of the Brady Handgun Violence Prevention Act, for the purpose of implementing that Act.'

(b) Additional Funding-

(1) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS- The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used--

- (A) for the creation of a computerized criminal history record system or improvement of an existing system;
- (B) to improve accessibility to the national instant criminal background system; and
- (C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated for grants under paragraph (1), which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, a total of \$200,000,000 for fiscal year 1994 and all fiscal years thereafter.

TITLE II--MULTIPLE FIREARM PURCHASES TO STATE AND LOCAL POLICE

SEC. 201. REPORTING REQUIREMENT.

Section 923(g)(3) of title 18, United States Code, is amended--

(1) in the second sentence by inserting after `thereon,' the following: `and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place,';

(2) by inserting `(A)' after `(3)'; and

(3) by adding at the end thereof the following:

`(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.'

TITLE III--FEDERAL FIREARMS LICENSE REFORM

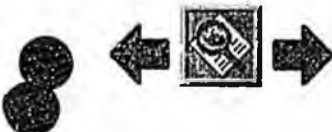
SEC. 301. SHORT TITLE.

This title may be cited as the `Federal Firearms License Reform Act of 1993'.

SEC. 302. PREVENTION OF THEFT OF FIREARMS.

(a) COMMON CARRIERS- Section 922(e) of title 18, United States Code, is amended by adding at the end the following: `No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.'

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-CITE-

18 USC Sec. 922

01/26/98

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 44 - FIREARMS

-HEAD-

Sec. 922. Unlawful acts

-STATUTE-

(a) It shall be unlawful -

(1) for any person -

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that -

(A) this paragraph and subsection (b) (3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from

<snip>

standing guard

"Insta-check"—the Bill Clinton/Sarah Brady version—is a reality check for the nation's gun owners.

It is a cold, harsh warning that we must never place trust in the idea that honor, integrity, truth, and the rule of law have anything to do with the Clinton Administration or with Bill Clinton's allies in Congress. They attempt to rule by stealth—outside the law.

"Instant check," or "Insta-Check" as Clinton has styled it, is the ultimate White House spin. It is a far cry from the system Congress intended to create in 1993.

In the 1999 reality, and in practice, the National Instant Check System (NICS) has been twisted by contorted FBI regulations into a firearms owner registration system that could be the baseline for future government action against peace-loving citizens who choose to exercise their right to own and use firearms.

Janet Reno and Bill Clinton, Al Gore and Sarah Brady ultimately want to be gun collectors. But the firearms they want to collect belong to the people. Those firearms are private property, owned by private citizens. They belong to you and me.

But they can't collect your guns if they don't know you have them. And your lawful, private ownership of firearms is none of government's business.

In 1993, when the rabidly anti-gun Congress enacted the Brady bill, NRA and our friends fought hard to make sure that when the waiting period was replaced by the Instant Check System, the government didn't have the power to retain any information on you or any firearms you might buy from a licensed dealer. The "instant check," as envisioned by those who wrote protections into the law in 1993, meant *instant destruction of records on those transactions not flagged as prohibited*.

Under Title 18 USC 922(t)(2)(c), all information relating to law-abiding firearms purchasers and the guns they buy must be instantly "destroyed." There's no shading to that word. There's no nuance in the law.

But the Justice Department has boldly proclaimed that the Federal Bureau of Investigation (FBI) will keep each and every record of the estimated 14 million annual legal firearms transactions in its massive computer database for at least six months—for "audit purposes." Emphatically, let me tell you, they cannot lawfully keep a single such record. To do so is a knowing, blatant violation of law.

The National Instant Check System—under Bill Clinton and Janet Reno's vision—would be the means to collect and keep unlawful files—dossiers on each of us, inaccessible to us—that could be used in the future to wipe out our civil rights. Under NICS, they are seeking even more power to single out those who choose to buy and own firearms. The President has declared gun shows to be "illegal arms bazaars for criminals and gun runners." We know that is preposterous, but the media will never see the truth. Bill Clinton has ordered "executive actions" to ban all private firearm transfers at gun shows, unless they are run through the NICS registration scheme. Congress never authorized

By Wayne LaPierre
Executive Vice President



A White House assistant described Clinton/Gore rule by Presidential diktat this way: "Stroke of the pen. Law of the land. Kinda cool." Stroke of the pen, lose your rights—lose your property. This is what

they think is "kinda cool."

I've got news for them. *With respect to Instant Check, all bets are off. The NRA will use every power at our disposal to force the Federal government to obey the law.*

That is why we have gone to Federal court to stop the Justice Department from keeping files on legal gun transactions and on law-abiding firearms purchasers.

The instant check concept is nothing new—it's been in place in some states for almost a decade. When properly administered, it prevents the retail sale of firearms to the few criminals stupid enough to attempt a gun purchase at a dealer, and it does so with a minimum of inconvenience to law-abiding gun buyers. And by its very nature, it also allows for "real time" notification of the authorities when a prohibited person violates Federal law by attempting to purchase a firearm.

These were the same objectives of the Congress when it debated and passed the law creating NICS in 1993. But the Clinton Administration has now twisted implementa-

tion of the NICS system into its own image—a national surveillance system that puts a higher priority on tracking gun purchases by law-abiding citizens than on the arrest and prosecution of those who attempt to violate our Federal firearms laws.

The coming year will be a difficult time in the Congress. The 1998 elections have elevated anti-gun kingpin Chuck Schumer from the U.S. House to the U.S. Senate, and he will waste no time attempting to press his savage anti-gun agenda. But we will meet him and his anti-gun cohorts head-on.

We have filed suit in the courts, and we will also work in Congress to ensure that NICS is administered according to the letter of the law.

Our friends in Congress will call for formal investigations and oversight on NICS operations and on why the Justice Department in Washington fails to arrest felons, fugitives, and the like when they violate Federal gun law. This is critical, especially in light of the enormous success of the independent Federal prosecutions of felons in possession of firearms under Project Exile in Richmond, Virginia.

We will press aggressively for full enforcement of existing laws, which could lock up every violent, armed felon in every corner of the country. And we intend to educate the public about these laws.

Grassroots pressure from NRA members killed the proposed gun tax—at least for the first 10 months of NICS operation. We will again have to fight that battle—among many others—in the year to come. Just as we rolled back portions of bad law with the passage of the Firearms Owners' Protection Act in 1986, we will roll back the sinister and devious effort to contort NICS into a system for subjecting gun buyers to enormous fees, government-sanctions of privacy and civil rights, and centralized regis-

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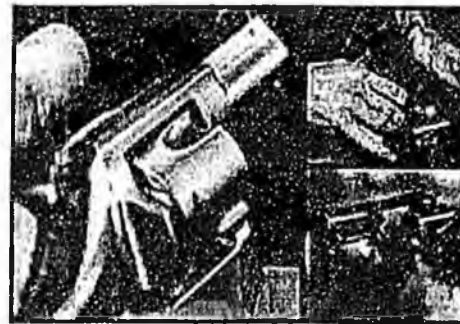
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NRA sues to block FBI from keeping lists of gun buyers

December 1, 1998
Web posted at: 5:59 p.m. EST (2259 GMT)

WASHINGTON (CNN) -- The National Rifle Association on Tuesday filed a federal lawsuit to block the FBI from keeping records on the instant background checks that are now mandatory for all gun sales.



The NRA lawsuit alleges that the "FBI intention to create and maintain a database of gun purchases is a violation of federal law, an invasion of privacy, and constitutes an illegal national registration of gun owners."

"Now, instead of creating a database of criminals, the federal government is bent on establishing a list of lawful citizens," said James Jay Baker, executive director of the NRA's Legislative Institute.

"There's absolutely no purpose served by the FBI keeping this list. These are people who are approved, who have no record, who have committed no crime," said NRA spokesman Bill Powers.

"Just because you've legally purchased a legal product, you're suddenly on an FBI hit list," he said. "It's an Orwellian nightmare."

The NRA suit contends that the Brady Act, the law that requires a background check before a gun purchase, specifically forbids the creation of a national registry of gun owners and directs the Justice Department to destroy those records.

"The clear intent of the Congress was to conduct the background check unobtrusively at the point of sale, without delay, and with all respect to the privacy of the gun purchaser," Baker said.

"Unfortunately, that is not what the federal government is doing. Clearly, the attorney general and the Justice Department are in violation of that intent and that law."

FBI: No law violation

The FBI rejects the accusations.

"We're not going to violate the law."



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NRA Executive Vice President Wayne LaPierre: 'It's a freedom issue'

"We're not going to violate the law. We want to maintain records in our system ... for statistical sampling and internal audits," said Jim Kessler, program director for the National Instant Criminal Background Check system.

Kessler said the agency needed to keep records on the requested background checks so it could audit the performance of its own staff and to ensure that firearms sellers didn't use the background checks for other purposes.

The FBI said it would decide by February how long it needed to keep the records, but would probably opt for fewer than six months.

Kessler said the FBI records included only the person's name, date of birth, sex, race and state of residence, as well as whether they wanted to buy a rifle, another type of "long gun" or a handgun.

The FBI was not collecting data on the make or model of the gun purchased or the prospective buyer's street address.

"We want to make sure the system is being used for its right intention and people are making the right calls on when to (approve the purchase) and are not selling a gun to someone who shouldn't have one," Kessler said.

"You could use the system for a lot of purposes -- to check on your neighbor, to check on your daughter's boyfriend, and that's not the purpose of this system," he said.

The NRA lawsuit names Attorney General Janet Reno as a defendant. Justice Department spokesman Gregory King said a formal response to the suit will be filed next week.

The new system is required under the Brady Law, which established federal background checks for handgun purchasers almost five years ago. As of Monday, people buying rifles and shotguns must submit to instant checks, too.

Federal law prohibits the purchase of guns by felons, the mentally ill and people convicted of domestic violence. States can add other categories.

An estimated 12.4 million firearms are sold each year in the United States. All will be covered by background checks, as will an additional 2.5 million annual transactions in which an owner retrieves a firearm from a pawn shop.

The federal system had some technical delays on its first day, but the FBI says that once the process is working smoothly, approvals should take just three minutes.

The Associated Press and Reuters contributed to this report.

APR 27 2001

Alaska Civil Liberties Union

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February 28, 2001

ALASKA CIVIL LIBERTIES UNION STATEMENT IN SUPPORT OF HOUSE JOINT RESOLUTION NO. 17

The Alaska Civil Liberties Union (AkCLU) strongly supports the passage of House Joint Resolution Number Seventeen. The AkCLU believes that the privacy of an individual is directly affected by the collection, maintenance, use and dissemination of personal information by government agencies and the private sector. The increasing use of computers and sophisticated information technology has substantially magnified the harm to individual privacy that can occur from any collection, use, maintenance or dissemination of personal information. The AkCLU supports HJR 17 because it urges the government to destroy lawfully collected information once that information is no longer necessary to carry out the government's purpose.

Government agencies and the private sector possess billions of records containing personal information, and there is often no provision or plan for disposal of that information in such a way that the privacy of the individual is protected. The collection and use of such enormous quantities of personal information raise a number of privacy and civil liberties concerns. Presently, many government agencies have nearly unrestrained access to each other's computerized record systems containing personal, sensitive information. Although much of the information is initially given voluntarily by individuals to government agencies, those agencies then match and verify separate record systems for purposes unrelated to their initial collection.

There is a danger in the aggregation and linking of multiple agency databases. Databases maintained for purposes of the Brady Bill in the Department of Justice and the Federal Bureau of Investigation may become or already are linked to other agency databases such as those maintained by the Internal Revenue Service, the Immigration and Naturalization Services, Health and Human Services or other agencies. The government, including state government, is increasingly moving towards the instant linkage of separate databases in order to verify information. Information collected for purposes of the Brady Bill should be destroyed consistent with the intent of the law. It should not be maintained nor spread to other databases.


It is nearly impossible for individuals to control information about themselves once it is in the hands of the government. Computer-driven techniques such as data matching and front-end verification make it possible for information to be stored in decentralized databases but then matched, merged or verified with information in one or more separate databases. A centralized national data bank is no longer necessary given the new technologies.

HJR 17 position paper -- AkCLU
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The Alaska Civil Liberties Union supports efforts on the part of government entities and the private sector to properly dispose of information collected provided that such information is originally gathered for a necessary and legitimate purpose. The fact that an agency may have been justified in collecting such information does not justify maintaining the information if it is not necessary for a lawful government purpose. The AkCLU urges the members of the legislature to pass HJR 17.

Please feel free to contact me if you have any questions or civil liberties concerns. Thank you very much for your consideration of this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Jennifer Rudinger". The signature is written in black ink and has a long, sweeping tail that extends to the right.

Jennifer Rudinger
Executive Director