

■ Brady Handgun Violence Protection Act

Date: 1993

Author: Charles Schumer (reintroduced to the House of Representatives) and Howard Metzenbaum (reintroduced to the Senate)

Genre: legislative act

Summary Overview

The Brady Handgun Violence Prevention Act, often referred to as the Brady bill, was generally supported by liberals and gun control advocates when it was enacted in 1993. The bill mandated federal background checks on firearm purchasers in the United States and imposed a waiting period for gun purchases. Liberals and many Democratic lawmakers applauded the bill as a significant step toward reducing gun violence and enhancing public safety.

Congress passed the Brady bill in the wake of an assassination attempt on President Ronald Reagan in 1981. “Brady” is James Brady, Reagan’s press secretary, who was wounded by one of the assailant’s bullets and remained permanently disabled until his death in 2014. Meanwhile, Brady’s wife, Sarah Brady, served as chair of the Brady Campaign to Prevent Gun Violence as the couple lobbied for stricter handgun control and restrictions on assault weapons, and “Brady” and the “Brady bill” have become almost synonymous with gun-control efforts. The fundamental purposes of the act are made clear in its formal long title: “An Act 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 before the transfer of any firearm.”

Defining Moment

The defining moment behind the Brady bill is readily identified. On March 30, 1981, President Ronald Reagan exited the Hilton Hotel in Washington, D.C., after having addressed the Building and Construction Workers Union. From a distance of about ten feet, John Hinckley, Jr., fired on the president with a .22-caliber Röhm RG-14 revolver. His first shot hit press secretary James Brady; other shots wounded a police officer and a Secret Service agent. Hinckley’s target, though, was the president, who was wounded when a shot ricocheted off the presidential limousine and struck him. Hinckley was quickly wrestled to the ground and arrested. Ultimately, he was found not guilty by reason of insanity.

Hinkley, it turned out, had become obsessed with the movie *Taxi Driver*, in which Robert DeNiro plays the part of a cab driver who stalks a presidential candidate in an effort to impress a young prostitute played by Jodie Foster. Hinkley in turn became

obsessed with Foster and believed that he could impress her and win her love by carrying out a high-profile assassination. In 1980, he began following President Jimmy Carter from state to state and was arrested at an airport in Nashville, Tennessee, for carrying guns at a Carter campaign stop, but the Secret Service was never notified. His guns were confiscated, but he went to a pawnshop in Dallas and purchased more guns, including the one he used in the Reagan assassination attempt. He later wrote a letter to Jodie Foster stating that his assassination attempt on President Reagan was for her.

Meanwhile, Brady never fully recovered from his injuries. The shooting left him partially paralyzed, with slurred speech. His wife, Sarah Brady, served as chair of the Brady Campaign to Prevent Gun Violence. The history of this organization dates back to 1974, when the National Council to Control Handguns was formed. That organization operated under the name Handgun Control, Inc., from 1980 to 2000; in 2001 it was renamed the Brady Campaign to



U.S. President Ronald Reagan waves moments before he was shot in an assassination attempt outside a Washington hotel on Monday, March 30, 1981. From left to right are Rick Ahearn, publicist for Reagan; secret service agent Jerry Parr, in raincoat, who pushed Reagan into the limousine; press secretary James Brady, who was seriously wounded; Jose Muratti, Reagan's military aide; Reagan; Michael Deaver, Reagan's aide; unidentified policeman; Washington policeman Thomas K. Delahanty, who was shot; and secret service agent Timothy J. McCarthy, who was shot in the stomach. Photo via Wikimedia Commons. [Public domain.]

Prevent Gun Violence; at the same time, the Center to Prevent Handgun Violence was renamed the Brady Center to Prevent Gun Violence.

Author Biography

An initial version of the Brady bill stalled in the U.S. Senate in 1991, but in 1993, New York Democratic Representative Charles Schumer reintroduced the bill in the House of Representatives, while Ohio Democratic Senator Howard Metzenbaum reintroduced it in the Senate. Ultimately, the bill passed in both the houses of Congress, and President Bill Clinton signed the bill into law on November 30, 1993.

“Chuck” Schumer was born on November 23, 1950, in Brooklyn, New York. He graduated from Harvard Law School in 1974 and was subsequently

elected to the New York State Assembly. In 1980, when he was just twenty-nine years old, he was elected to the U.S. House of Representatives, where he served for eighteen years. In 1998 he was elected to the U.S. Senate and became New York’s senior senator when Daniel Patrick Moynihan retired in 2000. He won reelection in 2004, 2010, and 2016.

Howard Metzenbaum was born in Cleveland, Ohio, on June 4, 1917. He graduated from Ohio State University in 1939, then from OSU’s School of Law in 1941. He served in the Ohio House of Representatives from 1943 to 1947, then in the Ohio Senate from 1947 to 1951. In 1976 the governor appointed him to fill a U.S. Senate seat vacated by the resignation of Robert Taft, Jr. He was reelected in 1982 and 1988; his tenure in the Senate ended in 1994. He died in Florida on March 12, 2008.



Historical Document

Brady Handgun Violence Protection Act

One Hundred Third Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fifth day of January, one thousand nine hundred and ninety-three

An Act

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 before the transfer of any firearm.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I—Brady Handgun Control

Sec. 101.Short Title.

This title may be cited as the ‘Brady Handgun Violence Prevention Act’.

SEC. 102. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NON-LICENSEE.

(a) INTERIM PROVISION-

(1) IN GENERAL-Section 922 of title 18, United States Code, is amended by adding at the end the following:

‘(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

‘(A) after the most recent proposal of such transfer by the transferee—

‘(i) the transferor has—

‘(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

‘(II) verified the identity of the transferee by examining the identification document presented;

‘(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

‘(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

‘(ii)(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

‘(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 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)(i)(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)(i)(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 recordkeeping systems are available and in a national system designated by the Attorney General.

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

‘(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(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.

‘(6)(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)(i)(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)(i)(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.’.

(2) HANDGUN DEFINED- Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

‘(29) The term ‘handgun’ means—

‘(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

‘(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.’.

(b) PERMANENT PROVISION- Section 922 of title 18, United States Code, as amended by subsection (a)(1), is amended by adding at the end the following:

‘(t)(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

‘(ii) 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 1028(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)(8)); 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.’.

(c) PENALTY- Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking ‘paragraph (2) or (3) of’; and

(2) by adding at the end the following:

‘(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined not more than \$1,000, imprisoned for not more than 1 year, or both.’.

SEC. 103. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

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(e) ADMINISTRATIVE PROVISIONS-

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION- Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY- The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) WRITTEN REASONS PROVIDED ON REQUEST- If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION- If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law,

the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) REGULATIONS- After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS- 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 any State or political subdivision thereof; 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 by section 922 (g) or (n) of title 18, United States Code or State law, from receiving a firearm.

(j) DEFINITIONS- As used in this section:

(1) LICENSEE- The term 'licensee' means a licensed importer (as defined in section 921(a)(9) of title 18, United States Code), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

(2) OTHER TERMS- The terms 'firearm', 'handgun', 'licensed importer', 'licensed manufacturer', and 'licensed dealer' have the meanings stated in section 921(a) of title 18, United States Code, as amended by subsection (a)(2).

(k) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated, which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, such sums as are necessary to enable the Attorney General to carry out this section.

Sec. 104. Remedy for Erroneous Denial of Firearm.

(a) IN GENERAL- Chapter 44 of title 18, United States Code, is amended by inserting after section 925 the following new section:

‘Sec. 925A. Remedy for erroneous denial of firearm

‘Any person denied a firearm pursuant to subsection (s) or (t) of section 922—

‘(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

‘(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922, may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney’s fee as part of the costs.’.



Document Analysis

Much of the Brady bill as passed deals with the technical issues associated with instituting and implementing the system. The chief provision, however, is that before a person can buy a firearm from a federally licensed dealer, manufacturer, or importer, a background check has to be conducted. Eligibility is determined by the FBI's National Instant Criminal Background Check System (NICS), although the original bill imposed a five-day waiting period until the NICS could be implemented in 1998. Two other databases are accessed when a person purchases a gun from a licensed dealer: that of the National Crime Information Center and the Interstate Identification Index. Additionally, the bill prohibits the transference of a firearm to any person who has been convicted of a crime punishable by a prison sentence of more than a year; to a fugitive from justice; to a drug addict or user of controlled substances; to anyone adjudicated as a mental defective or who has been committed to a mental institution; to an illegal immigrant; to anyone dishonorably discharged from the military; to any former U.S. citizen who has renounced U.S. citizenship; to a person under a restraining order to protect a domestic partner or has been convicted of domestic violence.

Generally, Brady background checks can be completed within minutes with the FBI still on the telephone with the gun dealer, but occasionally a gun buyer may have to wait three business days to complete the purchase. Unlicensed private sellers who are not engaged in the business of dealing in firearms are not subject to the provisions of the Brady bill.

It should be noted that the 1994 bill remained in effect until 1997, but that year, the U.S. Supreme Court, in *Printz v. United States*, struck down the law's background check requirement on Tenth Amend-

ment grounds, ruling that the federal government cannot compel state law enforcement to take any particular action. A new version of the bill was passed in 1998; this version covered all guns, instituted an instant background check of states' and FBI databases to identify criminals, and required a three-day waiting period.

—Michael J. O'Neal, PhD

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