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115-

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FIX NICS ACT OF 2017

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DECEMBER --, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. GOODLATTE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

\_\_\_\_ VIEWS

[To accompany H.R. 4477]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4477) to enforce current law regarding the National Instant Criminal Background Check System, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fix NICS Act of 2017”.

**SEC. 2. ACCOUNTABILITY FOR FEDERAL DEPARTMENTS AND AGENCIES.**

Section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) is amended—

(1) in subsection (e)(1), by adding at the end the following:

“(F) SEMIANNUAL CERTIFICATION AND REPORTING.—

“(i) IN GENERAL.—The head of each Federal department or agency shall submit a semiannual written certification to the Attorney General indicating whether the department or agency is in compliance with the record submission requirements under subparagraph (C).

“(ii) SUBMISSION DATES.—The head of a Federal department or agency shall submit a certification to the Attorney General under clause (i)—

“(I) not later than July 31 of each year, which shall address all relevant records, including those that have not been transmitted to the Attorney General, in possession of the department or agency

during the period beginning on January 1 of the year and ending on June 30 of the year; and

“(II) not later than January 31 of each year, which shall address all relevant records, including those that have not been transmitted to the Attorney General, in possession of the department or agency during the period beginning on July 1 of the previous year and ending on December 31 of the previous year.

“(iii) CONTENTS.—A certification required under clause (i) shall state, for the applicable period—

“(I) the total number of records of the Federal department or agency demonstrating that a person falls within one of the categories described in subsection (g) or (n) of section 922 of title 18, United States Code;

“(II) for each category of records described in subclause (I), the total number of records of the Federal department or agency that have been provided to the Attorney General; and

“(III) the efforts of the Federal department or agency to ensure complete and accurate reporting of relevant records, including efforts to monitor compliance and correct any reporting failures or inaccuracies.

“(G) IMPLEMENTATION PLAN.—

“(i) IN GENERAL.—Not later than 1 year after the date of enactment of this subparagraph, the head of each Federal department or agency, in coordination with the Attorney General, shall establish a plan to ensure maximum coordination and automated reporting or making available of records to the Attorney General as required under subparagraph (C), and the verification of the accuracy of those records, including the pre-validation of those records, where appropriate, during a 4-year period specified in the plan. The head of each Federal department or agency shall update the plan biennially, to the extent necessary, based on the most recent biennial assessment under subparagraph (K). The records shall be limited to those of an individual described in subsection (g) or (n) of section 922 of title 18, United States Code.

“(ii) BENCHMARK REQUIREMENTS.—Each plan established under clause (i) shall include annual benchmarks to enable the Attorney General to assess implementation of the plan, including—

“(I) qualitative goals and quantitative measures;

“(II) measures to monitor internal compliance, including any reporting failures and inaccuracies;

“(III) a needs assessment, including estimated compliance costs; and

“(IV) an estimated date by which the Federal department or agency will fully comply with record submission requirements under subparagraph (C).

“(iii) COMPLIANCE DETERMINATION.—Not later than the end of each fiscal year beginning after the date of the establishment of a plan under clause (i), the Attorney General shall determine whether the applicable Federal department or agency has achieved substantial compliance with the benchmarks included in the plan.

“(H) ACCOUNTABILITY.—The Attorney General shall publish, including on the website of the Department of Justice, and submit to the Committee on the Judiciary and the Committee on Appropriations of the Senate and the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives a semiannual report that discloses—

“(i) the name of each Federal department or agency that has failed to submit a required certification under subparagraph (F);

“(ii) the name of each Federal department or agency that has submitted a required certification under subparagraph (F), but failed to certify compliance with the record submission requirements under subparagraph (C);

“(iii) the name of each Federal department or agency that has failed to submit an implementation plan under subparagraph (G);

“(iv) the name of each Federal department or agency that is not in substantial compliance with an implementation plan under subparagraph (G);

“(v) a detailed summary of the data, broken down by department or agency, contained in the certifications submitted under subparagraph (F);

“(vi) a detailed summary of the contents and status, broken down by department or agency, of the implementation plans established under subparagraph (G); and

“(vii) the reasons for which the Attorney General has determined that a Federal department or agency is not in substantial compliance with an implementation plan established under subparagraph (G).

“(I) NONCOMPLIANCE PENALTIES.—For each of fiscal years 2019 through 2022, each political appointee of a Federal department or agency that has failed to certify compliance with the record submission requirements under subparagraph (C), and is not in substantial compliance with an implementation plan established under subparagraph (G), shall not be eligible for the receipt of bonus pay, excluding overtime pay, until the department or agency—

“(i) certifies compliance with the record submission requirements under subparagraph (C); or

“(ii) achieves substantial compliance with an implementation plan established under subparagraph (G).

“(J) TECHNICAL ASSISTANCE.—The Attorney General may use funds made available for the national instant criminal background check system established under subsection (b) to provide technical assistance to a Federal department or agency, at the request of the department or agency, in order to help the department or agency comply with the record submission requirements under subparagraph (C).

“(K) BIENNIAL ASSESSMENT.—Every 2 years, the Attorney General shall assess the extent to which the actions taken under the Fix NICS Act of 2017 have resulted in improvements in the system established under this section.

“(L) APPLICATION TO FEDERAL COURTS.—For purposes of this paragraph—

“(i) the terms ‘department or agency of the United States’ and ‘Federal department or agency’ include a Federal court; and

“(ii) the Director of the Administrative Office of the United States Courts shall perform, for a Federal court, the functions assigned to the head of a department or agency.”; and

(2) in subsection (g), by adding at the end the following: “For purposes of the preceding sentence, not later than 60 days after the date on which the Attorney General receives such information, the Attorney General shall determine whether or not the prospective transferee is the subject of an erroneous record and remove any records that are determined to be erroneous. In addition to any funds made available under subsection (k), the Attorney General may use such sums as are necessary and otherwise available for the salaries and expenses of the Federal Bureau of Investigation to comply with this subsection.”.

### SEC. 3. NICS ACT RECORD IMPROVEMENT PROGRAM.

(a) REQUIREMENTS TO OBTAIN WAIVER.—Section 102 of the NICS Improvement Amendments Act of 2007 (34 U.S.C. 40912) is amended—

(1) in subsection (a), in the first sentence—

(A) by striking “the Crime Identification Technology Act of 1988 (42 U.S.C. 14601)” and inserting “section 102 of the Crime Identification Technology Act of 1998 (34 U.S.C. 40301)”; and

(B) by inserting “is in compliance with an implementation plan established under subsection (b) or” before “provides at least 90 percent of the information described in subsection (c)”; and

(2) in subsection (b)(1)(B), by inserting “or has established an implementation plan under section 107” after “the Attorney General”.

(b) IMPLEMENTATION ASSISTANCE TO STATES.—Section 103 of the NICS Improvement Amendments Act of 2007 (34 U.S.C. 40913) is amended—

(1) in subsection (b)(3), by inserting before the semicolon at the end the following: “, including through increased efforts to pre-validate the contents of those records to expedite eligibility determinations”;

(2) in subsection (e), by striking paragraph (2) and inserting the following:

“(2) DOMESTIC ABUSE AND VIOLENCE PREVENTION INITIATIVE.—

“(A) ESTABLISHMENT.—For each of fiscal years 2018 through 2022, the Attorney General shall create a priority area under the NICS Act Record Im-

provement Program (commonly known as 'NARIP') for a Domestic Abuse and Violence Prevention Initiative that emphasizes the need for grantees to identify and upload all felony conviction records and domestic violence records.

“(B) FUNDING.—The Attorney General—

“(i) may use not more than 50 percent of the amounts made available under section 7 of the Fix NICS Act for each of fiscal years 2018 through 2022 to carry out the initiative described in subparagraph (A); and

“(ii) shall give a funding preference under NARIP to States that—

“(I) have established an implementation plan under section 107; and

“(II) will use amounts made available under this subparagraph to improve efforts to identify and upload all felony conviction records and domestic violence records described in clauses (i), (v), and (vi) of section 102(b)(1)(C) by not later than September 30, 2022.”; and

(3) by adding at the end the following:

“(g) TECHNICAL ASSISTANCE.—The Attorney General shall direct the Office of Justice Programs, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Federal Bureau of Investigation to—

“(1) assist States that are not currently eligible for grants under this section to achieve compliance with all eligibility requirements; and

“(2) provide technical assistance and training services to grantees under this section.”.

#### SEC. 4. NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM.

(a) STATE GRANT PROGRAM FOR CRIMINAL JUSTICE IDENTIFICATION, INFORMATION, AND COMMUNICATION.—Section 102 of the Crime Identification Technology Act of 1998 (34 U.S.C. 40301) is amended—

(1) in subsection (a)(3)—

(A) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively; and

(B) by inserting after subparagraph (B) the following:

“(C) identification of all individuals who have been convicted of a crime punishable by imprisonment for a term exceeding 1 year”;

(2) in subsection (b)(6)—

(A) by striking “(18 U.S.C. 922 note)” and inserting “(34 U.S.C. 40901(b))”; and

(B) by inserting before the semicolon at the end the following: “, including through increased efforts to pre-validate the contents of felony conviction records and domestic violence records to expedite eligibility determinations, and measures and resources necessary to establish and achieve compliance with an implementation plan under section 107 of the NICS Improvement Amendments Act of 2007”; and

(3) in subsection (d), by inserting after “unless” the following: “the State has achieved compliance with an implementation plan under section 107 of the NICS Improvement Amendments Act of 2007 or”.

(b) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—Section 106(b)(1) of the Brady Handgun Violence Prevention Act (34 U.S.C. 40302(1)) is amended—

(1) in the matter preceding subparagraph (A)—

(A) by striking “as of the date of enactment of this Act” and inserting “, as of the date of enactment of the Fix NICS Act of 2017,”; and

(B) by striking “files,” and inserting the following: “files and that will utilize funding under this subsection to prioritize the identification and transmittal of felony conviction records and domestic violence records,”;

(2) in subparagraph (B), by striking “and” at the end;

(3) in subparagraph (C)—

(A) by striking “upon establishment of the national system,”; and

(B) by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following—

“(D) to establish and achieve compliance with an implementation plan under section 107 of the NICS Improvement Amendments Act of 2007.”.

#### SEC. 5. IMPROVING INFORMATION SHARING WITH THE STATES.

(a) IN GENERAL.—Title I of the NICS Improvement Amendments Act of 2007 (34 U.S.C. 40911 et seq.) is amended by adding at the end the following:

**“SEC. 107. IMPLEMENTATION PLAN.**

“(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of the Fix NICS Act of 2017, the Attorney General, in coordination with the States and Indian tribal governments, shall establish, for each State or Indian tribal government, a plan to ensure maximum coordination and automation of the reporting or making available of appropriate records to the National Instant Criminal Background Check System established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) and the verification of the accuracy of those records during a 4-year period specified in the plan, and shall update the plan biennially, to the extent necessary, based on the most recent biennial assessment under subsection (f). The records shall be limited to those of an individual described in subsection (g) or (n) of section 922 of title 18, United States Code

“(b) **BENCHMARK REQUIREMENTS.**—Each plan established under this section shall include annual benchmarks to enable the Attorney General to assess the implementation of the plan, including—

- “(1) qualitative goals and quantitative measures; and
- “(2) a needs assessment, including estimated compliance costs.

“(c) **COMPLIANCE DETERMINATION.**—Not later than the end of each fiscal year beginning after the date of the establishment of an implementation plan under this section, the Attorney General shall determine whether each State or Indian tribal government has achieved substantial compliance with the benchmarks included in the plan.

“(d) **ACCOUNTABILITY.**—The Attorney General—

“(1) shall disclose and publish, including on the website of the Department of Justice—

“(A) the name of each State or Indian tribal government that received a determination of failure to achieve substantial compliance with an implementation plan under subsection (c) for the preceding fiscal year; and

“(B) a description of the reasons for which the Attorney General has determined that the State or Indian tribal government is not in substantial compliance with the implementation plan, including, to the greatest extent possible, a description of the types and amounts of records that have not been submitted; and

“(2) if a State or Indian tribal government described in paragraph (1) subsequently receives a determination of substantial compliance, shall—

- “(A) immediately correct the applicable record; and
- “(B) not later than 3 days after the determination, remove the record from the website of the Department of Justice and any other location where the record was published.

“(e) **INCENTIVES.**—For each of fiscal years 2018 through 2022, the Attorney General shall give affirmative preference to all Bureau of Justice Assistance discretionary grant applications of a State or Indian tribal government that received a determination of substantial compliance under subsection (c) for the fiscal year in which the grant was solicited.

“(f) **BIENNIAL ASSESSMENT.**—Every 2 years, the Attorney General shall assess the extent to which the actions taken under the Fix NICS Act of 2017 have resulted in improvements in the National Instant Criminal Background Check System established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40903).

**“SEC. 108. NOTIFICATION TO LAW ENFORCEMENT AGENCIES OF PROHIBITED PURCHASE OF A FIREARM.**

“(a) **IN GENERAL.**—In the case of a background check conducted by the National Instant Criminal Background Check System pursuant to the request of a licensed importer, licensed manufacturer, or licensed dealer of firearms (as such terms are defined in section 921 of title 18, United States Code), which background check determines that the receipt of a firearm by a person would violate subsection (g) or (n) of section 922 of title 18, United States Code, and such determination is made after 3 business days have elapsed since the licensee contacted the System and a firearm has been transferred to that person, the System shall notify the law enforcement agencies described in subsection (b).

“(b) **LAW ENFORCEMENT AGENCIES DESCRIBED.**—The law enforcement agencies described in this subsection are the law enforcement agencies that have jurisdiction over the location from which the licensee contacted the system and the law enforcement agencies that have jurisdiction over the location of the residence of the person for which the background check was conducted, as follows:

- “(1) The field office of the Federal Bureau of Investigation.

“(2) The local law enforcement agency.

“(3) The State law enforcement agency.”.

(b) TABLE OF CONTENTS.—The table of contents in section 1(b) of the NICS Improvement Amendments Act of 2007 (Public Law 110–180; 121 Stat. 2559) is amended by inserting after the item relating to section 106 the following:

“Sec. 107. Implementation plan.

“Sec. 108. Notification to law enforcement agencies of prohibited purchase of a firearm.”.

**SEC. 6. ATTORNEY GENERAL REPORT ON USE OF BUMP STOCKS IN CRIME.**

(a) IN GENERAL.—Using amounts made available for research, evaluation, or statistical purposes, within 180 days after the date of the enactment of this Act, the Attorney General shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a written report that—

(1) specifies the number of instances in which a bump stock has been used in the commission of a crime in the United States;

(2) specifies the types of firearms with which a bump stock has been so used; and

(3) contains the opinion of the Attorney General as to whether subparagraphs (B)(i) and (C)(i) of section 924(c)(1) of title 18, United States Code, apply to all instances in which a bump stock has been used in the commission of a crime of violence in the United States.

(b) DEFINITION OF BUMP STOCK.—In this section, the term “bump stock” means a device that—

(1) attaches to a semiautomatic rifle (as defined in section 921(a)(28) of title 18, United States Code);

(2) is designed and intended to repeatedly activate the trigger without the deliberate and volitional act of the user pulling the trigger each time the firearm is fired; and

(3) functions by continuous forward pressure applied to the rifle’s fore end in conjunction with a linear forward and backward sliding motion of the mechanism utilizing the recoil energy when the rifle is discharged.

**SEC. 7. AUTHORIZATIONS OF APPROPRIATIONS.**

(a) IN GENERAL.—There is authorized to be appropriated \$100,000,000 for each of fiscal years 2018 through 2022 to carry out, in accordance with the NICS Act Record Improvement Program and the National Criminal History Improvement Program, the activities under—

(1) section 102 of the NICS Improvement Amendments Act of 2007;

(2) section 103 of the NICS Improvement Amendments Act of 2007;

(3) section 102 of the Crime Identification Technology Act of 1998; and

(4) section 106(b) of the Brady Handgun Violence Prevention Act.

(b) ADDITIONAL AUTHORIZATIONS.—Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10261(a)) is amended—

(1) in paragraph (1)—

(A) by striking “\$33,000,000” and inserting “\$31,000,000”;

(B) by striking “1994 and 1995” and inserting “2018 through 2022”; and

(C) by inserting “, in addition to any amounts otherwise made available for research, evaluation or statistical purposes in a fiscal year” before the period; and

(2) in paragraph (2)—

(A) by striking “\$33,000,000” and inserting “\$27,000,000”;

(B) by striking “1994 and 1995” and inserting “2018 through 2022”; and

(C) by inserting “, in addition to any amounts otherwise made available for research, evaluation or statistical purposes in a fiscal year” before the period.