Pending

AMENDMENT NO. ____ Calendar No. ____

Purpose: To require criminal background checks on all firearms transactions occurring at events that provide a venue for the sale, offer for sale, transfer, or exchange of firearms, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 1805

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AMENDMENT No. 2636

By McCain - others

To: S.1805

Referred 19 **Page(s)**

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Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MCCAIN (for himself, Mr. REED, Mr. DEWINE, Mr. LIEBERMAN, Mr. CHAFEE, Mr. CORZINE, and Mr. DODD) Mr. Durbin

Viz:

On page 11, after line 19, add the following:

TITLE II—GUN SHOW LOOPHOLE CLOSING ACT OF 2004

SEC. 201. SHORT TITLE.

This title may be cited as the "Gun Show Loophole Closing Act of 2004".

1 **SEC. 202. DEFINITIONS.**

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

4 "(36) The term 'special firearms event'—

5 "(A) means any event at which 75 or more
6 firearms are offered or exhibited for sale, ex-
7 change, or transfer, if 1 or more of the firearms
8 has been shipped or transported in, or other-
9 wise affects, interstate or foreign commerce;

10 "(B) does not include an offer or exhibit of
11 firearms for sale, exchange, or transfer by an
12 individual from the personal collection of that
13 individual, at the private residence of that indi-
14 vidual, if the individual is not required to be li-
15 censed under section 923 or 932; and

16 "(C) does not include an offer or exhibit of
17 firearms for sale, exchange, or transfer at
18 events conducted and attended by permanent or
19 annual dues paying members, and their imme-
20 diate family, of private, not-for-profit organiza-
21 tions whose primary purpose is owning and
22 maintaining real property for the purpose of
23 hunting activities.

24 "(37) The term 'special firearms event licensee'
25 means any person who has obtained and holds a
26 valid license in compliance with section 932(d) and

1 who is authorized to contact the national instant
2 criminal background check system on behalf of an-
3 other individual, who is not licensed under this chap-
4 ter, for the purpose of conducting a background
5 check for a potential firearms transfer at a special
6 firearms event in accordance with section 932(c).
7 "(38) The term 'special firearms event vendor'
8 means any person who is not required to be licensed
9 under section 923 and who exhibits, sells, offers for
10 sale, transfers, or exchanges 1 or more firearms at
11 a special firearms event, regardless of whether or
12 not the person arranges with the special firearms
13 event promoter for a fixed location from which to ex-
14 hibit, sell, offer for sale, transfer, or exchange 1 or
15 more firearms.".

16 **SEC. 203. REGULATION OF FIREARMS TRANSFERS AT SPE-**
17 **CIAL FIREARMS EVENTS.**

18 (a) IN GENERAL.—Chapter 44 of title 18, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 **"§ 932. Regulation of firearms transfers at special**
22 **firearms events**

23 "(a) SPECIAL FIREARMS EVENTS OPERATORS.—It
24 shall be unlawful for a special firearms events operator

1 to organize, plan, promote, or operate a special firearms
2 event unless that operator—
3 "(1) before the commencement of the special
4 firearms event, or in the case of a vendor who ar-
5 rives after the commencement of the event, upon the
6 arrival of the vendor, verifies the identity of each
7 special firearms event vendor participating in the
8 special firearms event by examining a valid identi-
9 fication document (as defined in section 1028(d)(2))
10 of the vendor containing a photograph of the vendor;
11 "(2) before the commencement of the special
12 firearms event, or in the case of a vendor who ar-
13 rives after the commencement of the event, upon the
14 arrival of the vendor, requires each special firearms
15 event vendor to sign—
16 "(A) a ledger with identifying information
17 concerning the vendor; and
18 "(B) a notice advising the vendor of the
19 obligations of the vendor under this chapter;
20 "(3) notifies each person who attends the spe-
21 cial firearms event of the requirements of this chap-
22 ter; and
23 "(4) maintains a copy of the records described
24 in paragraphs (1) and (2) at the permanent place of
25 business of the operator.

1 "(b) FEES.—The Attorney General shall not impose
2 or collect any fee from special firearms event operators
3 in connection with the requirements under this section.
4 "(c) RESPONSIBILITIES OF TRANSFERORS OTHER
5 THAN LICENSEES.—
6 "(1) IN GENERAL.—If any part of a firearm
7 transaction takes place at a special firearms event,
8 or on the curtilage of the event, it shall be unlawful
9 for any person who is not licensed under this chap-
10 ter to transfer a firearm to another person who is
11 not licensed under this chapter, unless the firearm
12 is transferred through a licensed importer, licensed
13 manufacturer, licensed dealer, or a special firearms
14 event licensee in accordance with subsection (d).
15 "(2) CRIMINAL BACKGROUND CHECKS.—A per-
16 son who is subject to the requirement under para-
17 graph (1) shall not—
18 "(A) transfer the firearm to the transferee
19 until the licensed importer, licensed manufac-
20 turer, licensed dealer, or a special firearms
21 event licensee through which the transfer is
22 made makes the notification described in sub-
23 section (d)(2)(A); or
24 "(B) transfer the firearm to the transferee
25 if the person has been notified under subsection

1 (d)(2)(B) that the transfer would violate section
2 922 or State law.
3 "(3) ABSENCE OF RECORDKEEPING REQUIRE-
4 MENTS.—Nothing in this section shall permit or au-
5 thorize the Attorney General to impose record-
6 keeping requirements on any nonlicensed special
7 firearms event vendor.
8 "(d) RESPONSIBILITIES OF LICENSEES.—A licensed
9 importer, licensed manufacturer, licensed dealer, or special
10 firearms event licensee who agrees to assist a person who
11 is not licensed under this chapter in carrying out the re-
12 sponsibilities of that person under subsection (c) with re-
13 spect to the transfer of a firearm shall—
14 "(1) except as provided in paragraph (2), com-
15 ply with section 922(t) as if transferring the firearm
16 from the inventory of the licensed importer, licensed
17 manufacturer, or licensed dealer to the designated
18 transferee (although a licensed importer, licensed
19 manufacturer, or licensed dealer complying with this
20 subsection shall not be required to comply again
21 with the requirements of section 922(t) in delivering
22 the firearm to the nonlicensed transferor);
23 "(2) not later than 3 business days (meaning
24 days on which State offices are open) after the date
25 of the agreement to purchase, or if the event is held

1 in a State that has been certified by the Attorney
2 General under section 204 of the Gun Show Loop-
3 hole Closing Act of 2004, not later than 24 hours
4 after such date (or 3 business days after such date
5 if additional information is required in order to
6 verify disqualifying information from a State that
7 has not been certified by the Attorney General), no-
8 tify the nonlicensed transferor and the nonlicensed
9 transferee—
10 "(A) of any response from the national
11 criminal background check system, or if the li-
12 censee has had no response from the national
13 criminal background check system within the
14 applicable time period under this paragraph,
15 notify the nonlicensed transferor that no re-
16 sponse has been received and that the transfer
17 may proceed; and
18 "(B) of any receipt by the licensed im-
19 porter, licensed manufacturer, or licensed dealer
20 of a notification from the national instant
21 criminal background check system that the
22 transfer would violate section 922 or State law;
23 "(3) in the case of a transfer at 1 time or dur-
24 ing any 5 consecutive business days, of 2 or more
25 pistols or revolvers, or any combination of pistols

1 and revolvers totaling 2 or more, to the same non-
2 licensed person, in addition to the recordkeeping re-
3 quirements described in paragraph (4), prepare a re-
4 port of the multiple transfers, which report shall
5 be—
6 "(A) on a form specified by the Attorney
7 General; and
8 "(B) not later than the close of business
9 on the date on which the multiple transfer oc-
10 curs, forwarded to—
11 "(i) the office specified on the form
12 described in subparagraph (A); and
13 "(ii) the appropriate State law en-
14 forcement agency of the jurisdiction in
15 which the transfer occurs; and
16 "(4) comply with all recordkeeping require-
17 ments under this chapter.
18 "(e) SPECIAL FIREARMS EVENT LICENSE.—
19 "(1) IN GENERAL.—The Attorney General shall
20 issue a special firearms event license to a person
21 who submits an application for a special firearms
22 event license in accordance with this subsection.
23 "(2) APPLICATION.—The application required
24 by paragraph (1) shall be approved if—

1 "(A) the applicant is 21 years of age or
2 older;
3 "(B) the application includes a photograph
4 and the fingerprints of the applicant;
5 "(C) the applicant (including, in the case
6 of a corporation, partnership, or association,
7 any individual possessing, directly or indirectly,
8 the power to direct or cause the direction of the
9 management and policies of the corporation,
10 partnership, or association) is not prohibited
11 from transporting, shipping, or receiving fire-
12 arms or ammunition in interstate or foreign
13 commerce under subsection (g) or (n) of section
14 922;
15 "(D) the applicant has not willfully vio-
16 lated any of the provisions of this chapter or
17 regulations issued thereunder;
18 "(E) the applicant has not willfully failed
19 to disclose any material information required,
20 or has not made any false statement as to any
21 material fact, in connection with the applica-
22 tion; and
23 "(F) the applicant certifies that—

"(i) the applicant meets the requirements of subparagraphs (A) through (D) of section 923(d)(1);

"(ii) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located; and

"(iii) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met.

"(3) APPLICATION AND APPROVAL.—

"(A) IN GENERAL.—Upon the approval of an application under this subsection and payment by the applicant of a fee of $200 for 3 years, and upon renewal of a valid registration and payment of a fee of $90 for 3 years, the Attorney General shall issue to the applicant an instant check registration, and advise the Attorney General of that registration.

"(B) NICS.—A special firearms event licensee may contact the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) for infor-

1 mation about any individual desiring to obtain
2 a firearm at a special firearms event from any
3 special firearms event vendor who has requested
4 the assistance of the registrant in complying
5 with subsection (c) with respect to the transfer
6 of the firearm, during the 3-year period that
7 begins on the date on which the registration is
8 issued.

9 "(4) REQUIREMENTS.—The requirements for a
10 special firearms event licensee shall not exceed the
11 requirements for a licensed dealer and the record-
12 keeping requirements shall be the same.

13 "(5) RESTRICTIONS.—

14 "(A) BACKGROUND CHECKS.—A special
15 firearms event licensee may have access to the
16 national instant criminal background check sys-
17 tem to conduct a background check only at a
18 special firearms event and only on behalf of an-
19 other person.

20 "(B) TRANSFER OF FIREARMS.—A special
21 firearms event licensee shall not transfer a fire-
22 arm at a special firearms event.

23 "(f) DEFINED TERM.—In this section, the term 'fire-
24 arm transaction'—

1 "(1) includes the sale, offer for sale, transfer,
2 or exchange of a firearm; and
3 "(2) does not include—
4 "(A) the mere exhibition of a firearm; or
5 "(B) the sale, transfer, or exchange of fire-
6 arms between immediate family members, in-
7 cluding parents, children, siblings, grand-
8 parents, and grandchildren.".
9 (b) PENALTIES.—Section 924(a) of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:
12 "(8)(A) Whoever organizes, plans, promotes, or oper-
13 ates a special firearms event, knowing that the require-
14 ments under section 932(a)(1) have not been met—
15 "(i) shall be fined under this title, imprisoned
16 not more than 2 years, or both; and
17 "(ii) in the case of a second or subsequent con-
18 viction, shall be fined under this title, imprisoned
19 not more than 5 years, or both.
20 "(B) Whoever organizes, plans, promotes, or operates
21 a special firearms event, knowing that the requirements
22 under subsection (a)(2) or (c) of section 932 have not been
23 met, shall be fined under this title, imprisoned not more
24 than 5 years, or both.

1 "(C) Whoever organizes, plans, promotes, or operates
2 a special firearms event, knowing that the requirements
3 under section 932(a)(3) have not been met, shall be fined
4 under this title, imprisoned not more than 2 years, or
5 both.

6 "(D) In addition to any other penalties imposed
7 under this paragraph, the Attorney General may, with re-
8 spect to any person who violates any provision of section
9 932—

10 "(i) if the person is registered pursuant to sec-
11 tion 932(a), after notice and opportunity for a hear-
12 ing, suspend for not more than 6 months or revoke
13 the registration of that person under section 932(a);
14 and

15 "(ii) impose a civil fine in an amount equal to
16 not more than $10,000.".

17 (c) UNLAWFUL ACTS.—Section 922(b) of title 18,
18 United States Code, is amended in the matter preceding
19 paragraph (1), by striking "or licensed collector" and in-
20 serting "licensed collector, or special firearms event li-
21 censee".

22 (d) TECHNICAL AND CONFORMING AMENDMENT.—
23 Chapter 44 of title 18, United States Code, is amended
24 in the chapter analysis, by adding at the end the following:

"932. Regulation of firearms transfers at special firearms events.".

1 **SEC. 204. STATE OPTION FOR 24-HOUR BACKGROUND**
2 **CHECKS AT SPECIAL FIREARMS EVENTS FOR**
3 **STATES WITH COMPUTERIZED DISQUALI-**
4 **FYING RECORDS.**

5 (a) IN GENERAL.—Effective 3 years after the date
6 of enactment of this Act, a State may apply to the Attor-
7 ney General for certification of the 24-hour verification
8 authority of that State.

9 (b) CERTIFICATION.—The Attorney General shall
10 certify a State for 24-hour verification authority only upon
11 a clear showing by the State, and certification by the Bu-
12 reau of Justice Statistics, that—

13 (1) not less than 95 percent of all records con-
14 taining information that would disqualify an indi-
15 vidual under subsections (g) and (n) of section 922
16 of title 18, United States Code, or under State law,
17 is available on computer records in the State, and is
18 searchable under the national instant criminal back-
19 ground check system established under section 103
20 of the Brady Handgun Violence Prevention Act (18
21 U.S.C. 922 note);

22 (2) not less than 95 percent of all records con-
23 taining information that would disqualify an indi-
24 vidual under paragraphs (8) and (9) of subsection
25 922(g) of title 18, United States Code, or under
26 State law, is available on computer records in the

1 State, and is searchable under the national instant
2 criminal background check system established under
3 section 103 of the Brady Handgun Violence Protec-
4 tion Act (18 U.S.C. 922 note); and
5 (3) the chief judicial officer of the State re-
6 quires the courts of the State to use the toll-free
7 telephone number described in subsection (d)(1) to
8 immediately notify the National Instant Criminal
9 Background Check System each time a restraining
10 order (as described in section 922(g)(8) of title 18,
11 United States Code) is issued, lifted, or otherwise
12 removed by order of the court.
13 (c) CLARIFICATIONS.—
14 (1) DISQUALIFYING INFORMATION.—Disquali-
15 fying information for each State under subsection
16 (b) shall include the disqualifying records for that
17 State generated during the 30 years preceding the
18 date of application to the Attorney General for cer-
19 tification.
20 (2) TOLL-FREE TELEPHONE NUMBER.—Upon a
21 showing by the State that a court of the State has
22 developed computer systems which permit the court
23 to immediately electronically notify the National In-
24 stant Criminal Background Check System with re-
25 spect to the issuance or lifting of restraining orders,

1 the use of the toll-free telephone number described
2 in subsection (d)(1) shall no longer be required
3 under subsection (b)(3).
4 (d) NOTIFICATION INFRASTRUCTURE.—Before certi-
5 fying any State under subsection (b), the Attorney Gen-
6 eral shall—
7 (1) create a toll-free telephone number through
8 which State and local courts may immediately notify
9 the National Instant Background Check System
10 whenever a restraining order (as described in section
11 922(g)(8) of title 18, United States Code) is issued,
12 lifted, or otherwise removed by order of the court;
13 and
14 (2) encourage States to develop computer sys-
15 tems that permit courts to immediately electronically
16 notify the National Instant Criminal Background
17 Check System whenever a restraining order (as de-
18 scribed in section 922(g)(8) of title 18, United
19 States Code) has been issued, lifted, or otherwise re-
20 moved by order of the court.
21 (e) 24-HOUR PROVISION.—Upon certification by the
22 Attorney General, the 24-hour provision in section
23 932(c)(2) of title 18, United States Code, shall apply to
24 the verification process (for transfers between unlicensed
25 persons) in that State unless additional information is re-

1 quired in order to verify disqualifying information from
2 a State that has not been certified by the Attorney Gen-
3 eral, in which case the 3 business day limit shall apply.
4 (f) ANNUAL REVIEW.—The Director of the Bureau
5 of Justice Statistics shall annually review the certifications
6 under this section.
7 (g) REVOCATION.—The Attorney General shall re-
8 voke the certification required under this section for any
9 State that is not in compliance with subsection (b).

10 **SEC. 205. INSPECTION AUTHORITY.**

11 Section 923(g)(1)(B), of title 18, United States Code,
12 is amended by striking "or licensed dealer" and inserting
13 "licensed dealer, or special firearms event operator".

14 **SEC. 206. INCREASED PENALTIES FOR SERIOUS RECORD-**
15 **KEEPING VIOLATIONS BY LICENSEES.**

16 Section 924(a)(3) of title 18, United States Code, is
17 amended to read as follows:
18 "(3)(A) Except as provided in subparagraph
19 (B), any licensed dealer, licensed importer, licensed
20 manufacturer, licensed collector, or special firearms
21 event licensee who knowingly makes any false state-
22 ment or representation with respect to the informa-
23 tion required by this chapter to be kept in the
24 records of a person licensed under this chapter, or

1 violates section 922(m) shall be fined under this
2 title, imprisoned not more than 1 year, or both.
3 "(B) If the violation described in subparagraph
4 (A) is in relation to an offense—
5 "(i) under paragraph (1) or (3) of section
6 922(b), such person shall be fined under this
7 title, imprisoned not more than 5 years, or
8 both; or
9 "(ii) under subsection (a)(6) or (d) of sec-
10 tion 922, such person shall be fined under this
11 title, imprisoned not more than 10 years, or
12 both.".

13 **SEC. 207. INCREASED PENALTIES FOR VIOLATIONS OF**
14 **CRIMINAL BACKGROUND CHECK REQUIRE-**
15 **MENTS.**

16 Section 924(a) of title 18, United States Code, as
17 amended by section 203(b), is further amended—
18 (1) in paragraph (5), by striking "subsection
19 (s) or (t) of section 922" and inserting "section
20 922(s)"; and
21 (2) by adding at the end the following:
22 "(9) Whoever knowingly violates section 922(t)
23 shall be fined under this title, imprisoned not more
24 than 5 years, or both.".

1 **SEC. 208. RULE OF INTERPRETATION.**

2 A provision of State law is not inconsistent with this
3 title or an amendment made by this title if the provision
4 imposes a regulation or prohibition of greater scope or a
5 penalty of greater severity than any prohibition or penalty
6 imposed by this title or an amendment made by this title.

7 **SEC. 209. EFFECTIVE DATE.**

8 This title and the amendments made by this title
9 shall take effect 180 days after the date of enactment of
10 this Act.