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(Original Signature of Member)

114TH CONGRESS
2D SESSION

H. R. _____

To require the National Instant Criminal Background Check System to make a final disposition of requests to correct its records within 60 days, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. EMMER introduced the following bill; which was referred to the Committee
on _____

A BILL

To require the National Instant Criminal Background Check System to make a final disposition of requests to correct its records within 60 days, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Firearm Due Process
5 Protection Act”.

1 **SEC. 2. DEADLINE FOR FINAL DISPOSITION OF REQUESTS**
2 **TO CORRECT RECORDS OF THE NATIONAL IN-**
3 **STANT CRIMINAL BACKGROUND CHECK SYS-**
4 **TEM.**

5 Section 103(g) of the Brady Handgun Violence Pre-
6 vention Act (18 U.S.C. 922 note) is amended—

7 (1) by striking “If” and inserting the following:

8 “(1) IN GENERAL.—If”;

9 (2) by adding at the end the following: “The
10 Attorney General shall make a final disposition of
11 any information so submitted, within 60 days after
12 receipt of the information.”; and

13 (3) by adding after and below the end the fol-
14 lowing new paragraph:

15 “(2) PRIVATE RIGHT OF ACTION.—

16 “(A) IN GENERAL.—An individual ag-
17 grieved by a violation of the last sentence of
18 paragraph (1) may bring an action in the
19 United States district court for the district in
20 which individual attempted to acquire a firearm
21 for a declaratory judgment on the eligibility of
22 the individual to receive and possess a firearm.

23 “(B) EXPEDITED HEARING.—The court
24 shall hold a hearing on such an action within
25 30 days after the action is brought.

1 “(C) BURDEN OF PROOF.—At such a hear-
2 ing, the United States shall bear the burden of
3 proving by clear and convincing evidence that
4 the individual is ineligible to receive or possess
5 a firearm.

6 “(D) REMEDIES.—If the government does
7 not so prove the ineligibility, the court shall
8 order the Attorney General to correct or remove
9 the erroneous records of the national instant
10 criminal background check system with respect
11 to the individual within 5 business days, and
12 shall award the individual the costs of bringing
13 the action and a reasonable attorney’s fee.”.

14 **SEC. 3. ANNUAL REPORTS TO THE CONGRESS ON DISPOSI-**
15 **TION OF CHALLENGES TO ACCURACY OF**
16 **RECORDS OF THE NATIONAL INSTANT CRIMI-**
17 **NAL BACKGROUND CHECK SYSTEM.**

18 The Director of the Federal Bureau of Investigation
19 shall submit annually to the Committee on the Judiciary
20 of the House of Representatives and the Committee on
21 the Judiciary of the Senate a written report that speci-
22 fies—

23 (1) the total number of challenges to the accu-
24 racy of the records of the National Instant Criminal
25 Background Check System (in this section referred

1 to as the “NICS system”) established under section
2 103 of the Brady Handgun Violence Prevention Act
3 that were received by the NICS system during the
4 year covered by the report;

5 (2) the total number of the challenges that were
6 processed to final disposition by the NICS system;

7 (3) the total number of the challenges with re-
8 spect to which the initial determination of the NICS
9 system was reversed, and with respect to those chal-
10 lenges, the total number in which each reason for
11 the initial determination was made;

12 (4) the total number of the challenges with re-
13 spect to which the initial determination of the NICS
14 system was not reversed, and with respect to those
15 challenges, the total number in which each reason
16 for not doing so was made; and

17 (5) the average length of time needed to com-
18 plete the processing of the challenges referred to in
19 paragraph (2).

20 **SEC. 4. SENSE OF THE CONGRESS.**

21 It is the sense of the Congress that—

22 (1) the right of the people to keep and bear
23 arms is a fundamental component of self-government
24 and the preservation of individual liberty;

1 (2) deprivation of the constitutional right to
2 bear arms requires due process under the Fifth and
3 Fourteenth Amendments to the Constitution of the
4 United States; and

5 (3) ignoring appeals of determinations made by
6 the National Instant Criminal Background Check
7 System violates due process.