

Union Calendar No. 322

115TH CONGRESS
1ST SESSION

H. R. 4477

[Report No. 115-437]

To enforce current law regarding the National Instant Criminal Background
Check System.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2017

Mr. CULBERSON (for himself, Mr. CUELLAR, Ms. ESTY of Connecticut, Mr. AGUILAR, Mr. COSTELLO of Pennsylvania, Ms. SPEIER, Mr. RICHMOND, Mr. McCAUL, Mrs. COMSTOCK, and Ms. TITUS) introduced the following bill; which was referred to the Committee on the Judiciary

DECEMBER 5, 2017

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on November 29, 2017]

A BILL

To enforce current law regarding the National Instant
Criminal Background Check System.

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 “Fix NICS Act of 2017”.*

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

7 *Section 103 of the Brady Handgun Violence Preven-*
8 *tion Act (34 U.S.C. 40901) is amended—*

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

11 *“(F) SEMIANNUAL CERTIFICATION AND RE-*
12 *PORTING.—*

13 *“(i) IN GENERAL.—The head of each*
14 *Federal department or agency shall submit*
15 *a semiannual written certification to the*
16 *Attorney General indicating whether the de-*
17 *partment or agency is in compliance with*
18 *the record submission requirements under*
19 *subparagraph (C).*

20 *“(ii) SUBMISSION DATES.—The head of*
21 *a Federal department or agency shall sub-*
22 *mit a certification to the Attorney General*
23 *under clause (i)—*

24 *“(I) not later than July 31 of*
25 *each year, which shall address all rel-*

1 *evant records, including those that*
2 *have not been transmitted to the Attor-*
3 *ney General, in possession of the de-*
4 *partment or agency during the period*
5 *beginning on January 1 of the year*
6 *and ending on June 30 of the year;*
7 *and*

8 *“(II) not later than January 31*
9 *of each year, which shall address all*
10 *relevant records, including those that*
11 *have not been transmitted to the Attor-*
12 *ney General, in possession of the de-*
13 *partment or agency during the period*
14 *beginning on July 1 of the previous*
15 *year and ending on December 31 of the*
16 *previous year.*

17 *“(iii) CONTENTS.—A certification re-*
18 *quired under clause (i) shall state, for the*
19 *applicable period—*

20 *“(I) the total number of records of*
21 *the Federal department or agency dem-*
22 *onstrating that a person falls within*
23 *one of the categories described in sub-*
24 *section (g) or (n) of section 922 of title*
25 *18, United States Code;*

1 “(II) for each category of records
2 described in subclause (I), the total
3 number of records of the Federal de-
4 partment or agency that have been
5 provided to the Attorney General; and

6 “(III) the efforts of the Federal de-
7 partment or agency to ensure complete
8 and accurate reporting of relevant
9 records, including efforts to monitor
10 compliance and correct any reporting
11 failures or inaccuracies.

12 “(G) IMPLEMENTATION PLAN.—

13 “(i) IN GENERAL.—Not later than 1
14 year after the date of enactment of this sub-
15 paragraph, the head of each Federal depart-
16 ment or agency, in coordination with the
17 Attorney General, shall establish a plan to
18 ensure maximum coordination and auto-
19 mated reporting or making available of
20 records to the Attorney General as required
21 under subparagraph (C), and the
22 verification of the accuracy of those records,
23 including the pre-validation of those
24 records, where appropriate, during a 4-year
25 period specified in the plan. The head of

1 each Federal department or agency shall
2 update the plan biennially, to the extent
3 necessary, based on the most recent biennial
4 assessment under subparagraph (K). The
5 records shall be limited to those of an indi-
6 vidual described in subsection (g) or (n) of
7 section 922 of title 18, United States Code.

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

13 “(I) qualitative goals and quan-
14 titative measures;

15 “(II) measures to monitor inter-
16 nal compliance, including any report-
17 ing failures and inaccuracies;

18 “(III) a needs assessment, includ-
19 ing estimated compliance costs; and

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

24 “(iii) *COMPLIANCE DETERMINATION.*—
25 Not later than the end of each fiscal year

1 *beginning after the date of the establishment*
2 *of a plan under clause (i), the Attorney*
3 *General shall determine whether the appli-*
4 *cable Federal department or agency has*
5 *achieved substantial compliance with the*
6 *benchmarks included in the plan.*

7 “(H) *ACCOUNTABILITY.*—*The Attorney Gen-*
8 *eral shall publish, including on the website of the*
9 *Department of Justice, and submit to the Com-*
10 *mittee on the Judiciary and the Committee on*
11 *Appropriations of the Senate and the Committee*
12 *on the Judiciary and the Committee on Appro-*
13 *priations of the House of Representatives a semi-*
14 *annual report that discloses—*

15 “(i) *the name of each Federal depart-*
16 *ment or agency that has failed to submit a*
17 *required certification under subparagraph*
18 *(F);*

19 “(ii) *the name of each Federal depart-*
20 *ment or agency that has submitted a re-*
21 *quired certification under subparagraph*
22 *(F), but failed to certify compliance with*
23 *the record submission requirements under*
24 *subparagraph (C);*

1 “(iii) the name of each Federal depart-
2 ment or agency that has failed to submit an
3 implementation plan under subparagraph
4 (G);

5 “(iv) the name of each Federal depart-
6 ment or agency that is not in substantial
7 compliance with an implementation plan
8 under subparagraph (G);

9 “(v) a detailed summary of the data,
10 broken down by department or agency, con-
11 tained in the certifications submitted under
12 subparagraph (F);

13 “(vi) a detailed summary of the con-
14 tents and status, broken down by depart-
15 ment or agency, of the implementation
16 plans established under subparagraph (G);
17 and

18 “(vii) the reasons for which the Attor-
19 ney General has determined that a Federal
20 department or agency is not in substantial
21 compliance with an implementation plan
22 established under subparagraph (G).

23 “(I) *NONCOMPLIANCE PENALTIES.*—For
24 each of fiscal years 2019 through 2022, each po-
25 litical appointee of a Federal department or

1 agency that has failed to certify compliance with
2 the record submission requirements under sub-
3 paragraph (C), and is not in substantial compli-
4 ance with an implementation plan established
5 under subparagraph (G), shall not be eligible for
6 the receipt of bonus pay, excluding overtime pay,
7 until the department or agency—

8 “(i) certifies compliance with the
9 record submission requirements under sub-
10 paragraph (C); or

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

14 “(J) *TECHNICAL ASSISTANCE.*—*The Attor-*
15 *ney General may use funds made available for*
16 *the national instant criminal background check*
17 *system established under subsection (b) to pro-*
18 *vide technical assistance to a Federal department*
19 *or agency, at the request of the department or*
20 *agency, in order to help the department or agen-*
21 *cy comply with the record submission require-*
22 *ments under subparagraph (C).*

23 “(K) *BIENNIAL ASSESSMENT.*—*Every 2*
24 *years, the Attorney General shall assess the ex-*
25 *tent to which the actions taken under the Fix*

1 *NICS Act of 2017 have resulted in improvements*
2 *in the system established under this section.*

3 *“(L) APPLICATION TO FEDERAL COURTS.—*

4 *For purposes of this paragraph—*

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

8 *“(ii) the Director of the Administrative*
9 *Office of the United States Courts shall per-*
10 *form, for a Federal court, the functions as-*
11 *signed to the head of a department or agen-*
12 *cy.”; and*

13 *(2) in subsection (g), by adding at the end the*
14 *following: “For purposes of the preceding sentence,*
15 *not later than 60 days after the date on which the At-*
16 *torney General receives such information, the Attor-*
17 *ney General shall determine whether or not the pro-*
18 *spective transferee is the subject of an erroneous*
19 *record and remove any records that are determined to*
20 *be erroneous. In addition to any funds made avail-*
21 *able under subsection (k), the Attorney General may*
22 *use such sums as are necessary and otherwise avail-*
23 *able for the salaries and expenses of the Federal Bu-*
24 *reau of Investigation to comply with this subsection.”.*

1 **SEC. 3. NICS ACT RECORD IMPROVEMENT PROGRAM.**

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

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

6 (A) by striking “the Crime Identification
7 Technology Act of 1988 (42 U.S.C. 14601)” and
8 inserting “section 102 of the Crime Identifica-
9 tion Technology Act of 1998 (34 U.S.C. 40301)”;
10 and

11 (B) by inserting “is in compliance with an
12 implementation plan established under sub-
13 section (b) or” before “provides at least 90 per-
14 cent of the information described in subsection
15 (c)”; and

16 (2) in subsection (b)(1)(B), by inserting “or has
17 established an implementation plan under section
18 107” after “the Attorney General”.

19 (b) *IMPLEMENTATION ASSISTANCE TO STATES.*—Sec-
20 tion 103 of the *NICS Improvement Amendments Act of*
21 *2007* (34 U.S.C. 40913) is amended—

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

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

3 “(2) *DOMESTIC ABUSE AND VIOLENCE PREVEN-*
4 *TION INITIATIVE.—*

5 “(A) *ESTABLISHMENT.—For each of fiscal*
6 *years 2018 through 2022, the Attorney General*
7 *shall create a priority area under the NICS Act*
8 *Record Improvement Program (commonly known*
9 *as ‘NARIP’) for a Domestic Abuse and Violence*
10 *Prevention Initiative that emphasizes the need*
11 *for grantees to identify and upload all felony*
12 *conviction records and domestic violence records.*

13 “(B) *FUNDING.—The Attorney General—*

14 “(i) *may use not more than 50 percent*
15 *of the amounts made available under sec-*
16 *tion 7 of the Fix NICS Act for each of fiscal*
17 *years 2018 through 2022 to carry out the*
18 *initiative described in subparagraph (A);*
19 *and*

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

22 “(I) *have established an imple-*
23 *mentation plan under section 107; and*

24 “(II) *will use amounts made*
25 *available under this subparagraph to*

1 *improve efforts to identify and upload*
2 *all felony conviction records and do-*
3 *mestic violence records described in*
4 *clauses (i), (v), and (vi) of section*
5 *102(b)(1)(C) by not later than Sep-*
6 *tember 30, 2022.”; and*

7 *(3) by adding at the end the following:*

8 *“(g) TECHNICAL ASSISTANCE.—The Attorney General*
9 *shall direct the Office of Justice Programs, the Bureau of*
10 *Alcohol, Tobacco, Firearms, and Explosives, and the Fed-*
11 *eral Bureau of Investigation to—*

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

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

17 **SEC. 4. NATIONAL CRIMINAL HISTORY IMPROVEMENT PRO-**
18 **GRAM.**

19 *(a) STATE GRANT PROGRAM FOR CRIMINAL JUSTICE*
20 *IDENTIFICATION, INFORMATION, AND COMMUNICATION.—*
21 *Section 102 of the Crime Identification Technology Act of*
22 *1998 (34 U.S.C. 40301) is amended—*

23 *(1) in subsection (a)(3)—*

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

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

6 “(C) identification of all individuals who
7 have been convicted of a crime punishable by im-
8 prisonment for a term exceeding 1 year”;

9 (2) in subsection (b)(6)—

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

12 (B) by inserting before the semicolon at the
13 end the following: “, including through increased
14 efforts to pre-validate the contents of felony con-
15 viction records and domestic violence records to
16 expedite eligibility determinations, and measures
17 and resources necessary to establish and achieve
18 compliance with an implementation plan under
19 section 107 of the NICS Improvement Amend-
20 ments Act of 2007”; and

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

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

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

5 (A) *by striking “as of the date of enactment*
6 *of this Act” and inserting “; as of the date of en-*
7 *actment of the Fix NICS Act of 2017,”; and*

8 (B) *by striking “files,” and inserting the*
9 *following: “files and that will utilize funding*
10 *under this subsection to prioritize the identifica-*
11 *tion and transmittal of felony conviction records*
12 *and domestic violence records,”;*

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

15 (3) *in subparagraph (C)—*

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

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

20 (4) *by adding at the end the following—*

21 “(D) *to establish and achieve compliance*
22 *with an implementation plan under section 107*
23 *of the NICS Improvement Amendments Act of*
24 *2007.”.*

1 **SEC. 5. IMPROVING INFORMATION SHARING WITH THE**
2 **STATES.**

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

6 **“SEC. 107. IMPLEMENTATION PLAN.**

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

23 “(b) *BENCHMARK REQUIREMENTS.*—Each plan estab-
24 lished under this section shall include annual benchmarks
25 to enable the Attorney General to assess the implementation
26 of the plan, including—

1 “(1) qualitative goals and quantitative measures;
2 and

3 “(2) a needs assessment, including estimated
4 compliance costs.

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

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

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

14 “(A) the name of each State or Indian trib-
15 al government that received a determination of
16 failure to achieve substantial compliance with an
17 implementation plan under subsection (c) for the
18 preceding fiscal year; and

19 “(B) a description of the reasons for which
20 the Attorney General has determined that the
21 State or Indian tribal government is not in sub-
22 stantial compliance with the implementation
23 plan, including, to the greatest extent possible, a
24 description of the types and amounts of records
25 that have not been submitted; and

1 “(2) if a State or Indian tribal government de-
2 scribed in paragraph (1) subsequently receives a de-
3 termination of substantial compliance, shall—

4 “(A) immediately correct the applicable
5 record; and

6 “(B) not later than 3 days after the deter-
7 mination, remove the record from the website of
8 the Department of Justice and any other loca-
9 tion where the record was published.

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

17 “(f) *BIENNIAL ASSESSMENT.*—Every 2 years, the At-
18 torney General shall assess the extent to which the actions
19 taken under the Fix NICS Act of 2017 have resulted in im-
20 provements in the National Instant Criminal Background
21 Check System established under section 103 of the Brady
22 Handgun Violence Prevention Act (34 U.S.C. 40903).

1 **“SEC. 108. NOTIFICATION TO LAW ENFORCEMENT AGEN-**
2 **CIES OF PROHIBITED PURCHASE OF A FIRE-**
3 **ARM.**

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

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

24 *“(1) The field office of the Federal Bureau of In-*
25 *vestigation.*

26 *“(2) The local law enforcement agency.*

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

2 (b) *TABLE OF CONTENTS.—The table of contents in*
3 *section 1(b) of the NICS Improvement Amendments Act of*
4 *2007 (Public Law 110–180; 121 Stat. 2559) is amended*
5 *by inserting after the item relating to section 106 the fol-*
6 *lowing:*

“Sec. 107. Implementation plan.

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

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

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

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

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

21 (3) *contains the opinion of the Attorney General*
22 *as to whether subparagraphs (B)(i) and (C)(i) of sec-*
23 *tion 924(c)(1) of title 18, United States Code, apply*
24 *to all instances in which a bump stock has been used*

1 *in the commission of a crime of violence in the*
2 *United States.*

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

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

7 *(2) is designed and intended to repeatedly acti-*
8 *vate the trigger without the deliberate and volitional*
9 *act of the user pulling the trigger each time the fire-*
10 *arm is fired; and*

11 *(3) functions by continuous forward pressure ap-*
12 *plied to the rifle’s fore end in conjunction with a lin-*
13 *ear forward and backward sliding motion of the*
14 *mechanism utilizing the recoil energy when the rifle*
15 *is discharged.*

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

17 *(a) IN GENERAL.—There is authorized to be appro-*
18 *priated \$100,000,000 for each of fiscal years 2018 through*
19 *2022 to carry out, in accordance with the NICS Act Record*
20 *Improvement Program and the National Criminal History*
21 *Improvement Program, the activities under—*

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

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

1 (3) *section 102 of the Crime Identification Tech-*
2 *nology Act of 1998; and*

3 (4) *section 106(b) of the Brady Handgun Vio-*
4 *lence Prevention Act.*

5 (b) *ADDITIONAL AUTHORIZATIONS.—Section 1001(a)*
6 *of the Omnibus Crime Control and Safe Streets Act of 1968*
7 *(34 U.S.C. 10261(a)) is amended—*

8 (1) *in paragraph (1)—*

9 (A) *by striking “\$33,000,000” and inserting*
10 *“\$31,000,000”;*

11 (B) *by striking “1994 and 1995” and in-*
12 *serting “2018 through 2022”;* and

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

17 (2) *in paragraph (2)—*

18 (A) *by striking “\$33,000,000” and inserting*
19 *“\$27,000,000”;*

20 (B) *by striking “1994 and 1995” and in-*
21 *serting “2018 through 2022”;* and

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

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A BILL

To enforce current law regarding the National
Instant Criminal Background Check System.

DECEMBER 5, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed