



H.R. 1112 – Enhanced Background Checks Act of 2019 (Rep. Clyburn, D-SC)

FLOOR SCHEDULE:

Expected to be considered on February 28, 2019 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 1112](#) would do away with the current three-day safety valve for firearms purchases that exists for when a reasonably timely determination under the NICS background check system is not made.

COST:

A Congressional Budget Office (CBO) estimate is not available.

CONSERVATIVE CONCERNS:

Conservatives may be concerned that while the NICS system has advanced technologically, instead of shortening waiting periods, which, according to the dissenting views, has been supported by some democrats, this would instead drastically lengthen waiting periods.

Conservatives may be very concerned that this legislation could effectively give government near unlimited control over firearm transfers, as the proposed 20-business day waiting period could outlast the validity of a NICS background check. Moreover, if a purchaser fails to petition, the background check would essentially be invalidated.

Conservatives may be concerned that this legislation is being touted as a bill to close the “Charleston loophole”- blaming the current three-day safety valve for the horrific shooting at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina, despite the fact that the FBI had two months in between the firearm transfer and the tragic attack to investigate the attacker and failed to do so.

Conservatives may be concerned that this bill would increase federal regulation of firearms, which they generally believe to be an issue that should be left to the determination of states (within the bounds of the Second Amendment) given the explicitly limited powers bestowed upon the federal government under Title I, Section 8 of the Constitution.

DETAILED SUMMARY AND ANALYSIS:

Presently, all gun dealers must conduct background checks on any individual seeking to purchase a firearm by running their information through the federal [National Instant Criminal Background Check System \(NICS\)](#) background check system. If a dealer does not receive a response from NICS within three days, they can go ahead with the sale, though the dealer is not required to do so. The FBI would then have a further 90 days to investigate the purchaser, and, in the event the individual is not permitted to own a firearm, the Bureau of Alcohol, Tobacco, Firearms and Explosives receives notification from the FBI and collects the firearm.

Under H.R. 1112, if the dealer does not receive a response from the NICS system within 10 business days, the prospective purchaser would be required to petition the FBI to allow the firearm sale to continue. The dealer must then wait an additional 10 business days without a decision from NICS after the date of the petition to transfer a firearm. As NICS background checks are only valid for 30 calendar days, by relying on business days for the proposed timeline in H.R. 1112, the government in many situations, would effectively be able to indefinitely delay a firearm purchase. [According to the NRA](#), if a purchaser attempts to buy a firearm on Black Friday, for example, due to numerous holidays, the first day following the 10-day wait after the petition would fall on December 31, 2019 – unfortunately, the NICS check would have expired on December 29, 2019, and therefore the process would have to begin again. For more information and other examples of this issue provided by the Bureau of Alcohol, Tobacco, Firearms and Explosives, click [here](#).

The three-day safety valve currently in place gives recourse to law abiding citizens seeking to purchase firearms when the NICS system is overloaded. Instead of trying to ensure the NICS system is functioning effectively, this legislation instead infringes on an American's right to self-defense. The safety valve also ensures that all parties involved are doing their job to make sure the system functions without delays. In not providing a safety valve, the [government](#) would be permitted to have a say in how the second amendment applies, and on what time table it applies.

Democrats routinely refer to this legislation as a bill to “close the Charleston loophole,” in reference the horrific 2015 attack at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina, wrongly stating that were it not for the three-day safety valve currently in place, the shooting would have not occurred. In reality, the NICS check filed on April 11, 2015 was delayed due to a drug arrest on the part of the attacker. The firearm was transferred five days later. The tragic attack took place on June 17, 2015. The FBI had two months to flag the attacker as unfit to own a firearm and failed to do so. Moreover, the simple drug arrest likely did not rise to the standard that prohibited him from owning a firearm.

This legislation also directs the Attorney General to provide for the process to submit a petition. It also amends sections 922(d) and (g) of Title 18 regarding the sale of firearms and possession/transporting firearms, replacing the terms “adjudicated as a mental defective” with “adjudicated with mental illness, severe developmental disability, or severe emotional instability.”

AMENDMENTS:

1. [Rep. Rice \(R-SC\)](#) – This amendment would grant NICS examiners access to the [National Data Exchange](#) when considering firearms transfers.
2. [Rep. Schneider \(D-IL\)](#) - This amendment would require the FBI to annually report on the number of petitions they cannot make a determination on within 10 business days.
3. [Rep. Levin \(D-MI\)](#) – This amendment would require the GAO to report to Congress on the extent to which the bill actually prevents firearms from being transferred to prohibited

persons, an assessment of the bill's implementation (including its implementation challenges), and a description of delays, denials, and petitions submitted by prospective gun purchasers.

4. [Rep. Porter \(D-CA\)](#) – This amendment would require a report analyzing the impact of this legislation on victims of domestic violence and abuse, dating partner violence, stalking, and sexual assault and if any further legislative action would result in a reduction in the risk of death or great bodily harm for these victims.
5. [Rep. Van Drew \(D-NJ\)](#) – This amendment would allow a dealer that has heard from NICS after three business days that the receipt of a firearm would not violate this legislation to rely on that information for the longer of: an additional 25 calendar days following the notification; or, 30 days after initial contact.

GROUPS OPPOSED:

National Rifle Association – [Key Vote No](#)
[Gun Owners of America](#)

COMMITTEE ACTION:

H.R. 1112 was introduced on February 8, 2019 and was referred to the House Committee on the Judiciary where it was reported, as amended, on February 22, 2019.

ADMINISTRATION POSITION:

According to the [Statement of Administration Policy](#), “allowing the Federal Government to restrict firearms purchases through bureaucratic delay would undermine the Second Amendment’s guarantee that law-abiding citizens have an individual right to keep and bear arms.”

CONSTITUTIONAL AUTHORITY:

According to the sponsor: Congress has the authority to enact this legislation under Article I, Section 8 of the U.S. Constitution.

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