



H.R. 8 – Bipartisan Background Checks Act of 2019 (Rep. Thompson, D-CA)

FLOOR SCHEDULE:

Expected to be considered on February 27, 2019 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 8](#) would require universal background checks for firearm sales or transfers, with very few, vague exceptions.

COST:

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

CONSERVATIVE CONCERNS:

Conservatives may be concerned that this legislation may do [nothing to address](#) root causes of gun violence like ensuring that the [NICS background check system](#) is functioning effectively, accurately, and fairly. They may also be concerned that this legislation may also do anything to actually prevent criminals from getting guns, as many perpetrators either acquire firearms through illegal methods like [straw purchases](#).

Conservatives may also be concerned that most of the recent high-profile mass shootings would not have been prevented by expanded background checks. According to the dissenting view in the committee report, the [attackers](#) in San Bernardino, California in December of 2015 acquired the firearms used through a straw purchase. [According](#) to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), straw purchasing represents the most common trafficking channel, with nearly 50% of criminal acquiring firearms through this means. The [attacker](#) in Parkland acquired the firearms used after undergoing a NICS background check. The shooter in Parkland had numerous confrontations with law enforcement, including a tip made to the FBI tip line, concerns about his possible behavior were not addressed. Moreover, the State of California, which [implemented](#) comprehensive background checks in 1991, did not see a reduce in gun homicides or gun suicides from the expanded process.

Some conservatives may be concerned that this legislation does not address the methods by which criminals obtain weapons, including theft or through the underground market. Moreover,

conservatives may be concerned that this legislation, while alleging funds cannot be used for a “registry” of sorts, is likely generally unenforceable without a registry. According to the [dissenting views](#), the Department of Justice concluded in 2013 that universal background checks would be impossible to implement without a registry. Conservatives are rightly concerned that a gun registry would infringe upon the constitutional rights of all Americans, and while this legislation prohibits a registry, conservatives may be concerned that this legislation is being touted as a fix to gun violence, while it essentially is a piece of messaging legislation that does not actually perform a function.

Conservatives may be concerned that this legislation increases the vulnerability of Americans, in many cases criminalizing their constitutionally derived right to defend themselves. Conservatives would also be concerned that this legislation seeks to criminalize almost all gun transfers occurring between private individuals, including to friends. Transferring a firearm to a friend in a domestic violence situation would constitute a criminal act.

Conservatives may be concerned that licensed dealers or institutions may choose to decline to run a NICS check for a private individual, or that they could charge any fee they choose to conduct such a check.

Conservatives may also be concerned that this legislation relies on the use of [vague language](#) within its “exceptions” so that law abiding Americans will not know for certain what behavior is allowable. What does “imminent” mean in the case of a threat or potential threat? This legislation purposely uses terms, like great bodily harm, that are not defined in the U.S. Code, so as to create confusion amongst law abiding Americans.

Some conservatives may be concerned that the Attorney General would be permitted to promulgate regulations for the purposes of implementing the legislation.

DETAILED SUMMARY AND ANALYSIS:

H.R. 8 would make it unlawful for any person that isn’t a licensed importer, manufacturer or dealer, to transfer a firearm to a person unless the firearm first passes through a licensed institution, effectively criminalizing even handing a firearm to another person. This legislation would criminalize almost all gun transfers that could occur between private individuals, including friends. All firearms sales or transfers would require a licensed institution to run a [NICS background check](#) on the person seeking to purchase or receive a firearm. Background checks could only be conducted by licensed dealers, importers or manufacturers, who could decline to run the check or charge a high fee to do so.

The bill would provide a few exceptions to the restrictions on firearm transfers, including weapons transferred to law enforcement, armed private security, or a member of the armed forces, so long as they are acting within the scope of their employment. Though, transferring a weapon to a police officer outside of their duties of employment would generally not be excluded. Also excluded are loans or bona fide gifts to certain family members – though it is unclear if simply handing them the firearm to show would be criminalized or permitted. Also excluded are transfers to trustees or estate executors upon an owners death; temporary transfers to prevent death or bodily harm; transfers approved by the attorney General under the [IRS provision](#) providing for the tax on transfers; or,

certain ill-defined temporary transfers at shooting ranges or when reasonably necessary for hunting, trapping or fishing. Moreover, there is no indication as to how long these exemptions are valid.

The Attorney General would be permitted to promulgate regulations for the purposes of implementing the legislation. The AG would be prohibited from requiring dealers to process private transfers, therefore, a situation could arise under which a person may not have any reasonable means available to transfer a firearm. The AG would be prohibited from placing a cap on the fee licensees may charge to process a transfer.

This legislation would make it illegal for a licensed institution (manufacturer, dealer, or importer) to transfer a firearm without notice of the required background check. The person receiving the firearm in the transfer must also certify that the person has been provided the notice on a form prescribed by the AG.

This legislation would prohibit taxes or fees to be used to expand NICS and prohibits funding for a system to maintain purchaser lists for longer than 24 hours.

This legislation would be implemented within 210 days following enactment.

AMENDMENTS:

1. [Rep. Lesko \(R-AZ\)](#) – This amendment would permit transfers to participants of the Transportation Security Agency’s Pre-Check program.
2. [Rep. Dean \(D-PA\)](#) – This amendment would clarify that the bill’s exemption pertaining to imminent threats of great bodily harm or death also includes someone at risk of suicide or harming one’s “family, household members, or others.”
3. [Rep. Horn \(D-OK\)](#) – This amendment would include domestic violence, dating partner violence, sexual assault, stalking, and domestic abuse as examples of great bodily harm for purposes of that exception.
4. [Rep. Van Drew \(D-NJ\)](#) – This amendment would clarify that the exemption for transfers between parents and children also applies to step-parents and step-children. It would also limit the family transfer exception by making it apply only when “the transferor has no reason to believe that the transferee will use or intends to use the firearm in a crime or is prohibited from possessing firearms under State or Federal law.”

GROUPS OPPOSED:

Heritage Action – [Key Vote No](#)
National Rifle Association – [Key Vote No](#)
[Firearms Policy Coalition](#)
[Gun Owners of America](#)
[National Association for Gun Rights](#)

COMMITTEE ACTION:

H.R. 8 was introduced on January 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](#), “The Administration opposes H.R. 8 because it would impose burdensome requirements on certain firearm transactions.”

CONSTITUTIONAL AUTHORITY:

According to the sponsor: Congress has the authority to enact this legislation under Article I.

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