

113TH CONGRESS
1ST SESSION

S. 443

To increase public safety by punishing and deterring firearms trafficking.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2013

Mr. LEAHY (for himself, Ms. COLLINS, Mr. DURBIN, Mrs. GILLIBRAND, Mr. KIRK, Mr. BLUMENTHAL, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase public safety by punishing and deterring firearms trafficking.

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 “Stop Illegal Trafficking
5 in Firearms Act of 2013”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Hadiya Pendleton and Nyasia Pryear-Yard anti-straw purchasing and firearms trafficking amendments.

Sec. 4. Amendments to section 922(d).

Sec. 5. Amendments to section 924(a).

Sec. 6. Amendments to section 924(h).

Sec. 7. Amendments to section 924(k).

1 **SEC. 3. HADIYA PENDLETON AND NYASIA PRYEAR-YARD**
 2 **ANTI-STRAW PURCHASING AND FIREARMS**
 3 **TRAFFICKING AMENDMENTS.**

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

7 **“§ 932. Straw purchasing of firearms**

8 “(a) For purposes of this section—

9 “(1) the term ‘crime of violence’ has the mean-
 10 ing given that term in section 924(c)(3);

11 “(2) the term ‘drug trafficking crime’ has the
 12 meaning given that term in section 924(c)(2); and

13 “(3) the term ‘purchases’ includes the receipt of
 14 any firearm by a person who does not own the fire-
 15 arm—

16 “(A) by way of pledge or pawn as security
 17 for the payment or repayment of money; or

18 “(B) on consignment.

19 “(b) It shall be unlawful for any person (other than
 20 a licensed importer, licensed manufacturer, licensed col-
 21 lector, or licensed dealer) to knowingly purchase, or at-
 22 tempt or conspire to purchase, any firearm in or otherwise
 23 affecting interstate or foreign commerce—

1 “(1) from a licensed importer, licensed manu-
2 facturer, licensed collector, or licensed dealer for, on
3 behalf of, or at the request or demand of any other
4 person, known or unknown; or

5 “(2) from any person who is not a licensed im-
6 porter, licensed manufacturer, licensed collector, or
7 licensed dealer for, on behalf of, or at the request or
8 demand of any other person, known or unknown,
9 knowing or having reasonable cause to believe that
10 such other person—

11 “(A) is under indictment for, or has been
12 convicted in any court of, a crime punishable by
13 imprisonment for a term exceeding 1 year;

14 “(B) is a fugitive from justice;

15 “(C) is an unlawful user of or addicted to
16 any controlled substance (as defined in section
17 102 of the Controlled Substances Act (21
18 U.S.C. 802));

19 “(D) has been adjudicated as a mental de-
20 fective or has been committed to any mental in-
21 stitution;

22 “(E) is an alien who—

23 “(i) is illegally or unlawfully in the
24 United States; or

1 “(ii) except as provided in section
2 922(y)(2), has been admitted to the United
3 States under a nonimmigrant visa (as that
4 term is defined in section 101(a)(26) of
5 the Immigration and Nationality Act (8
6 U.S.C. 1101(a)(26));

7 “(F) has been discharged from the Armed
8 Forces under dishonorable conditions;

9 “(G) having been a citizen of the United
10 States, has renounced his or her citizenship;

11 “(H) is subject to a court order that re-
12 strains such person from harassing, stalking, or
13 threatening an intimate partner of such person
14 or child of such intimate partner or person, or
15 engaging in other conduct that would place an
16 intimate partner in reasonable fear of bodily in-
17 jury to the partner or child, except that this
18 subparagraph shall only apply to a court order
19 that—

20 “(i) was issued after a hearing of
21 which such person received actual notice,
22 and at which such person had the oppor-
23 tunity to participate; and

24 “(ii)(I) includes a finding that such
25 person represents a credible threat to the

1 physical safety of such intimate partner or
2 child; or

3 “(II) by its terms explicitly prohibits
4 the use, attempted use, or threatened use
5 of physical force against such intimate
6 partner or child that would reasonably be
7 expected to cause bodily injury;

8 “(I) has been convicted in any court of a
9 misdemeanor crime of domestic violence;

10 “(J) intends to—

11 “(i) use, carry, possess, or sell or oth-
12 erwise dispose of the firearm or ammuni-
13 tion in furtherance of a crime of violence
14 or drug trafficking crime; or

15 “(ii) export the firearm or ammuni-
16 tion in violation of law;

17 “(K) who does not reside in any State; or

18 “(L) intends to sell or otherwise dispose of
19 the firearm or ammunition to a person de-
20 scribed in any of subparagraphs (A) through
21 (K).

22 “(c)(1) Except as provided in paragraph (2), any per-
23 son who violates subsection (b) shall be fined under this
24 title, imprisoned for not more than 15 years, or both.

1 “(2) If a violation of subsection (b) is committed
2 knowing or with reasonable cause to believe that any fire-
3 arm involved will be used to commit a crime of violence,
4 the person shall be sentenced to a term of imprisonment
5 of not more than 25 years.

6 “(d) Subsection (b)(1) shall not apply to any firearm
7 that is lawfully purchased by a person—

8 “(1) to be given as a bona fide gift to a recipi-
9 ent who provided no service or tangible thing of
10 value to acquire the firearm, unless the person
11 knows or has reasonable cause to believe such recipi-
12 ent is prohibited by Federal law from possessing, re-
13 ceiving, selling, shipping, transporting, transferring,
14 or otherwise disposing of the firearm; or

15 “(2) to be given to a bona fide winner of an or-
16 ganized raffle, contest, or auction conducted in ac-
17 cordance with law and sponsored by a national,
18 State, or local organization or association, unless the
19 person knows or has reasonable cause to believe such
20 recipient is prohibited by Federal law from pos-
21 sessing, purchasing, receiving, selling, shipping,
22 transporting, transferring, or otherwise disposing of
23 the firearm.

24 **“§ 933. Trafficking in firearms**

25 “(a) It shall be unlawful for any person to—

1 “(1) ship, transport, transfer, cause to be
2 transported, or otherwise dispose of 2 or more fire-
3 arms to another person in or otherwise affecting
4 interstate or foreign commerce, if the transferor
5 knows or has reasonable cause to believe that the
6 use, carrying, or possession of a firearm by the
7 transferee would be in violation of, or would result
8 in a violation of, any Federal law punishable by a
9 term of imprisonment exceeding 1 year;

10 “(2) receive from another person 2 or more
11 firearms in or otherwise affecting interstate or for-
12 eign commerce, if the recipient knows or has reason-
13 able cause to believe that such receipt would be in
14 violation of, or would result in a violation of, any
15 Federal law punishable by a term of imprisonment
16 exceeding 1 year; or

17 “(3) attempt or conspire to commit the conduct
18 described in paragraph (1) or (2).

19 “(b)(1) Except as provided in paragraph (2), any per-
20 son who violates subsection (a) shall be fined under this
21 title, imprisoned for not more than 15 years, or both.

22 “(2) If a violation of subsection (a) is committed by
23 a person in concert with 5 or more other persons with
24 respect to whom such person occupies a position of orga-
25 nizer, leader, supervisor, or manager, the person shall be

1 sentenced to a term of imprisonment of not more than
2 25 years.

3 **“§ 934. Forfeiture and fines**

4 “(a)(1) Any person convicted of a violation of section
5 932 or 933 shall forfeit to the United States, irrespective
6 of any provision of State law—

7 “(A) any property constituting, or derived from,
8 any proceeds the person obtained, directly or indi-
9 rectly, as the result of such violation; and

10 “(B) any of the person’s property used, or in-
11 tended to be used, in any manner or part, to com-
12 mit, or to facilitate the commission of, such viola-
13 tion.

14 “(2) The court, in imposing sentence on a person con-
15 victed of a violation of section 932 or 933, shall order,
16 in addition to any other sentence imposed pursuant to sec-
17 tion 932 or 933, that the person forfeit to the United
18 States all property described in paragraph (1).

19 “(b) A defendant who derives profits or other pro-
20 ceeds from an offense under section 932 or 933 may be
21 fined not more than the greater of—

22 “(1) the fine otherwise authorized by this part;
23 and

1 “(2) the amount equal to twice the gross profits
2 or other proceeds of the offense under section 932
3 or 933.”.

4 (b) TITLE III AUTHORIZATION.—Section 2516(1)(n)
5 of title 18, United States Code, is amended by striking
6 “and 924(n)” and inserting “, 924, 932, or 933”.

7 (c) RACKETEERING AMENDMENT.—Section
8 1961(1)(B) of title 18, United States Code, is amended
9 by inserting “section 932 (relating to straw purchasing),
10 section 933 (relating to trafficking in firearms),” before
11 “section 1028”.

12 (d) MONEY LAUNDERING AMENDMENT.—Section
13 1956(c)(7)(D) of title 18, United States Code, is amended
14 by striking “section 924(n)” and inserting “section
15 924(n), 932, or 933”.

16 (e) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
17 suant to its authority under section 994 of title 28, United
18 States Code, and in accordance with this section, the
19 United States Sentencing Commission shall review and
20 amend its guidelines and policy statements to ensure that
21 persons convicted of an offense under section 932 or 933
22 of title 18, United States Code and other offenses applica-
23 ble to the straw purchases and firearms trafficking of fire-
24 arms are subject to increased penalties in comparison to
25 those currently provided by the guidelines and policy state-

1 ments for such straw purchasing and firearms trafficking
 2 offenses. The Commission shall also review and amend its
 3 guidelines and policy statements to reflect the intent of
 4 Congress that a person convicted of an offense under sec-
 5 tion 932 or 933 of title 18, United States Code, who is
 6 affiliated with a gang, cartel, organized crime ring, or
 7 other such enterprise should be subject to higher penalties
 8 than an otherwise unaffiliated individual.

9 (f) TECHNICAL AND CONFORMING AMENDMENT.—
 10 The table of sections of chapter 44 of title 18, United
 11 States Code, is amended by adding at the end the fol-
 12 lowing:

“932. Straw purchasing of firearms.
 “933. Trafficking in firearms.
 “934. Forfeiture and fines.”.

13 **SEC. 4. AMENDMENTS TO SECTION 922(d).**

14 Section 922(d) of title 18, United States Code, is
 15 amended—

16 (1) in paragraph (8), by striking “or” at the
 17 end;

18 (2) in paragraph (9), by striking the period at
 19 the end and inserting a semicolon; and

20 (3) by striking the matter following paragraph
 21 (9) and inserting the following:

22 “(10) intends to sell or otherwise dispose of the
 23 firearm or ammunition to a person described in any
 24 of paragraphs (1) through (9); or

1 “(11) intends to sell or otherwise dispose of the
2 firearm or ammunition in furtherance of a crime of
3 violence or drug trafficking offense or to export the
4 firearm or ammunition in violation of law.

5 This subsection shall not apply with respect to the sale
6 or disposition of a firearm or ammunition to a licensed
7 importer, licensed manufacturer, licensed dealer, or li-
8 censed collector who pursuant to subsection (b) of section
9 925 is not precluded from dealing in firearms or ammuni-
10 tion, or to a person who has been granted relief from dis-
11 abilities pursuant to subsection (c) of section 925.”.

12 **SEC. 5. AMENDMENTS TO SECTION 924(a).**

13 Section 924(a) of title 18, United States Code, is
14 amended—

15 (1) in paragraph (2), by striking “(d), (g),”;

16 and

17 (2) by adding at the end the following:

18 “(8) Whoever knowingly violates subsection (d) or (g)
19 of section 922 shall be fined under this title, imprisoned
20 not more than 15 years, or both.”.

21 **SEC. 6. AMENDMENTS TO SECTION 924(h).**

22 Section 924 of title 18, United States Code, is
23 amended by striking subsection (h) and inserting the fol-
24 lowing:

1 “(h)(1) Whoever knowingly receives or transfers a
2 firearm or ammunition, or attempts or conspires to do so,
3 knowing or having reasonable cause to believe that such
4 firearm or ammunition will be used to commit a crime of
5 violence (as defined in subsection (c)(3)), a drug traf-
6 ficking crime (as defined in subsection (c)(2)), or a crime
7 under the Arms Export Control Act (22 U.S.C. 2751 et
8 seq.), the International Emergency Economic Powers Act
9 (50 U.S.C. 1701 et seq.), the Foreign Narcotics Kingpin
10 Designation Act (21 U.S.C. 1901 et seq.), or section
11 212(a)(2)(C) of the Immigration and Nationality Act (8
12 U.S.C. 1182(a)(2)(C)) shall be imprisoned not more than
13 25 years, fined in accordance with this title, or both.

14 “(2) No term of imprisonment imposed on a person
15 under this subsection shall run concurrently with any term
16 of imprisonment imposed on the person under section
17 932.”.

18 **SEC. 7. AMENDMENTS TO SECTION 924(k).**

19 Section 924 of title 18, United States Code, is
20 amended by striking subsection (k) and inserting the fol-
21 lowing:

22 “(k)(1) A person who, with intent to engage in or
23 to promote conduct that—

24 “(A) is punishable under the Controlled Sub-
25 stances Act (21 U.S.C. 801 et seq.), the Controlled

1 Substances Import and Export Act (21 U.S.C. 951
2 et seq.), or chapter 705 of title 46;

3 “(B) violates any law of a State relating to any
4 controlled substance (as defined in section 102 of
5 the Controlled Substances Act, 21 U.S.C. 802); or

6 “(C) constitutes a crime of violence (as defined
7 in subsection (c)(3)),

8 smuggles or knowingly brings into the United States, a
9 firearm or ammunition, or attempts or conspires to do so,
10 shall be imprisoned not more than 15 years, fined under
11 this title, or both.

12 “(2) A person who, with intent to engage in or to
13 promote conduct that—

14 “(A) would be punishable under the Controlled
15 Substances Act (21 U.S.C. 801 et seq.), the Con-
16 trolled Substances Import and Export Act (21
17 U.S.C. 951 et seq.), or chapter 705 of title 46, if the
18 conduct had occurred within the United States; or

19 “(B) would constitute a crime of violence (as
20 defined in subsection (c)(3)) for which the person
21 may be prosecuted in a court of the United States,
22 if the conduct had occurred within the United
23 States,

24 smuggles or knowingly takes out of the United States, a
25 firearm or ammunition, or attempts or conspires to do so,

- 1 shall be imprisoned not more than 15 years, fined under
- 2 this title, or both.”.

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