

★ DELAWARE COALITION AGAINST GUN VIOLENCE

YES ON HB 325

PROVIDE ENOUGH TIME FOR BACKGROUND CHECKS ON GUN PURCHASES

What is the purpose of HB 325?

This bill closes a dangerous loophole in Delaware's background check system that allows gun sales to proceed by default after just three business days—without a completed federal background check. HB 325 would allow up to 30 days for the completion of a background investigation.

Why is HB 325 needed?

From 2013–2015, 40 individuals who successfully purchased firearms in Delaware were later determined to be prohibited from possessing a gun. This is dangerous. In each case, the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives had to put its agents at risk to retrieve the weapons. And this hardly accounts for the risk to the public.

Why is this called the “Charleston Loophole?”

The three-day background check loophole has come to be known as the Charleston Loophole. Last summer nine black churchgoers were killed in Charleston, S.C., during a prayer service. The shooter—who would not have passed a background check—was able to purchase the gun he used after three business days when the federal background check was still incomplete. Nationally, from 2010–2014, gun dealers completed 15,729 gun sales to ineligible people due to the expiration of the three-day period.

Isn't this a Federal issue?

Despite the fact that the Federal system has been chronically underfunded—and, more recently, overwhelmed by a nationwide surge in gun sales—more than 90 percent of background checks are processed within minutes or hours. Other cases require extra attention precisely because the firearm purchaser has a complicated record of red flags. As reported in *The Trace*, default-proceed sales are eight times more likely to involve a prohibited purchaser than other background checks. And because Federal legislation to close this loophole is currently unlikely, states have begun to act.

Is HB 325 constitutional?

Since the Supreme Court's 2008 opinion, *DC v. Heller*, most courts have held that a gun law violates the Second Amendment only if it does not serve an important or significant government interest, or if the law does not reasonably “fit” that interest. HB 325 easily passes this test. It serves a compelling government interest: preventing firearm possession by convicted felons, the dangerously mentally ill, and other people who cannot pass a background check. And the “fit” between HB 325 and this interest is clearly reasonable, given that it would allow a law-abiding, responsible person to obtain a gun as soon as the background check is completed—and, if the background check cannot be quickly completed, during the period of up to 30 days.

Sources: Federal Bureau of Investigation, Law Center to Prevent Gun Violence, The Trace, Americans for Responsible Solutions, Everytown USA.

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