



LEGISLATIVE ALERT

Friday, March 9, 2018

Regarding: **“Fix NICS” - S.2135 / H.R.4477 / et al.**
Position: **OPPOSED — AMENDMENTS REQUESTED**

- **FixNICS would create new problems and bureaucracy, but offers few benefits to law-abiding Americans, gun owners, or society at large.**
- FixNICS, as it is currently conceptualized, will result in potentially millions of Americans being reported as “prohibited” and legally ineligible, possibly erroneously, and largely based on administrative decisions, outdated federal eligibility statutes that pre-date *D.C. v. Heller*, and a growing list of state and local gun control laws. *See, e.g., Binderup v. Att’y Gen’l of the United States*, 836 F.3d 336 (3rd Cir. 2016); *Tyler v. Hillsdale County Sheriff’s Dept.*, 837 F.3d 678 (6th Cir. 2016).
- A February 2013 report published by the U.S. Department of Justice Bureau of Justice Statistics (*Background Checks for Firearm Transfers, 2010 - Statistical Tables*, online at <http://bit.ly/2BIc5ly>) reveals that **nearly one-quarter of all NICS denials are appealed** and **over one third of all denials that are appealed are reversed** (as the purchaser should never have been denied in the first place). (“In 2010, nearly 37,000 [NICS] denials (24%) were appealed. More than 12,000 appeals (34%) resulted in reversal of the denial (table 6),” report at p.2.) This is strong evidence that many of those denied by NICS are not actually prohibited at all.
- FixNICS should include a provision such that temporary firearm prohibitions are purged from the records unless a court or agency having jurisdiction proves that the prohibition was extended or made permanent. Federal, state, or local agencies often fail to report the reversal of the disability or court orders that have expired. Failure of various state and local agencies to update the system (reflecting the end of the prohibition period) may not be performed with the same prudence and care as the initial reporting—if it is done at all.
- FixNICS should be amended such that the government would bear the costs and reasonable attorney’s fees of a party who successfully challenges a NICS denial, prosecutes a NICS appeal, or who prevails in any litigation resulting from a denial.
- FixNICS should be amended to incent accuracy and fairness, such that a successful challenger to a NICS denial, NICS appeal, or a party to related litigation should be awarded compensatory and punitive damages for each day that their fundamental, individual right to keep and bear arms is limited or abrogated by operation of incomplete, inaccurate, or otherwise flawed information and/or actions taken thereon.
- FixNICS contains no way for people to check their federal eligibility BEFORE they go to a licensed gun dealer and attempt to purchase a gun. Federal law should contain an analogue to California’s Personal Firearms Eligibility Check (PFEC) system and

an efficient pre-transaction NICS record correction program. Thousands of people every year may be inadvertently (or wrongly) implicated in criminal circumstances that may be reported to law enforcement authorities. Fix NICS should include the addition of a PFEC-like system so that people can review their firearms eligibility (or disability) status and correct any defects in the record before participating in a potentially unlawful purchase or transfer that could lead to police officers showing up at their front door or potential prosecution.

- FixNICS should include adequate funding that is expressly appropriated for the federal firearms disability restoration program or, in the alternative, allow an individual to self fund such a determination (through, perhaps, a reasonable statutory fee not in excess of \$1,500). The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) has been affirmatively prohibited from operating the program under existing federal law to evaluate and provide firearms disability relief on a case-by-case basis. (*See, e.g.*, ATF answer to Q&A question “Is there a way for a prohibited person to restore his or her right to receive or possess firearms and ammunition?” online at <http://bit.ly/2ijJ2MP>.)
- FixNICS should not include mandatory reporting of NICS issues to law enforcement. Especially because so many people are unaware of their prohibited status, were never notified that their conviction or guilty plea would lead to a lifetime prohibition of their fundamental right to keep and bear arms, murky circumstances going back decades, false database matches of law-abiding people with the criminal data on a prohibited person, and the fact that thousands of people every year are caught up in a sticky web of erroneous database information, mandatory reporting to law enforcement is fundamentally unwise. In the absence of a Federal analogue to California’s PFEC system and an efficient pre-transaction NICS record correction program, a mandatory NICS reporting scheme would unnecessarily encumber already-bloated court dockets and force individuals to litigate their innocence in an unduly burdensome manner.

Law-abiding American gun owners want to see strong carry reciprocity legislation passed—not the flawed FixNICS.

For these and other reasons, we oppose FixNICS in its current form and urge your “Nay” vote.

Please do not hesitate to contact us at **(916) 378-5785** or **policy@fpchq.org** to discuss this or other matters in detail. Thank you for your time and consideration.