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FACT SHEET
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H.R. 1446, Enhanced Background Checks Act of 2021 *This Critical Bill Would Address the So-Called “Charleston Loophole”*

Key Points:

- Today, the House will begin consideration of H.R. 1446, Enhanced Background Checks Act of 2021. Like H.R. 8, this critical bill is an overdue, commonsense gun violence prevention measure, which will save lives. Democratic Members are urged to vote YES.
- In the 116th Congress, in February 2019, the House passed a version of this bill that was substantially the same as this year’s bill, by a bipartisan vote of 228 to 198 [\(2019 House Vote #103\)](#).
- This commonsense bill would address the so-called “Charleston Loophole,” which currently allows the sale of a firearm to proceed if a background check is not completed within three business days.
- H.R. 1446, addressing the “Charleston Loophole,” is supported by numerous prominent national organizations – including United States Conference of Mayors, Major Cities Chiefs Association, Police Executive Research Forum, Giffords Law Center, Everytown for Gun Safety, Brady Campaign to Prevent Gun Violence, Center for American Progress, National Urban League, Human Rights Campaign, National Education Association, Community Justice Action Fund, Newtown Action Alliance, Survivors Empowered Action Fund, Bishops United Against Gun Violence, Nurses Against Gun Violence, Doctors Demand Action, #ThisIsOurLane, MomsRising, American Federation of Teachers, Amnesty International, Children’s Defense Fund, Doctors for America, and American Medical Student Association.

What Is the “Charleston Loophole”?

- The massacre at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina, that killed nine innocent people, in 2015, exposed an area of weakness in our federal gun laws, commonly referred to as the “Charleston Loophole.”
- The shooter at the AME Church in Charleston – who was prohibited by law from possessing a firearm due to his history of unlawful controlled substance abuse – was able to acquire his gun before the FBI could complete his background check. Although the FBI needed more time to investigate the shooter’s records to determine whether the purchase was lawful, federal law allowed the gun dealer to transfer the gun to the shooter after three business days even though the background check was not complete.
- The sale to the gun purchaser after three business days, even though the background check had not been completed – known as a “default proceed” gun sale – is not an isolated incident.

Unfortunately, Cases of the “Charleston Loophole” – Resulting in Sales of Guns to Dangerous Individuals – Are Numerous

- While 97 percent of background checks are processed within 3 business days, hundreds of thousands of incomplete background checks enter into “default proceed” status each year. That means hundreds of thousands of guns can be sold without completed background checks each year.

- In 2017 alone, more than 4,000 guns were sold to people with criminal records, mental illnesses and other circumstances that disqualify them from purchasing a firearm, due to the inability to complete background checks within three business days.
- Furthermore, over 35,000 guns were transferred to purchasers disqualified from owning a gun between 2008 and 2017 – due to the three-day rule.
- Though they account for a small percentage of overall sales, “default proceed” purchases can have deadly consequences, putting guns in the hands of convicted felons, domestic abusers, fugitives from justice, and other prohibited persons.

What Does H.R. 1446 Do?

- H.R. 1446 provides the FBI with crucial additional time to complete a background check on a potential firearms purchaser before a licensed dealer can transfer a gun.
- The bill takes several steps in extending the time allowed for the FBI to complete a background check.
- First, the bill extends the initial background check review period from 3 business days to 10 business days.
- After the initial 10 business day period, if a background check has not been completed, a purchaser may request an escalated review by the FBI.
- This request for an escalated review will trigger a more intensive FBI investigation, designed to resolve the case within an additional 10-business day period. If the additional 10 business days elapse without a response from the National Instant Criminal Background Check System (NICS) system, then the dealer may sell or transfer the gun to the purchaser. Transactions for prospective purchasers who do not request an escalated review will not proceed until the case is resolved.

Cases of the “Charleston Loophole” – Otherwise Known as “Default Proceed” Sales -- Are Particularly Common in Domestic Violence Cases

- Under federal law, an individual with a misdemeanor conviction of domestic violence or with a domestic violence restraining order is not permitted to purchase a gun.
- Background checks involving misdemeanor domestic violence records consistently take longer than background checks involving other factors for being a prohibited purchaser (such as being a convicted felon).
- Indeed, in 2017, 23 percent of the cases where a gun was transferred to a prohibited purchaser through a “default proceed” sale involved someone prohibited due to a misdemeanor conviction of domestic violence or a domestic violence restraining order.

Large Numbers of “Charleston Loophole” Cases – Otherwise Known As “Default Proceed” Sales – Also Pose A Serious Risk to Law Enforcement

- In addition to the public safety risk, the transfer of firearms to prohibited purchasers due to “default proceed” sales puts law enforcement at risk. Over 35,000 prohibited purchasers were able to access firearms between 2008 and 2017 because of the 3-business-day default proceed rule. Each of these cases was referred to ATF or local law enforcement, which are charged with retrieving these firearms from the individual. The process of retrieval is often dangerous, putting law enforcement lives at risk.

In Summary, H.R. 1446 Takes An Enormous Step Forward in Minimizing the Number of “Default Proceed” Sales and Keeping Guns Out of the Hands of Dangerous Individuals

- This critical bill would provide crucial additional time for the FBI to complete background checks and is a dramatic step forward in minimizing the risk of “default proceed” gun sales.
- The bill is designed to ensure as best as possible that background checks for potential firearms purchases are completed before sales proceed while also protecting the rights of law-abiding gun purchasers to purchase firearms in a timely manner.