

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: James Castello

Subseries:

OA/ID Number: 6725

FolderID:

Folder Title:

Brady Bill

Stack:

S

Row:

110

Section:

7

Shelf:

8

Position:

1

THE WHITE HOUSE

WASHINGTON

March 24, 1995

MEMORANDUM FOR HAROLD ICKES
DEPUTY CHIEF OF STAFF FOR
POLICY AND POLITICAL AFFAIRS

FROM: JAMES E. CASTELLO *J.E.C.*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Georgia Gun Law

To follow up on my memo of yesterday, I have learned from Treasury that certification of Georgia's new gun law as complying with the Brady Act's criteria for exemption could take a week or more. By the way, my understanding is that Georgia did not formally apply for such certification; rather, it is up to BATF to evaluate each new state law once it is passed. I am told that there is sometimes a problem with a state's announcing to firearms sellers that the state has been "freed" from the Brady Act's waiting period before BATF has actually made that legal determination.

*Contact in
Treasury is
Debbie Diener*

622-1931

THE WHITE HOUSE
WASHINGTON

March 23, 1995

MEMORANDUM FOR HAROLD ICKES
DEPUTY CHIEF OF STAFF FOR
POLICY AND POLITICAL AFFAIRS

FROM: JAMES E. CASTELLO *J.E.C.*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Georgia Gun Law

As the attached memo explains, the waiting period provision of the Brady Handgun Violence Prevention Act does not apply to states that have in place a law that requires verification by a law enforcement officer of the legality of handgun transfers before they occur. At the time of the Act's passage, many states had such laws and thus were exempt from the federal waiting-period provision, but the Act also permits other states to become exempt by subsequently enacting a qualifying state law. That is what Georgia has sought to do.

I received the attached memo too late in the day to be able to get an answer from Treasury as to how long it may take BATF to rule on Georgia's application, but I have been promised an answer tomorrow.

Attachment



U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

FACSIMILE TRANSMITTAL COVER SHEET

DATE:

3-23-95

TO:

Jim Castello

FACSIMILE NO.

456-6279

TELEPHONE NO.

456-6611

FROM:

John Schmitt

FACSIMILE NO.

514-0238

TELEPHONE NO.

514 9500

NUMBER OF PAGES INCLUDING COVER SHEET:

3

COMMENTS:



U. S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

March 23, 1995

TO: Jim Costello
Deputy White House Counsel

FROM: John R. Schmidt
Associate Attorney General **(RKS)**

SUBJECT: Georgia's Exemption from the Brady Law Five-Day
Waiting Period

As reported in USA Today and the Washington Times, Georgia recently passed legislation instituting an instant background check system. Under the Brady Act, states implementing instant background check systems that are approved by the Bureau of Alcohol, Tobacco and Firearms, need not have the five-day waiting period before the purchase of a handgun.

While the news stories suggest that Georgia's law was a victory of sorts over the Brady Act, "freeing" the state of the waiting period, the stories misread Brady. The objective of the Brady Act is the background check not the waiting period. The five day waiting period is actually a five day window during which the Chief Law Enforcement Officer (CLEO) has an opportunity to do a background check. If the check is done in a day, the CLEO can clear the dealer to sell the handgun on that day. In a Brady state, if the dealer does not hear within five days, he may still sell the handgun.

The waiting period in the Brady Law is, in fact, intended to be superseded state-by-state and has a national sunset provision for December 31, 1998. A national instant check system is to be in place at that point, obviating the need for a waiting period.

Many states (24, not including Georgia's pending application), have ATF-approved procedures which replace the Brady waiting period. Several of these states have stricter restrictions on the purchase of guns than the Brady Act. For example, 10 states require checks for all firearms, not just handguns. Other states require fingerprint background checks.

The current system in Georgia has a CLEO in each of 159 counties. According to the ATF in its One Year Report, Georgia made 81,926 criminal history queries to the FBI; of these, 30.6% were potential denials. (Potential denials or "soft hits" occur when a name with a date of birth matches someone in the national

system.) The CLEO then must establish positive identification or a "hard hit" (usually through fingerprinting) in order to determine that the applicant is not the person whose record was in the FBI query. If positive identification is made, the application is denied.

No specific information is available about the procedures already in place in Georgia for following up on "soft hits." In other words, no numbers exist to exactly determine the number of "hard hits" (denials) in the entire state. One county, DeKalb County, reports a denial rate of 14.5%. Nationally, the denial rate is 3.5%.

The office in ATF that determines if a state's legislation qualifies as a Brady alternative state is the Counsel Office in the Firearms and Explosives Division of ATF. They have established the guidelines which they could not provide until tomorrow. Jack Patterson (927-8550) is a contact person. Terry Cates is the Chief of the Division (927-8300).

M E M O R A N D U M

TO: JAMES CASTELLO
FROM: DAVID FEIN
RE: BRADY LAW
DATE: MARCH 23, 1995

On March 22, 1995, Gov. Zell Miller signed a law purportedly freeing the State of Georgia from the federal waiting period for handgun purchases.

The Brady Handgun Violence Prevention Act prohibits the transfer of a handgun to an unlicensed individual unless (a) the transferor provides information about the identity of the transferee to the jurisdiction's chief law enforcement officer, and (b) five business days have elapsed from the date the information was provided, during which time the transferor has not received information from the chief law enforcement officer that the transfer would be illegal.

The Act exempts from that requirement jurisdictions where the law of the state itself requires -- prior to the transfer of a handgun to an unlicensed individual -- that an authorized government official verify that such transfer would not be illegal. In other words, states with their own programs for conducting background checks of handgun purchasers would be exempt from the waiting period, provided they are in compliance with timetables established by the Attorney General.

States that were not immediately exempt by virtue of systems already in place at the time of the legislation may still gain exemption under the Act by establishing appropriate background check systems. According to legislative history and press reports, approximately twenty-five states are linked to the federal computer system and are capable of, and require, necessary verification before a handgun may be transferred, including five states (Virginia, Delaware, Florida, Illinois and Wisconsin) that successfully operate point-of-sale background check systems.

It appears that the State of Georgia must now await federal notification as to whether its new law satisfies the Brady Act exemption.

D.B.F.