

112TH CONGRESS
1ST SESSION

S. 34

To increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected dangerous terrorists.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. LAUTENBERG (for himself, Mr. MENENDEZ, Mrs. FEINSTEIN, Mr. WHITEHOUSE, Mr. REED, Mr. LEVIN, Mr. SCHUMER, Mr. DURBIN, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected dangerous terrorists.

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 “Denying Firearms and
5 Explosives to Dangerous Terrorists Act of 2011”.

1 **SEC. 2. GRANTING THE ATTORNEY GENERAL THE AUTHOR-**
2 **ITY TO DENY THE SALE, DELIVERY, OR**
3 **TRANSFER OF A FIREARM OR THE ISSUANCE**
4 **OF A FIREARMS OR EXPLOSIVES LICENSE OR**
5 **PERMIT TO DANGEROUS TERRORISTS.**

6 (a) STANDARD FOR EXERCISING ATTORNEY GEN-
7 ERAL DISCRETION REGARDING TRANSFERRING FIRE-
8 ARMS OR ISSUING FIREARMS PERMITS TO DANGEROUS
9 TERRORISTS.—Chapter 44 of title 18, United States
10 Code, is amended—

11 (1) by inserting after section 922 the following:

12 **“§ 922A. Attorney General’s discretion to deny trans-**
13 **fer of a firearm**

14 “The Attorney General may deny the transfer of a
15 firearm under section 922(t)(1)(B)(ii) of this title if the
16 Attorney General—

17 “(1) determines that the transferee is known
18 (or appropriately suspected) to be or have been en-
19 gaged in conduct constituting, in preparation for, in
20 aid of, or related to terrorism, or providing material
21 support or resources for terrorism; and

22 “(2) has a reasonable belief that the prospective
23 transferee may use a firearm in connection with ter-
24 rorism.

1 **“§ 922B. Attorney General’s discretion regarding ap-**
2 **plicants for firearm permits which would**
3 **qualify for the exemption provided under**
4 **section 922(t)(3)**

5 “The Attorney General may determine that—

6 “(1) an applicant for a firearm permit which
7 would qualify for an exemption under section 922(t)
8 is known (or appropriately suspected) to be or have
9 been engaged in conduct constituting, in preparation
10 for, in aid of, or related to terrorism, or providing
11 material support or resources for terrorism; and

12 “(2) the Attorney General has a reasonable be-
13 lief that the applicant may use a firearm in connec-
14 tion with terrorism.”;

15 (2) in section 921(a), by adding at the end the
16 following:

17 “(36) The term ‘terrorism’ includes inter-
18 national terrorism and domestic terrorism, as those
19 terms are defined in section 2331 of this title.

20 “(37) The term ‘material support or resources’
21 has the same meaning as in section 2339A of this
22 title.

23 “(38) The term ‘responsible person’ means an
24 individual who has the power, directly or indirectly,
25 to direct or cause the direction of the management

1 and policies of the applicant or licensee pertaining to
2 firearms.”; and

3 (3) in the table of sections, by inserting after
4 the item relating to section 922 the following:

“922A. Attorney General’s discretion to deny transfer of a firearm.

“922B. Attorney General’s discretion regarding applicants for firearm permits
which would qualify for the exemption provided under section
922(t)(3).”.

5 (b) EFFECT OF ATTORNEY GENERAL DISCRE-
6 TIONARY DENIAL THROUGH THE NATIONAL INSTANT
7 CRIMINAL BACKGROUND CHECK SYSTEM (NICS) ON
8 FIREARMS PERMITS.—Section 922(t) of title 18, United
9 States Code, is amended—

10 (1) in paragraph (1)(B)(ii), by inserting “or
11 State law, or that the Attorney General has deter-
12 mined to deny the transfer of a firearm pursuant to
13 section 922A of this title” before the semicolon;

14 (2) in paragraph (2), in the matter preceding
15 subparagraph (A), by inserting “, or if the Attorney
16 General has not determined to deny the transfer of
17 a firearm pursuant to section 922A of this title”
18 after “or State law”;

19 (3) in paragraph (3)—

20 (A) in subparagraph (A)—

21 (i) in clause (i)—

22 (I) in subclause (I), by striking
23 “and” at the end; and

1 (II) by adding at the end the fol-
2 lowing:

3 “(III) was issued after a check of the sys-
4 tem established pursuant to paragraph (1);”;

5 (ii) in clause (ii), by inserting “and”
6 after the semicolon; and

7 (iii) by adding at the end the fol-
8 lowing:

9 “(iii) the State issuing the permit agrees to
10 deny the permit application if such other person is
11 the subject of a determination by the Attorney Gen-
12 eral pursuant to section 922B of this title;”;

13 (4) in paragraph (4), by inserting “, or if the
14 Attorney General has not determined to deny the
15 transfer of a firearm pursuant to section 922A of
16 this title” after “or State law”; and

17 (5) in paragraph (5), by inserting “, or if the
18 Attorney General has determined to deny the trans-
19 fer of a firearm pursuant to section 922A of this
20 title” after “or State law”.

21 (c) UNLAWFUL SALE OR DISPOSITION OF FIREARM
22 BASED UPON ATTORNEY GENERAL DISCRETIONARY DE-
23 NIAL.—Section 922(d) of title 18, United States Code, is
24 amended—

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

3 (2) in paragraph (9), by striking the period at
4 the end and inserting “; or”; and

5 (3) by adding at the end the following:

6 “(10) has been the subject of a determination
7 by the Attorney General under section 922A, 922B,
8 923(d)(3), or 923(e) of this title.”.

9 (d) ATTORNEY GENERAL DISCRETIONARY DENIAL
10 AS PROHIBITOR.—Section 922(g) of title 18, United
11 States Code, is amended—

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

14 (2) in paragraph (9), by striking the comma at
15 the end and inserting “; or”; and

16 (3) by inserting after paragraph (9) the fol-
17 lowing:

18 “(10) who has received actual notice of the At-
19 torney General’s determination made under section
20 922A, 922B, 923(d)(3) or 923(e) of this title,”.

21 (e) ATTORNEY GENERAL DISCRETIONARY DENIAL
22 OF FEDERAL FIREARMS LICENSES.—Section 923(d) of
23 title 18, United States Code, is amended—

1 (1) in paragraph (1), in the matter preceding
 2 subparagraph (A), by striking “Any” and inserting
 3 “Except as provided in paragraph (3), any”; and

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

5 “(3) The Attorney General may deny a license appli-
 6 cation if the Attorney General determines that the appli-
 7 cant (including any responsible person) is known (or ap-
 8 propriately suspected) to be or have been engaged in con-
 9 duct constituting, in preparation for, in aid of, or related
 10 to terrorism, or providing material support or resources
 11 for terrorism, and the Attorney General has a reasonable
 12 belief that the applicant may use a firearm in connection
 13 with terrorism.”.

14 (f) DISCRETIONARY REVOCATION OF FEDERAL FIRE-
 15 ARMS LICENSES.—Section 923(e) of title 18, United
 16 States Code, is amended—

17 (1) by inserting “(1)” after “(e)”;

18 (2) by striking “revoke any license” and insert-
 19 ing the following: “revoke—

20 “(A) any license”;

21 (3) by striking “. The Attorney General may,
 22 after notice and opportunity for hearing, revoke the
 23 license” and inserting the following: “;

24 “(B) the license”; and

1 (4) by striking “. The Secretary’s action” and
2 inserting the following: “; or

3 “(C) any license issued under this section if the
4 Attorney General determines that the holder of such
5 license (including any responsible person) is known
6 (or appropriately suspected) to be or have been en-
7 gaged in conduct constituting, in preparation for, in
8 aid of, or related to terrorism or providing material
9 support or resources for terrorism, and the Attorney
10 General has a reasonable belief that the applicant
11 may use a firearm in connection with terrorism.

12 “(2) The Attorney General’s action”.

13 (g) ATTORNEY GENERAL’S ABILITY TO WITHHOLD
14 INFORMATION IN FIREARMS LICENSE DENIAL AND REV-
15 OCATION SUIT.—

16 (1) IN GENERAL.—Section 923(f)(1) of title 18,
17 United States Code, is amended by inserting after
18 the first sentence the following: “However, if the de-
19 nial or revocation is pursuant to subsection (d)(3) or
20 (e)(1)(C), any information upon which the Attorney
21 General relied for this determination may be with-
22 held from the petitioner, if the Attorney General de-
23 termines that disclosure of the information would
24 likely compromise national security.”.

1 (2) SUMMARIES.—Section 923(f)(3) of title 18,
2 United States Code, is amended by inserting after
3 the third sentence the following: “With respect to
4 any information withheld from the aggrieved party
5 under paragraph (1), the United States may submit,
6 and the court may rely upon, summaries or redacted
7 versions of documents containing information the
8 disclosure of which the Attorney General has deter-
9 mined would likely compromise national security.”.

10 (h) ATTORNEY GENERAL’S ABILITY TO WITHHOLD
11 INFORMATION IN RELIEF FROM DISABILITIES LAW-
12 SUITS.—Section 925(c) of title 18, United States Code,
13 is amended by inserting after the third sentence the fol-
14 lowing: “If the person is subject to a disability under sec-
15 tion 922(g)(10) of this title, any information which the
16 Attorney General relied on for this determination may be
17 withheld from the applicant if the Attorney General deter-
18 mines that disclosure of the information would likely com-
19 promise national security. In responding to the petition,
20 the United States may submit, and the court may rely
21 upon, summaries or redacted versions of documents con-
22 taining information the disclosure of which the Attorney
23 General has determined would likely compromise national
24 security.”.

1 (i) PENALTIES.—Section 924(k) of title 18, United
2 States Code, is amended—

3 (1) in paragraph (2), by striking “or” at the
4 end;

5 (2) in paragraph (3), by striking the comma at
6 the end and inserting “; or”; and

7 (3) by inserting after paragraph (3) the fol-
8 lowing:

9 “(4) constitutes an act of terrorism, or pro-
10 viding material support or resources for terrorism,”.

11 (j) REMEDY FOR ERRONEOUS DENIAL OF FIREARM
12 OR FIREARM PERMIT EXEMPTION.—

13 (1) IN GENERAL.—Section 925A of title 18,
14 United States Code, is amended—

15 (A) in the section heading, by striking
16 “**Remedy for erroneous denial of fire-**
17 **arm**” and inserting “**Remedies**”;

18 (B) by striking “Any person denied a fire-
19 arm pursuant to subsection (s) or (t) of section
20 922” and inserting the following:

21 “(a) Except as provided in subsection (b), any person
22 denied a firearm pursuant to subsection (t) of section 922
23 or a firearm permit pursuant to a determination made
24 under section 922B”; and

25 (C) by adding at the end the following:

1 “(b) In any case in which the Attorney General has
2 denied the transfer of a firearm to a prospective transferee
3 pursuant to section 922A of this title or has made a deter-
4 mination regarding a firearm permit applicant pursuant
5 to section 922B of this title, an action challenging the de-
6 termination may be brought against the United States.
7 The petition shall be filed not later than 60 days after
8 the petitioner has received actual notice of the Attorney
9 General’s determination under section 922A or 922B of
10 this title. The court shall sustain the Attorney General’s
11 determination upon a showing by the United States by a
12 preponderance of evidence that the Attorney General’s de-
13 termination satisfied the requirements of section 922A or
14 922B, as the case may be. To make this showing, the
15 United States may submit, and the court may rely upon,
16 summaries or redacted versions of documents containing
17 information the disclosure of which the Attorney General
18 has determined would likely compromise national security.
19 Upon request of the petitioner or the court’s own motion,
20 the court may review the full, undisclosed documents ex
21 parte and in camera. The court shall determine whether
22 the summaries or redacted versions, as the case may be,
23 are fair and accurate representations of the underlying
24 documents. The court shall not consider the full, undis-
25 closed documents in deciding whether the Attorney Gen-

1 eral’s determination satisfies the requirements of section
2 922A or 922B.”.

3 (2) TECHNICAL AND CONFORMING AMEND-
4 MENT.—The table of sections for chapter 44 of title
5 18, United States Code, is amended by striking the
6 item relating to section 925A and inserting the fol-
7 lowing:

“925A. Remedies.”.

8 (k) PROVISION OF GROUNDS UNDERLYING INELIGI-
9 BILITY DETERMINATION BY THE NATIONAL INSTANT
10 CRIMINAL BACKGROUND CHECK SYSTEM.—Section 103
11 of the Brady Handgun Violence Prevention Act (18 U.S.C.
12 922 note) is amended—

13 (1) in subsection (f)—

14 (A) by inserting “or the Attorney General
15 has made a determination regarding an appli-
16 cant for a firearm permit pursuant to section
17 922B of title 18, United States Code,” after “is
18 ineligible to receive a firearm”; and

19 (B) by inserting “except any information
20 for which the Attorney General has determined
21 that disclosure would likely compromise na-
22 tional security,” after “reasons to the indi-
23 vidual,”; and

24 (2) in subsection (g)—

25 (A) the first sentence—

1 (i) by inserting “or if the Attorney
2 General has made a determination pursu-
3 ant to section 922A or 922B of title 18,
4 United States Code,” after “or State
5 law,”; and

6 (ii) by inserting “, except any infor-
7 mation for which the Attorney General has
8 determined that disclosure would likely
9 compromise national security” before the
10 period at the end; and

11 (B) by adding at the end the following:
12 “Any petition for review of information with-
13 held by the Attorney General under this sub-
14 section shall be made in accordance with section
15 925A of title 18, United States Code.”.

16 (l) UNLAWFUL DISTRIBUTION OF EXPLOSIVES
17 BASED UPON ATTORNEY GENERAL DISCRETIONARY DE-
18 NIAL.—Section 842(d) of title 18, United States Code, is
19 amended—

20 (1) in paragraph (9), by striking the period and
21 inserting “; or”; and

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

23 “(10) has received actual notice of the Attorney
24 General’s determination made pursuant to sub-
25 section (j) or (d)(1)(B) of section 843 of this title.”.

1 (m) ATTORNEY GENERAL DISCRETIONARY DENIAL
2 AS PROHIBITOR.—Section 842(i) of title 18, United States
3 Code, is amended—

4 (1) in paragraph (7), by inserting “; or” at the
5 end; and

6 (2) by inserting after paragraph (7) the fol-
7 lowing:

8 “(8) who has received actual notice of the At-
9 torney General’s determination made pursuant to
10 subsection (j) or (d)(1)(B) of section 843 of this
11 title.”.

12 (n) ATTORNEY GENERAL DISCRETIONARY DENIAL
13 OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—
14 Section 843 of title 18, United States Code, is amended—

15 (1) in subsection (b), by striking “Upon” and
16 inserting “Except as provided in subsection (j),
17 upon”; and

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

19 “(j) The Attorney General may deny the issuance of
20 a permit or license to an applicant if the Attorney General
21 determines that the applicant or a responsible person or
22 employee possessor thereof is known (or appropriately sus-
23 pected) to be or have been engaged in conduct consti-
24 tuting, in preparation of, in aid of, or related to terrorism,
25 or providing material support or resources for terrorism,

1 and the Attorney General has a reasonable belief that the
2 person may use explosives in connection with terrorism.”.

3 (o) ATTORNEY GENERAL DISCRETIONARY REVOCATION OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—Section 843(d) of title 18, United States Code, is
4 amended—
5
6

7 (1) by inserting “(1)” after “(d)”;

8 (2) by striking “if in the opinion” and inserting
9 the following: “if—

10 “(A) in the opinion”; and

11 (3) by striking “. The Secretary’s action” and
12 inserting the following: “; or

13 “(B) the Attorney General determines that the
14 licensee or holder (or any responsible person or employee
15 possessor thereof) is known (or appropriately
16 suspected) to be or have been engaged in conduct
17 constituting, in preparation for, in aid of, or related
18 to terrorism, or providing material support or resources
19 for terrorism, and that the Attorney General
20 has a reasonable belief that the person may use explosives
21 in connection with terrorism.

22 “(2) The Attorney General’s action”.

23 (p) ATTORNEY GENERAL’S ABILITY TO WITHHOLD
24 INFORMATION IN EXPLOSIVES LICENSE AND PERMIT DE-

1 NIAL AND REVOCATION SUITS.—Section 843(e) of title
2 18, United States Code, is amended—

3 (1) in paragraph (1), by inserting after the first
4 sentence the following: “However, if the denial or
5 revocation is based upon an Attorney General deter-
6 mination under subsection (j) or (d)(1)(B), any in-
7 formation which the Attorney General relied on for
8 this determination may be withheld from the peti-
9 tioner if the Attorney General determines that dis-
10 closure of the information would likely compromise
11 national security.”; and

12 (2) in paragraph (2), by adding at the end the
13 following: “In responding to any petition for review
14 of a denial or revocation based upon an Attorney
15 General determination under subsection (j) or
16 (d)(1)(B), the United States may submit, and the
17 court may rely upon, summaries or redacted versions
18 of documents containing information the disclosure
19 of which the Attorney General has determined would
20 likely compromise national security.”.

21 (q) ABILITY TO WITHHOLD INFORMATION IN COM-
22 MUNICATIONS TO EMPLOYERS.—Section 843(h)(2) of title
23 18, United States Code, is amended—

1 (1) in subparagraph (A), by inserting “or in
2 subsection (j) of this section (on grounds of ter-
3 rorism)” after “section 842(i)”; and

4 (2) in subparagraph (B)—

5 (A) in the matter preceding clause (i), by
6 inserting “or in subsection (j) of this section,”
7 after “section 842(i),”; and

8 (B) in clause (ii), by inserting “, except
9 that any information that the Attorney General
10 relied on for a determination pursuant to sub-
11 section (j) may be withheld if the Attorney Gen-
12 eral concludes that disclosure of the information
13 would likely compromise national security”
14 after “determination”.

15 (r) CONFORMING AMENDMENT TO IMMIGRATION AND
16 NATIONALITY ACT.—Section 101(a)(43)(E)(ii) of the Im-
17 migration and Nationality Act (8 U.S.C.
18 1101(a)(43)(E)(ii)) is amended by striking “or (5)” and
19 inserting “(5), or (10)”.

20 (s) GUIDELINES.—

21 (1) IN GENERAL.—The Attorney General shall
22 issue guidelines describing the circumstances under
23 which the Attorney General will exercise the author-
24 ity and make determinations under subsections
25 (d)(1)(B) and (j) of section 843 and sections 922A

1 and 922B of title 18, United States Code, as amend-
2 ed by this Act.

3 (2) CONTENTS.—The guidelines issued under
4 paragraph (1) shall—

5 (A) provide accountability and a basis for
6 monitoring to ensure that the intended goals
7 for, and expected results of, the grant of au-
8 thority under subsections (d)(1)(B) and (j) of
9 section 843 and sections 922A and 922B of
10 title 18, United States Code, as amended by
11 this Act, are being achieved; and

12 (B) ensure that terrorist watch list records
13 are used in a manner that safeguards privacy
14 and civil liberties protections, in accordance
15 with requirements outlines in Homeland Secu-
16 rity Presidential Directive 11 (dated August 27,
17 2004).

○