

110TH CONGRESS
1ST SESSION

S. 1237

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

APRIL 26, 2007

Mr. LAUTENBERG 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 2007”.

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)(1)(H), 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)(1)(H) or 923(e) of this title,”.

21 (e) ATTORNEY GENERAL DISCRETIONARY DENIAL
22 OF FEDERAL FIREARMS LICENSES.—Section 923(d)(1) of
23 title 18, United States Code, is amended—

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

4 (2) in subparagraph (F), by striking “and” at
 5 the end;

6 (3) in subparagraph (G), by striking the period
 7 and inserting “; and”; and

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

9 “(H) The Attorney General may deny a license
 10 application if the Attorney General determines that
 11 the applicant (including any responsible person) is
 12 known (or appropriately suspected) to be or have
 13 been engaged in conduct constituting, in preparation
 14 for, in aid of, or related to terrorism, or providing
 15 material support or resources for terrorism, and the
 16 Attorney General has a reasonable belief that the
 17 applicant may use a firearm in connection with ter-
 18 rorism.”.

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

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

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

25 “(A) any license”;

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

4 “(B) the license”; and

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

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

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

17 (g) ATTORNEY GENERAL’S ABILITY TO WITHHOLD
18 INFORMATION IN FIREARMS LICENSE DENIAL AND REV-
19 OCATION SUIT.—

20 (1) IN GENERAL.—Section 923(f)(1) of title 18,
21 United States Code, is amended by inserting after
22 the first sentence the following: “However, if the de-
23 nial or revocation is pursuant to subsection
24 (d)(1)(H) or (e)(3), any information upon which the
25 Attorney General relied for this determination may

1 be withheld from the petitioner, if the Attorney Gen-
2 eral determines that disclosure of the information
3 would likely compromise national security.”.

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

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

1 General has determined would likely compromise national
2 security.”.

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

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

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

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

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

13 (j) REMEDY FOR ERRONEOUS DENIAL OF FIREARM
14 OR FIREARM PERMIT EXEMPTION.—

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

17 (A) in the section heading, by striking

18 **“Remedy for erroneous denial of fire-**
19 **arm”** and inserting **“Remedies”**;

20 (B) by striking “Any person denied a fire-
21 arm pursuant to subsection (s) or (t) of section
22 922” and inserting the following:

23 “(a) Except as provided in subsection (b), any person
24 denied a firearm pursuant to subsection (t) of section 922

1 or a firearm permit pursuant to a determination made
2 under section 922B”; and

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

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

1 are fair and accurate representations of the underlying
 2 documents. The court shall not consider the full, undis-
 3 closed documents in deciding whether the Attorney Gen-
 4 eral’s determination satisfies the requirements of section
 5 922A or 922B.”.

6 (2) TECHNICAL AND CONFORMING AMEND-
 7 MENT.—The table of sections at the beginning of
 8 chapter 44 of title 18, United States Code, is
 9 amended by striking the item relating to section
 10 925A and inserting the following:

“925A. Remedies.”.

11 (k) PROVISION OF GROUNDS UNDERLYING INELIGI-
 12 BILITY DETERMINATION BY THE NATIONAL INSTANT
 13 CRIMINAL BACKGROUND CHECK SYSTEM.—Section 103
 14 of the Brady Handgun Violence Prevention Act (18 U.S.C.
 15 922 note) is amended—

16 (1) in subsection (f), by inserting “or the Attor-
 17 ney General has made a determination regarding an
 18 applicant for a firearm permit pursuant to section
 19 922B of title 18, United States Code,” after “is in-
 20 eligible to receive a firearm”;

21 (2) in subsection (f), by inserting “except any
 22 information for which the Attorney General has de-
 23 termined that disclosure would likely compromise
 24 national security,” after “reasons to the individual,”;
 25 and

1 (3) in subsection (g)—

2 (A) the first sentence—

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

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

13 (B) by adding at the end the following:
14 “Any petition for review of information with-
15 held by the Attorney General under this sub-
16 section shall be made in accordance with section
17 925A of title 18, United States Code.”.

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

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

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

1 “(10) has received actual notice of the Attorney
2 General’s determination made pursuant to sub-
3 section (b)(8) or (d)(2) of section 843 of this title.”.

4 (m) ATTORNEY GENERAL DISCRETIONARY DENIAL
5 AS PROHIBITOR.—Section 842(i) of title 18, United States
6 Code, is amended—

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

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

11 “(8) who has received actual notice of the At-
12 torney General’s determination made pursuant to
13 subsection (b)(8) or (d)(2) of section 843 of this
14 title,”.

15 (n) ATTORNEY GENERAL DISCRETIONARY DENIAL
16 OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—
17 Section 843(b) of title 18, United States Code, is amend-
18 ed—

19 (1) by striking “Upon” and inserting “Except
20 as provided in paragraph (8), upon”; and

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

22 “(8) The Attorney General may deny the
23 issuance of a permit or license to an applicant if the
24 Attorney General determines that the applicant or a
25 responsible person or employee possessor thereof is

1 known (or appropriately suspected) to be or have
2 been engaged in conduct constituting, in preparation
3 of, in aid of, or related to terrorism, or providing
4 material support or resources for terrorism, and the
5 Attorney General has a reasonable belief that the
6 person may use explosives in connection with ter-
7 rorism.”.

8 (o) ATTORNEY GENERAL DISCRETIONARY REVOCATION OF FEDERAL EXPLOSIVES LICENSES AND PER-
9 MITS.—Section 843(d) of title 18, United States Code, is
10 amended—
11

12 (1) by inserting “(1)” after “(d)”;

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

15 “(A) in the opinion”; and

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

18 “(B) the Attorney General determines that the
19 licensee or holder (or any responsible person or em-
20 ployee possessor thereof) is known (or appropriately
21 suspected) to be or have been engaged in conduct
22 constituting, in preparation for, in aid of, or related
23 to terrorism, or providing material support or re-
24 sources for terrorism, and that the Attorney General

1 has a reasonable belief that the person may use ex-
 2 plosives in connection with terrorism.

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

4 (p) ATTORNEY GENERAL’S ABILITY TO WITHHOLD
 5 INFORMATION IN EXPLOSIVES LICENSE AND PERMIT DE-
 6 NIAL AND REVOCATION SUITS.—Section 843(e) of title
 7 18, United States Code, is amended—

8 (1) in paragraph (1), by inserting after the first
 9 sentence the following: “However, if the denial or
 10 revocation is based upon an Attorney General deter-
 11 mination under subsection (b)(8) or (d)(2) of section
 12 843 of this title, any information which the Attorney
 13 General relied on for this determination may be
 14 withheld from the petitioner if the Attorney General
 15 determines that disclosure of the information would
 16 likely compromise national security.”; and

17 (2) in paragraph (2), by adding at the end the
 18 following: “In responding to any petition for review
 19 of a denial or revocation based upon an Attorney
 20 General determination under subsection (b)(8) or
 21 (d)(2) of section 843, the United States may submit,
 22 and the court may rely upon, summaries or redacted
 23 versions of documents containing information the
 24 disclosure of which the Attorney General has deter-
 25 mined would likely compromise national security.”.

1 (q) ABILITY TO WITHHOLD INFORMATION IN COM-
 2 MUNICATIONS TO EMPLOYERS.—Section 843(h)(2) of title
 3 18, United States Code, is amended—

4 (1) in subparagraph (A), by inserting “or in
 5 section 843(b)(1) (on grounds of terrorism) of this
 6 title” after “section 842(i)”; and

7 (2) in subparagraph (B)—

8 (A) in the matter preceding clause (i), by
 9 inserting “or in section 843(b)(8),” after “sec-
 10 tion 842(i),”; and

11 (B) in clause (ii), by inserting “, except
 12 that any information that the Attorney General
 13 relied on for a determination pursuant to sec-
 14 tion 843(b)(8) may be withheld if the Attorney
 15 General concludes that disclosure of the infor-
 16 mation would likely compromise national secu-
 17 rity” after “determination”.

18 (r) CONFORMING AMENDMENT TO IMMIGRATION AND
 19 NATIONALITY ACT.—Section 101(a)(43)(E)(ii) of the Im-
 20 migration and Nationality Act (8 U.S.C.
 21 1101(a)(43)(E)(ii)) is amended by striking “or (5)” and
 22 inserting “(5), or (10)”.

○