

111TH CONGRESS  
1ST SESSION

# H. R. 2159

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2009

Mr. KING of New York (for himself, Mr. RANGEL, Mr. CASTLE, Mrs. MCCARTHY of New York, Mr. KIRK, Mr. MORAN of Virginia, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

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

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 2009”.

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 the following new section after  
12 section 922:

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

15 “The Attorney General may deny the transfer of a  
16 firearm pursuant to section 922(t)(1)(B)(ii) if the Attor-  
17 ney General determines that the transferee is known (or  
18 appropriately suspected) to be or have been engaged in  
19 conduct constituting, in preparation for, in aid of, or re-  
20 lated to terrorism, or providing material support thereof,  
21 and the Attorney General has a reasonable belief that the  
22 prospective transferee may use a firearm in connection  
23 with terrorism.”;

24 (2) by inserting the following new section after  
25 section 922A:

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 an appli-  
 6 cant for a firearm permit which would qualify for an ex-  
 7 emption under section 922(t) is known (or appropriately  
 8 suspected) to be or have been engaged in conduct consti-  
 9 tuting, in preparation for, in aid of, or related to ter-  
 10 rorism, or providing material support thereof, and the At-  
 11 torney General has a reasonable belief that the applicant  
 12 may use a firearm in connection with terrorism.”; and

13 (3) in section 921(a), by adding at the end the  
 14 following:

15 “(36) The term ‘terrorism’ means ‘international ter-  
 16 rorism’ as defined in section 2331(1), and ‘domestic ter-  
 17 rorism’ as defined in section 2331(5).

18 “(37) The term ‘material support’ means ‘material  
 19 support or resources’ within the meaning of section 2339A  
 20 or 2339B.

21 “(38) The term ‘responsible person’ means an indi-  
 22 vidual who has the power, directly or indirectly, to direct  
 23 or cause the direction of the management and policies of  
 24 the applicant or licensee pertaining to firearms.”.

25 (b) EFFECT OF ATTORNEY GENERAL DISCRE-  
 26 TIONARY DENIAL THROUGH THE NATIONAL INSTANT

1 CRIMINAL BACKGROUND CHECK SYSTEM (NICS) ON  
2 FIREARMS PERMITS.—Section 922(t) of such title is  
3 amended—

4 (1) in paragraph (1)(B)(ii), by inserting “or  
5 State law, or that the Attorney General has deter-  
6 mined to deny the transfer of a firearm pursuant to  
7 section 922A” before the semicolon;

8 (2) in paragraph (2), by inserting after “or  
9 State law” the following: “or if the Attorney General  
10 has not determined to deny the transfer of a firearm  
11 pursuant to section 922A”;

12 (3) in paragraph (3)(A)(i)—

13 (A) by striking “and” at the end of sub-  
14 clause (I); and

15 (B) by adding at the end the following:

16 “(III) was issued after a check of the system  
17 established pursuant to paragraph (1);”;

18 (4) in paragraph (3)(A)—

19 (A) by adding “and” at the end of clause  
20 (ii); and

21 (B) by adding after and below the end the  
22 following:

23 “(iii) the State issuing the permit  
24 agrees to deny the permit application if  
25 such other person is the subject of a deter-

1 mination by the Attorney General pursuant  
2 to section 922B;”;

3 (5) in paragraph (4), by inserting after “or  
4 State law,” the following: “or if the Attorney Gen-  
5 eral has not determined to deny the transfer of a  
6 firearm pursuant to section 922A,”; and

7 (6) in paragraph (5), by inserting after “or  
8 State law,” the following: “or if the Attorney Gen-  
9 eral has determined to deny the transfer of a fire-  
10 arm pursuant to section 922A,”.

11 (c) UNLAWFUL SALE OR DISPOSITION OF FIREARM  
12 BASED ON ATTORNEY GENERAL DISCRETIONARY DE-  
13 NIAL.—Section 922(d) of such title is amended—

14 (1) by striking “or” at the end of paragraph  
15 (8);

16 (2) by striking the period at the end of para-  
17 graph (9) and inserting “; or”;

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

20 “(10) has been the subject of a determination  
21 by the Attorney General pursuant to section 922A,  
22 922B, 923(d)(1)(H), or 923(e) of this title.”.

23 (d) ATTORNEY GENERAL DISCRETIONARY DENIAL  
24 AS PROHIBITOR.—Section 922(g) of such title is amend-  
25 ed—

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

3 (2) by striking the comma at the end of para-  
4 graph (9) and inserting; “; or”; and

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

7 “(10) who has received actual notice of the At-  
8 torney General’s determination made pursuant to  
9 section 922A, 922B, 923(d)(1)(H), or 923(e) of this  
10 title.”.

11 (e) ATTORNEY GENERAL DISCRETIONARY DENIAL  
12 OF FEDERAL FIREARMS LICENSES.—Section 923(d)(1) of  
13 such title is amended—

14 (1) by striking “Any” and inserting “Except as  
15 provided in subparagraph (H), any”;

16 (2) in subparagraph (F)(iii), by striking “and”  
17 at the end;

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

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

21 “(H) The Attorney General may deny a li-  
22 cense application if the Attorney General deter-  
23 mines that the applicant (including any respon-  
24 sible person) is known (or appropriately sus-  
25 pected) to be or have been engaged in conduct

1           constituting, in preparation for, in aid of, or re-  
 2           lated to terrorism, or providing material sup-  
 3           port thereof, and the Attorney General has a  
 4           reasonable belief that the applicant may use a  
 5           firearm in connection with terrorism.”.

6           (f) DISCRETIONARY REVOCATION OF FEDERAL FIRE-  
 7   ARMS LICENSES.—Section 923(e) of such title is amend-  
 8   ed—

9           (1) in the 1st sentence—

10                 (A) by inserting after “revoke” the fol-  
 11           lowing: “—(1)”; and

12                 (B) by striking the period and inserting a  
 13           semicolon;

14           (2) in the 2nd sentence—

15                 (A) by striking “The Attorney General  
 16           may, after notice and opportunity for hearing,  
 17           revoke” and insert “(2)”; and

18                 (B) by striking the period and inserting “;  
 19           or”; and

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

21                 “(3) any license issued under this section if the  
 22           Attorney General determines that the holder of the  
 23           license (including any responsible person) is known  
 24           (or appropriately suspected) to be or have been en-  
 25           gaged in conduct constituting, in preparation for, in

1 aid of, or related to terrorism, or providing material  
2 support thereof, and the Attorney General has a rea-  
3 sonable belief that the applicant may use a firearm  
4 in connection with terrorism.”.

5 (g) ATTORNEY GENERAL’S ABILITY TO WITHHOLD  
6 INFORMATION IN FIREARMS LICENSE DENIAL AND REV-  
7 OCATION SUIT.—Section 923(f) of such title is amended—

8 (1) in the 1st sentence of paragraph (1), by in-  
9 serting “, except that if the denial or revocation is  
10 pursuant to subsection (d)(1)(H) or (e)(3), then any  
11 information on which the Attorney General relied for  
12 this determination may be withheld from the peti-  
13 tioner if the Attorney General determines that dis-  
14 closure of the information would likely compromise  
15 national security” before the period; and

16 (2) in paragraph (3), by inserting after the 3rd  
17 sentence the following: “With respect to any infor-  
18 mation withheld from the aggrieved party under  
19 paragraph (1), the United States may submit, and  
20 the court may rely on, summaries or redacted  
21 versions of documents containing information the  
22 disclosure of which the Attorney General has deter-  
23 mined would likely compromise national security.”.

24 (h) ATTORNEY GENERAL’S ABILITY TO WITHHOLD  
25 INFORMATION IN RELIEF FROM DISABILITIES LAW-



1 SUITS.—Section 925(c) of such title is amended by insert-  
2 ing after the 3rd sentence the following: “If receipt of a  
3 firearms by the person would violate section 922(g)(10),  
4 any information which the Attorney General relied on for  
5 this determination may be withheld from the applicant if  
6 the Attorney General determines that disclosure of the in-  
7 formation would likely compromise national security. In  
8 responding to the petition, the United States may submit,  
9 and the court may rely on, summaries or redacted versions  
10 of documents containing information the disclosure of  
11 which the Attorney General has determined would likely  
12 compromise national security.”.

13 (i) PENALTIES.—Section 924(k) of such title is  
14 amended—

15 (1) by striking “or” at the end of paragraph

16 (2);

17 (2) in paragraph (3), by striking “, or” and in-  
18 serting “; or”; and

19 (3) by inserting after paragraph (3) the fol-  
20 lowing:

21 “(4) constitutes an act of terrorism (as defined  
22 in section 921(a)(36)), or material support thereof  
23 (as defined in section 921(a)(37)), or”.

1 (j) REMEDY FOR ERRONEOUS DENIAL OF FIREARM  
2 OR FIREARM PERMIT EXEMPTION.—Section 925A of such  
3 title is amended—

4 (1) in the section heading, by striking “**Rem-**  
5 **edy for erroneous denial of firearm**” and  
6 inserting “**Remedies**”;

7 (2) by striking “Any person denied a firearm  
8 pursuant to subsection (s) or (t) of section 922” and  
9 inserting the following:

10 “(a) Except as provided in subsection (b), any person  
11 denied a firearm pursuant to section 922(t) or pursuant  
12 to a determination made under section 922B,”; and

13 (3) by adding after and below the end the fol-  
14 lowing:

15 “(b) In any case in which the Attorney General has  
16 denied the transfer of a firearm to a prospective transferee  
17 pursuant to section 922A or has made a determination  
18 regarding a firearm permit applicant pursuant to section  
19 922B, an action challenging the determination may be  
20 brought against the United States. The petition must be  
21 filed not later than 60 days after the petitioner has re-  
22 ceived actual notice of the Attorney General’s determina-  
23 tion made pursuant to section 922A or 922B. The court  
24 shall sustain the Attorney General’s determination on a  
25 showing by the United States by a preponderance of evi-

1 dence that the Attorney General’s determination satisfied  
2 the requirements of section 922A or 922B. To make this  
3 showing, the United States may submit, and the court  
4 may rely on, summaries or redacted versions of documents  
5 containing information the disclosure of which the Attor-  
6 ney General has determined would likely compromise na-  
7 tional security. On request of the petitioner or the court’s  
8 own motion, the court may review the full, undisclosed  
9 documents ex parte and in camera. The court shall deter-  
10 mine whether the summaries or redacted versions, as the  
11 case may be, are fair and accurate representations of the  
12 underlying documents. The court shall not consider the  
13 full, undisclosed documents in deciding whether the Attor-  
14 ney General’s determination satisfies the requirements of  
15 section 922A or 922B.”.

16 (k) PROVISION OF GROUNDS UNDERLYING INELIGI-  
17 BILITY DETERMINATION BY THE NATIONAL INSTANT  
18 CRIMINAL BACKGROUND CHECK SYSTEM.—Section 103  
19 of the Brady Handgun Violence Prevention Act (Public  
20 Law 103–159) is amended—

21 (1) in subsection (f)—

22 (A) by inserting after “is ineligible to re-  
23 ceive a firearm,” the following: “or the Attorney  
24 General has made a determination regarding an

1 applicant for a firearm permit pursuant to sec-  
2 tion 922B of title 18, United States Code”; and

3 (B) by inserting after “the system shall  
4 provide such reasons to the individual,” the fol-  
5 lowing: “except for any information the disclo-  
6 sure of which the Attorney General has deter-  
7 mined would likely compromise national secu-  
8 rity”; and

9 (2) in subsection (g)—

10 (A) in the 1st sentence, by inserting after  
11 “subsection (g) or (n) of section 922 of title 18,  
12 United States Code or State law” the following:  
13 “or if the Attorney General has made a deter-  
14 mination pursuant to section 922A or 922B of  
15 such title,”;

16 (B) by inserting “, except any information  
17 the disclosure of which the Attorney General  
18 has determined would likely compromise na-  
19 tional security” before the period; and

20 (C) by adding at the end the following:  
21 “Any petition for review of information with-  
22 held by the Attorney General under this sub-  
23 section shall be made in accordance with section  
24 925A of title 18, United States Code.”.

1 (l) UNLAWFUL DISTRIBUTION OF EXPLOSIVES  
2 BASED ON ATTORNEY GENERAL DISCRETIONARY DE-  
3 NIAL.—Section 842(d) of such title is amended—

4 (1) by striking the period at the end of para-  
5 graph (9) and inserting “; or”; and

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

7 “(10) has received actual notice of the Attorney  
8 General’s determination made pursuant to section  
9 843(b)(8) or (d)(2) of this title.”.

10 (m) ATTORNEY GENERAL DISCRETIONARY DENIAL  
11 AS PROHIBITOR.—Section 842(i) of such title is amend-  
12 ed—

13 (1) by adding “or” at the end of paragraph (7);  
14 and

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

17 “(8) who has received actual notice of the At-  
18 torney General’s determination made pursuant to  
19 section 843(b)(8) or (d)(2),”.

20 (n) ATTORNEY GENERAL DISCRETIONARY DENIAL  
21 OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—  
22 Section 843(b) of such title is amended—

23 (1) by striking “Upon” and inserting the fol-  
24 lowing: “Except as provided in paragraph (8), on”;  
25 and

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

3           “(8) The Attorney General may deny the  
4       issuance of a permit or license to an applicant if the  
5       Attorney General determines that the applicant or a  
6       responsible person or employee possessor thereof is  
7       known (or appropriately suspected) to be or have  
8       been engaged in conduct constituting, in preparation  
9       of, in aid of, or related to terrorism, or providing  
10      material support thereof, and the Attorney General  
11      has a reasonable belief that the person may use ex-  
12      plosives in connection with terrorism.”.

13      (o) ATTORNEY GENERAL DISCRETIONARY REVOCATION OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—Section 843(d) of such title is amended—

16           (1) by inserting “(1)” in the first sentence after  
17      “if”; and

18           (2) by striking the period at the end of the first  
19      sentence and inserting the following: “; or (2) the  
20      Attorney General determines that the licensee or  
21      holder (or any responsible person or employee possessor thereof) is known (or appropriately suspected)  
22      to be or have been engaged in conduct constituting,  
23      in preparation for, in aid of, or related to terrorism,  
24      or providing material support thereof, and that the  
25

1 Attorney General has a reasonable belief that the  
2 person may use explosives in connection with ter-  
3 rorism.”.

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 such  
7 title is amended—

8 (1) in the 1st sentence of paragraph (1), by in-  
9 serting “except that if the denial or revocation is  
10 based on a determination under subsection (b)(8) or  
11 (d)(2), then any information which the Attorney  
12 General relied on for the determination may be with-  
13 held from the petitioner if the Attorney General de-  
14 termines that disclosure of the information would  
15 likely compromise national security” before the pe-  
16 riod; 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 on a determination  
20 under section 843(b)(8) or (d)(2), the United States  
21 may submit, and the court may rely on, summaries  
22 or redacted versions of documents containing infor-  
23 mation the disclosure of which the Attorney General  
24 has determined would likely compromise national se-  
25 curity.”.

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

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

7 (2) in subparagraph (B)—

8 (A) by inserting “or section 843(b)(8)”  
9 after “section 842(i),”; and

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

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

○