

113TH CONGRESS
1ST SESSION

S. 792

To strengthen the enforcement of background checks with respect to the use of explosive materials.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2013

Mr. REID (for Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To strengthen the enforcement of background checks with respect to the use of explosive materials.

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 “Explosive Materials
5 Background Check Act”.

6 **SEC. 2. EXPLOSIVE MATERIALS BACKGROUND CHECKS.**

7 (a) AMENDMENTS TO TITLE 18.—Chapter 40 of title
8 18, United States Code, is amended—

9 (1) in section 841—

1 (A) in subsection (d), by inserting “smoke-
2 less powder and black powder substitutes,”
3 after “black powder,”; and

4 (B) in subsection (h), by striking “the
5 business of”;

6 (2) in section 842—

7 (A) in subsection (d)—

8 (i) in paragraph (9), by striking the
9 period and inserting a semicolon; and

10 (ii) inserting at the end the following:

11 “(10) is subject to a court order that restrains
12 such person from harassing, stalking, or threatening
13 an intimate partner of such person or child of such
14 intimate partner or person, or engaging in other
15 conduct that would place an intimate partner in rea-
16 sonable fear of bodily injury to the partner or child,
17 except that this paragraph shall only apply to a
18 court order that—

19 “(A) was issued after a hearing of which
20 such person received actual notice, and at which
21 such person had the opportunity to participate;
22 and

23 “(B)(i) includes a finding that such person
24 represents a credible threat to the physical safe-
25 ty of such intimate partner or child; or

1 “(ii) by its terms explicitly prohibits the
2 use, attempted use, or threatened use of phys-
3 ical force against such intimate partner or child
4 that would reasonably be expected to cause bod-
5 ily injury;

6 “(11) has been convicted in any court of a mis-
7 demeanor crime of domestic violence; or

8 “(12) has received actual notice of the Attorney
9 General’s determination made pursuant to sub-
10 section (d)(1)(B) or (j) of section 843 of this title.”;
11 and

12 (B) in subsection (i)—

13 (i) in paragraph (7), by inserting a
14 semicolon after “person”;

15 (ii) inserting at the end the following:

16 “(8) is subject to a court order that restrains
17 such person from harassing, stalking, or threatening
18 an intimate partner of such person or child of such
19 intimate partner or person, or engaging in other
20 conduct that would place an intimate partner in rea-
21 sonable fear of bodily injury to the partner or child,
22 except that this paragraph shall only apply to a
23 court order that—

24 “(A) was issued after a hearing of which
25 such person received actual notice, and at which

1 such person had the opportunity to participate;
2 and

3 “(B)(i) includes a finding that such person
4 represents a credible threat to the physical safe-
5 ty of such intimate partner or child; or

6 “(ii) by its terms explicitly prohibits the
7 use, attempted use, or threatened use of phys-
8 ical force against such intimate partner or child
9 that would reasonably be expected to cause bod-
10 ily injury;

11 “(9) has been convicted in any court of a mis-
12 demeanor crime of domestic violence; or

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

16 (3) in section 843—

17 (A) in subsection (b)—

18 (i) by striking “Upon” and inserting
19 “Except as provided in subsection (j),
20 upon”;

21 (ii) in paragraph (6), by striking
22 “and” after the semicolon;

23 (iii) in paragraph (7), by striking the
24 period and inserting “; and”; and

1 (iv) by inserting at the end the fol-
2 lowing:

3 “(8) in the case of a limited permit holder, the
4 applicant certifies the permit will only be used to
5 purchase black powder, black powder substitute, and
6 smokeless powder in which case the limitation in
7 paragraph (7) shall not apply.”;

8 (B) in subsection (d)—

9 (i) by inserting “(1)” after “(d)”;

10 (ii) by striking “if in the opinion” and
11 inserting the following: “if—

12 “(A) in the opinion”; and

13 (iii) by striking “. The Secretary’s ac-
14 tion” and inserting the following: “; or

15 “(B) the Attorney General determines that
16 the licensee or holder (or any responsible person
17 or employee possessor thereof) is known (or ap-
18 propriately suspected) to be or have been en-
19 gaged in conduct constituting, in preparation
20 for, in aid of, or related to terrorism, or pro-
21 viding material support or resources for ter-
22 rorism, and that the Attorney General has a
23 reasonable belief that the person may use explo-
24 sives in connection with terrorism.

25 “(2) The Attorney General’s action”; and

1 (C) in subsection (e)—

2 (i) in paragraph (1), by inserting after
3 the first sentence the following: “However,
4 if the denial or revocation is based upon an
5 Attorney General determination under sub-
6 section (j) or (d)(1)(B), any information
7 which the Attorney General relied on for
8 this determination may be withheld from
9 the petitioner if the Attorney General de-
10 termines that disclosure of the information
11 would likely compromise national secu-
12 rity.”; and

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

24 (D) in subsection (h)(2)—

1 (i) in subparagraph (A), by inserting
 2 “or in subsection (j) of this section (on
 3 grounds of terrorism)” after “section
 4 842(i)”; and

5 (ii) in subparagraph (B)—

6 (I) in the matter preceding clause
 7 (i), by inserting “or in subsection (j)
 8 of this section,” after “section
 9 842(i),”; and

10 (II) in clause (ii), by inserting “,
 11 except that any information that the
 12 Attorney General relied on for a de-
 13 termination pursuant to subsection (j)
 14 may be withheld if the Attorney Gen-
 15 eral concludes that disclosure of the
 16 information would likely compromise
 17 national security” after “determina-
 18 tion” ; and

19 (E) by inserting at the end the following:

20 “(j) ATTORNEY GENERAL DISCRETIONARY DENIAL
 21 OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—

22 The Attorney General may deny the issuance of a permit
 23 or license to an applicant if the Attorney General deter-
 24 mines that the applicant or a responsible person or em-
 25 ployee possessor thereof is known (or appropriately sus-

1 pected) to be or have been engaged in conduct consti-
2 tuting, in preparation of, in aid of, or related to terrorism,
3 or providing material support or resources for terrorism,
4 and the Attorney General has a reasonable belief that the
5 person may use explosives in connection with terrorism.”;
6 and

7 (4) in section 845(a)—

8 (A) in paragraph (4), by inserting after
9 “and components thereof” the following: “, ex-
10 cept for smokeless powder and black powder
11 substitutes”; and

12 (B) in paragraph (5), by striking “black
13 powder in quantities not to exceed fifty
14 pounds,”.

15 (b) GUIDELINES.—

16 (1) IN GENERAL.—The Attorney General shall
17 issue guidelines describing the circumstances under
18 which the Attorney General will exercise the author-
19 ity and make determinations under subsections
20 (d)(1)(B) and (j) of section 843 of title 18, United
21 States Code, as amended by this Act.

22 (2) CONTENTS.—The guidelines issued under
23 paragraph (1) shall—

24 (A) provide accountability and a basis for
25 monitoring to ensure that the intended goals

1 for, and expected results of, the grant of au-
2 thority under subsections (d)(1)(B) and (j) of
3 section 843 of title 18, United States Code, as
4 amended by this Act, are being achieved; and
5 (B) ensure that terrorist watch list records
6 are used in a manner that safeguards privacy
7 and civil liberties protections, in accordance
8 with requirements outlines in Homeland Secu-
9 rity Presidential Directive 11 (dated August 27,
10 2004).

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