

106TH CONGRESS  
1ST SESSION

# S. 1353

To combat criminal misuse of explosives.

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## IN THE SENATE OF THE UNITED STATES

JULY 13 (legislative day, JULY 12), 1999

Mr. TORRICELLI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To combat criminal misuse of explosives.

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 “Dangerous Explosives  
5 Background Checks Requirement Act”.

6 **SEC. 2. PERMITS AND BACKGROUND CHECKS FOR PUR-**  
7 **CHASES OF EXPLOSIVES.**

8 (a) PERMITS FOR PURCHASE OF EXPLOSIVES IN  
9 GENERAL.—

10 (1) IN GENERAL.—Section 842 of title 18,  
11 United States Code, is amended—

(A) in subsection (a)(3), by striking subparagraphs (A) and (B) and inserting the following:

“(A) to transport, ship, cause to be transported, or receive any explosive materials; or

“(B) to distribute explosive materials to any person other than a licensee or permittee.”; and

(B) in subsection (b)—

(i) by adding “or” at the end of paragraph (1);

(ii) by striking “; or” at the end of paragraph (2) and inserting a period; and

(iii) by striking paragraph (3).

(2) REGULATIONS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury shall promulgate final regulations with respect to the amendments made by paragraph (1).

(B) NOTICE TO STATES.—On the promulgation of final regulations under subparagraph (A), the Secretary of the Treasury shall notify the States of the regulations in order that the

1 States may consider legislation to amend rel-  
 2 evant State laws relating to explosives.

3 (b) BACKGROUND CHECKS.—Section 842 of title 18,  
 4 United States Code, is amended by adding at the end the  
 5 following:

6 “(p) BACKGROUND CHECKS.—

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) CHIEF LAW ENFORCEMENT OFFI-  
 9 CER.—The term ‘chief law enforcement officer’  
 10 means the chief of police, the sheriff, or an  
 11 equivalent officer or the designee of such an in-  
 12 dividual.

13 “(B) SYSTEM.—The term ‘system’ means  
 14 the national instant criminal background check  
 15 system established under section 103 of the  
 16 Brady Handgun Violence Prevention Act (18  
 17 U.S.C. 922 note).

18 “(2) PROHIBITION.—A licensed importer, li-  
 19 censed manufacturer, or licensed dealer shall not  
 20 transfer explosive materials to a permittee unless—

21 “(A) before the completion of the transfer,  
 22 the licensee contacts the system;

23 “(B)(i) the system provides the licensee  
 24 with a unique identification number; or

1           “(ii) 5 days on which State offices are  
2           open have elapsed since the licensee contacted  
3           the system, and the system has not notified the  
4           licensee that the receipt of explosive materials  
5           by the transferee would violate subsection (i);

6           “(C) the transferor has verified the iden-  
7           tity of the transferee by examining a valid iden-  
8           tification document (as defined in section 1028)  
9           of the transferee containing a photograph of the  
10          transferee; and

11          “(D) the transferor has examined the per-  
12          mit issued to the transferee under section 843  
13          and recorded the permit number on the record  
14          of the transfer.

15          “(3) IDENTIFICATION NUMBER.—If receipt of  
16          explosive materials would not violate section 842(i)  
17          or State law, the system shall—

18                 “(A) assign a unique identification number  
19                 to the transfer; and

20                 “(B) provide the licensee with the number.

21          “(4) EXCEPTIONS.—Paragraph (2) shall not  
22          apply to a transfer of explosive materials between a  
23          licensee and another person if, on application of the  
24          transferor, the Secretary has certified that compli-

1       ance with paragraph (2)(A) is impracticable  
2       because—

3               “(A) the ratio of the number of law en-  
4               forcement officers of the State in which the  
5               transfer is to occur to the number of square  
6               miles of land area of the State does not exceed  
7               0.0025;

8               “(B) the business premises of the licensee  
9               at which the transfer is to occur are extremely  
10              remote in relation to the chief law enforcement  
11              officer; and

12              “(C) there is an absence of telecommuni-  
13              cations facilities in the geographical area in  
14              which the business premises are located.

15              “(5) INCLUSION OF IDENTIFICATION NUM-  
16              BER.—If the system notifies the licensee that the in-  
17              formation available to the system does not dem-  
18              onstrate that the receipt of explosive materials by  
19              the transferee would violate subsection (i) or State  
20              law, and the licensee transfers explosive materials to  
21              the transferee, the licensee shall include in the  
22              record of the transfer the unique identification num-  
23              ber provided by the system with respect to the trans-  
24              fer.

1           “(6) PENALTIES.—If the licensee knowingly  
 2           transfers explosive materials to another person and  
 3           knowingly fails to comply with paragraph (2) with  
 4           respect to the transfer, the Secretary may, after no-  
 5           tice and opportunity for a hearing—

6                   “(A) suspend for not more than 6 months  
 7                   or revoke any license issued to the licensee  
 8                   under section 843; and

9                   “(B) impose on the licensee a civil penalty  
 10                  of not more than \$5,000.

11           “(7) NO LIABILITY.—Neither a local govern-  
 12           ment nor an employee of the Federal Government or  
 13           of any State or local government, responsible for  
 14           providing information to the system shall be liable in  
 15           an action at law for damages—

16                   “(A) for failure to prevent the transfer of  
 17                   explosive materials to a person whose receipt or  
 18                   possession of the explosive material is unlawful  
 19                   under this section; or

20                   “(B) for preventing such a transfer to a  
 21                   person who may lawfully receive or possess ex-  
 22                   plosive materials.

23           “(8) DETERMINATION OF INELIGIBILITY.—

24                   “(A) WRITTEN REASONS PROVIDED ON RE-  
 25                  QUEST.—If the system determines that an indi-

vidual is ineligible to receive explosive materials and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, not later than 5 business days after the date of the request.

“(B) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—

“(i) IN GENERAL.—If the system informs an individual contacting the system that receipt of explosive materials by a prospective transferee would violate subsection (i) or applicable State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons for the determination.

“(ii) TREATMENT OF REQUESTS.—On receipt a request under subparagraph (A), the Attorney General shall immediately comply with the request.

“(iii) SUBMISSION OF ADDITIONAL INFORMATION.—

“(I) IN GENERAL.—A prospective transferee may submit to the Attorney

1 General information to correct, clar-  
 2 ify, or supplement records of the sys-  
 3 tem with respect to the prospective  
 4 transferee.

5 “(II) ACTION BY THE ATTORNEY  
 6 GENERAL.—After receipt of informa-  
 7 tion under clause (i), the Attorney  
 8 General shall—

9 “(aa) immediately consider  
 10 the information;

11 “(bb) investigate the matter  
 12 further; and

13 “(cc) correct all erroneous  
 14 Federal records relating to the  
 15 prospective transferee and give  
 16 notice of the error to any Federal  
 17 department or agency or any  
 18 State that was the source of such  
 19 erroneous records.”.

20 (c) REMEDY FOR ERRONEOUS DENIAL OF EXPLO-  
 21 SIVE MATERIALS.—

22 (1) IN GENERAL.—Chapter 40 of title 18,  
 23 United States Code, is amended by inserting after  
 24 section 843 the following:



1 **“§ 843A. Remedy for erroneous denial of explosive**  
 2 **materials**

3 “(a) IN GENERAL.—Any person denied explosive ma-  
 4 terials under section 842(p)—

5 “(1) due to the provision of erroneous informa-  
 6 tion relating to the person by any State or political  
 7 subdivision of a State or by the national instant  
 8 criminal background check system referred to in sec-  
 9 tion 922(t); or

10 “(2) who was not prohibited from receiving ex-  
 11 plosive materials under section 842(i);  
 12 may bring an action against an entity described in sub-  
 13 section (b) for an order directing that the erroneous infor-  
 14 mation be corrected or that the transfer be approved, as  
 15 the case may be.

16 “(b) ENTITIES DESCRIBED.—An entity referred to in  
 17 subsection (a) is the State or political subdivision respon-  
 18 sible for providing the erroneous information referred to  
 19 in subsection (a)(1) or denying the transfer of explosives  
 20 or the United States, as the case may be.

21 “(c) ATTORNEY’S FEES.—In any action brought  
 22 under this section, the court, in its discretion, may allow  
 23 the prevailing party a reasonable attorney’s fee as part  
 24 of the costs.”.

25 (2) TECHNICAL AMENDMENT.—The analysis for  
 26 chapter 40 of title 18, United States Code, is

1       amended by inserting after the item relating to sec-  
 2       tion 843 the following:

“843A. Remedy for erroneous denial of explosive materials.”.

3       (d) LICENSES AND USER PERMITS.—Section 843(a)  
 4 of title 18, United States Code, is amended—

5           (1) by inserting “, including fingerprints and a  
 6       photograph of the applicant” before the period at  
 7       the end of the first sentence; and

8           (2) by striking the second sentence and insert-  
 9       ing the following: “Each applicant for a license shall  
 10      pay for each license a fee established by the Sec-  
 11      retary in an amount not to exceed \$300. Each appli-  
 12      cant for a permit shall pay for each permit a fee es-  
 13      tablished by the Secretary in an amount not to ex-  
 14      ceed \$100.”.

15      (e) PENALTIES.—Section 844(a) of title 18, United  
 16 States Code, is amended—

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

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

19           “(2) BACKGROUND CHECKS.—A person who  
 20      violates section 842(p) shall be fined under this title,  
 21      imprisoned not more than 5 years, or both.”.

22      (f) EFFECTIVE DATE.—The amendments made by  
 23 subsections (a), (b), (c), and (e) take effect 18 months  
 24 after the date of enactment of this Act.

