

107TH CONGRESS  
2D SESSION

# S. 2089

To combat criminal misuse of explosives.

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IN THE SENATE OF THE UNITED STATES

APRIL 11, 2002

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, cause to be transported, ship, 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) in paragraph (1), by adding “or” at the end;

(ii) in paragraph (2), by striking “; or” 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 “(q) 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  
9           1028(d)) of the transferee containing a photo-  
10          graph of the 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.—

1 “(i) IN GENERAL.—If the system de-  
 2 termines that an individual is ineligible to  
 3 receive explosive materials and the indi-  
 4 vidual requests the system to provide the  
 5 reasons for the determination, the system  
 6 shall provide such reasons to the indi-  
 7 vidual, in writing, not later than 5 business  
 8 days after the date of the request.

9 “(ii) INELIGIBILITY DUE TO VIOLA-  
 10 TION.—If the system informs an individual  
 11 contacting the system that receipt of explo-  
 12 sive materials by a prospective transferee  
 13 would violate subsection (i) or applicable  
 14 State law, the prospective transferee may  
 15 request the Attorney General to provide  
 16 the prospective transferee with the reasons  
 17 for the determination.

18 “(B) TREATMENT OF REQUESTS.—On re-  
 19 ceipt of a request under subparagraph (A), the  
 20 Attorney General shall immediately comply with  
 21 the request.

22 “(C) SUBMISSION OF ADDITIONAL INFOR-  
 23 MATION.—

24 “(i) IN GENERAL.—A prospective  
 25 transferee may submit to the Attorney

General information to correct, clarify, or supplement records of the system with respect to the prospective transferee.

“(ii) ACTION BY THE ATTORNEY GENERAL.—After receiving information under clause (i), the Attorney General shall—

“(I) immediately consider the information;

“(II) investigate the matter further;

“(III) correct all erroneous Federal records relating to the prospective transferee; and

“(IV) give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.”.

(c) REMEDY FOR ERRONEOUS DENIAL OF EXPLOSIVE MATERIALS.—

(1) IN GENERAL.—Chapter 40 of title 18, United States Code, is amended by inserting after 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(q)—

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 established under  
 9 section 103 of the Brady Handgun Violence Preven-  
 10 tion Act (18 U.S.C. 922 note); or

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

17 “(b) ENTITIES DESCRIBED.—An entity referred to in  
 18 subsection (a) is—

19 “(1) the State or political subdivision respon-  
 20 sible for—

21 “(A) providing the erroneous information  
 22 referred to in subsection (a)(1); or

23 “(B) denying the transfer of explosives; or

24 “(2) the United States.

25 “(c) ATTORNEY’S FEES.—In any action brought  
 26 under this section, the court, in its discretion, may allow

1 the prevailing party a reasonable attorney's fee as part  
2 of the costs.”.

3 (2) TECHNICAL AMENDMENT.—The analysis for  
4 chapter 40 of title 18, United States Code, is  
5 amended by inserting after the item relating to sec-  
6 tion 843 the following:

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

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

9 (1) by striking “shall be in such form and con-  
10 tain such information” and inserting “shall include  
11 fingerprints and a photograph of the applicant, and  
12 shall be in such form and contain such other infor-  
13 mation”; and

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

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

23 (1) in paragraph (1), by striking “and” at the  
24 end;

1           (2) in paragraph (2), by striking the period at  
2           the end and inserting “; and”; and

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

4           “(3) violates section 842(q) shall be fined under  
5           this title, imprisoned not more than 5 years, or  
6           both.”.

7           (f) **EFFECTIVE DATE.**—The amendments made by  
8           subsections (a), (b), (c), and (e) shall take effect 18  
9           months after the date of enactment of this Act.

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