

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. WHITEHOUSE

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . GRANTING THE ATTORNEY GENERAL THE AU-**
 3 **THORITY TO DENY THE SALE, DELIVERY, OR**
 4 **TRANSFER OF A FIREARM OR THE ISSUANCE**
 5 **OF A FIREARMS OR EXPLOSIVES LICENSE OR**
 6 **PERMIT TO DANGEROUS TERRORISTS.**

7 (a) STANDARD FOR EXERCISING ATTORNEY GEN-
 8 ERAL DISCRETION REGARDING TRANSFERRING FIRE-
 9 ARMS OR ISSUING FIREARMS PERMITS TO DANGEROUS
 10 TERRORISTS.—Chapter 44 of title 18, United States
 11 Code, is amended—

1 (1) by inserting after section 922 the following:

2 **“§ 922A. Attorney General’s discretion to deny trans-**
3 **fer of a firearm.**

4 “The Attorney General may deny the transfer of a
5 firearm under section 922(t)(1)(B)(ii) of this title if the
6 Attorney General—

7 “(1) determines that the transferee is known
8 (or appropriately suspected) to be or have been en-
9 gaged in conduct constituting, in preparation for, in
10 aid of, or related to terrorism, or providing material
11 support or resources for terrorism; and

12 “(2) has a reasonable belief that the prospective
13 transferee may use a firearm in connection with ter-
14 rorism.

15 **“§ 922B. Attorney General’s discretion regarding ap-**
16 **plicants for firearm permits which would**
17 **qualify for the exemption provided under**
18 **section 922(t)(3).**

19 “The Attorney General may determine that—

20 “(1) an applicant for a firearm permit which
21 would qualify for an exemption under section 922(t)
22 is known (or appropriately suspected) to be or have
23 been engaged in conduct constituting, in preparation
24 for, in aid of, or related to terrorism, or providing
25 material support or resources for terrorism; and

1 “(2) the Attorney General has a reasonable be-
 2 lief that the applicant may use a firearm in connec-
 3 tion with terrorism.”;

4 (2) in section 921(a), by adding at the end the
 5 following:

6 “(36) The term ‘terrorism’ includes inter-
 7 national terrorism and domestic terrorism, as de-
 8 fined in section 2331 of this title.

9 “(37) The term ‘material support or resources’
 10 has the meaning given the term in section 2339A of
 11 this title.

12 “(38) The term ‘responsible person’ means an
 13 individual who has the power, directly or indirectly,
 14 to direct or cause the direction of the management
 15 and policies of the applicant or licensee pertaining to
 16 firearms.”; and

17 (3) in the table of sections, by inserting after
 18 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).”.

19 (b) EFFECT OF ATTORNEY GENERAL DISCRE-
 20 TIONARY DENIAL THROUGH THE NATIONAL INSTANT
 21 CRIMINAL BACKGROUND CHECK SYSTEM (NICS) ON
 22 FIREARMS PERMITS.—Section 922(t) of title 18, United
 23 States Code, is amended—

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

5 (2) in paragraph (2), in the matter preceding
6 subparagraph (A), by inserting “, or if the Attorney
7 General has not determined to deny the transfer of
8 a firearm pursuant to section 922A of this title”
9 after “or State law”;

10 (3) in paragraph (3)—

11 (A) in subparagraph (A)—

12 (i) in clause (i)—

13 (I) in subclause (I), by striking
14 “and” at the end; and

15 (II) by adding at the end the fol-
16 lowing:

17 “(III) was issued after a check of the sys-
18 tem established pursuant to paragraph (1);”;

19 (ii) in clause (ii), by inserting “and”
20 after the semicolon; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(iii) the State issuing the permit agrees to
24 deny the permit application if such other person is

1 the subject of a determination by the Attorney Gen-
2 eral pursuant to section 922B of this title;”;

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

7 (5) in paragraph (5), by inserting “, or if the
8 Attorney General has determined to deny the trans-
9 fer of a firearm pursuant to section 922A of this
10 title” after “or State law”.

11 (c) UNLAWFUL SALE OR DISPOSITION OF FIREARM
12 BASED UPON ATTORNEY GENERAL DISCRETIONARY DE-
13 NIAL.—Section 922(d) of title 18, United States Code, is
14 amended—

15 (1) in paragraph (8), by striking “or” at the
16 end;

17 (2) in paragraph (9), by striking the period at
18 the end and inserting “; or”; and

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

20 “(10) has been the subject of a determination
21 by the Attorney General under section 922A, 922B,
22 923(d)(3), or 923(e) of this title.”.

23 (d) ATTORNEY GENERAL DISCRETIONARY DENIAL
24 AS PROHIBITOR.—Section 922(g) of title 18, United
25 States Code, is amended—

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

3 (2) in paragraph (9), by striking the comma at
4 the end 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 under section
9 922A, 922B, 923(d)(3) or 923(e) of this title.”.

10 (e) ATTORNEY GENERAL DISCRETIONARY DENIAL
11 OF FEDERAL FIREARMS LICENSES.—Section 923(d) of
12 title 18, United States Code, is amended—

13 (1) in paragraph (1), in the matter preceding
14 subparagraph (A), by striking “Any” and inserting
15 “Except as provided in paragraph (3), any”; and

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

17 “(3) The Attorney General may deny a license appli-
18 cation if the Attorney General determines that the appli-
19 cant (including any responsible person) is known (or ap-
20 propriately suspected) to be or have been engaged in con-
21 duct constituting, in preparation for, in aid of, or related
22 to terrorism, or providing material support or resources
23 for terrorism, and the Attorney General has a reasonable
24 belief that the applicant may use a firearm in connection
25 with terrorism.”.

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

4 (1) by inserting “(1)” after “(e)”;

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

7 “(A) any license”;

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

11 “(B) the license”; and

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

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

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

1 (g) ATTORNEY GENERAL'S ABILITY TO WITHHOLD
2 INFORMATION IN FIREARMS LICENSE DENIAL AND REV-
3 OCATION SUIT.—

4 (1) IN GENERAL.—Section 923(f)(1) of title 18,
5 United States Code, is amended by inserting after
6 the first sentence the following: “However, if the de-
7 nial or revocation is pursuant to subsection (d)(3) or
8 (e)(1)(C), any information upon which the Attorney
9 General relied for this determination may be with-
10 held from the petitioner, if the Attorney General de-
11 termines that disclosure of the information would
12 likely compromise national security.”.

13 (2) SUMMARIES.—Section 923(f)(3) of title 18,
14 United States Code, is amended by inserting after
15 the third sentence the following: “With respect to
16 any information withheld from the aggrieved party
17 under paragraph (1), the United States may submit,
18 and the court may rely upon, summaries or redacted
19 versions of documents containing information the
20 disclosure of which the Attorney General has deter-
21 mined would likely compromise national security.”.

22 (h) ATTORNEY GENERAL'S ABILITY TO WITHHOLD
23 INFORMATION IN RELIEF FROM DISABILITIES LAW-
24 SUITS.—Section 925(c) of title 18, United States Code,
25 is amended by inserting after the third sentence the fol-

1 lowing: “If the person is subject to a disability under sec-
2 tion 922(g)(10) of this title, any information which the
3 Attorney General relied on for this determination may be
4 withheld from the applicant if the Attorney General deter-
5 mines that disclosure of the information would likely com-
6 promise national security. In responding to the petition,
7 the United States may submit, and the court may rely
8 upon, summaries or redacted versions of documents con-
9 taining information the disclosure of which the Attorney
10 General has determined would likely compromise national
11 security.”.

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

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

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

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

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

22 (j) REMEDY FOR ERRONEOUS DENIAL OF FIREARM
23 OR FIREARM PERMIT EXEMPTION.—

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

1 (A) in the section heading, by striking
2 **“Remedy for erroneous denial of fire-**
3 **arm”** and inserting **“Remedies”**;

4 (B) by striking “Any person denied a fire-
5 arm pursuant to subsection (s) or (t) of section
6 922” and inserting the following:

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

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

12 “(b) In any case in which the Attorney General has
13 denied the transfer of a firearm to a prospective transferee
14 pursuant to section 922A of this title or has made a deter-
15 mination regarding a firearm permit applicant pursuant
16 to section 922B of this title, an action challenging the de-
17 termination may be brought against the United States.
18 The petition shall be filed not later than 60 days after
19 the petitioner has received actual notice of the Attorney
20 General’s determination under section 922A or 922B of
21 this title. The court shall sustain the Attorney General’s
22 determination upon a showing by the United States by a
23 preponderance of evidence that the Attorney General’s de-
24 termination satisfied the requirements of section 922A or
25 922B, as the case may be. To make this showing, the

1 United States may submit, and the court may rely upon,
2 summaries or redacted versions of documents containing
3 information the disclosure of which the Attorney General
4 has determined would likely compromise national security.
5 Upon request of the petitioner or the court's own motion,
6 the court may review the full, undisclosed documents ex
7 parte and in camera. The court shall determine whether
8 the summaries or redacted versions, as the case may be,
9 are fair and accurate representations of the underlying
10 documents. The court shall not consider the full, undis-
11 closed documents in deciding whether the Attorney Gen-
12 eral's determination satisfies the requirements of section
13 922A or 922B.”.

14 (2) TECHNICAL AND CONFORMING AMEND-
15 MENT.—The table of sections for chapter 44 of title
16 18, United States Code, is amended by striking the
17 item relating to section 925A and inserting the fol-
18 lowing:

“925A. Remedies.”.

19 (k) PROVISION OF GROUNDS UNDERLYING INELIGI-
20 BILITY DETERMINATION BY THE NATIONAL INSTANT
21 CRIMINAL BACKGROUND CHECK SYSTEM.—Section 103
22 of the Brady Handgun Violence Prevention Act (18 U.S.C.
23 922 note) is amended—

24 (1) in subsection (f)—

1 (A) by inserting “or the Attorney General
2 has made a determination regarding an appli-
3 cant for a firearm permit pursuant to section
4 922B of title 18, United States Code,” after “is
5 ineligible to receive a firearm”; and

6 (B) by inserting “except any information
7 for which the Attorney General has determined
8 that disclosure would likely compromise na-
9 tional security,” after “reasons to the indi-
10 vidual,”; and

11 (2) in subsection (g)—

12 (A) the first sentence—

13 (i) by inserting “or if the Attorney
14 General has made a determination pursu-
15 ant to section 922A or 922B of title 18,
16 United States Code,” after “or State
17 law,”; and

18 (ii) by inserting “, except any infor-
19 mation for which the Attorney General has
20 determined that disclosure would likely
21 compromise national security” before the
22 period at the end; and

23 (B) by adding at the end the following:
24 “Any petition for review of information with-
25 held by the Attorney General under this sub-

1 section shall be made in accordance with section
2 925A of title 18, United States Code.”.

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

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

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

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

13 (m) ATTORNEY GENERAL DISCRETIONARY DENIAL
14 AS PROHIBITOR.—Section 842(i) of title 18, United States
15 Code, is amended—

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

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

20 “(8) who has received actual notice of the At-
21 torney General’s determination made pursuant to
22 subsection (j) or (d)(1)(B) of section 843 of this
23 title.”.

1 (n) ATTORNEY GENERAL DISCRETIONARY DENIAL
2 OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—

3 Section 843 of title 18, United States Code, is amended—

4 (1) in subsection (b), by striking “Upon” and
5 inserting “Except as provided in subsection (j),
6 upon”; and

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

8 “(j) The Attorney General may deny the issuance of
9 a permit or license to an applicant if the Attorney General
10 determines that the applicant or a responsible person or
11 employee possessor thereof is known (or appropriately sus-
12 pected) to be or have been engaged in conduct consti-
13 tuting, in preparation of, in aid of, or related to terrorism,
14 or providing material support or resources for terrorism,
15 and the Attorney General has a reasonable belief that the
16 person may use explosives in connection with terrorism.”.

17 (o) ATTORNEY GENERAL DISCRETIONARY REVOCATION OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—Section 843(d) of title 18, United States Code, is
18 amended—
19
20

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

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

24 “(A) in the opinion”; and

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

3 “(B) the Attorney General determines that the
4 licensee or holder (or any responsible person or em-
5 ployee possessor thereof) is known (or appropriately
6 suspected) to be or have been engaged in conduct
7 constituting, in preparation for, in aid of, or related
8 to terrorism, or providing material support or re-
9 sources for terrorism, and that the Attorney General
10 has a reasonable belief that the person may use ex-
11 plosives in connection with terrorism.

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

13 (p) ATTORNEY GENERAL’S ABILITY TO WITHHOLD
14 INFORMATION IN EXPLOSIVES LICENSE AND PERMIT DE-
15 NIAL AND REVOCATION SUITS.—Section 843(e) of title
16 18, United States Code, is amended—

17 (1) in paragraph (1), by inserting after the first
18 sentence the following: “However, if the denial or
19 revocation is based upon an Attorney General deter-
20 mination under subsection (j) or (d)(1)(B), any in-
21 formation which the Attorney General relied on for
22 this determination may be withheld from the peti-
23 tioner if the Attorney General determines that dis-
24 closure of the information would likely compromise
25 national security.”; and

1 (2) in paragraph (2), by adding at the end the
2 following: “In responding to any petition for review
3 of a denial or revocation based upon an Attorney
4 General determination under subsection (j) or
5 (d)(1)(B), the United States may submit, and the
6 court may rely upon, summaries or redacted versions
7 of documents containing information the disclosure
8 of which the Attorney General has determined would
9 likely compromise national security.”.

10 (q) ABILITY TO WITHHOLD INFORMATION IN COM-
11 MUNICATIONS TO EMPLOYERS.—Section 843(h)(2) of title
12 18, United States Code, is amended—

13 (1) in subparagraph (A), by inserting “or in
14 subsection (j) of this section (on grounds of ter-
15 rorism)” after “section 842(i)”; and

16 (2) in subparagraph (B)—

17 (A) in the matter preceding clause (i), by
18 inserting “or in subsection (j) of this section,”
19 after “section 842(i),”; and

20 (B) in clause (ii), by inserting “, except
21 that any information that the Attorney General
22 relied on for a determination pursuant to sub-
23 section (j) may be withheld if the Attorney Gen-
24 eral concludes that disclosure of the information

1 would likely compromise national security”
2 after “determination”.

3 (f) CONFORMING AMENDMENT TO IMMIGRATION AND
4 NATIONALITY ACT.—Section 101(a)(43)(E)(ii) of the Im-
5 migration and Nationality Act (8 U.S.C.
6 1101(a)(43)(E)(ii)) is amended by striking “or (5)” and
7 inserting “(5), or (10)”.

8 (s) GUIDELINES.—

9 (1) IN GENERAL.—The Attorney General shall
10 issue guidelines describing the circumstances under
11 which the Attorney General will exercise the author-
12 ity and make determinations under subsections
13 (d)(1)(B) and (j) of section 843 and sections 922A
14 and 922B of title 18, United States Code, as amend-
15 ed by this Act.

16 (2) CONTENTS.—The guidelines issued under
17 paragraph (1) shall—

18 (A) provide accountability and a basis for
19 monitoring to ensure that the intended goals
20 for, and expected results of, the grant of au-
21 thority under subsections (d)(1)(B) and (j) of
22 section 843 and sections 922A and 922B of
23 title 18, United States Code, as amended by
24 this Act, are being achieved; and

1 (B) ensure that terrorist watch list records
2 are used in a manner that safeguards privacy
3 and civil liberties protections, in accordance
4 with requirements outlines in Homeland Secu-
5 rity Presidential Directive 11 (dated August 27,
6 2004).