

1 Title: To prevent terrorists from obtaining firearms or explosives.

2  
3 Mr. Toomey introduced the following bill; which was read twice and referred to the Committee  
4 on \_\_\_\_\_.

5 Be it enacted by the Senate and House of Representatives of the United States of America in  
6 Congress assembled,

7 **SEC. \_\_\_\_\_. FIGHTING TERRORISM AND UPHOLDING**  
8 **DUE PROCESS.**

9 (a) Short Title.—This section may be cited as the “Fighting Terrorism and Upholding Due  
10 Process Act”.

11 (b) Preventing the Transfer of a Firearm and the Issuance or Maintenance of a Firearms or  
12 Explosives License or Permit to Dangerous Terrorists.—Chapter 44 of title 18, United States  
13 Code, is amended by inserting after section 922 the following:

14 **“922A. Attorney general’s discretion to prohibit transfer of a**  
15 **firearm and deny or revoke a license or permit**

16 “(a) Definitions.—In this section—

17 “(1) the term ‘Foreign Intelligence Surveillance Court’ has the meaning given the term in  
18 section 701 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881);

19 “(2) the term ‘material support or resources’ shall include all actions prohibited by  
20 section 2339A;

21 “(3) the term the term ‘terrorism’ shall include ‘international terrorism’ and ‘domestic  
22 terrorism’, as defined in section 2331; and

23 “(4) the term ‘Terrorism Firearm Screening List’ means the list developed by the  
24 Attorney General under subsection (b)(4).

25 “(b) Development of Terrorism Firearm Screening List.—

26 “(1) IN GENERAL.—The Attorney General may develop a list of persons for whom the  
27 Attorney General determines, for each person, that—

28 “(A) there is probable cause to believe the person is or has been engaged in conduct  
29 constituting, in preparation for, in aid of, or in support of terrorism, or providing  
30 material support or resources for terrorism; and

31 “(B) there is reason to believe the person may use a firearm in connection with  
32 terrorism.

33 “(2) REQUIREMENT.—The Attorney General shall submit to the Foreign Intelligence  
34 Surveillance Court—

35 “(A) the list of persons developed under paragraph (1); and

36 “(B) the information and documents, in unredacted form, supporting the Attorney  
37 General’s determinations as to which persons are included on the list.

1 “(3) DETERMINATION.—Using the list, information, and documents submitted under  
2 paragraph (2), the Foreign Intelligence Surveillance Court shall determine, for each person  
3 on the list, whether—

4 “(A) there is probable cause to believe the person is or has been engaged in conduct  
5 constituting, in preparation for, in aid of, or in support of terrorism, or providing  
6 material support or resources for terrorism; and

7 “(B) there is reason to believe the person may use a firearm in connection with  
8 terrorism.

9 “(4) CONSOLIDATED LIST.—The Attorney General shall establish a list of persons whom  
10 the Foreign Intelligence Surveillance Court determines meet the criteria described in  
11 paragraph (3), to be known as the ‘Terrorism Firearm Screening List’.

12 “(c) Periodic Updating and Review of Terrorism Firearm Screening List.—

13 “(1) UPDATES TO THE LIST.—The Attorney General may, after the development of the  
14 Terrorism Firearm Screening List, add additional persons to the Terrorism Firearm  
15 Screening List by following the procedures set forth in subsection (b) for each person to be  
16 added.

17 “(2) PERIODIC JUDICIAL REVIEW.—

18 “(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section,  
19 and once every year thereafter, the Attorney General shall submit to the Foreign  
20 Intelligence Surveillance Court the Terrorism Firearm Screening List.

21 “(B) REVIEW.—The Foreign Intelligence Surveillance Court shall review the  
22 Terrorism Firearm Screening List submitted under subparagraph (A) to determine  
23 whether any person on the list should be removed by reason of no longer satisfying the  
24 requirements described in subsection (b)(3).

25 “(C) PRODUCTION OF INFORMATION.—Upon request of the Foreign Intelligence  
26 Surveillance Court, the Attorney General shall provide to the Court any information  
27 the Court determines necessary to conduct the review required under subparagraph (B).

28 “(D) REMOVAL OF NAMES.—In conducting a review under subparagraph (B), if the  
29 Foreign Intelligence Surveillance Court determines that a person should be removed  
30 from the Terrorism Firearm Screening List because the person no longer satisfies the  
31 requirements described in subsection (b)(3), the Attorney General shall remove such  
32 person from the Terrorism Firearm Screening List.

33 “(d) Authority to Prohibit Firearm Transfers and to Deny or Revoke Licenses and Permits.—  
34 In accordance with subsection (e), the Attorney General may prohibit a person who is listed on  
35 the Terrorism Firearm Screening List in accordance with subsections (b) and (c), or for whom  
36 there is probable cause to believe the person is or has been engaged in conduct constituting, in  
37 preparation for, in aid of, or in support of terrorism, or providing material support or resources  
38 for terrorism, and there is reason to believe the person may use a firearm in connection with  
39 terrorism, from—

40 “(1) participating in the transfer of a firearm under section 922;

41 “(2) receiving or maintaining a firearms license under section 923; and

1 “(3) receiving or maintaining a license or permit for explosive materials under section  
2 843.

3 “(e) Procedure for Prohibiting Firearm Transfer or Denying or Revoking a License or  
4 Permit.—

5 “(1) PROCEDURE WITH REGARD TO PERSONS INCLUDED ON THE TERRORISM FIREARM  
6 SCREENING LIST.—If the Attorney General prohibits the transfer of a firearm or denies or  
7 revokes a license or permit for firearms or explosive materials under subsection (d) for a  
8 person who is listed on the Terrorism Firearm Screening List—

9 “(A) the Attorney General shall—

10 “(i) not later than 7 days after the prohibition, denial, or revocation, file a  
11 petition to sustain the prohibition, denial, or revocation in the district court of the  
12 United States for the district in which—

13 “(I) the firearm transfer was attempted;

14 “(II) the licensee or permit holder is located; or

15 “(III) the applicant for a license or permit is located;

16 “(ii) submit to the district court of the United States in which the petition  
17 described in clause (i) is filed, the evidence the Attorney General relied upon in  
18 determining that the person should be added to Terrorism Firearm Screening List  
19 and any exculpatory evidence that the Attorney General possesses or has access  
20 to;

21 “(B) the person to whom the prohibition, denial, or revocation applies, shall be  
22 entitled to—

23 “(i) a hearing at which the person may be represented by counsel and a final  
24 judgment by the district court of the United States not later than 60 days after the  
25 date on which the attempted transfer of a firearm occurred or the Attorney  
26 General denied or revoked a license or permit for firearms or explosive materials;  
27 and

28 “(ii) in the case of an appeal of the decision of the district court of the United  
29 States, a decision by the reviewing court not later than 90 days after the date on  
30 which the district court of the United States issues the decision; and

31 “(C) the district court of the United States in which the petition described in clause  
32 (i) is filed—

33 “(i) shall allow the Attorney General, for information the United States has  
34 determined would likely compromise national security, to submit summaries and  
35 redacted versions of documents;

36 “(ii) shall review any summaries and redacted versions of documents to ensure  
37 that the person to whom the prohibition, denial, or revocation applies is receiving  
38 fair and accurate representations of the underlying information and documents;

39 “(iii) shall ensure that any summaries and redacted versions of documents  
40 accepted into evidence are fair and accurate representations of the underlying

1 information and documents;

2 “(iv) shall provide copies of any summaries and redacted versions of  
3 documents to the person to whom the prohibition, denial, or revocation applies;  
4 and

5 “(v) shall not consider the full, undisclosed information or documents in  
6 deciding whether to sustain the Attorney General’s decision to include the person  
7 on the Terrorism Firearm Screening List; and

8 “(vi) shall issue an order that the Attorney General’s action prohibiting the  
9 transfer of a firearm or denying or revoking a license or permit for a firearm or  
10 explosive material was not authorized unless the Attorney General  
11 demonstrates—

12 “(I) there is probable cause to believe the person is or has been engaged in  
13 conduct constituting, in preparation for, in aid of, or in support of terrorism,  
14 or providing material support or resources for terrorism; and

15 “(II) there is reason to believe the person may use a firearm in connection  
16 with terrorism.

17 “(D) RELIEF.—If a person who was subject to a prohibition, denial, or revocation  
18 described in this paragraph prevails in a proceeding under this paragraph, including on  
19 appeal, the person shall be entitled to all costs, including reasonable attorney’s fees,  
20 and the Attorney General shall immediately remove the individual from the Terrorism  
21 Forearm Screening List.

22 “(2) PROCEDURE WITH REGARD TO PERSONS NOT ON THE TERRORISM FIREARM SCREENING  
23 LIST.—If the Attorney General prohibits the transfer of a firearm or revocation of a license  
24 or permit for firearms or explosive materials under subsection (d) for a person who is not  
25 listed on the Terrorism Firearm Screening List, the following procedures shall apply:

26 “(A) TEMPORARY EX PARTE ORDER PROHIBITING TRANSFER OR SUSTAINING  
27 REVOCATION.—

28 “(i) IN GENERAL.—The Attorney General—

29 “(I) may deny the firearm transfer or revoke the license or permit for the  
30 period described in section 922(t)(1)(B)(ii);

31 “(II) shall file an emergency petition to temporarily prohibit the attempted  
32 transfer or sustain the revocation of a license or permit for 7 additional days,  
33 with such petition being filed with the Foreign Intelligence Surveillance  
34 Court or a Federal district court (provided that if the Attorney General files  
35 with a Federal district court, the Attorney General can and will comply with  
36 all the requirements of this paragraph, including the requirement to submit to  
37 the court the information and documents, in unredacted form, that support  
38 the Attorney General’s petition);

39 “(III) as part of the petition described in subclause (II), shall submit to the  
40 court the information and documents, in unredacted form, that support the  
41 Attorney General’s petition.

1 “(ii) COURT REQUIREMENTS.—The court shall deny an emergency petition filed  
2 by the Attorney General under clause (i) unless the Attorney General  
3 demonstrates—

4 “(I) there is probable cause to believe the person is or has been engaged in  
5 conduct constituting, in preparation for, in aid of, or in support of terrorism, or  
6 providing material support or resources for terrorism; and

7 “(II) there is reason to believe such person may use a firearm in connection  
8 with terrorism.

9 “(iii) TRANSFER ALLOWED.—If an order is not issued under this paragraph  
10 within the period described in section 922(t)(1)(B)(ii), the firearm transfer may  
11 proceed or the revocation of the license or permit shall be cancelled.

12 “(B) ADVERSARIAL COURT PROCEEDING TO OBTAIN A FINAL ORDER PROHIBITING  
13 TRANSFER OF A FIREARM OR REVOKING A LICENSE OR PERMIT.—

14 “(i) IN GENERAL.—If the Attorney General wishes to extend an order that is  
15 issued under subparagraph (A)(ii)(II)—

16 “(I) the Attorney General shall—

17 “(aa) within 7 days after the order was granted under subparagraph  
18 (A)(ii)(II), file a petition for a final order prohibiting the transfer of a  
19 firearm or sustaining the revocation of a license or permit, with such  
20 petition being filed in the district court of the United States in which the  
21 firearm transfer was attempted or the licensee or permit holder is  
22 located;

23 “(bb) submit to the district court of the United States in which the  
24 petition described in item (aa) is filed, the evidence supporting the  
25 Attorney General’s petition and any exculpatory evidence that the  
26 Attorney General possesses or has access to;

27 “(II) the person whose attempted firearm transfer was blocked shall be  
28 entitled to—

29 “(aa) a hearing at which the person may be represented by counsel  
30 and a final judgment by the district court of the United States not later  
31 than 60 days after the date on which the attempted transfer of a firearm  
32 occurred or Attorney General revoked a license or permit for firearms  
33 or explosive materials; and

34 “(bb) in the case of an appeal of the decision of the district court of  
35 the United States, a decision by the reviewing court not later than 90  
36 days after the date on which the district court of the United States issues  
37 the decision; and

38 “(III) the district court of the United States in which the petition described  
39 in subclause (I) was filed—

40 “(aa) shall allow the Attorney General, for information the United  
41 States has determined would likely compromise national security, to

1 submit summaries and redacted versions of documents

2 “(bb) shall review any summaries and redacted versions of  
3 documents to ensure that the person to whom the prohibition or  
4 revocation applies is receiving fair and accurate representations of the  
5 underlying information and documents;

6 “(cc) shall ensure that any summaries and redacted versions of  
7 documents accepted into evidence are fair and accurate representations  
8 of the underlying information and documents;

9 “(dd) shall provide copies of any summaries and redacted versions of  
10 documents to the person to whom the prohibition or revocation applies;  
11 and

12 “(ee) shall not consider the full, undisclosed information or  
13 documents in deciding whether to sustain the Attorney General’s  
14 prohibition or revocation; and

15 “(ff) shall issue an order rejecting the Attorney General’s petition  
16 unless the Attorney General demonstrates there is probable cause to  
17 believe the person is or has been engaged in conduct constituting, in  
18 preparation for, in aid of, or in support of terrorism, or providing  
19 material support or resources for terrorism, and there is reason to  
20 believe such person may use a firearm in connection with terrorism.

21 “(ii) EFFECT.—The temporary, ex parte order issued under paragraph (A) shall  
22 remain in effect until the proceeding under this paragraph is resolved.

23 “(iii) RELIEF.—If a person who was prohibited from participating in the transfer  
24 of a firearm or had a license or permit for firearms or explosive materials revoked  
25 prevails in a proceeding under clause (i), including on appeal, the person shall be  
26 entitled to all costs, including reasonable attorney’s fees, and the Attorney  
27 General shall immediately remove the individual from the Terrorism Forearm  
28 Screening List.

29 “(iv) ADDITION TO TERRORISM FIREARM SCREENING LIST.—If the Attorney  
30 General prevails in a proceeding under clause (i), including on appeal, the  
31 Attorney General may add the person to the Terrorism Firearm Screening List.”.

32 (c) Transparency.—Not later than 60 days after the date of the enactment of this Act, and  
33 quarterly thereafter, the Attorney General shall submit to the Committee on the Judiciary and the  
34 Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the  
35 Permanent Select Committee on Intelligence of the House of Representatives a report providing  
36 the following information:

37 (1) The number of persons added to the Terrorism Firearm Screening List established  
38 under section 922A of title 18, United States Code, as added by this Act, during the  
39 reporting period.

40 (2) The number of persons whose names the Attorney General submitted to the Foreign  
41 Intelligence Surveillance Court pursuant to section 922A(b)(2) of title 18, United States  
42 Code, as added by this Act, during the reporting period.

1 (3) The number of persons described in paragraph (2) whom the Foreign Intelligence  
2 Surveillance Court determined, pursuant to section 922A(b)(2) of title 18, United States  
3 Code, as added by this Act, that there was not—

4 (A) probable cause to believe the person is or has been engaged in conduct  
5 constituting, in preparation for, in aid of, or in support of terrorism, or providing  
6 material support or resources for terrorism; or

7 (B) reason to believe the person may use a firearm in connection with terrorism.

8 (d) Technical and Conforming Amendments.—

9 (1) TABLE OF SECTIONS.—The table of sections for chapter 44 of title 18, United States  
10 Code, is amended by inserting after the item relating to section 922 the following:

11 “922A. Attorney general’s discretion to prohibit transfer of a firearm and deny or revoke a  
12 license or permit.”.

13 (2) TECHNICAL AMENDMENTS.—Section 922(t) of title 18, United States Code, is  
14 amended—

15 (A) in paragraph (1)(B), by striking clause (ii) and inserting the following:

16 “(ii) 3 business days (meaning a day on which State offices are open) have elapsed since  
17 the licensee contacted the system; and

18 “(iii) the system has not notified the licensee that—

19 “(I) the receipt of a firearm by such other person would violate subsection (g) or (n)  
20 of this section or State law; or

21 “(II) that the transfer has been prohibited pursuant to section 922A of this title;”;

22 (B) in paragraph (2), in the matter preceding subparagraph (A), by inserting “, and  
23 the transfer has not been prohibited pursuant to section 922A of this title” after “or  
24 State law”;

25 (C) in paragraph (3)—

26 (i) in subparagraph (A)(i)—

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

28 (II) by adding at the end the following:

29 “(III) was issued after a check of the system established pursuant to paragraph (1);”;  
30 and

31 (ii) in subparagraph (C)—

32 (I) in clause (ii), by striking “and” at the end;

33 (II) in clause (iii), by striking the period and inserting “; and”; and

34 (III) by adding at the end the following:

35 “(iv) the State issuing the permit agrees to deny the permit application if the  
36 applicant is included on the Terrorism Firearm Screening List established by section  
37 922A of this title or to revoke the permit if a court order is entered pursuant to section

1 922A(e) of this title.”;

2 (D) in paragraph (4), by inserting “, or that the person is prohibited from  
3 participating in a firearm transfer pursuant to section 922A of this title” after “or State  
4 law”; and

5 (E) in paragraph (5), by inserting “, or that the person is prohibited from  
6 participating in a firearm transfer pursuant to section 922A of this title” after “or State  
7 law”.

8 (3) UNLAWFUL SALE OR DISPOSITION OF FIREARM BASED UPON ATTORNEY GENERAL  
9 DISCRETIONARY DENIAL.—Section 922(d) of title 18, United States Code, is amended—

10 (A) in paragraph (8), by striking “or” at the end;

11 (B) in paragraph (9), by striking the period at the end and inserting “; or”; and

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

13 “(10) is prohibited from participating in a firearm transfer pursuant to section 922A of  
14 this title.”.

15 (4) ATTORNEY GENERAL DISCRETIONARY DENIAL AS PROHIBITOR.—Section 922(g) of title  
16 18, United States Code, is amended—

17 (A) in paragraph (8), by striking “or” at the end;

18 (B) in paragraph (9), by striking the comma at the end and inserting “; or”; and

19 (C) by inserting after paragraph (9) the following:

20 “(10) who has received actual notice of an order entered by a court pursuant to section  
21 922A(e) of this title,”.

22 (5) ATTORNEY GENERAL DISCRETIONARY DENIAL OF FEDERAL FIREARMS LICENSES.—  
23 Section 923(d) of title 18, United States Code, is amended in paragraph (1)—

24 (A) in subparagraph (F), by striking “and” at the end of clause (iii);

25 (B) in subparagraph (G), by striking “device).” and inserting “device); and”; and

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

27 “(H) the applicant is not on the Terrorism Firearm Screening List established by section  
28 922A of this title or subject to an order entered by a court pursuant to section 922A(e) of  
29 this title.”.

30 (6) DISCRETIONARY REVOCATION OF FEDERAL FIREARMS LICENSES.—Section 923(e) of  
31 title 18, United States Code, is amended—

32 (A) by inserting “(1)” after “(e)”;

33 (B) by striking “revoke any license” and inserting: “revoke—

34 “(A) any license;”;

35 (C) by striking “. The Attorney General may, after notice and opportunity for  
36 hearing, revoke the license” and inserting the following:

1 “(B) the license; and”;

2 (D) by striking “. The Secretary’s action” and inserting: “; or

3 “(C) any license issued under this section if the Attorney General determines that the  
4 holder of such license (including any responsible person) is on the Terrorism Firearm  
5 Screening List established by section 922A of this title.

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

7 (7) PROVISION OF GROUNDS UNDERLYING INELIGIBILITY DETERMINATION BY THE  
8 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.—Section 103 of the Brady  
9 Handgun Violence Prevention Act (18 U.S.C. 922 note) is amended—

10 (A) in subsection (f), by striking “date of the request” and inserting “date of the  
11 request, provided that if the individual is ineligible by virtue of being included on the  
12 Terrorism Firearm Screening List established under section 922A of title 18, United  
13 States Code or being subject to a court order under section 922A(e) of title 18, United  
14 States Code, the system shall state only that the individual is barred by section 922A of  
15 title 18, United States Code.”; and

16 (B) in subsection (g), in the first sentence, by inserting “or that the individual is  
17 prohibited from engaging in a firearm transfer pursuant to section 922A of title 18,  
18 United States Code,” after “or State law,”.

19 (8) UNLAWFUL DISTRIBUTION OF EXPLOSIVES BASED UPON ATTORNEY GENERAL  
20 DISCRETIONARY DENIAL.—Section 842(d) of title 18, United States Code, is amended—

21 (A) in paragraph (9), by striking the period and inserting “; or”; and

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

23 “(10) who has received actual notice of an order entered by a court pursuant to section  
24 922A(e) of this title.”.

25 (9) ATTORNEY GENERAL DISCRETIONARY DENIAL AS PROHIBITOR.—Section 842(i) of title  
26 18, United States Code, is amended—

27 (A) in paragraph (7), by inserting “; or” at the end; and

28 (B) by inserting after paragraph (7) the following:

29 “(8) who has received actual notice of an order entered by a court pursuant to section  
30 922A(e) of this title,”.

31 (10) ATTORNEY GENERAL DISCRETIONARY DENIAL OF FEDERAL EXPLOSIVES LICENSES AND  
32 PERMITS.—Section 843(b) of title 18, United States Code, is amended—

33 (A) in paragraph (6) by striking “and”;

34 (B) in paragraph (7) by striking “valid.” And inserting “valid; and”

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

36 “(8) the applicant is not disqualified pursuant to section 922A of this title.”.

37 (11) ATTORNEY GENERAL DISCRETIONARY REVOCATION OF FEDERAL EXPLOSIVES LICENSES  
38 AND PERMITS.—Section 843(d) of title 18, United States Code, is amended by inserting after

1 “is included on the Terrorism Firearm Screening List established by section 922A of this  
2 title or subject to an order entered by a district court of the United States pursuant to section  
3 922A(e) of this title,” after “this chapter,”.

4 (12) ATTORNEY GENERAL’S ABILITY TO WITHHOLD INFORMATION IN EXPLOSIVES LICENSE  
5 AND PERMIT DENIAL AND REVOCATION SUITS.—Section 843(e) of title 18, United States  
6 Code, is amended in paragraph (1), by inserting after the first sentence the following:  
7 “However, if the denial or revocation is based upon the person being disqualified pursuant  
8 to section 922A of this title any information which the Attorney General relied on for  
9 adding the person to the Terrorism Firearm Screening List established by section 922A of  
10 this title or obtaining a court order under section 922A(e) of this title, this determination  
11 may be withheld from the petitioner if the Attorney General determines that disclosure of  
12 the information would likely compromise national security.”.

13 (13) ABILITY TO WITHHOLD INFORMATION IN COMMUNICATIONS TO EMPLOYERS.—Section  
14 843(h)(2) of title 18, United States Code, is amended—

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

17 (B) in subparagraph (B)—

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

20 (ii) in clause (ii), by inserting “, except that any information that the Attorney  
21 General relied on for adding the person to the Terrorism Firearm Screening List  
22 established by section 922A of this title or obtaining a court order under section  
23 922A(e) of this title may be withheld if the Attorney General concludes that  
24 disclosure of the information would likely compromise national security” after  
25 “determination”.