

103^D CONGRESS
2^D SESSION

H. R. 3912

To prohibit the receipt of explosives without a Federal permit, and to provide for a waiting period before the purchase of explosives.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1994

Mr. QUINN (for himself, Mr. HOCHBRUECKNER, Mr. BLUTE, Mr. KING, Mr. LEVY, Mr. HOUGHTON, Mr. WALSH, Mr. LAZIO, Mr. CASTLE, and Ms. MOLINARI) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit the receipt of explosives without a Federal permit, and to provide for a waiting period before the purchase 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 “Explosives Control Act
5 of 1994”.

1 **SEC. 2. PROHIBITION AGAINST THE RECEIPT OF EXPLO-**
2 **SIVE MATERIALS WITHOUT A FEDERAL PER-**
3 **MIT.**

4 Section 842 of title 18, United States Code, is
5 amended—

6 (1) by amending subsection (a)(3)(A) to read as
7 follows:

8 “(A) to transport, ship, or cause to be
9 transported in interstate or foreign commerce
10 any explosive materials, or to receive in inter-
11 state or foreign commerce any explosive mate-
12 rials (other than black powder or smokeless
13 powder, in amounts less than 50 pounds); or”;
14 and

15 (2) in subsection (b)—

16 (A) by adding “or” at the end of para-
17 graph (1);

18 (B) by striking “; or” in paragraph (2)
19 and inserting a period;

20 (C) by striking paragraph (3); and

21 (D) by adding at the end the following new
22 sentence:

23 “The preceding sentence shall not apply to the distribution
24 of black powder or smokeless powder in amounts of less
25 than 50 pounds.”.

1 **SEC. 3. FEDERAL EXPLOSIVES LICENSEE REQUIRED TO**
2 **CONDUCT CRIMINAL BACKGROUND CHECK**
3 **BEFORE TRANSFER OF EXPLOSIVE MATE-**
4 **RIALS TO NON-LICENSEE.**

5 (a) IN GENERAL.—Section 842 of title 18, United
6 States Code, is amended by adding at the end the follow-
7 ing:

8 “(l)(1) Beginning on the date that is 90 days after
9 the date of enactment of this subsection and ending on
10 the day before the date that is 60 months after November
11 30, 1993, it shall be unlawful for any licensee to sell, de-
12 liver, or transfer explosive materials to an individual who
13 is not a licensee, unless—

14 “(A) after the most recent proposal of such
15 transfer by the transferee—

16 “(i) the transferor has—

17 “(I) received from the transferee a
18 statement of the transferee containing the
19 information described in paragraph (3);

20 “(II) verified the identity of the trans-
21 feree by examining the identification docu-
22 ment presented;

23 “(III) within 1 day after the trans-
24 feree furnishes the statement, provided no-
25 tice of the contents of the statement to the

1 chief law enforcement officer of the place
2 of residence of the transferee; and

3 “(IV) within 1 day after the trans-
4 feree furnishes the statement, transmitted
5 a copy of the statement to the chief law
6 enforcement officer of the place of resi-
7 dence of the transferee; and

8 “(ii)(I) 5 business days (meaning days on
9 which State offices are open) have elapsed from
10 the date the transferor furnished notice of the
11 contents of the statement to the chief law en-
12 forcement officer, during which period the
13 transferor has not received information from
14 the chief law enforcement officer that receipt or
15 possession of the explosive materials by the
16 transferee would be in violation of Federal,
17 State, or local law; or

18 “(II) the transferor has received notice
19 from the chief law enforcement officer that the
20 officer has no information indicating that re-
21 ceipt or possession of the explosive materials by
22 the transferee would violate Federal, State, or
23 local law;

24 “(B)(i) the transferee has presented to the
25 transferor a permit that—

1 “(I) allows the transferee to possess or ac-
2 quire explosive materials; and

3 “(II) was issued not more than 5 years
4 earlier by the State in which the transfer is to
5 take place; and

6 “(ii) the law of the State provides that such a
7 permit is to be issued only after an authorized gov-
8 ernment official has verified that the information
9 available to such official does not indicate that pos-
10 session of explosive materials by the transferee
11 would be in violation of the law;

12 “(C) the law of the State requires that, before
13 any licensee completes the transfer of explosive ma-
14 terials to an individual who is not a licensee, an au-
15 thorized government official verify that the informa-
16 tion available to such official does not indicate that
17 possession of explosive materials by the transferee
18 would be in violation of law;

19 “(D) the Secretary has approved the transfer
20 under section 5812 of the Internal Revenue Code of
21 1986; or

22 “(E) on application of the transferor, the Sec-
23 retary has certified that compliance with subpara-
24 graph (A)(i)(III) is impracticable because—

1 “(i) the ratio of the number of law enforce-
2 ment officers of the State in which the transfer
3 is to occur to the number of square miles of
4 land area of the State does not exceed 0.0025;

5 “(ii) the business premises of the trans-
6 feror at which the transfer is to occur are ex-
7 tremely remote in relation to the chief law en-
8 forcement officer; and

9 “(iii) there is an absence of telecommuni-
10 cations facilities in the geographical area in
11 which the business premises are located.

12 “(2) A chief law enforcement officer to whom a trans-
13 feror has provided notice pursuant to paragraph
14 (1)(A)(i)(III) shall make a reasonable effort to ascertain
15 within 5 business days whether receipt or possession would
16 be in violation of the law, including research in whatever
17 State and local recordkeeping systems are available and
18 in a national system designated by the Attorney General.

19 “(3) The statement referred to in paragraph
20 (1)(A)(i)(I) shall contain only—

21 “(A) the name, address, and date of birth ap-
22 pearing on a valid identification document (as de-
23 fined in section 1028(d)(1)) of the transferee con-
24 taining a photograph of the transferee and a de-
25 scription of the identification used;

1 “(B) a statement that transferee—

2 “(i) is not under indictment for, and has
3 not been convicted in any court of, a crime pun-
4 ishable by imprisonment for a term exceeding 1
5 year;

6 “(ii) is not a fugitive from justice;

7 “(iii) is not an unlawful user of or addicted
8 to any controlled substance (as defined in sec-
9 tion 102 of the Controlled Substances Act);

10 “(iv) has not been adjudicated as a mental
11 defective or been committed to a mental institu-
12 tion;

13 “(v) is not an alien who is illegally or un-
14 lawfully in the United States;

15 “(vi) has not been discharged from the
16 Armed Forces under dishonorable conditions;
17 and

18 “(vii) is not a person who, having been a
19 citizen of the United States, has renounced
20 such citizenship;

21 “(C) the date the statement is made; and

22 “(D) notice that the transferee intends to ob-
23 tain explosive materials from the transferor.

24 “(4) Any transferor of explosive materials who, after
25 such transfer, receives a report from a chief law enforce-

1 ment officer containing information that receipt or posses-
2 sion of the explosive materials by the transferee violates
3 Federal, State, or local law shall, within 1 business day
4 after receipt of such request, communicate all information
5 related to the transfer that the transferor has about the
6 transfer and the transferee to—

7 “(A) the chief law enforcement officer of the
8 place of business of the transferor; and

9 “(B) the chief law enforcement officer of the
10 place of residence of the transferee.

11 “(5) Any transferor who receives information, not
12 otherwise available to the public, in a report under this
13 subsection shall not disclose such information except to
14 the transferee, to law enforcement authorities, or pursuant
15 to the direction of a court of law.

16 “(6)(A) Any transferor who sells, delivers, or other-
17 wise transfers explosive materials to a transferee shall re-
18 tain the copy of the statement of the transferee with re-
19 spect to the explosive materials transaction, and shall re-
20 tain evidence that the transferor has complied with
21 subclauses (III) and (IV) of paragraph (1)(A)(i) with re-
22 spect to the statement.

23 “(B) Unless the chief law enforcement officer to
24 whom a statement is transmitted under paragraph

1 (1)(A)(i)(IV) determines that a transaction would violate
2 Federal, State, or local law—

3 “(i) the officer shall, within 20 business days
4 after the date the transferee made the statement on
5 the basis of which the notice was provided, destroy
6 the statement, any record containing information de-
7 rived from the statement, and any record created as
8 a result of the notice required by paragraph
9 (1)(A)(i)(III);

10 “(ii) the information contained in the statement
11 shall not be conveyed to any person except a person
12 who has a need to know in order to carry out this
13 subsection; and

14 “(iii) the information contained in the state-
15 ment shall not be used for any purpose other than
16 to carry out this subsection.

17 “(C) If a chief law enforcement officer determines
18 that an individual is ineligible to receive explosive mate-
19 rials and the individual requests the officer to provide the
20 reason for such determination, the officer shall provide
21 such reasons to the individual in writing within 20 busi-
22 ness days after receipt of the request.

23 “(7) A chief law enforcement officer or other person
24 responsible for providing criminal history background in-

1 formation pursuant to this subsection shall not be liable
2 in an action at law for damages—

3 “(A) for failure to prevent the sale or transfer
4 of explosive materials to a person whose receipt or
5 possession of the explosive materials is unlawful
6 under this section; or

7 “(B) for preventing such a sale or transfer to
8 a person who may lawfully receive or possess explo-
9 sive materials.

10 “(8) For purposes of this subsection:

11 “(A) The term ‘chief law enforcement officer’
12 means the chief of police, the sheriff, or an equiva-
13 lent officer or the designee of any such individual.

14 “(B) The term ‘explosive materials’ does not in-
15 clude black powder or smokeless powder in amounts
16 of less than 50 pounds.

17 “(9) The Secretary shall take necessary actions to en-
18 sure that the provisions of this subsection are published
19 and disseminated to licensees and the public.

20 “(m)(1) Beginning on the date that is 30 days after
21 the Attorney General notifies licensees under section
22 103(d) of the Brady Handgun Violence Prevention Act of
23 1994 that the national instant criminal background check
24 system is established, a licensee shall not transfer explo-

1 sive materials to any other person who is not a licensee,
2 unless—

3 “(A) before the completion of the transfer, the
4 licensee contacts the national instant criminal back-
5 ground check system established under section 103
6 of that Act;

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

9 “(ii) 3 business days (meaning a day on which
10 State offices are open) have elapsed since the li-
11 censee contacted the system, and the system has not
12 notified the licensee that the receipt of explosive ma-
13 terials by such other person would violate this sec-
14 tion; and

15 “(C) the transferor has verified the identity of
16 such other person by examining a valid identification
17 document (as defined in section 1028(d)(1) of this
18 title) of such other person containing a photograph
19 of such other person.

20 “(2) If receipt of explosive materials would not violate
21 this section or State law, the system shall—

22 “(A) assign a unique identification number to
23 the transfer;

24 “(B) provide the licensee with the number; and

1 “(C) destroy all records of the system with re-
2 spect to the call (other than the identifying number
3 and the date the number was assigned) and all
4 records of the system relating to the person or the
5 transfer.

6 “(3) Paragraph (1) shall not apply to explosive mate-
7 rials transfer between a licensee and another person if—

8 “(A)(i) such other person has presented to the
9 licensee a permit that—

10 “(I) allows such other person to possess or
11 acquire explosive materials; and

12 “(II) was issued not more than 5 years
13 earlier by the State in which the transfer is to
14 take place; and

15 “(ii) the law of the State provides that such a
16 permit is to be issued only if not prohibited by other
17 law and only after an authorized government official
18 has verified that the information available to such
19 official does not indicate that possession of explosive
20 materials by such other person would be in violation
21 of law;

22 “(B) the Secretary has approved the transfer
23 under section 5812 of the Internal Revenue Code of
24 1986; or

1 “(C) on application of the transferor, the Sec-
2 retary has certified that compliance with paragraph
3 (1)(A) is impracticable because—

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

8 “(ii) 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 (as defined in subsection (l)(8)); and

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

15 “(4) If the national instant criminal background
16 check system notifies the licensee that the information
17 available to the system does not demonstrate that the re-
18 ceipt of explosive materials by such other person would
19 violate this section or State law, and the licensee transfers
20 explosive materials to such other person, the licensee shall
21 include in the record of the transfer the unique identifica-
22 tion number provided by the system with respect to the
23 transfer.

24 “(5) If the licensee knowingly transfers explosive ma-
25 terials to such other person and knowingly fails to comply

1 with paragraph (1) of this subsection with respect to the
2 transfer and, at the time such other person most recently
3 proposed the transfer, the national instant criminal back-
4 ground check system was operating and information was
5 available to the system demonstrating that receipt of ex-
6 plosive materials by such other person would violate this
7 section or State law, the Secretary may, after notice and
8 opportunity for a hearing, suspend for not more than 6
9 months or revoke any license issued to the licensee under
10 section 843, and may impose on the licensee a civil fine
11 of not more than \$5,000.

12 “(6) Neither a local government nor an employee of
13 the Federal Government or of any State or local govern-
14 ment, responsible for providing information to the national
15 instant criminal background check system shall be liable
16 in an action at law for damages—

17 “(A) for failure to prevent the sale or transfer
18 of explosive materials to a person whose receipt or
19 possession of the firearm is unlawful under this sec-
20 tion; or

21 “(B) for preventing such a sale or transfer to
22 a person who may lawfully receive or possess explo-
23 sive materials.

1 “(7) For purposes of this subsection, the term ‘explo-
2 sive materials’ does not include black powder or smokeless
3 powder in amounts of less than 50 pounds.”.

4 (b) PENALTIES.—Section 844 of such title is amend-
5 ed—

6 (1) in subsection (b), by striking “any other
7 provision of section 842 of this chapter” and insert-
8 ing “subsection (j) or (k) of section 842”; and

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

10 “(k) Whoever knowingly violates subsection (l) or (m)
11 of section 842 shall be fined not more than \$10,000, im-
12 prisoned not more than 10 years, or both. Section 3571
13 shall not apply in the imposition of any fine under this
14 subsection.”.

15 **SEC. 4. USE OF NATIONAL INSTANT CRIMINAL BACK-**
16 **GROUND CHECK SYSTEM.**

17 The requirements of section 103 of the Brady Hand-
18 gun Violence Prevention Act (other than subsection (i)
19 thereof) shall apply to explosive materials (other than
20 black powder or smokeless powder in amounts of less than
21 50 pounds) in the same manner in which such section ap-
22 plies to firearms, except that, in the case of such explosive
23 materials—

24 (1) the system shall provide information on
25 whether receipt of such explosive materials by a pro-

1 spective transferee would violate section 842 of title
2 18, United States Code, or State law; and

3 (2) as used in such section, the term “licensee”
4 has the same meaning given such term by section
5 841(m) of title 18, United States Code.

6 **SEC. 5. REMEDY FOR ERRONEOUS DENIAL OF EXPLOSIVE**
7 **MATERIALS.**

8 (a) IN GENERAL.—Chapter 40 of title 18, United
9 States Code, is amended by inserting after section 845 the
10 following new section:

11 **“§845A. Remedy for erroneous denial of explosive**
12 **materials**

13 “Any person denied explosive materials pursuant to
14 subsection (l) or (m) of section 842—

15 “(1) due to the provision of erroneous informa-
16 tion relating to the person by any State or political
17 subdivision thereof, or by the national instant crimi-
18 nal background check system established under sec-
19 tion 3 of the Explosives Control Act of 1994; or

20 “(2) who was not prohibited from receipt of ex-
21 plosive materials pursuant to section 842,

22 may bring an action against the State or political subdivi-
23 sion responsible for providing the erroneous information,
24 or responsible for denying the transfer, or against the
25 United States, as the case may be, for an order directing

1 that the erroneous information be corrected or that the
2 transfer be approved, as the case may be. In any action
3 under this section, the court, in its discretion, may allow
4 the prevailing party a reasonable attorney's fee as part
5 of the costs.".

6 (b) TECHNICAL AMENDMENT.—The chapter analysis
7 for such chapter is amended by inserting after the item
8 relating to section 845 the following new item:

"845A. Remedy for erroneous denial of explosive materials."

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