

109TH CONGRESS
2D SESSION

H. R. 5092

To modernize and reform the Bureau of Alcohol, Tobacco, Firearms, and
Explosives.

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2006

Mr. COBLE (for himself and Mr. SCOTT of Virginia) introduced the following
bill; which was referred to the Committee on the Judiciary

A BILL

To modernize and reform the Bureau of Alcohol, Tobacco,
Firearms, and 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 “Bureau of Alcohol,
5 Tobacco, Firearms, and Explosives (BATFE) Moderniza-
6 tion and Reform Act of 2006”.

1 **SEC. 2. GRADUATED PENALTIES FOR CIVIL VIOLATIONS BY**
2 **FEDERAL FIREARMS LICENSEES.**

3 (a) IN GENERAL.—Section 923 of title 18, United
4 States Code, is amended by striking subsections (e) and
5 (f) and inserting the following:

6 “(e)(1)(A) If the Attorney General determines that
7 a licensee under this section has willfully violated any pro-
8 vision of this chapter or any regulation prescribed under
9 this chapter, or has failed to have secure gun storage or
10 safety devices available at any place in which firearms are
11 sold under the license to persons who are not licensees
12 (except because of theft, casualty loss, consumer sales,
13 backorders from a manufacturer, or any other similar rea-
14 son beyond the control of the licensee), the Attorney Gen-
15 eral may—

16 “(i) if the violation is not of a serious nature—

17 “(I) impose on the licensee a civil money
18 penalty of not more than \$1,000 for each such
19 violation, except that the total amount of pen-
20 alties imposed on a licensee under this sub-
21 clause for violations arising from a single in-
22 spection or examination shall not exceed
23 \$5,000; or

24 “(II) suspend the license for not more than
25 30 days, and specify the circumstances under
26 which the suspension is to be terminated, if, in

1 the period for which the license is in effect,
2 there have been at least 2 prior occasions on
3 which the licensee has been determined to have
4 violated this chapter; or

5 “(ii) if the violation is of a serious nature—

6 “(I) impose on the licensee a civil money
7 penalty of not more than \$2,500 for each such
8 violation, except that the total amount of pen-
9 alties imposed on a licensee under this sub-
10 clause for a violations arising from a single in-
11 spection or examination shall not exceed
12 \$15,000;

13 “(II) suspend the license for not more than
14 90 days, and specify the circumstances under
15 which the suspension is to be terminated;

16 “(III) revoke the license; or

17 “(IV) take the actions described in sub-
18 clauses (I) and (II), or subclauses (I) and (III).

19 “(B)(i) In determining the amount of a civil money
20 penalty to impose under subparagraph (A) on a licensee,
21 the nature and severity of the violation involved, the size
22 of the firearms business operated by the licensee, and the
23 prior record of the licensee shall be considered.

24 “(ii) For purposes of subparagraph (A), violation of
25 a provision of this chapter with respect to 2 or more fire-

1 arms during a single transaction shall be considered a sin-
2 gle violation of the provision.

3 “(C) For purposes of subparagraph (A), a violation
4 of this chapter shall be considered to be of a serious nature
5 if the violation—

6 “(i) results in or could have resulted in the
7 transfer of a firearm or ammunition to a person pro-
8 hibited from possessing or receiving the firearm or
9 ammunition under this chapter;

10 “(ii) obstructs or could have obstructed a bona
11 fide civil or criminal investigation or prosecution; or

12 “(iii) prevents or could have prevented a li-
13 censee from complying with subsection (g)(7).

14 “(D) The Attorney General may not commence an
15 enforcement action under subparagraph (A) with respect
16 to a violation after the 5-year period that begins with—

17 “(i) the date of the violation; or

18 “(ii) if the licensee involved intentionally ob-
19 structed discovery of the violation, the date of dis-
20 covery of the violation.

21 “(2)(A) Not less than 30 days before the effective
22 date of any penalty imposed on a licensee by reason of
23 a determination made under paragraph (1), the Attorney
24 General shall send the licensee a written notice of—

1 “(i) the determination, and the grounds on
2 which the determination was made;

3 “(ii) the nature of the penalty; and

4 “(iii) how, and by when, the licensee may re-
5 quest a hearing to review the determination.

6 “(B) A hearing to review a determination made under
7 paragraph (1) with respect to a licensee shall not be held
8 unless the licensee requests such a hearing within 30 days
9 after receiving the notice of the determination sent pursu-
10 ant to subparagraph (A).

11 “(C) On timely receipt from the licensee of a request
12 for such a review, the Attorney General shall stay the im-
13 position under paragraph (1) of any penalty involved,
14 pending resolution of the review.

15 “(3)(A) Within 90 days after timely receipt from a
16 licensee of a request to review a determination made under
17 paragraph (1) (or at such later time as is agreed to by
18 the Attorney General and the licensee), an administrative
19 law judge shall hold a hearing, at a location convenient
20 to the licensee, to review the determination.

21 “(B) Not less than 30 days before the hearing, the
22 Attorney General shall deliver to the licensee a copy of
23 each document which will be introduced as evidence at the
24 hearing, and copies of all documents on which the deter-
25 mination is based.

1 “(C) Within 90 days after the hearing, the adminis-
2 trative law judge shall issue a written decision setting
3 forth findings of fact and conclusions of law, and a deci-
4 sion as to whether to affirm, modify, or reverse the deter-
5 mination.

6 “(D) On request of the licensee, the Attorney General
7 shall stay the effective date of any penalty, suspension,
8 or revocation until there has been a final, nonreviewable
9 judgment with respect to the determination involved.

10 “(E) The action of an administrative law judge under
11 this subsection shall be considered final agency action for
12 all purposes, and may be reviewed only as provided in sub-
13 section (f).

14 “(4) This subsection shall not be interpreted to affect
15 the authority of the Attorney General under section
16 922(t)(5).

17 “(f)(1) Within 60 days after a party receives a notice
18 issued under subsection (d)(3) of a decision to deny a li-
19 cense, or a notice issued under subsection (e)(3)(C) of a
20 determination to impose a civil money penalty or to sus-
21 pend or revoke a license, the party may file a petition with
22 the United States district court for the district in which
23 the party resides or has a principal place of business for
24 a de novo review of the decision or determination.

1 “(2) In a proceeding conducted under this paragraph,
2 the court shall, on application of a party, consider any evi-
3 dence submitted by the parties to the proceeding whether
4 or not the evidence was considered at the hearing held
5 under subsection (d)(3) or (e)(3).

6 “(3) If the court decides that the decision or deter-
7 mination was not authorized, the court shall order the At-
8 torney General to take such action as may be necessary
9 to comply with the judgment of the court.

10 “(4) If criminal proceedings are instituted against a
11 licensee alleging any violation of this chapter or of a regu-
12 lation prescribed under this chapter, and the licensee is
13 acquitted of the charges, or the proceedings are termi-
14 nated, other than upon motion of the Government before
15 trial on the charges, the Attorney General shall be abso-
16 lutely barred from denying a license under this chapter,
17 suspending or revoking a license granted under this chap-
18 ter, or imposing a civil money penalty under subsection
19 (e), if the action would be based in whole or in part on
20 the facts which form the basis of the criminal charges.

21 “(5) The Attorney General may not institute a pro-
22 ceeding to suspend or revoke a license granted under this
23 chapter, or to impose a civil money penalty under sub-
24 section (e), more than 1 year after the filing of the indict-
25 ment or information.”.

1 (b) CONFORMING AMENDMENT.—Section 923(d) of
2 such title is amended by adding at the end the following:

3 “(3) If the Attorney General denies an application
4 for a license, an administrative law judge of the Depart-
5 ment of Justice shall, on request by the aggrieved party,
6 promptly hold a hearing to review the denial, at a location
7 convenient to the aggrieved party. If, after the hearing,
8 the administrative law judge decides not to reverse the de-
9 nial, the administrative law judge shall give notice of the
10 final denial decision to the aggrieved party.”.

11 **SEC. 3. CONSIDERATION OF FEDERAL FIREARMS LICENSE**
12 **APPLICATIONS.**

13 (a) IN GENERAL.—Section 923(d) of title 18, United
14 States Code, as amended by section 2(b) of this Act, is
15 amended by redesignating paragraphs (2) and (3) as para-
16 graphs (3) and (4) and inserting after paragraph (1) the
17 following:

18 “(2) The Attorney General shall make a preliminary
19 determination as to whether to approve or deny an appli-
20 cation submitted under subsection (a) or (b). If the pre-
21 liminary determination is to deny the application, the At-
22 torney General shall notify the applicant in writing of the
23 preliminary determination and the reasons for the prelimi-
24 nary determination, and shall afford the applicant an op-
25 portunity to supplement the application with additional in-

1 formation and to request a hearing on the application. If
2 the applicant, in a timely manner, requests such a hearing,
3 the Attorney General shall hold the hearing at a location
4 convenient to the applicant, and shall notify the applicant
5 in writing of the time and place of the hearing.”.

6 (b) CONFORMING AMENDMENT.—Section 923(f)(1)
7 of such title, as amended by section 2(a) of this Act, is
8 amended by striking “(d)(3)” each place it appears and
9 inserting “(d)(4)”.

10 **SEC. 4. DEFINITION OF WILLFULLY.**

11 Section 921(a) of title 18, United States Code, is
12 amended by adding at the end the following:

13 “(36) The term ‘willfully’ means intentionally, pur-
14 posely, and with the intent to act in violation of a known
15 legal duty.”.

16 **SEC. 5. ESTABLISHMENT OF FORMAL INVESTIGATIVE**
17 **GUIDELINES.**

18 The Attorney General shall establish guidelines for
19 how the Bureau of Alcohol, Tobacco, Firearms, and Ex-
20 plosives is to conduct investigations of possible violations
21 of chapter 44 of title 18, United States Code.

1 **SEC. 6. REVIEW BY THE INSPECTOR GENERAL OF THE DE-**
2 **PARTMENT OF JUSTICE OF THE GUN SHOW**
3 **ENFORCEMENT PROGRAM; REPORT.**

4 (a) REVIEW.—The Inspector General of the Depart-
5 ment of Justice shall conduct a review of the operations
6 of the Bureau of Alcohol, Tobacco, Firearms, and Explo-
7 sives, for the purpose of assessing the manner in which
8 the Bureau conducts the gun show enforcement program
9 and blanket residency checks of prospective and actual
10 firearms purchasers.

11 (b) REPORT.—Not later than 1 year after the date
12 of the enactment of this Act, the Inspector General of the
13 Department of Justice shall submit to the Committee on
14 the Judiciary of the House of Representatives and the
15 Committee on the Judiciary of the Senate a written report
16 that contains the findings of the review required by sub-
17 section (a), and includes such recommendations as may
18 be appropriate.

19 **SEC. 7. LIMITATIONS ON USE OF FIREARMS PURCHASER**
20 **INFORMATION.**

21 Section 923(g)(1)(D) of title 18, United States Code,
22 is amended in the last sentence by inserting “, except that
23 information about the conduct of a named individual with
24 respect to a firearm or ammunition may not be so made
25 available or so provided unless the agency involved has cer-
26 tified that the agency will not disclose the information to

1 any entity other than a court, Federal, State, or local law
2 enforcement agency, or prosecutor” before the period.

3 **SEC. 8. CLARIFICATION OF RESPONSIBILITIES.**

4 Section 1111(b) of the Homeland Security Act of
5 2002 (6 U.S.C. 531(b)) is amended—

6 (1) by adding “and” at the end of paragraph

7 (1);

8 (2) by striking “; and” at the end of paragraph

9 (2) and inserting a period; and

10 (3) by striking paragraph (3).

11 **SEC. 9. LIQUIDATION OF INVENTORY IN FEDERAL FIRE-**
12 **ARMS LICENSE EXPIRATION, SURRENDER, OR**
13 **REVOCAION CASES.**

14 Section 923 of title 18, United States Code, is
15 amended by adding at the end the following:

16 “(m) A person whose license issued under this chap-
17 ter is expired, surrendered, or revoked shall be afforded
18 60 days from the effective date of the expiration, sur-
19 render, or revocation to liquidate the firearms inventory
20 of the person, which time may be extended upon a showing
21 of reasonable cause.”.

22 **SEC. 10. OPPORTUNITY TO CURE VIOLATIONS AFTER AC-**
23 **QUISITION OF FIREARMS BUSINESS.**

24 Section 923 of title 18, United States Code, is further
25 amended by adding at the end the following:

1 “(n) If the Attorney General is made aware that a
2 person licensed under this chapter has transferred to an-
3 other person an entire firearms business subject to license
4 under this chapter and, before the transfer, the transferor
5 was found to be operating the business in violation of this
6 chapter, the Attorney General—

7 “(1) shall notify the transferee of the violation
8 by the transferor;

9 “(2) shall not presume that the transferee is
10 committing the violation; and

11 “(3) if the Attorney General finds that the
12 transferee is committing the violation—

13 “(A) shall notify the transferee of the vio-
14 lation;

15 “(B) shall afford the transferee a reason-
16 able amount of time after receipt of the notice
17 to cure the violation; and

18 “(C) shall not impose a sanction on the
19 transferee with respect to the violation, unless
20 the transferee has not cured the violation with
21 the reasonable amount of time referred to in
22 subparagraph (B).”.

1 **SEC. 11. STANDARDS FOR CRIMINAL VIOLATIONS OF REC-**
2 **ORDKEEPING REQUIREMENTS.**

3 Section 922(m) of title 18, United States Code, is
4 amended—

5 (1) by striking “any false entry” and inserting
6 “a materially false entry”;

7 (2) by striking “appropriate entry” and insert-
8 ing “a materially significant entry”; and

9 (3) by striking “properly maintain” and insert-
10 ing “retain custody of”.

11 **SEC. 12. EFFECTIVE DATE.**

12 This Act and the amendments made by this Act shall
13 take effect at the end of the 180-day period that begins
14 with the date of the enactment of this Act.

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