

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5092

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2006

Received

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Bureau of Alcohol,  
3 Tobacco, Firearms, and Explosives (BATFE) Moderniza-  
4 tion and Reform Act of 2006”.

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

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

10 “(e)(1)(A) If the Attorney General determines that  
11 a licensee under this section has willfully violated any pro-  
12 vision of this chapter or any regulation prescribed under  
13 this chapter, the Attorney General may—

14 “(i) if the violation is of a minor nature—

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

22 “(II) suspend the license for not more than  
23 30 days, and specify the circumstances under  
24 which the suspension is to be terminated, if, in  
25 the period for which the license is in effect,  
26 there have been at least 2 prior occasions on

1           which the licensee has been determined to have  
2           violated this chapter; or

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

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

11                   “(II) suspend the license for not more than  
12                   90 days, and specify the circumstances under  
13                   which the suspension is to be terminated;

14                   “(III) revoke the license; or

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

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

22           “(II) On request of the licensee, the Attorney General  
23           may consider the ability of the licensee to pay a civil  
24           money penalty, and may allow the licensee to submit docu-  
25           ments and information to establish the ability of the li-

1 censee to pay. The Attorney General shall not make part  
2 of any public record any document or information so sub-  
3 mitted, and shall return to the licensee any such document  
4 or information.

5 “(III) The total amount of penalties imposed on a  
6 licensee under subparagraph (A) with respect to violations  
7 of a minor nature and of a serious nature arising from  
8 a single inspection or examination shall not exceed  
9 \$15,000.

10 “(ii) For purposes of subparagraph (A), violation of  
11 a provision of this chapter with respect to 2 or more fire-  
12 arms during a single transaction shall be considered a sin-  
13 gle violation of the provision.

14 “(iii) The Attorney General may defer, or suspend,  
15 in whole or in part, the imposition of a civil money penalty  
16 on a licensee whose license is suspended under this para-  
17 graph.

18 “(C) For purposes of subparagraph (A):

19 “(i) A violation of this chapter shall be consid-  
20 ered to be of a serious nature if the violation—

21 “(I) results in or could have resulted in the  
22 transfer of a firearm or ammunition to a person  
23 prohibited from possessing or receiving the fire-  
24 arm or ammunition under this chapter or under  
25 State or local law;

1           “(II) obstructs or could have obstructed  
2           a bona fide criminal investigation or prosecu-  
3           tion, or an inspection or examination under this  
4           chapter; or

5           “(III) prevents or could have prevented a  
6           licensee from complying with subsection (a)(7),  
7           (a)(8), (b)(1), (b)(3), (b)(4), (j), (k), (o), or (p)  
8           of section 922, subsection (g)(7) of this section,  
9           or subsection (b) or (h) of section 924.

10          “(ii) A violation of this chapter shall be consid-  
11          ered to be of a minor nature if the violation is not  
12          of a serious nature.

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

16               “(i) the date the violation occurred; or

17               “(ii) if the licensee intentionally obstructed dis-  
18          covery of the violation, the date the violation is dis-  
19          covered.

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

24               “(i) of the determination, and the grounds on  
25          which the determination was made;

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

2           “(iii) that the licensee may, within 30 days  
3           after receipt of the notice, request a hearing to re-  
4           view the determination.

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

10          “(C) On timely receipt from the licensee of a request  
11          for such a review, the Attorney General shall stay the im-  
12          position under paragraph (1) of any penalty involved,  
13          pending resolution of the review, unless, in the case of a  
14          suspension or revocation of a licensee, the Attorney Gen-  
15          eral establishes, at a hearing before an administrative law  
16          judge, by clear and convincing evidence, that the continued  
17          operation by the licensee of the business poses an imme-  
18          diate and grave threat to public safety.

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

1       “(B) Not less than 30 days before the hearing, the  
2 Attorney General shall deliver to the licensee—

3               “(i) a document identifying each person whom  
4 the Attorney General intends to call as a witness  
5 during the hearing;

6               “(ii) a copy of each document which will be in-  
7 troduced as evidence at the hearing; and

8               “(iii) copies of all documents on which the de-  
9 termination is based.

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

15       “(D) On request of the licensee, the Attorney General  
16 shall stay the effective date of any penalty, suspension,  
17 or revocation until there has been a final, nonreviewable  
18 judgment with respect to the determination involved, un-  
19 less, in the case of a suspension or revocation of a licensee,  
20 the Attorney General establishes, at a hearing before an  
21 administrative law judge, by clear and convincing evi-  
22 dence, that the continued operation by the licensee of the  
23 business poses an immediate and grave threat to public  
24 safety.

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

5       “(4) This subsection shall not be interpreted to affect  
6 the authority of the Attorney General under section  
7 922(t)(5).

8       “(f)(1) Within 60 days after a party receives a notice  
9 issued under subsection (d)(3) of a decision to deny a li-  
10 cense, or a notice issued under subsection (e)(3)(C) of a  
11 determination to impose a civil money penalty or to sus-  
12 pend or revoke a license, the party may file a petition with  
13 the United States district court for the district in which  
14 the party resides or has a principal place of business for  
15 a de novo review of the decision or determination.

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

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

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

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

17       (b) CONFORMING AMENDMENT TO PROCEDURE AP-  
18 PPLICABLE TO DENIAL OF APPLICATION FOR LICENSE.—  
19 Section 923(d) of such title is amended by adding at the  
20 end the following:

21       “(3) If the Attorney General denies an application  
22 for a license, an administrative law judge of the Depart-  
23 ment of Justice shall, on request by the aggrieved party,  
24 promptly hold a hearing to review the denial, at a location  
25 convenient to the aggrieved party. If, after the hearing,

1 the administrative law judge decides not to reverse the de-  
2 nial, the administrative law judge shall give notice of the  
3 final denial decision to the aggrieved party.”.

4 **SEC. 3. CONSIDERATION OF FEDERAL FIREARMS LICENSE**  
5 **APPLICATIONS.**

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

11 “(2) The Attorney General shall make a preliminary  
12 determination as to whether to approve or deny an appli-  
13 cation submitted under subsection (a) or (b). If the pre-  
14 liminary determination is to deny the application, the At-  
15 torney General shall notify the applicant in writing of the  
16 preliminary determination and the reasons for the prelimi-  
17 nary determination, and shall afford the applicant an op-  
18 portunity to supplement the application with additional in-  
19 formation and to request a hearing on the application. If  
20 the applicant, in a timely manner, requests such a hearing,  
21 the Attorney General shall hold the hearing at a location  
22 convenient to the applicant, and shall notify the applicant  
23 in writing of the time and place of the hearing.”.

24 (b) CONFORMING AMENDMENT.—Section 923(f) of  
25 such title, as amended by section 2(a) of this Act, is

1 amended by striking “(d)(3)” each place it appears and  
2 inserting “(d)(4)”.

3 **SEC. 4. DEFINITION OF WILLFULLY.**

4 Section 923(e) of title 18, United States Code, as  
5 amended by section 2(a) of this Act, is amended by adding  
6 at the end the following:

7 “(5) For purposes of this subsection, the term ‘will-  
8 fully’ means, with respect to conduct of a person, that the  
9 person knew of a legal duty, and engaged in the conduct  
10 knowingly and in intentional disregard of the duty.”.

11 **SEC. 5. ESTABLISHMENT OF FORMAL INSPECTION, EXAM-  
12 INATION, AND INVESTIGATIVE GUIDELINES.**

13 The Attorney General shall establish guidelines for  
14 how the Bureau of Alcohol, Tobacco, Firearms, and Ex-  
15 plosives is to conduct inspections, examinations, or inves-  
16 tigation of possible violations of chapters 40 and 44 of  
17 title 18, United States Code.

18 **SEC. 6. REVIEW BY THE INSPECTOR GENERAL OF THE DE-  
19 PARTMENT OF JUSTICE OF THE GUN SHOW  
20 ENFORCEMENT PROGRAM; REPORT.**

21 (a) REVIEW.—The Inspector General of the Depart-  
22 ment of Justice shall conduct a review of the operations  
23 of the Bureau of Alcohol, Tobacco, Firearms, and Explo-  
24 sives, for the purpose of assessing the manner in which  
25 the Bureau conducts the gun show enforcement program

1 and blanket residency checks of prospective and actual  
2 firearms purchasers.

3 (b) REPORT.—Not later than 1 year after the date  
4 of the enactment of this Act, the Inspector General of the  
5 Department of Justice shall submit to the Committee on  
6 the Judiciary of the House of Representatives and the  
7 Committee on the Judiciary of the Senate a written report  
8 that contains the findings of the review required by sub-  
9 section (a), and includes such recommendations as may  
10 be appropriate.

11 **SEC. 7. LIMITATIONS ON USE OF FIREARMS PURCHASER**  
12 **INFORMATION.**

13 Section 923(g)(1)(D) of title 18, United States Code,  
14 is amended in the last sentence by inserting “, except that  
15 information identifying a person who has purchased or re-  
16 ceived firearms or ammunition and who is not prohibited  
17 from doing so may not be so made available or so provided  
18 unless the agency involved has certified that the agency  
19 will not disclose the information to any entity other than  
20 a court, federal, State or local law enforcement agency,  
21 or prosecutor” before the period.

1 **SEC. 8. LIQUIDATION OF INVENTORY IN FEDERAL FIRE-**  
2 **ARMS LICENSE EXPIRATION, SURRENDER, OR**  
3 **REVOCAION CASES.**

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

6 “(m)(1) Except as provided in paragraph (2), a per-  
7 son whose license issued under this chapter is expired, sur-  
8 rendered, or revoked shall be afforded 60 days from the  
9 effective date of the expiration, surrender, or revocation  
10 to liquidate the firearms inventory of the person, which  
11 time may be extended upon a showing of reasonable cause.  
12 During such 60-day period (including any extension of the  
13 period), the license involved shall continue to be considered  
14 valid.

15 “(2) Paragraph (1) shall not apply with respect to  
16 a person if a United States District Court for the judicial  
17 district in which the person resides or in which the prin-  
18 cipal place of business of the person subject to the license  
19 is located finds, by clear and convincing evidence, that the  
20 continued operation by the person of the business poses  
21 an immediate and grave threat to public safety.”.

22 **SEC. 9. OPPORTUNITY TO CURE VIOLATIONS AFTER ACQUI-**  
23 **SITION 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 business licensed under this chapter has transferred to a  
3 surviving spouse or child of the licensee, to an executor,  
4 administrator, or other legal representative of a deceased  
5 licensee; or to a receiver or trustee in bankruptcy, or an  
6 assignee for benefit of creditors, and, before the transfer,  
7 or on the first inspection or examination by the Attorney  
8 General of the records of the licensee after the transfer,  
9 the licensee is found to be operating the business in viola-  
10 tion of this chapter, the Attorney General—

11               “(1) shall notify the transferee of the violation  
12       by the transferor; and

13               “(2) shall not presume that the transferee is  
14       committing the violation.”.

15 **SEC. 10. STANDARDS FOR CRIMINAL VIOLATIONS OF REC-**  
16 **ORDKEEPING REQUIREMENTS.**

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

19               (1) by striking “any false entry” and inserting  
20       “a materially false entry”;

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

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

1 **SEC. 11. AUTHORITY TO COLLECT INFORMATION ON EX-**  
2 **PLOSIVES STORED UNDER STATE LAW; REGU-**  
3 **LATIONS GOVERNING STORAGE OF EXPLO-**  
4 **SIVES MADE APPLICABLE TO STORAGE OF**  
5 **EXPLOSIVES BY AGENCIES OPERATING**  
6 **UNDER STATE LAW.**

7 (a) **AUTHORITY TO COLLECT INFORMATION ON EX-**  
8 **PLOSIVES STORED UNDER STATE LAW.—**

9 (1) **IN GENERAL.**—Section 846 of title 18,  
10 United States Code, is amended by adding at the  
11 end the following:

12 “(c) Each agency operating under the law of any  
13 State or political subdivision thereof that stores or keeps  
14 explosive materials shall submit to the Attorney General,  
15 at such time as the Attorney General shall prescribe in  
16 regulations, a written report that specifies each location  
17 at which the agency stores or keeps explosive materials  
18 that have been shipped or transported in interstate or for-  
19 eign commerce, and the types and amounts of such explo-  
20 sive materials that are stored or kept at the location.”.

21 (2) **REGULATIONS.**—Within 6 months after the  
22 date of the enactment of this section, the Attorney  
23 General shall prescribe the regulations referred to in  
24 section 846(c) of title 18, United States Code.

25 (b) **REGULATIONS GOVERNING STORAGE OF EXPLO-**  
26 **SIVES MADE APPLICABLE TO STORAGE OF EXPLOSIVES**

1 BY AGENCIES OPERATING UNDER STATE LAW.—Subpart  
2 K of part 555 of subchapter C of chapter II of title 27,  
3 Code of Federal Regulations, shall apply with respect to  
4 the storage by agencies operating under the law of any  
5 State or political subdivision thereof of explosive materials  
6 that have been shipped or transported in interstate or for-  
7 eign commerce.

8 **SEC. 12. EFFECTIVE DATE.**

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

Passed the House of Representatives September 26,  
2006.

Attest:

KAREN L. HAAS,

*Clerk.*