

Suspend the Rules and Pass the Bill, HR. 5092, with An Amendment
(The amendment strikes all after the enacting clause and inserts a new text)

109TH CONGRESS
2^D 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, the Attorney General may—

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

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

18 “(II) suspend the license for not more than
19 30 days, and specify the circumstances under
20 which the suspension is to be terminated, if, in
21 the period for which the license is in effect,
22 there have been at least 2 prior occasions on
23 which the licensee has been determined to have
24 violated this chapter; or

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

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

8 “(II) suspend the license for not more than
9 90 days, and specify the circumstances under
10 which the suspension is to be terminated;

11 “(III) revoke the license; or

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

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

19 “(II) On request of the licensee, the Attorney General
20 may consider the ability of the licensee to pay a civil
21 money penalty, and may allow the licensee to submit docu-
22 ments and information to establish the ability of the li-
23 censee to pay. The Attorney General shall not make part
24 of any public record any document or information so sub-

1 mitted, and shall return to the licensee any such document
2 or information.

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

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

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

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

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

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

24 “(II) obstructs or could have obstructed
25 a bona fide criminal investigation or prosecu-

1 tion, or an inspection or examination under this
2 chapter; or

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

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

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

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

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

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

22 “(i) of the determination, and the grounds on
23 which the determination was made;

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

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

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

9 “(C) On timely receipt from the licensee of a request
10 for such a review, the Attorney General shall stay the im-
11 position under paragraph (1) of any penalty involved,
12 pending resolution of the review, unless, in the case of a
13 suspension or revocation of a licensee, the Attorney Gen-
14 eral establishes, at a hearing before an administrative law
15 judge, by clear and convincing evidence, that—

16 “(i) the licensee or the principal owner of the
17 business subject to the license has been indicted and
18 charged with a criminal violation of this chapter;
19 and

20 “(ii) the continued operation by the licensee of
21 the business poses an immediate and grave threat to
22 public safety.

23 “(3)(A) Within 90 days after timely receipt from a
24 licensee of a request to review a determination made under
25 paragraph (1) (or at such later time as is agreed to by

1 the Attorney General and the licensee), an administrative
2 law judge shall hold a hearing, at a location convenient
3 to the licensee, to review the determination.

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

6 “(i) a document identifying each person whom
7 the Attorney General intends to call as a witness
8 during the hearing;

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

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

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

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

1 “(i) the licensee or the principal owner of the
2 business subject to the license has been indicted and
3 charged with a criminal violation of this chapter;
4 and

5 “(ii) the continued operation by the licensee of
6 the business poses an immediate and grave threat to
7 public safety.

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

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

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

23 “(2) In a proceeding conducted under this paragraph,
24 the court shall, on application of a party, consider any evi-
25 dence submitted by the parties to the proceeding whether

1 or not the evidence was considered at the hearing held
2 under subsection (d)(3) or (e)(3).

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

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

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

23 (b) CONFORMING AMENDMENT TO PROCEDURE AP-
24 PPLICABLE TO DENIAL OF APPLICATION FOR LICENSE.—

1 Section 923(d) of such title is amended by adding at the
2 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) of
7 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 923(e) of title 18, United States Code, as
12 amended by section 2(a) of this Act, is amended by adding
13 at the end the following:

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

18 **SEC. 5. ESTABLISHMENT OF FORMAL INSPECTION, EXAM-**

19 **INATION, AND INVESTIGATIVE GUIDELINES.**

20 The Attorney General shall establish guidelines for
21 how the Bureau of Alcohol, Tobacco, Firearms, and Ex-
22 plosives is to conduct inspections, examinations, or inves-
23 tigation of possible violations of chapters 40 and 44 of
24 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 identifying a person who has purchased or re-
24 ceived firearms or ammunition and who is not prohibited
25 from doing so may not be so made available or so provided
26 unless the agency involved has certified that the agency

1 will not disclose the information to any entity other than
2 a court, federal, State or local law enforcement agency,
3 or prosecutor” before the period.

4 **SEC. 8. LIQUIDATION OF INVENTORY IN FEDERAL FIRE-**
5 **ARMS LICENSE EXPIRATION, SURRENDER, OR**
6 **REVOCAION CASES.**

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

9 “(m) A person whose license issued under this chap-
10 ter is expired, surrendered, or revoked shall be afforded
11 60 days from the effective date of the expiration, sur-
12 render, or revocation to liquidate the firearms inventory
13 of the person, which time may be extended upon a showing
14 of reasonable cause. During such 60-day period (including
15 any extension of the period), the license involved shall con-
16 tinue to be considered valid.”.

17 **SEC. 9. OPPORTUNITY TO CURE VIOLATIONS AFTER ACQUI-**
18 **SITION OF FIREARMS BUSINESS.**

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

21 “(n) If the Attorney General is made aware that a
22 business licensed under this chapter has transferred to a
23 surviving spouse or child of the licensee, to an executor,
24 administrator, or other legal representative of a deceased
25 licensee; or to a receiver or trustee in bankruptcy, or an

1 assignee for benefit of creditors, and, before the transfer,
2 or on the first inspection or examination by the Attorney
3 General of the records of the licensee after the transfer,
4 the licensee is found to be operating the business in viola-
5 tion of this chapter, the Attorney General—

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

8 “(2) shall not presume that the transferee is
9 committing the violation.”.

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

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

14 (1) by striking “any false entry” and inserting
15 “a materially false entry”;

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

18 (3) by striking “properly maintain” and insert-
19 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.