

Union Calendar No. 401

109TH CONGRESS
2^D SESSION

H. R. 5092

[Report No. 109-672]

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

SEPTEMBER 21, 2006

Additional sponsors: Mr. BOUCHER, Mr. ROGERS of Alabama, Mr. HAYES, Mr. YOUNG of Alaska, Mr. ENGLISH of Pennsylvania, Mr. BURTON of Indiana, Mr. CANNON, Mr. RAHALL, Mr. GERLACH, Mrs. MUSGRAVE, Mr. CONAWAY, Mr. KUHL of New York, Mr. WESTMORELAND, Ms. FOXX, Mr. ISTOOK, Mr. CANTOR, Mr. KLINE, Mr. FEENEY, Mr. SALAZAR, Mr. CARTER, Mr. DELAY, Mr. MARSHALL, Mr. GOODE, Mr. SESSIONS, Ms. HART, Mr. GARRETT of New Jersey, Mr. GINGREY, Mr. DAVIS of Tennessee, Mr. MILLER of Florida, Mr. MATHESON, Mr. SCHWARZ of Michigan, Mr. BARRETT of South Carolina, Mr. BARROW, Mr. JENKINS, Mr. BOREN, Mr. ADERHOLT, Mr. WILSON of South Carolina, Mr. DOOLITTLE, Mr. ALEXANDER, Mrs. DRAKE, Mr. BISHOP of Georgia, Mr. EVERETT, Mr. KELLER, Mr. DAVIS of Kentucky, Mr. POE, Mr. BOYD, Mrs. EMERSON, Mr. BERRY, Mr. PLATTS, Mr. MICHAUD, Mr. HENSARLING, Mrs. BLACKBURN, Mr. KENNEDY of Minnesota, Mr. HOLDEN, Mr. CRAMER, Mr. COLE of Oklahoma, Mr. REYNOLDS, Mr. NORWOOD, Mr. BACHUS, Mr. HALL, Mr. STRICKLAND, Mr. HERGER, Mr. AKIN, Mr. LARSEN of Washington, Mr. BILIRAKIS, Mr. STEARNS, Mr. TERRY, Mr. PEARCE, Mr. LUCAS, Mr. DEAL of Georgia, Mr. EDWARDS, Mr. PETERSON of Pennsylvania, Mr. FORBES, Mr. SWEENEY, Mr. PRICE of Georgia, Mr. DUNCAN, Mr. ROSS, Mr. HIGGINS, Mr. REHBERG, Mr. SIMPSON, Mr. MCCRERY, Mr. MURPHY, Mr. OTTER, Ms. HARRIS, Mr. PUTNAM, Mr. MELANCON, Mr. PICKERING, Mr. BONNER, Mr. BONILLA, Mrs. MILLER of Michigan, Mr. MCCOTTER, Mr. SOUDER, Mr. WAMP, Mr. GREEN of Wisconsin, Mr. SHADEGG, Mr. DENT, Mr. CAMPBELL of Cali-

fornia, Mr. LATHAM, Mr. NUSSLE, Mr. BISHOP of Utah, Mr. ROGERS of Michigan, Mr. NEUGEBAUER, Mr. POMBO, Mr. CULBERSON, Mr. BROWN of South Carolina, Mr. LEWIS of Kentucky, Mr. RENZI, Mr. MACK, Mr. JINDAL, Mr. BAKER, Mr. KING of Iowa, Mr. MURTHA, Mr. WICKER, Mr. WELDON of Pennsylvania, Mr. KINGSTON, Mr. PITTS, Mr. GOODLATTE, Mr. BEAUPREZ, Mr. FRANKS of Arizona, Mr. WHITFIELD, Mr. DINGELL, Mr. MCHENRY, Mr. TANCREDO, Mr. ORTIZ, Mr. GENE GREEN of Texas, Mr. TAYLOR of North Carolina, Mr. SHERWOOD, Mrs. MYRICK, Mr. TANNER, Mr. MOLLOHAN, Mrs. CUBIN, Mrs. JO ANN DAVIS of Virginia, Mr. CARDOZA, Mr. PETERSON of Minnesota, Mr. MARCHANT, Mr. GRAVES, Mr. DEFazio, Mr. ISSA, Mr. BILBRAY, Mr. FORD, Mr. PENCE, Mr. PORTER, Mr. BURGESS, Mr. RYUN of Kansas, Mr. SPRATT, Mr. BASS, Mr. BRADLEY of New Hampshire, Mr. BOOZMAN, Mr. SAM JOHNSON of Texas, Mr. BOUSTANY, and Ms. GRANGER

SEPTEMBER 21, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on April 5, 2006]

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, To-*
5 *bacco, Firearms, and Explosives (BATFE) Modernization*
6 *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 (f)
5 and inserting the following:

6 “(e)(1)(A) *If the Attorney General determines that a*
7 *licensee under this section has willfully violated any provi-*
8 *sion of this chapter or any regulation prescribed under this*
9 *chapter, the Attorney General may—*

10 “(i) *if the violation is of a minor nature, or if*
11 *the violation is that the licensee has failed to have se-*
12 *cure gun storage or safety devices available at any*
13 *place in which firearms are sold under the license to*
14 *persons who are not licensees (except because of theft,*
15 *casualty loss, consumer sales, back orders from a*
16 *manufacturer, or any other similar reason beyond the*
17 *control of the licensee)—*

18 “(I) *impose on the licensee a civil money*
19 *penalty of not more than \$1,000 for each such*
20 *violation, except that the total amount of pen-*
21 *alties imposed on a licensee under this subclause*
22 *for violations arising from a single inspection or*
23 *examination shall not exceed \$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, there*
2 *have been at least 2 prior occasions on which the*
3 *licensee has been determined to have violated this*
4 *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 subclause*
10 *for a violations arising from a single inspection*
11 *or examination shall not exceed \$15,000;*

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

15 *“(III) revoke the license; or*

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

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

23 *“(II) On request of the licensee, the Attorney General*
24 *may consider the ability of the licensee to pay a civil money*
25 *penalty, and may allow the licensee to submit documents*

1 *and information to establish the ability of the licensee to*
2 *pay. The Attorney General shall not make part of any pub-*
3 *lic record any document or information so submitted, and*
4 *shall return to the licensee any such document or informa-*
5 *tion.*

6 “(III) *The total amount of penalties imposed on a li-*
7 *icensee under subparagraph (A) with respect to violations*
8 *of a minor nature and of a serious nature arising from*
9 *a single inspection or examination shall not exceed \$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, in*
15 *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 a
2 *bona fide criminal investigation or prosecution,*
3 *or an inspection or examination under this*
4 *chapter; or*

5 “(III) prevents or could have prevented a li-
6 *censee 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, or*
9 *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 en-
14 *forcement action under subparagraph (A) with respect to*
15 *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 date
21 *of any penalty imposed on a licensee by reason of a deter-*
22 *mination made under paragraph (1), the Attorney General*
23 *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 after
3 receipt of the notice, request a hearing to review the
4 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 pursuant
9 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 impo-
12 sition under paragraph (1) of any penalty involved, pend-
13 ing resolution of the review, unless, in the case of a suspen-
14 sion or revocation of a licensee, the Attorney General estab-
15 lishes, at a hearing before an administrative law judge, by
16 clear and convincing evidence, that—

17 “(i) the licensee or the principal owner of the
18 business subject to the license has been indicted and
19 charged with a criminal violation of this chapter; 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 li-
24 censee of a request to review a determination made under
25 paragraph (1) (or at such later time as is agreed to by the

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

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

6 “(i) *a document identifying each person whom*
7 *the Attorney General intends to call as a witness dur-*
8 *ing 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 deter-*
12 *mination is based.*

13 “(C) *Within 90 days after the hearing, the administra-*
14 *tive law judge shall issue a written decision setting forth*
15 *findings of fact and conclusions of law, and a decision as*
16 *to whether to affirm, modify, or reverse the determination.*

17 “(D) *On request of the licensee, the Attorney General*
18 *shall stay the effective date of any penalty, suspension, or*
19 *revocation until there has been a final, nonreviewable judg-*
20 *ment with respect to the determination involved, unless, in*
21 *the case of a suspension or revocation of a licensee, the At-*
22 *torney General establishes, at a hearing before an adminis-*
23 *trative law judge, by clear and convincing evidence, 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; and

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

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

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

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

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

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

3 “(3) *If the court decides that the decision or determina-*
4 *tion was not authorized, the court shall order the Attorney*
5 *General to take such action as may be necessary to comply*
6 *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 regula-*
9 *tion prescribed under this chapter, and the licensee is ac-*
10 *quitted of the charges, or the proceedings are terminated,*
11 *other than upon motion of the Government before trial on*
12 *the charges, the Attorney General shall be absolutely barred*
13 *from denying a license under this chapter, suspending or*
14 *revoking a license granted under this chapter, or imposing*
15 *a civil money penalty under subsection (e), if the action*
16 *would be based in whole or in part on the facts which form*
17 *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 AMENDMENTS.—*

1 (1) *PROCEDURE APPLICABLE TO DENIAL OF AP-*
2 *PLICATION FOR LICENSE.*—Section 923(d) of such title
3 *is amended by adding at the end the following:*

4 “*(3) If the Attorney General denies an application for*
5 *a license, an administrative law judge of the Department*
6 *of Justice shall, on request by the aggrieved party, promptly*
7 *hold a hearing to review the denial, at a location convenient*
8 *to the aggrieved party. If, after the hearing, the administra-*
9 *tive law judge decides not to reverse the denial, the adminis-*
10 *trative law judge shall give notice of the final denial deci-*
11 *sion to the aggrieved party.*”

12 (2) *ELIMINATION OF REDUNDANT PENALTY.*—
13 *Section 924 of such title is amended by striking sub-*
14 *section (p).*

15 **SEC. 3. CONSIDERATION OF FEDERAL FIREARMS LICENSE**
16 **APPLICATIONS.**

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

22 “*(2) The Attorney General shall make a preliminary*
23 *determination as to whether to approve or deny an applica-*
24 *tion submitted under subsection (a) or (b). If the prelimi-*
25 *nary determination is to deny the application, the Attorney*

1 *General shall notify the applicant in writing of the prelimi-*
2 *nary determination and the reasons for the preliminary de-*
3 *termination, and shall afford the applicant an opportunity*
4 *to supplement the application with additional information*
5 *and to request a hearing on the application. If the appli-*
6 *cant, in a timely manner, requests such a hearing, the At-*
7 *torney General shall hold the hearing at a location conven-*
8 *ient to the applicant, and shall notify the applicant in*
9 *writing of the time and place of the hearing.”.*

10 *(b) CONFORMING AMENDMENT.—Section 923(f) of such*
11 *title, as amended by section 2(a) of this Act, is amended*
12 *by striking “(d)(3)” each place it appears and inserting*
13 *“(d)(4)”.*

14 **SEC. 4. DEFINITION OF WILLFULLY.**

15 *Section 923(e) of title 18, United States Code, as*
16 *amended by section 2(a) of this Act, is amended by adding*
17 *at the end the following:*

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

22 **SEC. 5. ESTABLISHMENT OF FORMAL INSPECTION, EXAM-**
23 **INATION, AND INVESTIGATIVE GUIDELINES.**

24 *The Attorney General shall establish guidelines for how*
25 *the Bureau of Alcohol, Tobacco, Firearms, and Explosives*

1 *is to conduct inspections, examinations, or investigations*
2 *of possible violations of chapters 40 and 44 of title 18,*
3 *United States Code.*

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

7 (a) *REVIEW.*—*The Inspector General of the Depart-*
8 *ment of Justice shall conduct a review of the operations of*
9 *the Bureau of Alcohol, Tobacco, Firearms, and Explosives,*
10 *for the purpose of assessing the manner in which the Bureau*
11 *conducts the gun show enforcement program and blanket*
12 *residency checks of prospective and actual firearms pur-*
13 *chasers.*

14 (b) *REPORT.*—*Not later than 1 year after the date of*
15 *the enactment of this Act, the Inspector General of the De-*
16 *partment of Justice shall submit to the Committee on the*
17 *Judiciary of the House of Representatives and the Com-*
18 *mittee on the Judiciary of the Senate a written report that*
19 *contains the findings of the review required by subsection*
20 *(a), and includes such recommendations as may be appro-*
21 *priate.*

22 **SEC. 7. LIMITATIONS ON USE OF FIREARMS PURCHASER IN-**
23 **FORMATION.**

24 *Section 923(g)(1)(D) of title 18, United States Code,*
25 *is amended in the last sentence by inserting “, except that*

1 *information identifying a person who has purchased or re-*
 2 *ceived firearms or ammunition and who is not prohibited*
 3 *from doing so may not be so made available or so provided*
 4 *unless the agency involved has certified that the agency will*
 5 *not disclose the information to any entity other than a*
 6 *court, federal, State or local law enforcement agency, or*
 7 *prosecutor” before the period.*

8 **SEC. 8. LIQUIDATION OF INVENTORY IN FEDERAL FIRE-**
 9 **ARMS LICENSE EXPIRATION, SURRENDER, OR**
 10 **REVOCAATION CASES.**

11 *Section 923 of title 18, United States Code, is amended*
 12 *by adding at the end the following:*

13 *“(m) A person whose license issued under this chapter*
 14 *is expired, surrendered, or revoked shall be afforded 60 days*
 15 *from the effective date of the expiration, surrender, or rev-*
 16 *ocation to liquidate the firearms inventory of the person,*
 17 *which time may be extended upon a showing of reasonable*
 18 *cause. During such 60-day period (including any extension*
 19 *of the period), the license involved shall continue to be con-*
 20 *sidered valid.”.*

21 **SEC. 9. OPPORTUNITY TO CURE VIOLATIONS AFTER ACQUI-**
 22 **SITION OF FIREARMS BUSINESS.**

23 *Section 923 of title 18, United States Code, is further*
 24 *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, ad-*
 4 *ministrators, or other legal representative of a deceased li-*
 5 *cencee; or to a receiver or trustee in bankruptcy, or an as-*
 6 *signee for benefit of creditors, and, before the transfer, or*
 7 *on the first inspection or examination by the Attorney Gen-*
 8 *eral of the records of the licensee after the transfer, the li-*
 9 *cencee is found to be operating the business in violation of*
 10 *this chapter, the Attorney General—*

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

13 “(2) *shall not presume that the transferee is com-*
 14 *mitting 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. EFFECTIVE DATE.**

2 *This Act and the amendments made by this Act shall*
3 *take effect at the end of the 180-day period that begins with*
4 *the date of the enactment of this Act.*

Union Calendar No. 401

109TH CONGRESS
2^D SESSION

H. R. 5092

[Report No. 109-672]

A BILL

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

SEPTEMBER 21, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed