

111TH CONGRESS
1ST SESSION

S. 2878

To prevent gun trafficking in the United States.

IN THE SENATE OF THE UNITED STATES

DECEMBER 11, 2009

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prevent gun trafficking in the United States.

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 “Gun Trafficking Pre-
5 vention Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds and declares that—

8 (1) in the United States, the black market is
9 the source for guns used in more than 90 percent
10 of gun crimes;

1 (2) nearly 90 percent of the guns used in gun
2 crimes in New York City, New York come from
3 other States;

4 (3) according to the Federal Bureau of Inves-
5 tigation, in 2008, in the United States, $\frac{2}{3}$ of all
6 murders committed resulted from the use of a fire-
7 arm, and 2,364 people under the age of 22 were
8 murdered with a firearm;

9 (4) the Bureau of Alcohol, Tobacco, Firearms
10 and Explosives (in this section referred to as the
11 “ATF”) crime gun trace reports show that only
12 about 1 percent of licensed firearms arms dealers
13 supply nearly 60 percent of crime gun traces;

14 (5) ATF has found that Straw Purchasers are
15 the largest source of guns trafficked into the illegal
16 market;

17 (6) then Acting ATF Director Michael J. Sulli-
18 van’s April 19, 2007, testimony to the Senate Ap-
19 propriations Subcommittee on Commerce, Justice,
20 Science, and Related Agencies, named as “signifi-
21 cant regional, national and international trafficking
22 corridors”—

23 (A) the Southwest Border;

24 (B) the I-95 corridor between Miami and
25 Boston;

1 (C) Northern rural Mississippi to Chicago;

2 (D) Northern Indiana to Chicago;

3 (E) the triangle between Los Angeles, Las

4 Vegas and Phoenix; and

5 (F) Birmingham to Chicago;

6 (7) there are approximately 2500 agents, and

7 600 Industry Operator Investigators (in this section

8 referred to as the “IOI”) for the 115,000 Federal

9 Firearm Licensees in the United States;

10 (8) the average cycle of inspection is 7 to 10

11 years; and

12 (9) ATF needs more resources to prevent guns

13 from falling into the hands of those persons not le-

14 gally allowed to possess them.

15 **SEC. 3. TRAFFICKING IN FIREARMS.**

16 (a) IN GENERAL.—Chapter 44 of title 18, United

17 States Code, is amended by inserting at the end the fol-

18 lowing:

19 **“§ 932. Trafficking in firearms**

20 “(a) IN GENERAL.—

21 “(1) OFFENSE.—It shall be unlawful for any

22 person knowingly, regardless of whether anything of

23 value is exchanged—

24 “(A) to ship, transport, transfer, or other-

25 wise dispose to a person, 2 or more firearms in

1 or affecting interstate or foreign commerce, if
2 the transferor knows or has reasonable cause to
3 believe that such disposition would be in viola-
4 tion of, or would result in a violation of any
5 Federal, State, or local law punishable by a
6 term of imprisonment exceeding 1 year;

7 “(B) to receive from a person, 2 or more
8 firearms in or affecting interstate or foreign
9 commerce, if the recipient knows or has reason-
10 able cause to believe that such receipt would be
11 in violation of, or would result in a violation of
12 any Federal, State, or local law punishable by
13 a term of imprisonment exceeding 1 year;

14 “(C) except a licensed importer, licensed
15 manufacturer, or licensed dealer, to make mate-
16 rially false statements to a licensed importer, li-
17 censed manufacturer, or licensed dealer, relat-
18 ing to the purchase, receipt, or acquisition from
19 a licensed importer, licensed manufacturer, or
20 licensed dealer of 2 or more firearms that have
21 moved in or affected interstate or foreign com-
22 merce, for the person, or for or on behalf of any
23 other person; or

24 “(D) to direct, promote, or facilitate con-
25 duct specified in subparagraph (A), (B), or (C).

1 “(2) PENALTY.—Any person who violates this
2 section shall be fined under this title, imprisoned not
3 more than 20 years, or both.

4 “(3) APPLICATION.—

5 “(A) AFFIRMATIVE DEFENSE.—It is an af-
6 firmative defense to any prosecution for a viola-
7 tion of subparagraph (A) or (B) of paragraph
8 (1) of this subsection or a violation of para-
9 graph (1)(D) of this subsection that relates to
10 conduct specified in subparagraph (A) or (B) of
11 paragraph (1) that the firearm at issue was
12 transferred only after a background check on
13 the actual buyer pursuant to section 922(t) in-
14 dicated that the actual buyer’s receipt of the
15 firearm would not violate section 922 (g) or (n)
16 or State law.

17 “(B) DEFINITIONS.—In this subsection—

18 “(i) the term ‘term of imprisonment
19 exceeding 1 year’ does not include any of-
20 fense classified by such jurisdiction as a
21 misdemeanor and punishable by a term of
22 imprisonment of 2 years or less; and

23 “(ii) the term ‘actual buyer’ means
24 the individual for whom the firearm is

1 being purchased, as described in paragraph
2 (1)(C).

3 “(C) PURCHASE.—Paragraph (1) shall not
4 apply to a firearm that is—

5 “(i) lawfully acquired by a person to
6 be given to another person not prohibited
7 from possessing a firearm under Federal,
8 State, or local law as a gift; or

9 “(ii) lawfully received or otherwise ac-
10 quired by a court-appointed trustee, re-
11 ceiver, or conservator for, or on behalf of,
12 an estate or creditor or by a person to
13 carry out a bequest, or an acquisition by
14 intestate succession under the laws of the
15 State of residence of the person.

16 “(b) SENTENCING GUIDELINES ENHANCEMENTS.—
17 Pursuant to its authority under section 994(p) of title 28,
18 United States Code, the United States Sentencing Com-
19 mission shall amend the Federal Sentencing Guidelines to
20 provide for an appropriate increase in the offense level for
21 each of the following violations of this section, if the of-
22 fense involves the shipping, transporting, transferring, dis-
23 posing of, or receiving—

24 “(1) more than 4, but fewer than 15 firearms;

25 “(2) more than 14, but fewer than 25 firearms;

1 “(3) more than 24 but fewer than 100 fire-
2 arms; and

3 “(4) 100 or more firearms.

4 “(c) ORGANIZER.—If a violation of subsection (a) is
5 committed by a person in concert with 5 or more other
6 persons with respect to whom such person occupies a posi-
7 tion of organizer, a supervisory position, or any other posi-
8 tion of management, that person may be sentenced to an
9 additional term of imprisonment of not more than 5 con-
10 secutive years.

11 “(d) CONSPIRACY.—Any person who attempts or con-
12 spires to commit any offense defined in this section may
13 be subject to the same penalties, including those under
14 subsections (b) and (c), as those prescribed for the com-
15 pleted offense.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENT.—
17 The table of sections of chapter 44 of title 18, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

 “932. Trafficking in firearms.”.

20 **SEC. 4. CRACKING DOWN ON CORRUPT GUN DEALERS.**

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

24 “(e)(1) If the holder of a license issued under this
25 section knowingly violates any provision of this chapter,

1 chapter 53 of the Internal Revenue Code of 1986, the
2 Arms Export Control Act (22 U.S.C. 2751 et seq.), or sec-
3 tion 1001 of this title, or any rule or regulation as pre-
4 scribed by the Attorney General, the Attorney General
5 may—

6 “(A) assess on the licensee a civil penalty of not
7 more than \$2,500; and

8 “(B) suspend for not more than 6 months, or
9 revoke, any license issued under this section.

10 “(2)(A) Except as provided in subparagraph (B), the
11 Attorney General may, after notice and opportunity for
12 hearing, assess a civil penalty on, or suspend or revoke
13 any license issued to, a licensee under this section, if the
14 licensee fails to have secure gun storage or safety devices
15 available at any place in which firearms are sold under
16 the license to persons who are not licensees.

17 “(B) Subparagraph (A) shall not apply in any case
18 in which a secure gun storage or safety device is tempo-
19 rarily unavailable because of theft, casualty loss, consumer
20 sales, backorders from a manufacturer, or any other simi-
21 lar reason beyond the control of the licensee, the dealer
22 shall not be considered to be in violation of the require-
23 ment to make available such a device.

24 “(3) The Attorney General may, after notice and op-
25 portunity for hearing, assess a civil penalty, suspend or

1 revoke the license of a dealer who knowingly transfers
2 armor piercing ammunition.

3 “(4) The Attorney General may suspend or revoke
4 any license issued under this section if the holder of the
5 license has been indicted for knowingly violating any provi-
6 sion of this chapter, chapter 53 of the Internal Revenue
7 Code of 1986, the Arms Export Control Act (22 U.S.C.
8 2751 et seq.), or section 1001 of this title in a manner
9 that could create a threat to public safety.

10 “(f)(1) Any person whose application for a license is
11 denied and any holder of a license which is suspended or
12 revoked or who is assessed a civil penalty shall receive
13 written notice from the Attorney General stating specifi-
14 cally the grounds upon which the application was denied
15 or upon which the license was suspended or revoked or
16 the civil penalty assessed. Any notice of a fine, suspension,
17 or revocation of a license shall be given to the holder of
18 the license not less than 14 days before the effective date
19 of the suspension, revocation, or imposition of a civil pen-
20 alty, unless the Attorney General determines that good
21 cause exists to waive such notification requirement, in
22 which case notification shall be given as soon as prac-
23 ticable.

24 “(2) If the Attorney General denies an application
25 for a license, or suspends or revokes a license, or assesses

1 a civil penalty, the Attorney General shall, upon request
2 by the aggrieved party, promptly hold a hearing to review
3 the denial, suspension, revocation, or assessment. A hear-
4 ing under this paragraph shall be held at a location con-
5 venient to the aggrieved party and shall be conducted pur-
6 suant to chapter 5 of title 5.

7 “(3) If, after a hearing held under paragraph (2), the
8 Attorney General decides not to reverse the decision to
9 deny an application or suspend or revoke a license or as-
10 sess a civil penalty, the Attorney General shall give notice
11 in writing of the decision to the aggrieved party. The ag-
12 grieved party may at any time within 60 days after the
13 date of notice is given under this paragraph file a petition
14 with the United States district court for the district in
15 which the party resides or in which the party’s principal
16 place of business is located for judicial review of the de-
17 nial, suspension, revocation, or assessment. Such judicial
18 review shall be conducted pursuant to chapter 7 of title
19 5. If the court decides that the Attorney General was not
20 authorized to deny the application or to suspend or revoke
21 the license or to assess the civil penalty, the court shall
22 order the Attorney General to take such action as may
23 be necessary to comply with the judgment of the court.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) SECTION 925 OF TITLE 18.—Section 925 of
2 title 18, United States Code, is amended—

3 (A) by striking subsection (b);

4 (B) by redesignating subsections (c), (d),
5 (e), and (f) as subsections (b), (c), (d), and (e),
6 respectively; and

7 (C) in subsection (e), as redesignated, by
8 striking “under subsection (d)” and inserting
9 “under subsection (c)”.

10 (2) SECTION 922 OF TITLE 18.—Section 922(d)
11 of title 18, United States Code, is amended in the
12 matter following paragraph (9)—

13 (A) by striking “subsection (b) of section
14 925” and inserting “section 923(e)(4)”; and

15 (B) by striking “subsection (c)” and in-
16 serting “subsection (b)”.

17 (3) ARMS EXPORT AND CONTROL ACT.—Section
18 38(b)(1)(B)(i) of the Arms Export and Control Act
19 (22 U.S.C. 2778(b)(1)(B)(i)) is amended by striking
20 “section 925(e)” and inserting “section 925(d)”.

21 (4) ATOMIC ENERGY ACT OF 1954.—Section
22 161A of the Atomic Energy Act of 1954 (42 U.S.C.
23 2201a) is amended by striking “section 925(d)(3)”
24 and inserting “section 925(c)(3)”.

1 **SEC. 5. CHANGE THE STANDARD FOR GUN SELLER FED-**
2 **ERAL FIREARMS LICENSE APPROVAL.**

3 Section 923(d)(1) of title 18, United States Code, is
4 amended—

5 (1) in subparagraph (C), by striking “willfully”
6 and inserting “knowingly”; and

7 (2) in subparagraph (D), by striking “willfully”
8 and inserting “knowingly”.

9 **SEC. 6. STRENGTHEN PENALTIES FOR RECORDKEEPING**
10 **VIOLATIONS.**

11 Section 924(a)(3) of title 18, United States Code, is
12 amended by striking “one year” and inserting “3 years”.

13 **SEC. 7. CRACKING DOWN ON HIGH-RISK GUN DEALERS.**

14 Section 923 of title 18, United States Code is amend-
15 ed by adding the following:

16 “(m)(1) At least once every year, the Attorney Gen-
17 eral shall identify licensed firearms dealers who have a
18 heightened risk of firearms being diverted to criminal use
19 based on criteria determined by the Attorney General
20 which may include 2 or more of the following:

21 “(A) Short time-to-crime for crime guns traced
22 to a dealer.

23 “(B) Incomplete crime gun trace results for
24 firearms sold by a dealer.

25 “(C) Significant or frequently reported firearm
26 losses or thefts by a dealer.

1 “(D) Violations of Federal firearms laws by a
2 dealer.

3 “(E) Any additional criteria determined by the
4 Attorney General.

5 “(2)(A) The Attorney General may impose special
6 conditions on dealers determined to be subject to a height-
7 ened risk of diversion under paragraph (1) after written
8 notice 14 days in advance, including—

9 “(i) inspection or examination of inventory and
10 records, notwithstanding subsection (g)(1)(B);

11 “(ii) requirements that the dealer secure fire-
12 arms at its business premises in a manner to be de-
13 termined by the Attorney General;

14 “(iii) mandatory inventory check and reconcili-
15 ation of firearms at the business premises by the
16 dealer in a manner to be determined by the Attorney
17 General and notwithstanding any other provision of
18 Federal law;

19 “(iv) notwithstanding section 922(t)(1)(B)(ii), a
20 requirement that the dealer not complete firearm
21 sales or transfers until the national instant criminal
22 background check system has informed the dealer
23 that the sale or transfer may proceed; and

24 “(v) require that the dealer and employees un-
25 dergo special training in how to avoid illegal sales.

1 “(B) Conditions may be imposed on a dealer identi-
2 fied as a high-risk dealer under this paragraph for no
3 longer than 1 year, unless the Attorney General deter-
4 mines that the dealer continues to have a heightened risk
5 of firearms being diverted to criminal use. The Attorney
6 General shall notify the dealer in writing of any such con-
7 ditions imposed on such dealer.

8 “(3) After the Attorney General has identified a deal-
9 er as a high-risk dealer and has imposed conditions on
10 that dealer, a knowing violation by the dealer of any condi-
11 tion imposed under this subsection shall be considered a
12 willful violation of this chapter, for the purposes of section
13 924(a)(1)(D).

14 “(4)(A) Any dealer identified as a high-risk dealer
15 under paragraph (1) may challenge the designation by re-
16 questing a hearing in writing to review within 60 days
17 after notice of such designation.

18 “(B) If after a hearing held under subparagraph (A)
19 the Attorney General decides not to reverse the designa-
20 tion of the dealer as a high-risk dealer, the Attorney Gen-
21 eral shall give notice of the decision to the dealer. The
22 dealer may at any time within 60 days after the date no-
23 tice is given under this subparagraph file a petition with
24 the United States district court for the district in which
25 the party resides or in which the party’s principal place

1 of business is located for judicial review of the Attorney
 2 General's designation. Such judicial review shall be con-
 3 ducted pursuant to chapter 7 of title 5.

4 “(5) Nothing in this subsection shall be construed to
 5 limit the authority of the Attorney General under section
 6 926.”.

7 **SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON**
 8 **LOST AND STOLEN FIREARMS.**

9 (a) DEFINITION.—For the purposes of this section
 10 the term “firearm”—

11 (1) means any weapon which will or is designed
 12 to or may readily be converted to expel a projectile
 13 by the action of an explosive and the frame or re-
 14 ceiver of any such weapon; and

15 (2) does not include an antique firearm, as de-
 16 fined in section 921 of title 18, United States Code.

17 (b) STUDY.—The Comptroller General of the United
 18 States shall conduct a study on firearms in the United
 19 States that are lost or stolen during commercial shipping,
 20 including—

21 (1) determining the number of firearms that
 22 are lost or stolen during commercial shipping on av-
 23 erage per year;

24 (2) identifying how firearms are being lost or
 25 stolen during commercial shipping;

1 (3) what efforts, if any, to reduce the number
2 of firearms that are lost or stolen during commercial
3 shipping are being made by—

4 (A) Federal law enforcement agencies;

5 (B) firearm manufacturers;

6 (C) firearm dealers; and

7 (D) shipping companies that transport
8 firearms; and

9 (4) the role that firearms lost or stolen during
10 commercial shipping play in interstate and inter-
11 national gun trafficking.

12 (c) REPORT.—Not later than 1 year after the date
13 of enactment of this Act, the Comptroller General of the
14 United States shall submit to Congress a report that con-
15 tains—

16 (1) the results of the study required under sub-
17 section (a); and

18 (2) recommendations for how to reduce the
19 number of firearms that are lost or stolen during
20 commercial shipping.

21 **SEC. 9. AUTHORITY TO HIRE PERSONNEL TO ADDRESS**
22 **TRAFFICKING IN FIREARMS.**

23 (a) IN GENERAL.—The Director of the Bureau of Al-
24 cohool, Tobacco, Firearms and Explosives may hire addi-
25 tional personnel sufficient for a firearms trafficking team

1 of additional agents, Industry Operations Investigators,
2 and analysts that would enable the average inspections
3 rate of gun dealers to operate on a 3-year inspection cycle.

4 (b) AUTHORITY TO HIRE PERSONNEL TO ADDRESS
5 TRAFFICKING IN FIREARMS.—

6 (1) IN GENERAL.—The Director of the Bureau
7 of Alcohol, Tobacco, Firearms, and Explosives shall
8 hire 500 additional Industry Operations Investiga-
9 tors and 1,000 additional Special Agents, subject to
10 the availability of appropriations, for the purpose of
11 addressing trafficking in firearms, as described in
12 section 932 of title 18, United States Code, as added
13 by this Act.

14 (2) AUTHORITY.—There are authorized to be
15 appropriated for the hiring and maintenance of 500
16 additional Industry Operations Investigators and
17 1,000 additional Special Agents—

18 (A) \$65,593,500 for fiscal year 2011, to
19 hire 125 Industry Operations Investigators and
20 250 Special Agents;

21 (B) \$153,735,425 for fiscal year 2012, to
22 hire 125 Industry Operations Investigators and
23 250 Special Agents;

1 (C) \$268,199,200 for fiscal year 2013, to
2 hire 125 Industry Operations Investigators and
3 250 Special Agents; and

4 (D) \$387,741,186 for fiscal year 2014, to
5 hire 125 Industry Operations Investigators and
6 250 Special Agents.

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