

# SWEAT THE DETAILS

NATIONAL SHOOTING  
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The Gun Control Act of 1968 (GCA) allows the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to revoke your federal firearms license (FFL) if you have willfully violated any provision, rule or regulation under the GCA. To help ensure that your FFL is not revoked, it is important you understand what constitutes a “willful” violation of the GCA and ATF regulations.

Since the term “willful” is not defined within the GCA or ATF regulations, Federal courts have defined what constitutes a willful violation. By knowing and understanding what the courts have said, you will be able to avoid committing a willful violation of the GCA and the ATF regulations and remain in business for years to come.

## Minor Mistakes Count

When determining whether a record keeping error is a willful violation of the GCA or its corresponding regulations, courts are not required to consider the severity nor the effect of the error. In one case, a court clarified that even minor clerical errors may be treated as willful violations since *“failure to comply with exacting book keeping regulations may hinder the ATF’s ability to perform its mandated function.”*<sup>1</sup> Another court agreed that minor errors can be considered willful violations. *“Keeping records is a technical exercise and errors, even typos, are unacceptable.”*<sup>2</sup>

This means that even if a minor error in failing to comply with the GCA does not result in illegal possession of a firearm, illegal use of a firearm or even an inability of the firearm to be tracked, your FFL may still be revoked for willfully violating the GCA.<sup>3</sup> Encouraging careful attention to details, a Federal judge warned, *“If ever there were a statutory scheme where a licensee would be obligated to ‘sweat the details,’ irrespective of how trifling they may appear, the [GCA] would appear to fit that bill.”*<sup>4</sup>

## A Single Violation, Without Warning, Is Enough

The GCA allows for license revocation upon the willful violation of any provision, rule or regulation under the GCA and many federal courts have shared and supported the view that multiple violations are not required before your license may be revoked.<sup>5</sup> Therefore, a single violation is enough for the ATF to revoke your FFL.

Just as there is no requirement for multiple violations, there is also no requirement that ATF provide a dealer with a warning prior to the violation. As one court pointed out, *“No court has imposed a requirement that a warning must precede a determination of willfulness.”*<sup>6</sup>



## A Failure to Act may be Willful

Failing to abide by known legal obligations through inaction may constitute a willful violation. The United States Supreme Court and the majority of federal courts have held that when a licensee understands the legal obligations imposed by the GCA and fails to abide by those obligations the FFL may be revoked due to a willful violation.<sup>7</sup> The United States Supreme Court explained, *“Disregard of a known legal obligation [under the GCA] is certainly sufficient to establish a willful violation.”*<sup>8</sup> And, more than one federal court has found that when a licensee understands the requirements of the law and knowingly fails to follow those requirements or is simply indifferent to them the licensee has committed a willful violation.<sup>9</sup>

Mere plain indifference to the known requirements is also sufficient to establish a willful violation. A court may find a willful violation of the GCA when the licensee knew of the requirement to act or even if the licensee knew that a failure to act would be unlawful.<sup>10</sup>

## Criminal Intent Is Not Required

The requirement of bad purpose is not required when finding willfulness in a violation of the GCA or its regulations.<sup>11</sup> In one case, a licensee without criminal intent sold handgun ammunition to a purchaser who was under the age of 21 and was found to have willfully violated the GCA. In its decision, the court pointed out that the GCA itself does not include a requirement of criminal intent.<sup>12</sup> This means that even unintentional violations of the GCA may still be considered willful.<sup>13</sup>

## Effort to Correct the Violation Is Irrelevant

Courts determine willfulness at the time of the violation. Even if you put forward great effort and expense to correct a violation found during an ATF inspection, it may still be considered willful. In one case, a licensee made efforts to correct the violations pointed out to him during an ATF inspection, and he was still found to have willfully violated the GCA.<sup>14</sup> Another Federal court agreed when it said, *“The fact that [the licensee] spent a great deal of money trying to correct his faulty recordkeeping system, after the violations . . . is immaterial to the question of willfulness at the time the violations occurred.”*<sup>15</sup>

However, it is still important for you to act on any errors as they are found so that you are not accused of plain indifference on a subsequent inspection. If you discover a violation, you are encouraged to promptly correct it. In some cases where you cannot correct the error, you are encouraged to report the situation to ATF and ask for guidance.

## Sweat the Details

As the “responsible person” on your license, you are ultimately responsible for everything any employee does or fails to do. Therefore, it is important that both you as the licensee and your employees “sweat the details” when it comes to ATF regulatory compliance. The Federal court cases discussed above explain the law and make it clear that minor mistakes, single errors and the disregard of known obligations, regardless of intent or effort to correct the violation after the fact, may be considered willful violations for which an FFL may be revoked.

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## The Good News About ATF

However, the good news is that ATF does not view its job as simply to revoke licenses whenever it finds a violation. Instead, ATF assists and works with members of our industry to encourage and enhance compliance with the requirements of the GCA and the ATF regulations, so that ATF can promote public safety. In fact, while the number of ATF inspections has been increasing in recent years, up to over 10,000 in 2010 from just 5,000 in 2005, the number and rate of revocations have actually been decreasing down to only 0.64% from 2.5% five years prior. That's twice as many inspections and an almost four-fold decrease in revocations. ATF reports that the rate of regulatory compliance, where no violations of any kind are found, has been increasing over time.

If you and your employees "sweat the details," the chances are greatly improved that if you are inspected ATF will not find any mistakes or errors in your records. This will make the inspection process smoother, help you stay in business lawfully selling firearms to law-abiding Americans and allow us all to promote, protect and preserve hunting and the shooting sports.

FOR MORE INFORMATION ON ATF  
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GOVERNMENT RELATIONS ISSUES,  
PLEASE VISIT: [WWW.NSSF.ORG/GOVREL](http://WWW.NSSF.ORG/GOVREL)

<sup>1</sup>*Dick's Sport Center, Inc. v. Alexander*, 2006 WL 799178 (E.D. Mich. 2006)

<sup>2</sup>*Garner v. Lambert*, 345 Fed. Appx. 66 (6th Cir. 2009)

<sup>3</sup>*Armalite, Inc. v. Lambert*, 544 F.3d 644 (6th Cir. 2008)

<sup>4</sup>*Willingham Sports, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 415 F.3d 1274 (11th Cir. 2005)

<sup>5</sup>*Dick's Sport Center, Inc. v. Alexander*

<sup>6</sup>*Strong v. U.S.*, 422 F. Supp. 2d 712 (N.D. Tex. 2006)

<sup>7</sup>*Al's Jewelry & Loan, Inc. v. U.S. Dept. of Treasury, Bureau of Alcohol, Tobacco and Firearms*, 103 F.3d 128 (6th Cir. 1996)

<sup>8</sup>*Bryan v. U.S.*, 524 U.S. 184 (1998)

<sup>9</sup>*General Store, Inc. v. Van Loan*, 551 F.3d 1093 (9th Cir. 2008)

<sup>10</sup>*RSM, Inc. v. Herbert*, 466 F.3d 316 (4th Cir. 2006)

<sup>11</sup>*Shyda v. Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Dept. of Treasury*, 448 F. Supp. 409 (M.D. Pa. 1977)

<sup>12</sup>*Appalachian Resources Development Corp. v. McCabe*, 387 F.3d 461 (6th Cir. 2004)

<sup>13</sup>*Shaffer v. Holder*, 2010 WL 1408829 (M.D. Tenn. 2010), citing *Procaccio v. Lambert*, 233 Fed. Appx. 554 (6th Cir. 2007)

<sup>14</sup>*Sturdy v. Bentsen*, No. 97-1786, 1997 WL 611765, at \*2, 1997 U.S. Appx. LEXIS 27671, at \*5 (8th Cir. Oct. 6, 1997)

<sup>15</sup>*Cucchiara v. Sec'y of Treasury*, 652 F.2d 28, 30 (9th Cir. 1981)

## WHAT IS A WILLFUL VIOLATION?

**Minor Mistakes Count** - The severity of the discrepancy, even if it is a typo, plays no role in the determination of whether your violation is willful.

"If ever there were a statutory scheme where a licensee would be obligated to 'sweat the details,' irrespective of how trifling they may appear, the [GCA] would appear to fit that bill." *Willingham Sports, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 415 F.3d 1274 (11th Cir. 2005)

**A Single Violation Is Enough** - A single violation is enough for the ATF to revoke your license.

"A single uncontested violation of the regulatory requirements of the [GCA] suffices to uphold a firearms license revocation..." *American Arms Int'l. v. Herbert*, 563 F.3d 78 (4th Cir. 2009)

**No Warning Is Required** - The ATF is not obligated to warn you of your violations before finding that they are willful.

"No court has imposed a requirement that [a] warning must precede a determination of willfulness" *Strong v. U.S.*, 422 F. Supp. 2d 712 (N.D. Tex. 2006)

**A Failure to Act May be Willful**

Your violation of the GCA may be considered willful if you knew of the requirements and failed to abide by them.

"Evidence that an individual was aware of his legal obligations under the [GCA], but disregarded those obligations, is sufficient to establish a willful violation." *Garner v. Lambert*, 345 Fed. Appx. 66 (6th Cir. 2009)

**Plain Indifference can be a Willful Violation** - Failing to act on a known requirement may be a willful violation.

"[A] court may infer willful omission from a defendant's plain indifference to a legal requirement to act if the defendant (1) knew of the requirement or (2) knew generally that his failure to act would be unlawful." *RSM, Inc. v. Herbert*, 446 F.3d 316 (4th Cir. 2006)

**Criminal Intent Is Not Required** - The requirement of bad purpose needed in a criminal prosecution is not needed to find a willful violation of the GCA.

"'Willfulness' under the GCA does not require a heightened showing of 'bad purpose' or evil motive; rather, evidence of an individual's disregard of a known legal obligation is entirely sufficient" *Procaccio v. Lambert*, 233 Fed. Appx. 554 (6th Cir. 2007)

**Effort to Correct the Violation Is Irrelevant** - Willfulness is measured at the time of the violation.

"The fact that [an FFL holder] spent a great deal of money trying to correct [violations] is immaterial to the question of willfulness at the time the violations occurred." *Sturdy v. Bentsen*, 1997 WL 611765 (8th Cir. 1997)



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