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DIVISION ONE

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NO. 67060-3-1

DIVISION ONE OF THE COURT OF APPEALS AT SEATTLE
STATE OF WASHINGTON

In re the Matter of:

BRYAN HENRY SHADEL

Appellant,

v.

JENNIFER ANNE NAULING,

Respondent.

APPEAL FROM THE
SUPERIOR COURT FOR SNOHOMISH COUNTY WASHINGTON
HONORABLE RONALD L. CASTLEBERRY

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

I. INTRODUCTION/QUESTIONS PRESENTED 1

II. PARTIES TO THE PROCEEDING 2

III. COUNTERSTATEMENT OF THE CASE 3

IV. STANDARDS OF REVIEW 5

V. ARGUMENT 7

 A. The March 31, 2011 Parenting Plan Challenged by Shadel No Longer Controlling And Has Been Superseded By Subsequent Unappealed Orders 7

 B. Shadel Fails To Identify Any Reversible Errors By The Trial Court Or Explain The Legal Grounds For His Appeal 8

 C. Mr. Shadel’s Claim Of Judicial Bias Or Prejudice Resulting In A Denial Of Due Process Is Factually And Legally Unsupported 10

 D. Shadel Provides No Adequate Factual Or Legal Support For His Assignments Of Error 15

 E. Shadel’s Argument That A Bankruptcy Stay Was Violated Is Meritless 18

 F. Firearms restriction 24

 G. Respondent Should Be Awarded Attorneys’ Fees And Costs. 27

1. Fees and Expenses Recoverable in Dissolution Appeal.....	28
2. Fees and Expenses are Recoverable for Responding to a Frivolous Appeal.....	29
VI. CONCLUSION	31
VII. APPENDIX.....	
1. 11 USC § 362	
2. 18 USC § 922	

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Boyles v. Department of Retirement Sys.</i> , 105 Wn.2d 499, 508-09, 716 P.2d 869 (1986).....	30
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 809, 828 P.2d 549 (1992).....	9, 16
<i>DeHeer v. Seattle Post-Intelligencer</i> , 60 Wn.2d 122, 126, 372 P.2d 193 (1962)	28
<i>Green River Cmty. College Dist. No. 10 v. Higher Educ. Pers. Bd.</i> , 107 Wn.2d 427, 442-443, 730 P.2d 653 (1986)	31
<i>Hegwine v. Longview Fibre Co.</i> , 132 Wn. App. 546, 556, 132 P.3d 789 (2006), aff'd, 162 Wn.2d 340, 172 P.3d 688 (2006)	28
<i>In re Marriage of Booth</i> , 114 Wn.2d 772, 776, 791 P.2d 519 (1990)	6, 16
<i>In re Marriage of Griffin</i> , 114 Wn.2d 772, 776, 791 P.2d 519 (1990).....	6
<i>In re Marriage of Meredith</i> , 148 Wn. App. 887, 903, 201 P.3d 1056 (2009)	6, 11
<i>In re Marriage of Olson</i> , 69 Wn. App. 621, 626, 850 P.2d 527 (1993)	9
<i>In re Marriage of Penry</i> , 119 Wn. App. 799, 804, 82 P.3d 1231 (2004)	30

<i>In re Marriage of Stenshoel</i> , 72 Wn. App. 800, 803, 866 P.2d 635 (1993)	5
<i>In re McDole</i> , 122 Wn.2d 604, 609-610, 859 P.2d 1239 (1993)	6
<i>In re Parentage of Jannot</i> , 149 Wn.2d 123, 127-28, 65 P.3d 664 (2003)	27
<i>In re Pers. Restraint of Davis</i> , 152 Wn.2d 647, 692, 101 P.3d 1 (2004)	6, 11
<i>Mahoney v. Shinpoch</i> , 107 Wn.2d 679, 691, 732 P.2d 510 (1987)	30
<i>Navajo Nation v. U.S. Forest Serv.</i> , 535 F.3d 1058, 1079 n.26 (9th Cir. 2008)	28
<i>Sorenson v. Bellingham</i> , 80 Wn.2d 547, 558, 496 P.2d 512 (1972)	8
<i>State v. Elliott</i> , 114 Wn.2d 6, 15, 785 P.2d 440 (1990)	9, 16
<i>State v. Krzeszowski</i> , 106 Wn. App. 638, 641, 24 P.3d 485 (2001)	26
<i>State v. Marintorres</i> , 93 Wn. App. 442, 452, 969 P.2d 501 (1999)	9
<i>State v. Munoz</i> , 67 Wn. App. 533, 535, 837 P.2d 636 (1992), review denied, 120 Wn.2d 1024 (1993)	7, 13
<i>United States v Reese</i> , 627 F3d 792 (10 th Cir. 2010)	26
<i>United States v. Emerson</i> , 270 F.3d 203 (5th Cir. 2001)	26

<i>United States v. Luedtke</i> , 589 F. Supp. 2d 1018, 1024 (E.D. Wis. 2009).....	26
<i>Westerman v. Cary</i> , 125 Wn.2d 277, 286, 892 P.2d 1067 (1994).....	8

STATUTES.....PAGE

RCW 26.09.050.....	25
RCW 26.09.140	2, 29, 32
RCW 26.09.300.....	25
RCW Chapter 26	4

OTHER AUTHORITIESPAGE

18 U.S.C. §§ 922(d)(8).....	25
18 U.S.C. §§ 922(g)(8).....	25
RAP 18.1(a).....	29
RAP 18.1(c).....	29
RAP 9.1 to 9.11	15

I. INTRODUCTION/QUESTIONS PRESENTED

Respondent Jennifer Snyder is the former domestic partner of appellant Bryan Shadel. The two have been involved in litigation concerning their meretricious relationship, ownership of certain real property and custody of their son, for the past five years. Following a full trial, and entry of orders addressed to dissolution of the meretricious relationship and custody of the couple's minor child, the current appeal is focused upon Mr. Shadel's continuing personal dissatisfaction with the trial court, rather than a challenge to the rulings below based upon relevant parts of the record, reasoned argument or citations to controlling legal authority.

The questions presented are:

1. Whether some or all of the orders Shadel challenges have been superseded by later orders and are therefore moot;
2. Whether Shadel has identified any errors by the Superior Court that constitute a manifest abuse of discretion and warrant reversal of the Court's March 2011 orders;
3. Whether Shadel has timely objected to or contested any actions by the Court below that he now claims were in error;

4. Whether Respondent should be awarded her fees and costs incurred on this appeal under RCW 26.09.140, or under RAP 18.9 on the basis that this appeal is frivolous.

II. PARTIES TO THE PROCEEDING

Respondent Jennifer Nauling¹ is an individual formerly residing in the State of Washington. Ms. Nauling was the Petitioner in Snohomish County Superior Court Cause No. 08-2-08210-3, *Petition for Division and Distribution of Property and Debt in a Meretricious Relationship*; the Respondent in Snohomish County Superior Court Cause No. 07-3-02177-1, *In re the Parenting and Support of Mason Shadel, a minor child*; and Defendant in Snohomish County Superior Court Cause No. 07-2-07892-2, *Complaint to Quiet Title to Real Property*.²

Appellant Bryan Shadel is an individual residing in the State of Washington, was Respondent in Snohomish County Superior Court Cause No. 08-2-08210-3, *Petition for Division and Distribution of*

¹ Respondent's legal name is now Jennifer Snyder but the actions now on appeal all identified her as Jennifer Nauling, her name prior to her 2011 marriage. Respondent will therefore be referred to by the name Nauling throughout this brief.

² All of the referenced causes of action below were consolidated for trial.

Property and Debt in a Meretricious Relationship; Petitioner in Snohomish County Superior Court Cause No. 07-3-02177-1, *In re the Parenting and Support of Mason Shadel, a minor child*; and Plaintiff in Snohomish County Superior Court Cause No. 07-2-07892-2, *Complaint to Quiet Title to Real Property*.

III. COUNTERSTATEMENT OF THE CASE

Jennifer Nauling (“Nauling”) and Bryan Shadel (“Shadel”), lived together in Snohomish County Washington, in a meretricious relationship that began in 2003. The couple purchased a house together in June, 2004. Their child, Mason Shadel, was born on June 27, 2006.

Shortly after purchasing the house together, Nauling and Shadel fell into financial difficulty, and their relationship deteriorated. In September of 2005, Mr. Shadel quitclaimed a one-half interest in the house to Ms. Nauling. **CP 112**. In 2007, Shadel filed suit against Snyder, maintaining that he was entitled to full ownership and possession of the house they had purchased together. **CP 438-443** Also in 2007, Shadel filed an action concerning the parenting and support of his son with Nauling, Mason Shadel.

In 2008, Ms. Nauling filed a petition to dissolve the meretricious relationship and to distribute property under RCW Chapter 26. All of these actions were ultimately consolidated under Snohomish County Superior Court Cause Number 08-2-08210-3. **CP 444-447**. The course of the litigation was marked by repeated motions and similar filings by Shadel, who was acting *pro se*. Shadel's filings regularly express his mistrust of, and frustration with, Nauling's attorney, the Superior Court and the court-appointed Guardian Ad Litem. See **CP 83-103; CP 451-461**.

Trial of the three consolidated matters was held before the Honorable Ronald L. Castleberry from January 12-14, 2011. Shadel and Nauling both presented evidence and witnesses at trial. **CP 83-168; CP 331-349**. On January 28, 2011, Judge Castleberry delivered an oral opinion, discussing the findings of fact and conclusions of law he had made and the evidence and reasoning supporting them. **CP 51-80**. Subsequently, on March 31, 2011, the court's findings of fact and conclusions of law were reduced to writing and entered (**CP 41-49**) as were a Decree of Dissolution of the parties' meretricious relationship (**CP 33-40**) a Parenting Plan,

(CP 24-32) and an Order of Child Support (CP 3-13). These are the orders from which Mr. Shadel ostensibly appeals, although his briefing seems to address the January 28, 2011 oral ruling.

On October 31, 2011, the parties were again before the Snohomish County Superior Court, which entered an Order Re Modification/Adjustment of Parenting Plan (CP 499-503) and associated Modified Parenting Plan (CP 489-498), based upon Respondent Nauling's move to the State of Florida. This order and plan were never appealed by any party.

Shadel does not specify what relief he is requesting from this Court, but appears to be challenging the entire trial process, and all substantive orders entered, based upon his allegations of judicial bias or the trial court's alleged failure to consider Shadel's arguments in rendering its decision.

IV. STANDARDS OF REVIEW

A trial court's final decision in a dissolution case is reviewed for abuse of discretion. *In re Marriage of Stenshoel*, 72 Wn. App. 800, 803, 866 P.2d 635 (1993). "[T]rial court decisions in dissolution proceedings will seldom be changed on appeal." *In re Marriage of*

Griffin, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). A challenge to a decision in a dissolution proceeding must demonstrate a manifest abuse of discretion by the trial court, i.e. a decision that is "manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Booth*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990).

A trial court's decision in matters dealing with the welfare of children will not be reversed on appeal unless the court exercised its discretion in an untenable or manifestly unreasonable way. A trial court's findings will be upheld if they are supported by substantial evidence. *In re McDole*, 122 Wn.2d 604, 609-610, 859 P.2d 1239 (1993).

A trial court is presumed to perform its functions regularly and properly without bias or prejudice. *In re Marriage of Meredith*, 148 Wn. App. 887, 903, 201 P.3d 1056 (2009). A party seeking to overcome this presumption must provide specific facts establishing bias. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004). Judicial rulings alone almost never constitute a valid showing of bias. *Id.*

Absent a finding of actual, demonstrated prejudice that affected

the right to a fair trial, a "generic due process claim" does not merit appellate review. *State v. Munoz*, 67 Wn. App. 533, 535, 837 P.2d 636 (1992), review denied, 120 Wn.2d 1024 (1993).

V. ARGUMENT

A. The March 31, 2011 Parenting Plan Challenged by Shadel No Longer Controlling And Has Been Superseded By Subsequent Unappealed Orders.

In large part, Mr. Shadel's brief focuses on the parenting plan entered by the trial court on March 31, 2011, which was attached to Mr. Shadel's Notice of Appeal. **CP 24-32**. However, on October 31, 2011, a modified parenting plan was entered by the trial court which, by court order, "supersedes all previous decrees or Parenting Plans." **CP 501**. Mr. Shadel never appealed the October 31 order or Parenting Plan and never subsequently amended his Notice of Appeal to include either October document.

Whatever errors Mr. Shadel may assign to the March 31, 2011 Parenting Plan, those arguments are now moot, because it has been replaced by the Modified Parenting Plan in October. Therefore, any alleged defects with the March 31 plan are not ripe for review, as any reversal or modification of the superseded plan would have no effect.

"It is a general rule that, where only moot questions or abstract propositions are involved, or where the substantial questions involved in the trial court no longer exist, the appeal . . . should be dismissed." *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994) (quoting *Sorenson v. Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). Only questions of public interest should be reviewed after they are rendered moot. *Id.*

Although the argument on this point is unclear, Mr. Shadel identifies his concern with the March 31 plan as being the fact that he "is no closer to unsupervised visitation." (Opening Brief of Appellant at pp. 12-13). This issue is decidedly of a private nature, and not a matter "of [a] continuing and substantial public interest." *Westerman*, 125 Wn.2d at 286. Mr. Shadel's request for this Court to review the moot March 31, 2011 parenting plan should be rejected.

To the extent that Mr. Shadel's appeal is based on an unappealed order from October 2011, or on the superseded March 31 order, these issues are not ripe for review and, therefore, cannot form the basis for a valid appeal.

B. Shadel Fails To Identify Any Reversible Errors By The Trial Court Or Explain The Legal Grounds For His Appeal.

An overarching and fatal problem with this appeal is Mr. Shadel's persistent failure to either cite to specific facts supporting his arguments, or to cite to law supporting his position. Although Mr. Shadel is proceeding *pro se*, he must comply with all court rules. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993); and a failure to do so may preclude review of the asserted claims. *State v. Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1999). A reviewing court generally will not consider arguments that are unsupported by meaningful analysis. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (insufficient argument); RAP 10.3(a).

Mr. Shadel has not complied with these standards. Mr. Shadel's challenges to the proceedings below suffer from a total failure to provide meaningful citations to the record, cite authority relevant to most of his claims or develop argument on appeal that rises above rhetoric and statements of dissatisfaction with the proceedings below.

Instead of articulating legal errors or citing relevant facts, Mr. Shadel only presents broad argument, repeating his bare and unsupported claims of judicial bias, prejudicial treatment, frustration and angst. Mr. Shadel gives lengthy factual recitations without any citation to evidence, and then fails to cite any legal authority that would support his claim that error has occurred. Indeed, many of the “facts” recited by Mr. Shadel do not relate to the acts and omissions of the trial judge at all, but are complaints and criticisms of Ms. Nauling, her attorney, the guardian ad litem and nearly every other individual connected with this litigation. This provides no competent basis for appeal.

C. Mr. Shadel’s Claim Of Judicial Bias Or Prejudice Resulting In A Denial Of Due Process Is Factually And Legally Unsupported.

Mr. Shadel urges the court to reverse the trial court’s March 31, 2011 orders on the grounds that he was denied a fair trial because the judge was biased and prejudiced against him, and that he was otherwise denied due process. Mr. Shadel points to a few truncated parts of the record, primarily in the transcript that is **CP 51-80**, to

support these assertions.³ Shadel's claims of bias or deprivation of due process are without merit.

A trial court is presumed to perform its functions regularly and properly without bias or prejudice. *In re Marriage of Meredith*, 148 Wn. App. 887, 903, 201 P.3d 1056 (2009). A party seeking to overcome this presumption must provide specific facts establishing bias. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004). Judicial rulings alone almost never constitute a valid showing of bias. *Id.* (citing *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994)).

The substance of Mr. Shadel's appeal here is based almost entirely upon his dissatisfaction with the trial judge's rulings, without more. Not only does Mr. Shadel fail to identify specific facts in the record establishing bias of the trial judge, but he also does not demonstrate where in the record he made a timely objection to the

³ "An oral opinion or memorandum decision may be used to interpret a finding if no statement is made on the subject or the findings are ambiguous or vague; however, statements made in an oral decision have no binding effect unless are expressly incorporated within the formal findings of fact, conclusions of law, and judgment." *In re Marriage of McKinney*, 14 Wn. App. 921, 923-924, 546 P.2d 456 (1976). Here, the oral comments and opinions of the trial court were not expressly incorporated into its findings of fact and conclusions of law. **CP 41 – 49.**

judge's conduct or in any proceeding. Nor does the record reflect that Mr. Shadel raised any concerns of bias or prejudice in a proper motion to reconsider or to modify its March 31, 2011 orders.

Despite the failure to object and to articulate the basis for this argument, Mr. Shadel nevertheless asserts that he has been denied due process because, in his words, "Appellant was not listened to and Ms. Herber and Respondent were believed in every instance ...". This naked assertion clearly is insufficient to support either a claim of judicial bias or denial of due process. An appearance of fairness argument must, as a threshold matter, cite to evidence of actual or potential bias. See, *State v. Post*, 118 Wn.2d 596, 619 n. 9, 826 P.2d 172 (1992). Without such evidence, a litigant's appearance of fairness claim will be deemed "without merit." *Id.* at 619; see also *In re Guardianship of Wells*, 150 Wn. App. 491, 503, 208 P.3d 1126 (2009) ("Evidence of a judge or commissioner's actual or potential bias is required before the appearance of fairness doctrine will be applied. A party claiming bias or prejudice must support the claim.") (emphasis added).

A failure to raised alleged judicial misconduct at the trial level

means such a claim may not thereafter be raised on appeal. *State v. Tolias*, 135 Wn.2d 133, 140, 954 P.2d 907 (1998). As noted, the record is devoid of timely or meaningful objections by Mr. Shadel to the trial judge's conduct, unfairness or alleged bias. Such failure to object below is fatal to a deprivation of due process rights claim, even in the criminal law context. Absent a finding of actual, demonstrated prejudice that affected the right to a fair trial, a party's "'generic due process claim' does not merit review." *State v. Munoz*, 67 Wn. App. 533, 535, 837 P.2d 636 (1992).

The constitutional right to due process applies in the context of a marital dissolution trial. *In re Marriage of Ebbighausen*, 42 Wn. App. 99, 102, 708 P.2d 1220 (1985); and of course procedural due process requires notice and a meaningful opportunity to be heard. *State v. Whitney*, 78 Wn. App. 506, 510, 897 P.2d 374 (1995). The orders at issue were entered after a three-day trial in which Mr. Shadel fully participated, and at which he introduced witness testimony and exhibits. Prior to trial, Mr. Shadel engaged in four years of extensive Superior Court litigation with Ms. Nauling on these related issues. These facts alone establish that Mr. Shadel

received ample notice and opportunity to be heard for the purposes of constitutional analysis.

Moreover, Shadel fails to explain how his due process rights were actually violated. Failure to state or explain the basis for a claimed error precludes review. See, *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). "The proper way to approach claims of constitutional error asserted for the first time on appeal is as follows. First, the appellate court should satisfy itself that the error is truly of constitutional magnitude -- that is what is meant by "manifest". If the asserted error is not a constitutional error, the court may refuse review on that ground." *State v. Scott*, 110 Wn.2d 682, 688, 757 P.2d 492 (1988).

Appellant Shadel points to no specific error by the trial court upon which he predicates the claim that his due process rights were violated, nor does he explain how any of the many complaints he makes about the trial court constitute a denial of rights. Instead, he makes accusations of partiality and bias by the trial judge, unsupported by any citation to the record. Mr. Shadel's complaint that "the judge acted in an extremely unprofessional, prejudicial

and accusatory manner toward Appellant” (Appellant’s Opening Brief at p. 9) hardly rises to the level of demonstrating an error of constitutional magnitude; and fails even to support Appellant’s assertions that the trial court was biased and partial.

Mr. Shadel has utterly failed to demonstrate a manifest error by the Superior Court. His claims of judicial bias or prejudice, and associated denial of due process, are meritless and may be summarily rejected.

D. Shadel Provides No Adequate Factual Or Legal Support For His Assignments Of Error.

Appellant Shadel’s briefing consistently fails to develop arguments based upon the record below and he offers scant evidence to demonstrate what he characterizes as the trial court’s abuse of discretion and errors of law. The appellate court only reviews findings to which error is assigned, and the review is limited to determining whether the findings are supported by substantial evidence. *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 555 - 556, 132 P.3d 789 (2006), *affirmed*, 162 Wn.2d 340, 172 P.3d 688 (2006). The only evidence to be considered is that evidence which was before the trial court. See, RAP 9.1 to 9.11. Arguments that

are not supported by pertinent authority, references to the record or meaningful analysis need not be considered. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990). Under this standard, Shadel's appeal cannot succeed.

For example, Mr. Shadel asserts that it was error for the trial court to award primary custody of Mason Shadel to Ms. Nauling, and posits that the ruling was manifestly unreasonable. In the first place, a challenge to decisions involving children, such as a parenting plan or custody decision, while reviewed for abuse of discretion, are quite seldom modified upon appeal because the initial consideration of the trial court is the best interest of the child; and the emotional and financial interests affected by such decisions are best served by finality. See *In re Marriage of Booth*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990).

Secondly, Mr. Shadel fails to actually explain *why* it was erroneous or unreasonable for the trial court to award custody of Mason to Ms. Nauling. According to the trial judge's remarks, this decision was based of the fact that Ms. Nauling had been the

custodial parent for Mason's entire life and that Mr. Shadel had failed to even exercise his visitation rights for over 2 years prior to trial. **CP 64** (Oral Opinion at p. 14, lines 11-22). In the face of these legal and factual obstacles, Mr. Shadel does nothing to explain his challenge to the custody ruling or articulate why the trial court erred.

To add to the burden Mr. Shadel faces here in challenging parenting and custody decisions, the grounds and basis he argues for modification or vacation are not supported by any meaningful reference to the record. Mr. Shadel refers the court to the "Guardian Ad Litem Report" at **CP 388-390** to support his allegation that the trial court's custody decision was incorrect; but the record referenced is only a summary or recap of the GAL's recommendations. "The history, interviews and recommendations are documented in the sealed portion of the GAL report." **CP 388**. Mr. Shadel has not made the heart of the GAL report part of the record here and, more importantly, provides no further citation to the record demonstrating that his challenge has any basis in fact.

Alongside these arguments is Mr. Shadel's claim that the trial

court failed to consider or follow the recommendations of the GAL. See, Appellant's Opening Brief at pp. 2 and 12. As noted, the failure to make the substantive portion of the GAL report part of the record undercuts this argument by depriving it of a factual basis.

Moreover, Mr. Shadel's contention is simply incorrect. His criticism of the trial court for failing to follow the GAL's recommendations flies in the face of his own repeated objections to the GAL's work and report. See **CP 96** ("I am asking the court to dismiss the GAL report as extremely prejudicial as her report and subsequent conclusions are unfair, biased and done in an extremely negligent manner.") and **CP 97** ("It is clear that under the GAL code of conduct, the GAL's negligence and/or carelessness in rendering her report breached her fiduciary duty of [sic] our child."). In light of this prior position, Mr. Shadel's current complaint rings hollow.

In fact, it is clear that the trial court did consider the work and recommendations of the GAL in rendering his decision. See, e.g., **CP 75** ("I think the Guardian ad Litem in a very difficult situation did a good job. And despite Mr. Shadel's criticism, remained objective,

and I would commend her for her recommendations.”). Shadel’s change of position on appeal is nonsensical and should fail for lack of factual support.

Similarly, Mr. Shadel argues that the court below erred in its choice of an “evaluator,” urging this Court to find this was error. Again, Mr. Shadel offers absolutely no citation to the record and no authority supporting his position whatsoever. Arguments of error “not supported by any reference to the record nor by any citation of authority”, are not considered on appeal. *McKee v. American Home Prods. Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989).

E. Shadel’s Argument That A Bankruptcy Stay Was Violated Is Meritless.

Appellant Shadel maintains that the trial court erred in “failing to correct the court’s previous decisions in violating Appellant’s Bankruptcy stay,” but makes no showing that he ever moved the court to correct previous decisions, or indeed what decisions were in error. Moreover, apart from Shadel’s argument in his trial brief (CP 265-268) the only references to bankruptcy in the record before this Court are documents attached to Shadel’s trial brief relating to a purported discharge (CP 138-140) and which was also offered by

Shadel as a trial exhibit. **CP 296-297**.

Shadel seems to be making an argument that the Snohomish County trial court could make no decision concerning certain real property that passed through the meretricious estate due to Shadel's bankruptcy. However, Shadel has failed to establish a record--either below or here--of which of his assets were or were not included in the bankruptcy, how the real property was characterized in the bankruptcy, or even if the real property was properly included in his bankruptcy schedules.⁴ His argument in briefing to this Court is incomprehensible, and does not constitute an explanation of this purported assignment of error. An appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority. *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989). This Court should decline to review Shadel's assertion that the trial court erred here.

Moreover, if the documents in the record accurately demonstrate when Shadel's bankruptcy was filed and when he was discharged, his claim of trial court error is incorrect, since a bankruptcy stay is not

⁴ It is unclear from the record what interest Shadel had in the real property at the time he filed for bankruptcy. He deeded a one-half interest

as all-inclusive as Appellant suggests. There is no stay, as a matter of law, when a debtor is involved in dissolution, support and custody matters in state court; and while the stay may operate to preclude an equitable property division in a dissolution proceeding, the stay is dissolved upon the debtor's discharge. 11 U.S.C. § 362(b)(2)(A)

Here it appears that Shadel filed bankruptcy on or about October 1, 2008, and was discharged July 14, 2009—long before the trial commenced or the Court issued its orders. **CP 296-298**. Even if the automatic stay were still in effect at the time of trial (which it was not) the actions for dissolution, child custody and support could still proceed under the Bankruptcy Code:

The filing of a petition under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], **does not operate as a stay—**

* * *

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding--

- (i) for the establishment of paternity;
- (ii) for the establishment or modification of an order for domestic support obligations;
- (iii) concerning child **custody or visitation**;
- (iv) **for the dissolution of a marriage, except to**

in that property to Ms. Snyder on August 29, 2007. **CP 112**.

the extent that such proceeding seeks to determine the division of property that is property of the estate;

or

(v) regarding **domestic violence**;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

11 U.S.C. § 362 (b) (*emphasis added*)

No order of the trial court distributed any community property, real or personal, prior to March 31, 2011--over two years after Shadel had been discharged in bankruptcy. Accordingly, the stay provisions of 11 U.S.C. § 362(b) did not prevent Respondent Snyder from commencing her dissolution action, and certainly did not prevent the court below from awarding her the community residence after Shadel's Chapter 13 discharge. See 11 U.S.C. § 362 (c)(2)(c).

Shadel further asserts, at page 16 of his Opening Brief that "Family court and upon De Novo review, a violation of Appellant's bankruptcy petition was upheld. Further, the trial court judge ruled in the same manner and did nothing to rectify the mistake of the prior decisions." This statement is nonsensical, but it may refer to an (unappealed) temporary restraining order in the dissolution action from November which ordered Mr. Shadel to vacate the residence he had shared with Ms. Snyder. **CP 462-465**. In that order the court

stated that it was “subject to any stay . . . granted in respondent’s Chap 13 bankruptcy.” *Id.* To the extent it makes any sense, and assuming it was properly before this Court, this argument would still be unavailing.

Shadel filed a motion to revise the November restraining order, which motion was denied. **CP 450-461**. Shadel could have sought relief from the court below; but Shadel’s motion does not address his bankruptcy or the stay in any way; and there is no record indicating that he raised the matter in the bankruptcy court. It is clear that Shadel had a potential remedy in the Snohomish County Superior Court and did not exercise it.

The proper course of action for the Debtor to have taken in this situation was to file a motion with the state court, notifying it of his bankruptcy petition and the application of the automatic stay. It is settled law that bankruptcy courts do not have exclusive jurisdiction in determining the applicability of the automatic stay. As one court has stated: The court in which the litigation claimed to be stayed is pending has jurisdiction to determine not only its own jurisdiction but also the more precise question whether the proceeding pending before it is subject to the automatic stay... . If the Debtor had been dissatisfied with the state court’s decision of that issue, he had the option of appealing through the state court system.

Rogers v. Overstreet (In re Rogers), 164 B.R. 382, 391 (N.D. Ga.

1994), *affirmed*, 87 F.3d 1329 (11th Cir. 1996) (citations omitted).

The record as presented here shows no attempt by Mr. Shadel to demonstrate to the Superior Court that his house was properly before the bankruptcy court, or to explain his position to the court concerning the stay. Indeed, even after the court entered the order requiring Shadel to vacate the residence **CP 462 – 465**, the record does not show that Mr. Shadel took any steps to avoid eviction; and Shadel presents nothing from the record here to support his claims involving bankruptcy. Indeed, Mr. Shadel presents only argument, unsupported by authority. Mr. Shadel has failed to present a cogent explanation of the facts and legal grounds supporting his claim of error. This, standing alone, is a basis for rejecting this assignment of error.

F. Firearms restriction

Mr. Shadel maintains that the court below erred in restricting his access to firearms, as a condition of the parenting plan entered on March 31, 2011. See, Appellant's Opening Brief at pp. 13-14. In the first place, and as discussed above, the March 31, 2011 order has been superseded by the Modified Parenting Plan entered on

October 31, 2011. The order accompanying that plan also included a restraining order that precludes Shadel from firearm possession, pursuant to 18 U.S.C. § 922(g)(8). **CP 502** . Shadel relies upon no authority in asserting this claimed error apart from Article 1, § 24 of the Washington State Constitution. He also offers no citation to the record to support any claim of error in the entry of the October 31, 2011 restraining order—indeed he has never appealed that order. Where a party cites no authorities to support a proposition, the appellate court is not required to search out authorities, nor to consider an unsupported claim of error, “unless it is apparent without further research that the assignments of error presented are well taken.” *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

The firearms restriction complained of by Shadel was entered pursuant to RCW 26.09.050, RCW 26.09.300, and 18 U.S.C. §§ 922(g)(8). 18 U.S.C. §§ 922(g)(8) and (d)(8) concern the prohibition against disposal of firearms to, or receipt or possession of firearms by persons who are subject to domestic violence protection orders. Section 922(d)(8) prohibits the knowing transfer

of a firearm to a person who is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; and section 922(g)(8) prohibits the receipt or possession of a firearm or ammunition by such a person. Firearms restrictions under these sections have repeatedly been found to be constitutional. “Under both [the Washington and the United States] constitutions the law is well established that the right to bear arms is not absolute and is subject to reasonable regulation.” *State v. Krzeszowski*, 106 Wn. App. 638, 641, 24 P.3d 485 (2001); *see also, United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001) (prosecution of the defendant for possessing a gun while under a state court protective order did not violate his Second Amendment rights); *United States v. Luedtke*, 589 F. Supp. 2d 1018, 1024 (E.D. Wis. 2009) (rejecting Second Amendment challenge to 18 U.S.C. § 922(g)(8)); *United States v Reese*, 627 F3d 792 (10th Cir. 2010) (Indictment of defendant under 18 USCS § 922(g)(8) for possessing firearms while subject to domestic protection order did not violate Second Amendment as applied; defendant was subject to a protective

order that satisfied requirements of § 922(g)(8), and defendant could not collaterally attack merits of protective order).

A restraining order with a firearms restriction was first included in the (now moot) parenting plan entered on March 31, 2011. **CP 27**. The firearms restriction, albeit in a slightly different form, was also included in the Order Re Modification/Adjustment of Parenting Plan in October 2011. **CP 502**. As mentioned, rulings concerning parenting plans are reviewed for abuse of discretion, and will seldom be changed upon appeal because the emotional and financial interests affected by such decisions are best served by finality. See, e.g., *In re Parentage of Jannot*, 149 Wn.2d 123, 127-28, 65 P.3d 664 (2003). In the course of the trial that preceded entry of the order, the judge heard testimony from the parties, their witnesses, and the psychologist who examined Mr. Shadel pursuant to court order. **CP 169-170**. That psychologist, Dr. Schau, noted Mr. Shadel's "abusive use of conflict" (**CP 486-487**) and the trial judge noted Mr. Shadel's prior suicide threat, the general hostility between the parties as a basis for requiring firearms restrictions as to both parties. See **CP 62 & 68**. A reviewing court

“view[s] the evidence in the light most favorable to the prevailing party and defer[s] to the trial court regarding witness credibility and conflicting testimony.” *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 556, 132 P.3d 789 (2006), aff’d, 162 Wn.2d 340, 172 P.3d 688 (2006). Appellant has made absolutely no showing of a manifest abuse of discretion by the court below in imposing a firearm restriction.

Mr. Shadel’s claim that the trial court violated his rights under the Washington State Constitution or his Second Amendment rights under the United States constitution is meritless and not supported by legal authority and citation to the record. Reviewing courts will decline to address claims that are only “bare assertion[s] . . . with no supporting argument,” *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1079 n.26 (9th Cir. 2008); *DeHeer*, 60 Wn.2d at 126.

G. Respondent Should Be Awarded Attorneys’ Fees And Costs.

There are two independent grounds for awarding Respondent her attorneys’ fees and costs on appeal, both of which apply here.

1. Fees and Expenses Recoverable in Dissolution Appeal.

The Rules of Appellate Procedure specifically authorize the award of fees and expenses if applicable law in the underlying case permits such an award. RAP 18.1(a). Under Washington law, fees and costs may be awarded to a party in a dissolution action. See, RCW 26.09.140. This statute specifically authorizes the award of fees on appeal. *Id.* In deciding to award fees and costs on this basis, the court will consider financial need *and* the merits of the appeal. *Id.* A party on appeal may satisfy the financial need requirement of this statute by filing an Affidavit of Financial Need under RAP 18.1(c) or its equivalent.⁵ A Declaration of Financial Need has been completed by Respondent Snyder and is filed herewith.

The factors laid out in RCW 26.09.140 clearly support an award of attorneys' fees and costs against Appellant Shadel. As Ms. Snyder's declaration demonstrates, she lacks the ability to pay for these appellate proceedings.

⁵ Under General Rule 13, a declaration may be substituted for an affidavit for the purposes of RAP 18.1.

2. Fees and Expenses are Recoverable for Responding to a Frivolous Appeal

The Rules of Appellate Procedure also allow recovery of attorneys' fees or damages in cases of frivolous or improper appeals:

The appellate court on its own initiative or on motion of a party may order a party . . . who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or failure to comply or to pay sanctions to the court.

RAP 18.9. If a frivolous or improper appeal is made in a family law action, an award of fees and costs may be made regardless of financial need. See *In re Marriage of Penry*, 119 Wn. App. 799, 804, 82 P.3d 1231 (2004).

"An appeal is frivolous when there are no debatable issues upon which reasonable minds could differ and when the appeal is so totally devoid of merit that there was no reasonable possibility of reversal." *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987) (citing *Boyles v. Department of Retirement Sys.*, 105 Wn.2d 499, 508-09, 716 P.2d 869 (1986) and RAP 18.9(a)). Before finding an appeal frivolous, the court must examine the appeal as a whole and resolve all doubts in favor of the appellant.

Id.; see also, *Green River Cmty. College Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 442-443, 730 P.2d 653 (1986).

Even under the charitable standard mandated by the case law, Shadel's appeal amply qualifies as frivolous. The assignments of error are incoherent and confusing and, more importantly, cite to no factual or legal basis upon which this Court could reverse the rulings of the Superior Court. Rather, Mr. Shadel's brief is dominated by his complaints about the outcome of trial, criticisms of Ms. Nauling and the other personnel involved in the litigation and generalized anger at the entire proceeding. Any reasonable litigant knows, or should know, that this is inadequate grounds for appeal.

Mr. Shadel was fully aware that he had no basis to proceed, but has persisted in this appeal nonetheless, extending this long and painful dissolution out as far as possible. This is a strategy that Shadel has employed throughout this litigation, and one that was forecast by the trial court, which stated in its Modified Parenting Plan that "The Court is concerned about the conduct and the passive aggressive activity of the Father" and that the "Court is concerned about ***the abusive use of the Court process*** by the

Father.” **CP 496** (emphasis added). Abuse of the process has indeed occurred and this is precisely the type of appeal that is addressed by RAP 18.9.

Under both RCW 26.09.140 and RAP 18.9, this Court should award Ms. Nauling her attorneys’ fees and costs on appeal.

VI. CONCLUSION

Although styled an “appeal,” Mr. Shadel’s efforts in this Court really are no appeal at all. In order to be valid, an appeal must identify purported errors, point to specific facts to support the appellant’s position, and cite to law that would support reversal. Appeals require a good faith effort by the appellant (whether or not they are legally trained) to identify errors and seek correction based on a mistake of fact or law. Mr. Shadel has done none of this, but rather only repeats his disagreement with the outcome of the trial and asserts unsupported claims of unfair treatment and lack of due process. This type of behavior should not be countenanced by this Court. Respondent Nauling respectfully requests that this Court affirm the rulings of the Superior Court and award to Ms. Nauling all fees and costs on appeal.

RESPECTFULLY SUBMITTED this 23rd day of April, 2012.

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*** Current through PL 112-106, approved 4/5/12 ***

TITLE 11. BANKRUPTCY
CHAPTER 3. CASE ADMINISTRATION
SUBCHAPTER IV. ADMINISTRATIVE POWERS

Go to the United States Code Service Archive Directory

11 USCS § 362

Review expert commentary from The National Institute for Trial Advocacy following 11 USCS § 105 (relating to the power of the court).

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 4 DOCUMENTS.
THIS IS PART 1.
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or con-

cerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], does not operate as a stay--

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding--

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act [42 USCS § 666(a)(16)];

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act [42 USCS § 666(a)(7)];

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act [42 USCS §§ 664 and 666(a)(3)] or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act [42 USCS §§ 601 et seq.];

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title [11 USCS § 546(b)] or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title [11 USCS § 547(e)(2)(A)];

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

(5) [Deleted]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556 [11 USCS § 555 or 556]) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556 [11 USCS § 555 or 556]) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559 [11 USCS § 559]) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual

right (as defined in section 559 [11 USCS § 559]) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of--

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 [46 USCS §§ 53701 et seq.] or section 109(h) of title 49 [49 USCS § 109(h)], or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46 [46 USCS §§ 53701 et seq.];

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 [20 USCS § 1085(j)] or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560 [11 USCS § 560]) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560 [11 USCS § 560]) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(c)], that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer--

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1108(b)(1)] or is subject to section 72(p) of the Internal Revenue Code of 1986 [26 USCS § 72(p)]; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5 [5 USCS §§ 8431 et seq.], that satisfies the requirements of section 8433(g) of such title [5 USCS § 8433(g)];

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d) [26 USCS § 414(d)], or a contract or account under section 403(b) [26 USCS § 403(b)], of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property--

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 [11 USCS § 544] and that is not avoidable under section 549 [11 USCS § 549];

(25) under subsection (a), of--

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after

notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361 [11 USCS § 361]) for the secured claim of such authority in the setoff under section 506(a) [11 USCS § 506(a)];

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560 [11 USCS § 555, 556, 559, or 560]) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560 [11 USCS § 555, 556, 559, or 560]) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act [42 USCS § 1320a-7b(f)] pursuant to title XI or XVIII of such Act [42 USCS §§ 1301 et seq. or 1395 et seq.]).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title [11 USCS §§ 701 et seq.] concerning an individual or a case under chapter 9, 11, 12, or 13 of this title [11 USCS §§ 901 et seq., 1101 et seq., 1201 et seq., or 1301 et seq.], the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13 [11 USCS §§ 701 et seq., 1101 et seq., or 1301 et seq.], and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [11 USCS § 707(b)]--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors, if--

(I) more than 1 previous case under any of chapters 7, 11, and 13 [11 USCS §§ 701 et seq., 1101 et seq., and 1301 et seq.] in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 [11 USCS §§ 701 et seq., 1101 et seq., and 1301 et seq.] in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--

(aa) file or amend the petition or other documents as required by this title [11 USCS §§ 101 et seq.] or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 [11 USCS §§ 701 et seq., 1101 et seq., or 1301 et seq.] or any other reason to conclude that the later case will be concluded--

(aa) if a case under chapter 7 [11 USCS §§ 701 et seq.], with a discharge; or

(bb) if a case under chapter 11 or 13 [11 USCS §§ 1101 et seq. or 1301 et seq.], with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [11 USCS § 707(b)], the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors if--

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7 [11 USCS §§ 701 et seq.], with a discharge, and if a case under chapter 11 or 13 [11 USCS §§ 1101 et seq. or 1301 et seq.], with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

11 USCS § 362

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

- (A) the debtor does not have an equity in such property; and
- (B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later--

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that--

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2) [11 USCS § 363(c)(2)], be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)

(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 [11 USCS §§ 701 et seq., 1101 et seq., or 1301 et seq.] in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless--

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended--

(i) by agreement of all parties in interest; or

11 USCS § 362

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h) (1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) [11 USCS § 521(a)(2)]--

(A) to file timely any statement of intention required under section 521(a)(2) [11 USCS § 521(a)(2)] with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722 [11 USCS § 722], enter into an agreement of the kind specified in section 524(c) [11 USCS § 524(c)] applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) [11 USCS § 365(p)] if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2) [11 USCS § 521(a)(2)], after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 [11 USCS §§ 701 et seq., 1101 et seq., or 1301 et seq.] is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k) (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)

11 USCS § 362

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)--

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)--

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5) (A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify--

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)

(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2) (A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied--

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)--

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n) (1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor--

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply--

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if--

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.



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*** Current through PL 112-106, approved 4/5/12 ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 44. FIREARMS

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18 USCS § 922

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 2 DOCUMENTS.
THIS IS PART 1.
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

§ 922. Unlawful acts [Caution: See prospective amendment note below.]

(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter [18 USCS §§ 921 et seq.] to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that--

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title [18 USCS § 1715], is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if

the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter [effective Dec. 16, 1968];

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954 [1986] [26 USCS § 5845]), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter [18 USCS §§ 921 et seq.];

(7) for any person to manufacture or import armor piercing ammunition, unless--

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery--

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;

[and]

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954 [1986] [26 USCS § 5845]), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter [18 USCS § 923], the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter [18 USCS §§ 921 et seq.], a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if--

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code [18 USCS §§ 921 et seq.], from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

Signature..... Date....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department [United States Postal Service] regulations; and

18 USCS § 922

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g) [18 USCS § 923(g)].

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) [who] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter [18 USCS § 925] is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter [18 USCS § 925].

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter [18 USCS §§ 921 et seq.]. No common or contract carrier shall require or cause

18 USCS § 922

any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f) (1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter [18 USCS §§ 921 et seq.].

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment--

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 USCS § 922

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered, or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter [18 USCS § 925(d)], it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter [18 USCS §§ 921 et seq.].

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter [18 USCS § 923] or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o) (1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to--

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect [effective May 19, 1986].

(p) (1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm--

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection--

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is--

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which--

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988 [enacted Nov. 10, 1988].

(q) (1) The Congress finds and declares that--

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary [of] the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves--even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

18 USCS § 922

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2) (A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3) (A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm--

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter [18 USCS § 925(d)(3)] as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to--

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s) (1) Beginning on the date that is 90 days after the date of enactment of this subsection [enacted Nov. 30, 1993] and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923 [18 USCS § 923], unless--

(A) after the most recent proposal of such transfer by the transferee--

(i) the transferor has--

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii) (I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C) (i) the transferee has presented to the transferor a permit that--

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place;

and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923 [18 USCS § 923], an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986 [26 USCS § 5812]; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only--

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1) [18 USCS § 1028(d)(1)]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee--

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who--

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to--

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6) (A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law--

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t) (1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act [note to this section] that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter [18 USCS §§ 921 et seq.], unless--

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act [note to this section];

(B) (i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title [18 USCS § 1028(d)]) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate section 922 (g) or (n) [18 USCS § 922(g) or (n)] or State law, the system shall--

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if--

(A) (i) such other person has presented to the licensee a permit that--

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place;

and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986 [26 USCS § 5812]; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a

hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923 [18 USCS § 923], and may impose on the licensee a civil fine of not more than \$ 5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

(v), (w) [Repealed]

(x) (1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to--

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile--

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except--

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

18 USCS § 922

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6) (A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas.

(1) Definitions. In this subsection--

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions. Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is--

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is--

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver.

(A) Conditions for waiver. Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if--

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition. Each petition under subparagraph (B) shall--

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition. The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner--

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure gun storage or safety device.

18 USCS § 922

(1) In general. Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter [18 USCS §§ 921 et seq.], unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34) [18 USCS § 921(a)(34)]) for that handgun.

(2) Exceptions. Paragraph (1) shall not apply to--

(A) (i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13) [18 USCS § 921(a)(13)]; or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e) [18 USCS § 923(e)], if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.

(A) In general. Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions. A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term. As used in this paragraph, the term "qualified civil liability action"--

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if--

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

Div B, Title IV, § 4003(a)(1), 116 Stat. 1811; Nov. 25, 2002, P.L. 107-296, Title XI, Subtitle B, § 1112(f)(4), (6), 116 Stat. 2276; Oct. 26, 2005, P.L. 109-92, §§ 5(c)(1), 6(a), 119 Stat. 2099, 2101.)