

SJR

44

The Alaska State Senate today passed a resolution which would request the U.S. House of Representatives to approve the McClure-Volkmer Bill (S.49), the Firearm Owners Protection Act.

Sponsored by the Senate Judiciary Committee, chaired by Senator Patrick Rodey, SJR 44 would urge the U.S. House of Representatives to follow the U.S. Senate's lead in passing this proposal. S. 49 passed the U.S. Senate by a vote of 79 to 15 in July 1985, and it has managed to garner the support of 170 House Members to bypass the House Judiciary Committee to move the bill to the House Floor. The legislation requires a majority vote of 218 to pass the House.

Senator Patrick Rodey, a strong proponent for the bill, said, "I feel this legislation goes a long way to correct provisions of the 1968 Gun Control Act that limit the individual rights of honest gun owners, dealers and collectors. The Firearm Owners Protection Act is backed by the National Rifle Association and would prevent some of the existing abuses allowed under the 1968 Gun Control Act."

Changes brought about by the Firearm Owners Protection Act include:

- *Eliminating the requirement for records on ammunition purchases.
- *Prohibits government from imposing any gun registration scheme.
- *Allows an individual to transport firearms through restrictive firearm jurisdictions.
- *Requires for the first time that the government prove criminal intent before you can be convicted of an offense.
- *Allows an individual to purchase a firearm in another state provided the legal requirements of both states are met.
- *Provides a mechanism for return of seized firearms should the government fail to prosecute or the owner is acquitted of charges.

Senator Rodey continued, "There are a number of improvements which would be brought about as a result of passage of S. 49. This Act strengthens federal mandatory penalty provisions by applying a five year mandatory jail term to first offenses and ten years for second offenses. These penalties would be extended to drug traffickers as well.

"Another area of concern addresses the pre-emption of state laws regarding transporting guns through a state. This Act does not pre-empt state laws that apply to criminals using or possessing guns. It simply allows honest law-abiding citizens to travel from one state to another on the condition that their firearms are inaccessible and unloaded. The Act would bar illegal gun traffickers from interstate travel," he concluded.

The proposal has received the unanimous support of Alaska's congressional delegation and received a record vote of 19 yeas to pass it through the State Senate.

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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During Session
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Juneau, Alaska 99811
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March 11, 1986

TO : All Senators
FROM: Senator Patrick M. Rodey
RE : SJR 44 - Requesting the U.S. House of Representatives
to approve the McClure-Volkmer Bill

Attached is a copy of a sectional analysis on the McClure-Volkmer Bill which I believe will be helpful to you.

Attachment



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D. C. 20036

Volkmer/McClure

THE FIREARM OWNERS PROTECTION ACT

The Firearm Owners Protection Act has now passed the Senate. Peter Rodino, Chairman of the House Judiciary Committee has declared the bill "Dead on arrival in the House." We need your help to show Peter Rodino he is dead wrong.

The Firearm Owners Protection Act will prevent abuses under the 1968 Gun Control Act by:

- ★ Requiring for the first time that government prove criminal intent before you can be convicted of an offense.
- ★ Allowing you to transport your firearms through restrictive firearm jurisdictions.
- ★ Allowing you to purchase a firearm in another state so long as the legal requirements of both your state of residence and the state of purchase are met.
- ★ Eliminating the requirement for records on your ammunition purchases.
- ★ Providing a mechanism for the return of seized firearms in the event the government fails to prosecute or the owner is acquitted of charges.
- ★ Prohibiting the government from imposing any gun registration scheme.

Support of the Firearms Owners Protection Act by the nation's firearm owners is needed to get the bill to the House floor. *You can help by letting your Congressman know of your strong support.* Ask your Congressman to sign Congressman Volkmer's discharge petition to let the House vote on the Firearm Owners Protection Act.

You can write your Congressman at the following address:

The Honorable _____
U.S. House of Representatives
Washington, D.C. 20515

or call his or her office (202) 224-3121. Your Congressman needs to hear of your support for the Firearm Owners Protection Act. Together we can make it law.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D. C. 20036

Dear Activist:

The Firearms Owners Protection Act introduced by Representative Harold Volkmer and Senator James McClure has been referred to the House Judiciary Committee that is chaired by anti-gun Representative Peter Rodino.

Rodino plans to kill this important bill, and he has stated that it is "dead on arrival." To defeat Rodino, Representative Volkmer, Tommy Robinson, Trent Lott and Larry Craig have filed a discharge petition to release the Firearms Owners Protection Act from committee, the discharge petition needs 218 Congressional signatures to bring the bill to the floor.

The enclosed list of major provisions of the Firearms Owners Protection Act detail many of the reforms entailed in this important bill. I cannot over emphasize the importance of this fight. For years, the NRA has been perceived as a strong lobby with active members. Our many legislative and electoral successes have reinforced this truth. However, our political strength is being called into question by Judiciary Committee Chairman Rodino. It is critical that gun owners win this battle, or else the door may be opened for efforts currently underway to ban every semiautomatic firearm in the nation.

A signature on the Volkmer discharge petition is the single test of your Congressman's support for your rights.

Rest assured, the Washington Post, New York Times and CBS News have already lined up against you. Some national police union leaders have grabbed the limelight by allowing themselves to be manipulated by Judiciary Committee Chairman Rodino in opposition to the bill.

Only you can help turn the tide in favor of the rights of law abiding citizens.

A key to our success is to extend a message beyond the NRA membership to all law-abiding gun owners. Toward this end, I am enclosing petitions for signature supporting the Firearms Owners Protection Act. Please make copies of these petitions, and get the signatures of all your fellow gun owners.

Also, if you have any friends in law enforcement, please designate a petition as "A SPECIAL LAW ENFORCEMENT PETITION" and urge him or her to get their fellow officers signatures.

Please make certain that your local gun shops, ranges and locations where hunting licenses are sold have fact sheets and petitions available for signature. Take the enclosed cards to these locations, and encourage them to order a store display.

The defense of the 2nd Amendment is everyone's business. With your help, we will be able to get many non-NRA members involved in the fight.

Sincerely,

Wayne LaPierre
Director
Governmental Affairs

enclosure

Major Provisions of S. 49

1. S. 49 defines the term "engaging in the business", in terms of livelihood and profit motive and activity considered to be in the regular course of trade or business. Specifically exempted are individuals who make only occasional sales or purchases to enhance a personal collection or those who liquidate all or part of their personal collection.

Current law contains no such definition.

2. S. 49 eliminates the record keeping requirements for the sale of ammunition. The retention of these records serve no useful purpose.

Current law requires that records for the sale of ammunition, except .22 caliber rimfire, be maintained.

3. S. 49 clearly establishes who is prohibited from receiving or possessing a firearm. In addition, it creates a felony of any person knowingly selling a firearm to a prohibited person.

Current law contains duplicative categories of prohibited persons which are found in different code sections. S. 49 consolidates them. In addition, currently it is not a violation of current law for a non-licensee to sell to a prohibited person. S. 49 closes this loophole.

4. S. 49 allows a licensed dealer to sell firearms to a resident of another state, if the legal requirements of both the state of residence and state of purchase are met in regard to sale, receipt, and delivery. Because the Bureau of Alcohol, Tobacco and Firearms supplies each licensed firearms dealer with a booklet of all state firearms laws and ordinances, the licensed dealer is presumed to know the law of the purchaser's residence. An illegal sale subjects the dealer to a federal felony charge. The prohibition on "mail order sales" is maintained.

Current law prohibits such transactions except for "contiguous state" transactions involving rifles and shotguns.

5. S. 49 expressly recognizes that a Federal Firearms licensee may maintain a private collection of firearms separate and distinct from that persons business inventory. It provides that business records need not reflect transactions from the private collection regarding firearms acquired from the inventory if the firearm remains in the collection for one year.

Some courts have interpreted current law to prohibit a Federal licensee from maintaining such a private collection and requires all transactions from the private collection be reflected in the licensee's business records.

6. S. 49 expressly requires that intent (willful) to violate the provisions of Federal law be shown before a licensee may have his license revoked. It also provides for a "de novo" judicial review of such a determination. In addition, S. 49 prohibits revocation or denial of a license where the denial or revocation is based upon charges upon which the licensee was acquitted.

Current law does not expressly require that intent be shown to revoke a license and allows only normal judicial reviews of administrative decisions. Licenses can be revoked on the basis of charges of which the licensee was acquitted.

7. S. 49 generally requires a search warrant to inspect the records of a Federal licensee. The exceptions to the warrant requirement are (a) during the course of a criminal investigation, (b) to "trace" a specifically identified firearm or (c) one courtesy inspection per year upon reasonable notice.

Current law allows unlimited inspection during business hours.

8. S. 49 provides that out of business dealer records be stored by the Archivist of the United States for twenty years. It provides that the Secretary of Treasury may, in writing, require a licensee to provide business record information. S. 49 also requires the reporting of multiple handgun sales.

Current law is formally silent on these matters, but they are covered by Treasury regulation. The legislation formalizes these regulations.

9. S. 49 allows Federal licensees to conduct business at sanctioned gun shows provided that all records required are kept.

This is currently allowed by Treasury regulation and the legislation formalizes the regulatory standard.

10. S. 49 requires the showing of criminal intent before a person can be convicted of an offense under the Gun Control Act.

Current law requires no proof of intent.

11. S. 49 designates certain technical, record-keeping violations as misdemeanors.

Under current law, all violations are felonies.

12. S. 49 makes the use or carrying of a firearm in a crime of violence subject to a mandatory five years for a first offense and a mandatory ten years for a second offense. No parole, probation, or suspension of sentence is allowed and the sentence cannot run concurrently with the sentence for the underlying offense.

Current law does not require mandatory sentence for a first offense. Otherwise, these are only technical changes from the legislation as it appeared in the President's crime package.

13. S. 49 establishes rules and a type of statute of limitations for seizure and forfeiture actions. Actions for forfeiture must be commenced within 120 days of seizure. Seized firearms must be returned in the event of acquittal or failure to prosecute. It also provides for the award of attorney fees in the event the owner must sue to have his firearms returned.

Current law has no such provisions, and the general statutory provisions dealing with seizure and forfeiture govern. Currently property may be seized and held without instituting forfeiture, with the threat of criminal charges being brought if a person tried to recover his property.

14. S. 49 establishes a judicial review for those individuals whose petition for relief from disabilities is denied by the Secretary.

Current law has no such provision.

15. S. 49 prohibits the importation of frames, barrels, or receivers of firearms which if assembled could not be imported under the sporting purpose test.

Current law prohibits only the importation of such frames and receivers.

16. S. 49 prohibits the establishment of any firearms registration system.

This provision formalizes a restriction contained in the Treasury Appropriation ever since 1979, and would make it part of permanent law.

17. S. 49 allows the transportation in interstate commerce of firearms which are unloaded and not readily accessible, notwithstanding any state or local law or ordinance.

Current law does not permit such transport where local law prohibits.

What S. 49 Does Not Do

1. S. 49 does not allow mail order sales. S. 49 maintains the current prohibition on transmitting a firearm through the mails to a non federal licensee and the current requirement that a buyer appears at a dealer's premises.

2. S. 49 does not allow felons, drug addicts, or mental incompetents to possess firearms. In fact, S. 49 would result in a clear concise listing of such prohibited persons by consolidating the categories of current law.

3. S. 49 will not allow firearms to be sold out of the trunks of cars. S. 49 tracks current regulations by allowing licensed dealer sales off premise only at properly sanctioned gun shows, and subject to all record keeping requirement.

4. S. 49 will not allow an individual to evade local firearm ownership restrictions simply by crossing a state line. For an interstate sale to be legal, the purchaser would be required to meet both the requirements of his own state of residence and the state of purchase.

When the 1968 Gun Control Act was signed into law, its preamble contained a solemn sounding promise. In part, it read that nothing in the Federal gun law was intended or would be used to "place any undue restrictions or burdens on law-abiding citizens . . ." or "discourage or eliminate the private ownership of firearms. . . ."

The history of enforcement of the Gun Control Act of 1968 has shown that pledge not to have been kept. S. 49, the Firearm Owners Protection Act, is a clear response to the abuses of citizens' rights documented under the '68 Act. The reform legislation passed the U.S. Senate by a vote of 79 to 15 on July 9, 1985.

Many utterly false allegations have been made—by the media and by groups that support the prohibition of firearms—about the legislation and what it will accomplish.

Please learn the truth about S. 49, the Volkmer-McClure Firearm Owners Protection Act.

CLAIM:

The nation's law enforcement community is against Volkmer-McClure, the Firearm Owners Protection Act. They say it endangers police and aids criminals. How can NRA oppose law enforcement?

FACTS:

NRA does not oppose law enforcement. In fact, over one million police have been trained by NRA-trained police and security firearms instructors. The Protection Act is an effort to change unjust provisions in the federal gun law. The federal law enforcement agencies charged with enforcing this law—the Treasury Department and the Justice Department—support this bill. They helped write the bill to ensure that it meets the needs of

law enforcement and protects the rights of honest citizens.

The leadership of the Fraternal Order of Police, International Association of Chiefs of Police and some others that claim to speak for their memberships in opposing the Protection Act have relied on distortions of the bill provided by anti-gun ownership groups, such as the National Coalition to Ban Handguns and Handgun Control Inc. The propaganda they hand out opposing the bill was written and printed by Handgun Control Inc. It is totally wrong and intended to mislead the public.

State and local law enforcement are charged with enforcing state and local laws, not federal law. The Protection Act is federal law and has the support of federal law enforcement. If federal law enforcement lobbied state legislatures on state matters, state law enforcement would object mightily. The obvious political nature of the alleged law enforcement objections and the mixing of jurisdictional authority casts grave suspicion on that so-called opposition.

CLAIM:

Criminals will evade restrictive state laws by purchasing guns in other states.

FACTS:

Nonsense. Criminals will still be prohibited by federal law from purchasing any gun in any state. The interstate sales provision applies only to the law-abiding citizen—for example a collector or hunter or competitor. No sale would be permitted without verifiable proof that the purchaser is in compliance with all the laws of the buyer's state of residence and the state of purchase.

The Protection Act directs the Treasury Department to publish

and distribute to all licensed dealers a booklet of state and local gun laws and the Act directs Treasury to keep dealers informed of changes. (Note: passage of state pre-emption laws in all states would reduce the hodge-podge of state and local laws to 50. At present, more than 30 states have pre-emption.)

Mail order sales are prohibited. All sales must be made in person.

CLAIM:

Criminals will be allowed to carry guns across state lines.

FACTS:

Felons, drug abusers and the mentally incompetent are barred from possession of guns, period. Only the law-abiding would be allowed to transport personal, legally-owned firearms across state lines if the guns are unloaded and inaccessible to the owners.

CLAIM:

The ability to trace guns used by criminals would be eliminated.

FACTS:

Absolutely false. Current regulations governing tracing would be written into federal statute by the Protection Act. Dealers evading federal record-keeping provisions would be subject to a federal felony charge. Dealers would not be able to circumvent record-keeping restrictions by "placing firearms in inventory into their private "collections." Dealers would be allowed to sell themselves guns. These transactions would be recorded exactly as any other sale. For dealers, however, even those guns would be considered as part of their inventory for a full 12 months after the transaction.

Criminal investigators would have complete access to a dealer's records at any time. Only the annual compliance bookkeeping check requires "prior notice."

The "advance notice" provision was included in the Act to eliminate the use of the compliance inspection as a harassment technique by a government hostile to the private ownership of guns.

CLAIM:

No criminal charges can result from compliance inspections. "Carelessness" can be used as an excuse by crooked dealers.

FACTS:

Criminal charges can be brought against dealers for selling firearms to prohibited persons if such sales are uncovered in the course of a compliance inspection. Minor technical bookkeeping errors, those which are obviously non-criminal in nature, would be excused. Current law does not distinguish between minor or inadvertent infractions and criminal violations. Every violation, regardless of its nature, is a federal felony under current law.

CLAIM:

Elimination of centerfire ammunition record-keeping cripples law enforcement efforts.

FACTS:

Federal law enforcement authorities urged that ammunition record-keeping provisions be dropped. Nearly two decades have proven this a useless crime-fighting tool. Centerfire rifle and shotgun ammunition was exempted in 1969. Record-keeping for .22 ammunition was eliminated in 1983. Even Ted Kennedy voted in favor of that ex-

emption. Today, virtually all hand-gun cartridges—.357 magnum, .44, 5mm and 45 ACP—have become rifle cartridges with carbines and rifles chambered to accept them.

CLAIM:

Current mandatory penalty provisions of federal law would be "gutted" by the Protection Act's use of the term "in furtherance of" a crime phrase.

FACTS:

False. The Protection Act strengthens federal mandatory penalty provisions. The Protection Act applies a five-year mandatory jail term to first offenses, 10 years for second offenses. The Protection Act extends the mandatory penalties to drug traffickers.

The term "in furtherance" was inserted to protect individuals such as police officers, required by law to carry guns at all times, from facing a five-year mandatory felony charge should they find themselves guilty of a minor infraction, such as being involved in a scuffle, during which a gun was present but not used.

The legislative history of the Protection Act as described in the Senate Judiciary Committee's report on the bill specifically states that criminals would not be exempted from the enhanced penalty.

CLAIM:

A plea of self-defense to avoid the mandatory penalty provision could be used to justify the killing of police by criminals.

FACTS:

False. Self-defense claims would apply only when a "severe and substantial miscarriage of justice" regarding the application of the

mandatory penalty provision was proved to the court. The bill as well as the Senate Judiciary Committee report notes specifically that criminals engaged in criminal activity would not be eligible to claim "self-defense."

CLAIM:

"Waiting period" provisions are needed in federal law to keep guns out of the hands of criminals.

FACTS:

"Waiting period" statutes have been considered and rejected by 34 states. Because they did not believe that Congress should overrule more than half of all the states by imposing a national waiting period, 79 U.S. Senators voted against that scheme.

There is no proof that waiting periods deter criminals from obtaining firearms. Justice Department studies show that most criminals obtain firearms from the black market and not from dealers. Current federal gun law leaves individual traffickers untouched. The Protection Act makes it a federal felony for dealers and individuals to channel guns to criminals.

CLAIM:

Congress seems perfectly willing to pre-empt state laws regarding transporting guns through a state.

FACTS:

The Protection Act does not pre-empt state laws dealing with criminals using or possessing guns. It only allows honest citizens to travel across the United States on the condition that their firearms are unloaded and inaccessible. Illegal gun traffickers would be barred from interstate travel.

CLAIM:

The NRA doesn't want any testimony or debate on the Protection Act; that's why they are attempting to secure a discharge petition and avoid the committee process.

FACTS:

For six years the Protection Act worked its way through the committee process. Two sets of Senate hearings were held. Numerous meetings with federal enforcement agencies—the U.S. Treasury Department and the U.S. Justice Department—were held to ensure the bill met federal law enforcement needs. The House Judiciary Committee under Representative Peter Rodino refused to hold hearings. Rodino declared the bill "dead on arrival in the House." His current strategy is to hold rigged "hearings" in an effort to "hear" the bill to death. That's why a bipartisan coalition of congressmen have chosen to obtain a floor vote on the Protection Act by using a technique called a discharge petition. Under the current discharge petition, six hours of debate would be allowed. Amendments from the floor during that time would also be allowed. Democracy will be allowed to prevail over Rodino's dictatorial rule.

Please write your Senators and Congressmen. Without your support, without your letters, the Firearm Owners Protection Act will not be enacted. With your message, enactment of that long-awaited relief from the oppressive anti-gun law will truly be within reach. And if your lawmakers are cosponsors of the Firearm Owners Protection Act, by all means thank them. It's important.

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Washington, D.C. 20036

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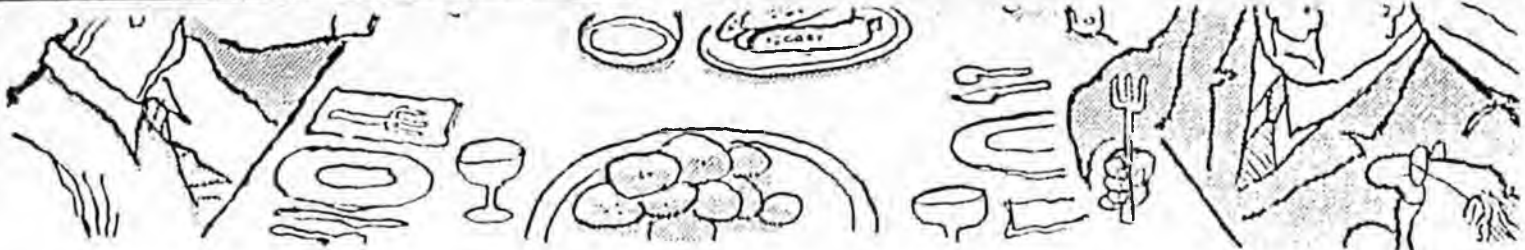


for the coalition lobbying on the issue, says he has spoken or written to every member of the Finance Committee and the House Ways and Means Committee about it. So have dozens of college presidents, many of whom descended on Senate offices during a convention here three weeks ago.

"Very few senators come from a state without a university," says Sen. Daniel Patrick Moynihan, a New York Democrat, who strongly favors retaining the deduction.

The coalition, called the Alliance for Philanthropy, was the brainchild of Washington lobbyist Dan Flanagan, whose clients include Sloan-Kettering. After the House bill passed, Flanagan says, alarmed proponents of the deduction realized their strategy had been flawed: "We were making our case to staff and by the time the opportunity presented itself, it was part of the minimum tax," he says.

This time around, coalition members decided, they would seek to persuade senators themselves. At weekly meetings, they allocate their resources among Senate Finance members, so that each one will be contacted by influential charitable groups from his state.



BY ROGERS FOR THE PITTSBURGH PRESS

At one recent pow-wow, for example, two Oregon colleges, a foundation, the Oregon Symphony Orchestra and a public-land trust agreed to talk to Finance Committee Chairman Bob Packwood, a Republican from their state. Republican Sen. John Heinz would hear from the University of Pennsylvania, the local United Way, a community foundation and an area museum group. The University of Minnesota was to call Sen. David F. Durenberger. Sen. William L. Armstrong would hear from the Colorado Open Lands Foundation, and ranking committee Democrat Russell B. Long from the president of Tulane University and the New Orleans Symphony. And so on.

No such lobbying is taking place on the other side of the issue. The only support for the

provision comes from tax-policy experts who point out that the appreciated-property provision is like almost no other section of the tax code in that it gives taxpayers a double benefit: Not only can they avoid taxation on the property's increase in value, but they can use that higher value to shelter income from other sources.

The deduction "conflicts with basic principles governing the measurement of income, produces an artificial incentive to donate appreciated property rather than cash and also leads to abuse and administrative problems for the Internal Revenue Service when taxpayers over-value donated property," according to the Treasury Department's original tax plan.

"Here is someone giving something worth

\$30,000. They get a \$100,000 donation and the Treasury does not get the tax revenue, and that's not the way it's supposed to work," says Democratic Sen. Bill Bradley of New Jersey, a Finance member.

Proponents of the deduction marshal a host of arguments against such objections, contending that most appreciated gifts are stocks or real estate, which are fairly easy to price.

Those arguments and others seem to be making headway with the Finance Committee. At a hearing on the minimum tax, several senators made a point of objecting to including appreciated property. And there is little sign the House-passed provision will be in the draft tax-overhaul legislation Packwood is preparing to offer to the committee. □

By Howard Kurtz
Washington Post Staff Writer

Senior officials at the Justice and Treasury departments have privately expressed strong reservations about legislation—officially backed by the Reagan administration—that would weaken the 1968 Gun Control Act, according to administration sources and documents.

Attorney General Edwin Meese III told a conservative group that he has serious reservations about parts of the bill and these concerns were repeated by Justice Department officials in a January meeting with lobbyists for the National Rifle Association, according to the documents.

The Treasury Department's Bureau of Alcohol, Tobacco and Firearms (BATF) detailed 13 objections in an internal memo two weeks ago, saying the bill would make it harder to prosecute gun-wielding criminals.

The split within the administration is over the McClure-Volkmer bill, which is backed by

ISSUES

(S.49)

SJR 44

Has the Move to Shoot Holes in Gun Control Run Out of Ammo?

Meese objects to parts of an NRA-backed bill

the NRA but opposed by most law enforcement groups.

The internal divisions became clear last week at a hearing of the House Judiciary subcommittee on crime, where Chairman William J. Hughes of New Jersey released some of the documents.

Deputy Assistant Treasury Secretary Edward T. Stevenson denied any change in position, saying, "Justice, Treasury and the White House are still consistent in support of"

the bill. Stevenson said the measure strikes "a balance between the rights of law-abiding gun owners on the one hand and the requirements of law enforcement on the other."

Under questioning from Hughes, however, Stephen E. Higgins, director of Treasury's firearms bureau, acknowledged that his agency objects to key provisions.

At the Justice Department, spokesman Patrick Korten says: "We fully support the bill, and Ed Meese wants to see it passed. No amend-

ments are needed. Whatever concerns we and Ed Meese may have, we believe they can be fully resolved through a colloquy on the House floor to establish a legislative history."

Meese declined to send a representative to the hearing, saying he would defer to the Treasury Department. An administration official says this was meant to signal that the Justice Department finds "several things wrong with the bill." Hughes says he thinks that the attorney general "has very serious reservations" about some provisions.

The bill, sponsored by Republican Sen. James A. McClure of Idaho and Democratic Rep. Harold L. Volkmer of Missouri, proposes the first major change in gun control laws in 17 years. It passed the Senate 79 to 15 in July, and 170 House members have signed a discharge petition to bypass the Judiciary Committee and move the bill to the House floor. A majority of 218 is needed.

In a Feb. 10 memo, Higgins listed six positive

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aspects of the bill and 13 criticisms, such as its ban on surprise inspections of gun dealers.

"The prohibition against unannounced inspections would enable unscrupulous licensees to conceal violations of the law," he wrote.

He also criticized its weakening of mandatory penalties for using a gun in a violent crime.

"The bill may be interpreted to allow a fleeing felon to avoid the penalties where he used a firearm to make his escape," he wrote.

Higgins also took issue with the easing of record-keeping rules for dealers and owners, saying this "would hamper law enforcement's ability to trace firearms." And he said a provision to legalize the interstate transportation of unloaded, inaccessible firearms "would impede the efforts of state and local law enforcement officials" to enforce the law.

Another BATF memo said Meese told the

conservative 721 Group "that he had problems with the bill; that the bill was no longer necessary since the administration had solved the problems that gave rise to the bill . . . and that he was particularly concerned about the provision of the bill on mandatory penalties."

NRA spokesman John Aquilino says BATF's concerns are "nonsense" and "sound like a serious disinformation campaign." He says the issues were dealt with in the Senate bill. "There's no wavering by the administration as far as we're concerned," he says.

Higgins conceded at the hearing that he receives few complaints about record-keeping, a target of the bill, and that each year only 4 percent of the nation's 225,000 gun dealers are inspected.

"We cannot break publicly with the administration," a BATF official says. "But we went in there and told the truth." □

CONGRESS

Well, They Dealt These Cards...

Capitol Hill budgets have to shrink, too

By Sandra Sugawara

Washington Post Staff Writer

Rep. Stan Parris, a Virginia Republican, recently laid off two employees, including one recently recruited from a federal agency, and is planning to dismiss a third worker.

The House Foreign Affairs Committee sharply cut or eliminated everything from salaries to long distance phone calls to expense money for out-of-town witnesses.

The House Merchant Marine and Fisheries Committee is struggling with a 10 percent cut in its staff budget. "The rumor mill is working overtime," says Sue Waldron, committee press assistant.

The Gramm-Rudman-Hollings budget-balancing law has hit home on Capitol Hill. The creators of the law are now learning, like other recipients of federal money, what it is like

more complicated. Each congressman was originally given \$296,010 to pay for up to 18 staff members from January through September. Gramm-Rudman-Hollings reduced that amount by 10.5 percent, to \$265,000 for each office.

In addition, each office has a fund that pays for such things as office supplies, telephones and rent on district offices. The amount varies from \$100,000 to \$370,000, depending on such factors as distances and regional costs. Those accounts are to be cut by 4.3 percent.

In the Senate, administrative officials have been asked to prepare lists of people who might be let go. Members have been told to reduce their office and staff budgets by 4.3 percent, according to Peter Loomis, an aide to Republican John Warner of Virginia. He says that Warner will not replace two people who recently left, and will not have paid col-

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PRESIDENTIAL ACTION

Antitrust Law Revision

The Reagan administration issued its detailed legislative proposal for a major revision of merger laws, including limited antitrust immunity for companies in industries that have been severely injured by import competition. The proposals' fate is uncertain, particularly in the House, where Rep. Peter W. Rodino Jr., chairman of the House Judiciary Committee, has already expressed skepticism. The proposal would change several long-standing antitrust and merger policies in the name of eliminating unneeded government regulation of business. (Feb. 19)

Aid to the Contras

President Reagan asked Congress for \$100 million in economic and military aid for the rebels fighting to overthrow Nicaragua's Sandinista government. Reagan asked Congress to provide the contras with \$30 million in non-lethal aid, such as clothing and medical supplies, and \$70 million in covert military assistance. In 1984 Congress barred military aid to the contras, but last year approved \$27 million in nonlethal aid, which expires March 31. (Feb. 18)

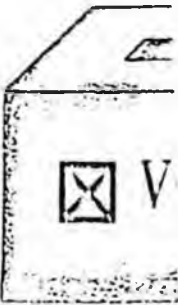
Ex-Im Bank Nominee

President Reagan announced that he will nominate John A. Bohn Jr. to be president of the Export-Import Bank of the United States. Bohn, who is vice president of the bank, would replace William H. Draper III, who resigned last month to become head of the United Nations Development Program. The Ex-Im Bank provides low-cost financing to help American exporters sell their products overseas. (Feb. 18)

Aid to Savimbi

The Reagan administration told Congress that it has decided to provide Angolan rebel leader Jonas Savimbi with covert military assistance in his war with the Marxist Angolans.

to direct President to get the change has indicated 19)



Philippine El

The Senate approved a resolution declaring that the Philippines "were marred that they cannot of the will of pines." In the most bipartisan political government of President nonbinding resolutions are best served government which The Senate stopped concrete action, I committee chairman hold U.S. military government. (SRes34)

Aid to Liberia

The House approved a binding resolution to suspend that country holds addition, the meaning of so-called the government re and allows the pre national observers African nation's O

When the 1968 Gun Control Act was signed into law, its preamble contained a solemn sounding promise. In part, it read that nothing in the Federal gun law was intended or would be used to "place any undue restrictions or burdens on law-abiding citizens . . ." or "discourage or eliminate the private ownership of firearms. . . ."

The history of enforcement of the Gun Control Act of 1968 has shown that pledge not to have been kept. S. 49, the Firearm Owners Protection Act, is a clear response to the abuses of citizens' rights documented under the '68 Act. The reform legislation passed the U.S. Senate by a vote of 79 to 15 on July 9, 1985.

Many utterly false allegations have been made—by the media and by groups that support the prohibition of firearms—about the legislation and what it will accomplish.

Please learn the truth about S. 49, the Volkmer-McClure Firearm Owners Protection Act.

CLAIM:

The nation's law enforcement community is against Volkmer-McClure, the Firearm Owners Protection Act. They say it endangers police and aids criminals. How can NRA oppose law enforcement?

FACTS:

NRA does not oppose law enforcement. In fact, over one million police have been trained by NRA-trained police and security firearms instructors. The Protection Act is an effort to change unjust provisions in the federal gun law. The federal law enforcement agencies charged with enforcing this law—the Treasury Department and the Justice Department—support this bill. They helped write the bill to ensure that it meets the needs of

law enforcement and protects the rights of honest citizens.

The leadership of the Fraternal Order of Police, International Association of Chiefs of Police and some others that claim to speak for their memberships in opposing the Protection Act have relied on distortions of the bill provided by anti-gun ownership groups, such as the National Coalition to Ban Handguns and Handgun Control Inc. The propaganda they hand out opposing the bill was written and printed by Handgun Control Inc. It is totally wrong and intended to mislead the public.

State and local law enforcement are charged with enforcing state and local laws, not federal law. The Protection Act is federal law and has the support of federal law enforcement. If federal law enforcement lobbied state legislatures on state matters, state law enforcement would object mightily. The obvious political nature of the alleged law enforcement objections and the mixing of jurisdictional authority casts grave suspicion on that so-called opposition.

CLAIM:

Criminals will evade restrictive state laws by purchasing guns in other states.

FACTS:

Nonsense. Criminals will still be prohibited by federal law from purchasing any gun in any state. The interstate sales provision applies only to the law-abiding citizen—for example a collector or hunter or competitor. No sale would be permitted without verifiable proof that the purchaser is in compliance with all the laws of the buyer's state of residence and the state of purchase.

The Protection Act directs the Treasury Department to publish

and distribute to all licensed dealers a booklet of state and local gun laws and the Act directs Treasury to keep dealers informed of changes. (Note: passage of state pre-emption laws in all states would reduce the hodge podge of state and local laws to 50. At present, more than 30 states have pre-emption.)

Mail order sales are prohibited. All sales must be made in person.

CLAIM:

Criminals will be allowed to carry guns across state lines.

FACTS:

Felons, drug abusers and the mentally incompetent are barred from possession of guns, period. Only the law-abiding would be allowed to transport personal, legally-owned firearms across state lines if the guns are *unloaded and inaccessible* to the owners.

CLAIM:

The ability to trace guns used by criminals would be eliminated.

FACTS:

Absolutely false. Current regulations governing tracing would be written into federal statute by the Protection Act. Dealers evading federal record-keeping provisions would be subject to a federal felony charge. Dealers would not be able to circumvent record-keeping restrictions by "placing firearms in inventory into their private "collections." Dealers would be allowed to sell themselves guns. These transactions would be recorded exactly as any other sale. For dealers, however, even those guns would be considered as part of their inventory for a full 12 months after the transaction.

Criminal investigators would have complete access to a dealer's records at any time. Only the annual compliance bookkeeping check requires "prior notice."

The "advance notice" provision was included in the Act to eliminate the use of the compliance inspection as a harassment technique by a government hostile to the private ownership of guns.

CLAIM:

No criminal charges can result from compliance inspections. "Carelessness" can be used as an excuse by crooked dealers.

FACTS:

Criminal charges can be brought against dealers for selling firearms to prohibited persons if such sales are uncovered in the course of a compliance inspection. Minor technical bookkeeping errors, those which are obviously non-criminal in nature, would be excused. Current law does not distinguish between minor or inadvertent infractions and criminal violations. Every violation, regardless of its nature, is a federal felony under current law.

CLAIM:

Elimination of centerfire ammunition record-keeping cripples law enforcement efforts.

FACTS:

Federal law enforcement authorities urged that ammunition record-keeping provisions be dropped. Nearly two decades have proven this a useless crime-fighting tool. Centerfire rifle and shotgun ammunition was exempted in 1983. Record-keeping for .22 ammunition was eliminated in 1983. Even Ted Kennedy voted in favor of that ex-

emption. Today, virtually all handgun cartridges—.357 magnum, .44, 9mm and 45 ACP—have become rifle cartridges with carbines and rifles chambered to accept them.

CLAIM:

Current mandatory penalty provisions of federal law would be "gutted" by the Protection Act's use of the term "in furtherance of" a crime phrase.

FACTS:

False. The Protection Act strengthens federal mandatory penalty provisions. The Protection Act applies a five-year mandatory jail term to first offenses, 10 years for second offenses. The Protection Act extends the mandatory penalties to drug traffickers.

The term "in furtherance" was inserted to protect individuals such as police officers, required by law to carry guns at all times, from facing a five-year mandatory felony charge should they find themselves guilty of a minor infraction, such as being involved in a scuffle, during which a gun was present but not used.

The legislative history of the Protection Act as described in the Senate Judiciary Committee's report on the bill specifically states that criminals would not be exempted from the enhanced penalty.

CLAIM:

A plea of self-defense to avoid the mandatory penalty provision could be used to justify the killing of police by criminals.

FACTS:

False. Self-defense claims would apply only when a "severe and substantial miscarriage of justice" regarding the application of the

mandatory penalty provision was proved to the court. The bill as well as the Senate Judiciary Committee report notes specifically that criminals engaged in criminal activity would not be eligible to claim "self-defense."

CLAIM:

"Waiting period" provisions are needed in federal law to keep guns out of the hands of criminals.

FACTS:

"Waiting period" statutes have been considered and rejected by 34 states. Because they did not believe that Congress should overrule more than half of all the states by imposing a national waiting period, 79 U.S. Senators voted against that scheme.

There is no proof that waiting periods deter criminals from obtaining firearms. Justice Department studies show that most criminals obtain firearms from the black market and not from dealers. Current federal gun law leaves individual traffickers untouched. The Protection Act makes it a federal felony for dealers and individuals to channel guns to criminals.

CLAIM:

Congress seems perfectly willing to pre-empt state laws regarding transporting guns through a state.

FACTS:

The Protection Act does not pre-empt state laws dealing with criminals using or possessing guns. It only allows honest citizens to travel across the United States on the condition that their firearms are unloaded and inaccessible. Illegal gun traffickers would be barred from interstate travel.

CLAIM:

The NRA doesn't want any testimony or debate on the Protection Act; that's why they are attempting to secure a discharge petition and avoid the committee process.

FACTS:

For six years the Protection Act worked its way through the committee process. Two sets of Senate hearings were held. Numerous meetings with federal enforcement agencies—the U.S. Treasury Department and the U.S. Justice Department—were held to ensure the bill met federal law enforcement needs. The House Judiciary Committee under Representative Peter Rodino refused to hold hearings. Rodino declared the bill "dead on arrival in the House." His current strategy is to hold rigged "hearings" in an effort to "hear" the bill to death. That's why a bipartisan coalition of congressmen have chosen to obtain a floor vote on the Protection Act by using a technique called a discharge petition. Under the current discharge petition, six hours of debate would be allowed. Amendments from the floor during that time would also be allowed. Democracy will be allowed to prevail over Rodino's dictatorial rule.

Please write your Senators and Congressmen. Without your support, without your letters, the Firearm Owners Protection Act will not be enacted. With your message, enactment of that long-awaited relief from the oppressive anti-gun law will truly be within reach. And if your lawmakers are cosponsors of the Firearm Owners Protection Act, by all means thank them. It's important.

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1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036

the truth about S.49:
THE FIREARM OWNERS PROTECTION ACT



99TH CONGRESS
1ST SESSION

S. 49

I

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1985

Referred to the Committee on the Judiciary

AN ACT

To protect firearms owners' constitutional rights, civil liberties,
and rights to privacy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress finds that the rights to keep and bear
4 arms under the second amendment to the United States Con-
5 stitution; their rights to security against illegal and unreason-
6 able searches and seizures under the fourth amendment; the
7 protections against uncompensated taking of property, double
8 jeopardy, and assurance of due process of law under the fifth
9 amendment; and the rights against unconstitutional exercise
10 of authority under the ninth and tenth amendments; require

1 additional legislation to correct existing firearms statutes and
2 enforcement policies. The Congress further finds that ad-
3 tional legislation is required to reaffirm its intent, as ex-
4 pressed in section 101 of title I of the Gun Control Act of
5 1968, that "it is not the purpose of this title to place any
6 undue or unnecessary Federal restrictions or burdens on law-
7 abiding citizens with respect to the acquisition, possession, or
8 use of firearms appropriate to the purpose of hunting, trap-
9 shooting, target shooting, personal protection, or any other
10 lawful activity, . . ." or "to discourage or eliminate the pri-
11 vate ownership or use of firearms by law-abiding citizens for
12 lawful purposes."

13 TITLE I—AMENDMENTS TO TITLE 18, UNITED
14 STATES CODE (18 U.S.C. 921-928)

15 AMENDMENTS TO SECTION 921

16 SEC. 101. Section 921 of title 18, United States Code,
17 is amended—

18 (1) in subsection (a)(10) by deleting the words
19 "manufacture of" and inserting in lieu thereof the
20 words "business of manufacturing";

21 (2) in subsection (a)(11)(A) by deleting the words
22 "or ammunition";

23 (3) in subsection (a)(12) by deleting the words "or
24 ammunition";

1 (4) in subsection (a)(13) by deleting the words "or
2 ammunition";

3 (5) by amending subsection (a)(20) to read as
4 follows:

5 “(20) The term ‘crime punishable by imprisonment for a
6 term exceeding one year’ shall not include (A) any Federal or
7 State offenses pertaining to antitrust violations, unfair trade
8 practices, restraints of trade, or other similar offenses relat-
9 ing to the regulation of business practices, or (B) any State
10 offense classified by the laws of the State as a misdemeanor
11 and punishable by a term of imprisonment of two years or
12 less: *Provided, however,* That what constitutes a conviction
13 shall be determined in accordance with the law of the juris-
14 diction in which the proceedings were held: *Provided further,*
15 That any conviction which has been expunged, or set aside or
16 for which a person has been pardoned or has had his or her
17 civil rights restored shall not be considered a conviction
18 under the provisions of this Act, unless such pardon, ex-
19 punction, or restoration of civil rights expressly provides
20 that the person may not ship, transport, possess, or receive
21 firearms.”; and

22 (6) in subsection (a) by inserting new paragraphs
23 (21) and (22) after paragraph (20), to read as follows:

24 “(21) The term ‘engaged in the business’ means—

1 “(A) As applied to a manufacturer of firearms, a
2 person who devotes time, attention, and labor to manu-
3 facturing firearms as a regular course of trade or
4 business with the principal objective of livelihood and
5 profit through the sale or distribution of the firearms
6 manufactured.

7 “(B) As applied to a manufacturer of ammunition,
8 a person who devotes time, attention, and labor to
9 manufacturing ammunition as a regular course of trade
10 or business with the principal objective of livelihood
11 and profit through the sale or distribution of the ammu-
12 nition manufactured.

13 “(C) As applied to a dealer in firearms, as defined
14 in section 921(a)(11)(A), a person who devotes time,
15 attention, and labor to dealing in firearms as a regular
16 course of trade or business with the principal objective
17 of livelihood and profit through the repetitive purchase
18 and resale of firearms. The term shall not include a
19 person who makes occasional sales, exchanges, or pur-
20 chases of firearms for the enhancement of a personal
21 collection or hobby, or who sells all or part of his per-
22 sonal collection of firearms.

23 “(D) As applied to a dealer in firearms, as defined
24 in section 921(a)(11)(B), a person who devotes time,
25 attention, and labor to engaging in such activity as a

1 regular course of trade or business with the principal
2 objective of livelihood and profit. The term shall not in-
3 clude a person who makes occasional repairs of fire-
4 arms or who occasionally fits special barrels, stocks, or
5 trigger mechanisms to firearms.

6 "(E) As applied to an importer of firearms, a
7 person who devotes time, attention, and labor to im-
8 porting firearms as a regular course of trade or busi-
9 ness with the principal objective of livelihood and profit
10 through the sale or distribution of the firearms
11 imported.

12 "(F) As applied to an importer of ammunition, a
13 person who devotes time, attention, and labor to im-
14 porting ammunition as a regular course of trade or
15 business with the principal objective of livelihood and
16 profit through the activity involving firearms, includ-
17 ing the sale or other distribution of the ammunition
18 imported.

19 "(22) The term 'with the principal objective of liveli-
20 hood and profit' means that the intent underlying the sale or
21 disposition of firearms is predominantly one of obtaining live-
22 lihood and pecuniary gain, as distinguished from other in-
23 tents, such as improving or liquidating a personal firearms
24 collection."

AMENDMENTS TO SECTION 922

1
2 SEC. 102. Section 922 of title 18, United States Code,
3 is amended—

4 (1) by amending subsection (a)(1) to read as
5 follows:

6 “(1) for any person (A) except a licensed im-
7 porter, licensed manufacturer, or licensed dealer to
8 engage in the business of importing, manufacturing, or
9 dealing in firearms, or in the course of such business to
10 ship, transport, or receive any firearm in interstate or
11 foreign commerce; and (B) except a licensed importer
12 or licensed manufacturer to engage in the business of
13 importing or manufacturing ammunition, or in the
14 course of such business, to ship, transport, or receive
15 any ammunition in interstate or foreign commerce”;

16 (2) in subsection (a)(2)—

17 (A) by deleting the words “or ammunition”;

18 and

19 (B) by deleting the words “or licensed dealer
20 for the sole purpose of repair or customizing,”
21 and inserting in lieu thereof the words, “licensed
22 dealer, or licensed collector;”;

23 (3) by amending clause (B) of subsection (a)(3) to
24 read as follows: “(B) shall not apply to the transporta-

1 tion or receipt of a firearm obtained in conformity with
2 the provisions of subsection (b)(3) of this section,";

3 (4) in subsection (b)—

4 (A) by deleting in paragraph (2) "or ammuni-
5 tion" each place it appears;

6 (B) by deleting clause (A) in paragraph (3)
7 and inserting in lieu thereof the following: "(A)
8 shall not apply to the sale or delivery of any fire-
9 arm to a resident of a State other than a State in
10 which the licensee's place of business is located if
11 the sale, delivery and receipt fully comply with
12 the legal conditions of sale in both such States:
13 *Provided, however,* That any licensed manufactur-
14 er, importer or dealer shall be presumed, in the
15 absence of evidence to the contrary, to have had
16 actual knowledge of the State laws and published
17 ordinances of both States,";

18 (C) by inserting "and" before "(B)" in para-
19 graph (3);

20 (D) by striking out ", and" in clause (B) of
21 paragraph (3) and inserting in lieu thereof a
22 semicolon;

23 (E) by repealing clause (C) of paragraph (3);
24 and

1 (F) by deleting from paragraph (5) "or am-
2 munition except .22 rimfire ammunition";

3 (5) in subsection (d)—

4 (A) by deleting "licensed importer, licensed
5 manufacturer, licensed dealer, or licensed collec-
6 tor" the first time they appear and inserting in
7 lieu thereof "person";

8 (B) by amending paragraph (3) to read as fol-
9 lows:

10 "(3) is an unlawful user of or addicted to marijua-
11 na or any depressant or stimulant substance or narcotic
12 drug (as those terms are defined in section 102 of the
13 Controlled Substances Act (21 U.S.C. 802));";

14 (C) by replacing the period in paragraph (4)
15 with a semicolon; and

16 (D) by inserting after paragraph (4) the
17 following:

18 "(5) who, being an alien, is illegally or unlawfully
19 in the United States;

20 "(6) who has been discharged from the Armed
21 Forces under dishonorable conditions; or

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

24 (6) in subsection (g)—

1 (A) by deleting the words "is under indict-
2 ment for, or who" in paragraph (1);

3 (B) by amending paragraph (3) to read as fol-
4 lows:

5 "(3) is an unlawful user of or addicted to marijua-
6 na or any depressant or stimulant substance or narcotic
7 drug (as those terms are defined in section 102 of the
8 Controlled Substances Act (21 U.S.C. 802));";

9 (C) by inserting after paragraph (4) the
10 following:

11 "(5) who, being an alien, is illegally or unlawfully
12 in the United States;

13 "(6) who has been discharged from the Armed
14 Forces under dishonorable conditions; or

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

17 (D) by deleting the words "to ship or trans-
18 port any firearm or ammunition in interstate or
19 foreign commerce" and inserting in lieu thereof
20 the words "to ship or transport in interstate or
21 foreign commerce, or possess in or affecting com-
22 merce, any firearm or ammunition; or to receive
23 any firearm or ammunition which has been
24 shipped or transported in interstate or foreign
25 commerce.";

1 (7) in subsection (h)—

2 (A) by inserting after the word “any” and
3 before the word “person” the words “individual
4 who to his knowledge and while being employed
5 by any”;

6 (B) by deleting the words “is under indict-
7 ment for, or who” in paragraph (1);

8 (C) by amending paragraph (3) to read as fol-
9 lows:

10 “(3) is an unlawful user of or addicted to marijua-
11 na or any depressant or stimulant substance or narcotic
12 drug (as those terms are defined in section 102 of the
13 Controlled Substances Act (21 U.S.C. 802));”;

14 (D) by inserting after paragraph (4) the
15 following:

16 “(5) who, being an alien, is illegally or unlawfully
17 in the United States;

18 “(6) who has been discharged from the Armed
19 Forces under dishonorable conditions; or

20 “(7) who having been a citizen of the United
21 States, has renounced his citizenship;” and

22 (E) by deleting the words “to receive any
23 firearm or ammunition which has been shipped or
24 transported in interstate or foreign commerce”
25 and inserting in lieu thereof the words “in the

1 course of such employment to ship or transport in
2 interstate or foreign commerce, or possess in or
3 affecting commerce, any firearm or ammunition;
4 or to receive any firearm or ammunition which
5 has been shipped or transported in interstate or
6 foreign commerce.”; and

7 (8) by inserting after subsection (m) a new subsec-
8 tion to read as follows:

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

15 AMENDMENTS TO SECTION 923

16 SEC. 103. Section 923 of title 18, United States Code,
17 is amended—

18 (1)(A) in subsection (a)—

19 (i) by deleting the words “No person shall
20 engage in business as a firearms or ammunition
21 importer, manufacturer, or dealer until he has
22 filed an application with, and received a license to
23 do so from the Secretary.” and inserting in lieu
24 thereof the words “No person shall engage in the
25 business of importing, manufacturing, or dealing
26 in firearms, or importing or manufacturing ammu-

1 nition, until he has filed an application with and
2 received a license to do so from the Secretary.”;
3 and

4 (ii) by deleting the words “and contain such
5 information”, and inserting in lieu thereof the
6 words “and contain only that information neces-
7 sary to determine eligibility for licensing.”;

8 (B) in subsection (a)(3)(B) by deleting the words
9 “or ammunition for firearms other than destructive
10 devices”;

11 (2) in subsection (b) by striking out “and contain
12 such information”, and inserting in lieu thereof “and
13 contain only that information necessary to determine
14 eligibility for licensing”;

15 (3) in subsection (c) by adding at the end thereof
16 the following: “*Provided, however,* That nothing in this
17 chapter shall be construed to prohibit a licensed manu-
18 facturer, importer, or dealer from maintaining and dis-
19 posing of a personal collection of firearms, subject only
20 to such restrictions as apply in this chapter to disposi-
21 tions by a person other than a licensed manufacturer,
22 importer, or dealer: *Provided further,* That if any fire-
23 arm is in a licensee’s personal collection disposed of by
24 a licensee within one year of its transfer from his busi-
25 ness inventory into his personal collection or if such

1 transfer is made for the purpose of willfully evading
2 the restrictions placed upon licensees by this chapter,
3 then such firearm shall be deemed part of his business
4 inventory.”;

5 (4) in subsection (e) by inserting before the word
6 “violated” the word “willfully”;

7 (5) in subsection (f)—

8 (A) by inserting the words “de novo” before
9 the word “judicial” in paragraph (3);

10 (B) by adding the words “, whether or not
11 such evidence was considered at the hearing held
12 under paragraph (2).” after the words “to the
13 proceeding” in paragraph (3); and

14 (C) by inserting at the end thereof the fol-
15 lowing new paragraph:

16 “(4) If criminal proceedings are instituted against a li-
17 censee alleging violations of this chapter or regulations pro-
18 mulgated thereunder, and the licensee is acquitted of such
19 charges, or such proceedings are terminated, other than upon
20 motion of the Government prior to trial upon such charges,
21 the Secretary shall be absolutely barred from denying or re-
22 voking any license granted under the provisions of this chap-
23 ter where such denial or revocation is based in whole or in
24 part on the facts which form the basis of such criminal
25 charges. No proceedings for the revocation of a license shall

1 be instituted by the Secretary more than one year after the
2 filing of the indictment or information.”;

3 (6) by amending subsection (g) to read as follows:

4 “(g)(1) Each licensed importer, licensed manufacturer,
5 and licensed dealer, shall maintain such records of importa-
6 tion, production, shipment, receipt, sale, or other disposition,
7 of firearms at his place of business for such period, and in
8 such form, as the Secretary may by regulations prescribe.
9 Such importers, manufacturers and dealers shall not be re-
10 quired to submit to the Secretary reports and information
11 with respect to such records and the contents thereof, except
12 as expressly required by this section. The Secretary, when he
13 has reasonable cause to believe a violation of this law has
14 occurred, and that evidence thereof may be found on such
15 premises may, upon demonstrating such cause before a Fed-
16 eral magistrate, and securing from him a warrant authorizing
17 entry, enter during business hours the premises (including
18 places of storage) of any licensed firearms importer, licensed
19 manufacturer, licensed dealer, licensed collector or any li-
20 censed importer or manufacturer of ammunition, for the pur-
21 poses of inspecting or examining (1) any records or docu-
22 ments required to be kept by such licensed importer, licensed
23 manufacturer, licensed dealer, or licensed collector under the
24 provisions of this chapter or regulations issued under this
25 chapter, and (2) any firearms or ammunition kept or stored

1 by such licensed importer, licensed manufacturer, licensed
2 dealer, or licensed collector, at such premises. The Secretary
3 may inspect or examine the inventory and records of a li-
4 censed importer, licensed manufacturer, or licensed dealer
5 without such cause or warrant, (A) in the course of a reason-
6 able inquiry during the course of a criminal investigation of a
7 person or persons other than the licensee; or (B) no more
8 than once in any twelve consecutive months, upon reasonable
9 notice, but no criminal charges shall be brought against the
10 licensee based upon such inspection except for willful viola-
11 tions of the recordkeeping requirements of this chapter or
12 sales or other dispositions of firearms in violation of section
13 922(d); or (C) when such inspection or examination may be
14 required for determining the disposition of one or more par-
15 ticular firearms in the course of a bona fide criminal investi-
16 gation. The Secretary may inspect the inventory and records
17 of a licensed collector without such reasonable cause or war-
18 rant (A) no more than once in any twelve consecutive month
19 period, upon reasonable notice, but no criminal charges shall
20 be brought against such licensee based upon such inspection
21 except for willful violations of the recordkeeping require-
22 ments of this chapter or sales or other dispositions of firearms
23 to prohibited persons; or (B) when such inspection or exami-
24 nation may be required for determining the disposition of one
25 or more particular firearms in the course of a bona fide crimi-

1 nal investigation. At the election of a licensed collector, the
2 annual inspection of records and inventory permitted under
3 this paragraph shall be performed at the office of the Secre-
4 tary designated for such inspections which is located in clos-
5 est proximity to the premises where the inventory and
6 records of such licensed collector are maintained. The inspec-
7 tion and examination authorized by this subsection shall not
8 be construed as authorizing the Secretary to seize any
9 records or other documents other than those records or docu-
10 ments constituting material evidence of a violation of law. If
11 the Secretary seizes such records or documents, copies shall
12 be provided the licensee within a reasonable time. The Secre-
13 tary may make available to any Federal, State, or local law
14 enforcement agency any information which he may obtain by
15 reason of the provisions of this chapter with respect to the
16 identification of persons prohibited from purchasing or receiv-
17 ing firearms or ammunition who have purchased or received
18 firearms or ammunition, together with a description of such
19 firearms or ammunition and he may provide information to
20 the extent such information may be contained in the records
21 required to be maintained by the provisions of this chapter,
22 when so requested by any Federal, State, or local law en-
23 forcement agency.

24 “(2) Each licensed collector shall maintain in a bound
25 volume the nature of which the Secretary may by regulations

1 prescribe, records of the receipt, sale, or other disposition, of
2 firearms. Such records shall include the name and addresses
3 of any person to whom the collector sells or otherwise dis-
4 poses of a firearm. Such collector shall not be required to
5 submit to the Secretary reports and information with respect
6 to such records and the contents thereof, except as expressly
7 required by this section.

8 “(3)(A) Within thirty days of the absolute discontinu-
9 ance of the business of a licensee, any records maintained by
10 such licensee under this chapter shall be delivered to the joint
11 custody of the Archivist of the United States and the Secre-
12 tary to be stored in a records center maintained and operated
13 by the Archivist, unless State law or local ordinance requires
14 delivery to another authority, in which event the Archivist
15 and the Secretary may arrange for delivery to such authority.

16 “(B) The Secretary shall have access to records stored
17 under this paragraph solely for the purposes of determining
18 from whom a licensee acquired a firearm and to whom such
19 licensee disposed of such firearm, organizing and preserving
20 such records, and certifying to facts on the basis of such
21 records in any court or any administrative proceeding of the
22 United States or of any State. The Secretary may remove
23 such records from the record center maintained by the Archi-
24 vist only in connection with proceedings in any court or any

1 administrative proceeding of the United States or of any
2 State.

3 “(C) The Archivist may promulgate regulations govern-
4 ing the storage, processing and servicing of records stored
5 under this paragraph: *Provided*, That no such regulations
6 may restrict the authority of the Secretary under this para-
7 graph to have access to or to remove such records.

8 “(D) Notwithstanding any other provision of law, the
9 Archivist shall dispose of records kept by licensed dealers and
10 licensed collectors, and records relating to the disposition of
11 firearms kept by manufacturers and importers, and stored
12 under this paragraph twenty years after such records are re-
13 ceived by the Archivist and the Secretary.

14 “(4)(A) Each licensee shall, when required by letter
15 issued by the Secretary, and until notified to the contrary in
16 writing by the Secretary, submit on a form specified by the
17 Secretary, for the periods and at the times specified in such
18 letter, all record information required by this chapter or such
19 lesser record information as the Secretary in his letter may
20 specify.

21 “(B) The Secretary may authorize the information to be
22 submitted in a manner other than that prescribed in subpara-
23 graph (A) of this paragraph when it is shown by a licensee
24 that an alternate method of reporting is reasonably necessary

1 and will not unduly hinder the effective administration of this
2 chapter.

3 “(C) No warrant shall issue nor shall any criminal
4 charges be brought against the licensee based solely upon
5 information provided pursuant to the provisions of this para-
6 graph.

7 “(5)(A) Each licensee shall prepare a report of multiple
8 sales or other disposition whenever the licensee sells or oth-
9 erwise disposes of, at one time or during any five consecutive
10 business days, two or more pistols, or revolvers, or any com-
11 bination of pistols and revolvers totaling two or more, to an
12 unlicensed person. The report shall be prepared on a form
13 specified by the Secretary and forwarded to the office speci-
14 fied thereon not later than the close of business on the day
15 that the multiple sale or other disposition occurs.

16 “(B) Ten years after receiving any report submitted
17 under subparagraph (A) of this paragraph, the Secretary shall
18 deliver such report to the joint custody of the Archivist of the
19 United States and the Secretary to be stored in a records
20 center maintained and operated by the Archivist, subject to
21 the provisions of sections 923(g)(3) (B) and (C) of this title.
22 Notwithstanding any other provision of law, the Archivist
23 shall dispose of records stored under this subparagraph ten
24 years after such records are received by the Archivist and the
25 Secretary.

1 “(C) No record, form, or information delivered, submit-
2 ted, or forwarded pursuant to this paragraph or paragraph (3)
3 or (4) of this subsection may be kept by the Secretary at a
4 centralized location, nor shall it be entered into a computer
5 for storage or retrieval.”; and

6 (7) by amending subsection (j) to read as follows:

7 “(j) A licensed importer, licensed manufacturer, or li-
8 censed dealer may, under regulations prescribed by the Sec-
9 retary, conduct business temporarily at a location other than
10 the location specified on the license if such temporary loca-
11 tion is the location for a gun show or event sponsored by any
12 national, State, or local organization, or any affiliate of any
13 such organization devoted to the collection, competitive use,
14 or other sporting use of firearms, or an organization or asso-
15 ciation that sponsors events devoted to the collection, com-
16 petitive use or other sporting use of firearms in the communi-
17 ty, and such location is in the State which is specified on the
18 license. Records of receipt and disposition of firearms trans-
19 actions conducted at such temporary location shall include
20 the location of the sale or other disposition and shall be en-
21 tered in the permanent records of the licensee and retained
22 on the location specified on the license. Nothing in this sub-
23 section shall authorize any licensee to conduct business in or
24 from any motorized or towed vehicle. Notwithstanding the
25 provisions of subsection (a) of this section, a separate fee shall

1 not be required of a licensee with respect to business con-
2 ducted under this subsection. Except for records directly re-
3 lated to receipts, sales, or other dispositions of firearms made
4 at the temporary premises within the period of time the li-
5 censed importer, licensed manufacturer, or licensed dealer
6 conducted the business of which such receipts, sales, or other
7 dispositions were a part, nothing in this subsection shall be
8 construed to authorize the Secretary to inspect or examine
9 the inventory or records of a licensed importer, licensed man-
10 ufacturer, or licensed dealer at any location other than the
11 location specified on the license. Nothing in this subsection
12 shall be construed to diminish in any manner any right to
13 display, sell or otherwise dispose of firearms or ammunition
14 which is in effect prior to the date of enactment of the Act
15 entitled 'An Act to protect firearms owners' constitutional
16 rights, civil liberties, and rights to privacy'."

17 AMENDMENTS TO SECTION 924

18 SEC. 104. Section 924 of title 18, United States Code,
19 is amended—

20 (1) by amending subsection (a) to read as follows:

21 "(a) Whoever—

22 "(A) other than a licensed dealer, licensed import-
23 er, licensed manufacturer, or licensed collector know-
24 ingly makes any false statement or representation with
25 respect to the information required by the provisions of

1 this chapter to be kept in the records of a person li-
2 censed under the provisions of this chapter;

3 “(B) knowingly makes any false statement or rep-
4 resentation in applying for any license or exemption or
5 relief from disability under the provisions of this
6 chapter;

7 “(C) knowingly violates subsection (a)(4), (a)(6),
8 (f), (g), (h), (i), (j), or (k) of section 922;

9 “(D) knowingly imports or brings into the United
10 States or any possessor thereof any firearm or ammu-
11 nition in violation of section 922(l);

12 “(E) knowingly violates any provision of this sec-
13 tion; or

14 “(F) willfully violates any other provision of this
15 chapter,

16 shall be fined not more than \$5,000, or imprisoned not more
17 than five years, or both, and shall become eligible for parole
18 as the Board of Parole shall determine.

19 “(2) Any licensed dealer, licensed importer, licensed
20 manufacturer, or licensed collector who knowingly—

21 “(A) makes any false statement or representation
22 with respect to the information required by the provi-
23 sions of this chapter to be kept in the records of a
24 person licensed under this chapter, or

25 “(B) violates subsection (m) of section 922,

1 shall be fined not more than \$1,000, or imprisoned not more
2 than one year, or both, and shall become eligible for parole as
3 the Board of Parole shall determine."

4 (2) by amending subsection (c) to read as follows:

5 "(c)(1) Whoever, during and in relation to any felony
6 described in the Controlled Substances Act (21 U.S.C. 801 et
7 seq.), the Controlled Substances Import and Export Act (21
8 U.S.C. 951 et seq.), or section 1 of the Act of September 15,
9 1980 (94 Stat. 1159; 21 U.S.C. 855a), or any crime of vio-
10 lence, including a crime of violence which provides for an
11 enhanced punishment if committed by the use of a deadly or
12 dangerous weapon or device, for which he may be prosecuted
13 in a court of the United States, uses a firearm, or carries a
14 firearm in furtherance of any such crime of violence, shall, in
15 addition to the punishment provided for such felony described
16 in the Controlled Substances Act (21 U.S.C. 801 et seq.), the
17 Controlled Substances Import and Export Act (21 U.S.C.
18 951 et seq.), or section 1 of the Act of September 15, 1980
19 (94 Stat. 1159; 21 U.S.C. 855a), or crime of violence, be
20 sentenced to imprisonment for a term of five years. In the
21 case of his second or subsequent conviction under this subsec-
22 tion, such person shall be sentenced to imprisonment for a
23 term of ten years. Notwithstanding any other provision of
24 law, the court shall not place on probation or suspend the
25 sentence of any person convicted of a violation of this subsec-

1 tion, nor shall the term of imprisonment imposed under this
2 subsection run concurrently with any other term of imprison-
3 ment including that imposed for the felony described in the
4 Controlled Substances Act (21 U.S.C. 801), the Controlled
5 Substances Import and Export Act (21 U.S.C. 951), or sec-
6 tion 1 of the Act of September 15, 1980 (94 Stat. 1159; 21
7 U.S.C. 855a), or crime of violence in which the firearm was
8 used or carried. No person sentenced under this subsection
9 shall be eligible for parole during the term of imprisonment
10 imposed herein: *Provided*, That no person shall be sentenced
11 under this subsection if he establishes to the satisfaction of
12 the court that the use of the firearm was to protect his person
13 or the person of another from perceived immediate danger,
14 other than the danger which was the direct result of the com-
15 mission of or attempt to commit a felony by either such
16 person, and the court finds that the perceived immediate
17 danger was so perceived in good faith and that a sentence
18 under this section would constitute a severe and substantial
19 miscarriage of justice. The court must provide in writing each
20 finding of fact and law necessary to establish the applicability
21 of this proviso.

22 “(2) For purposes of this subsection the term ‘crime of
23 violence’ means an offense that is a felony and—

1 “(A) has as an element the use, attempted use, or
2 threatened use of physical force against the person or
3 property of another, or

4 “(B) that by its nature, involves a substantial risk
5 that physical force against the person or property of
6 another may be used in the course of committing the
7 offense.”.

8 (3) by amending subsection (d) to read as follows:

9 “(d)(1) Any firearm or ammunition involved in or used
10 in any knowing violation of subsection (a)(4), (a)(6), (f), (g),
11 (h), (i), (j), or (k) of section 922, or knowing importation or
12 bringing into the United States or any possession thereof any
13 firearm or ammunition in violation of section 922(l), or know-
14 ing violation of section 924, or willful violation of any other
15 provision of this chapter or any rule or regulation promulgat-
16 ed thereunder, or any violation of any other criminal law of
17 the United States, or any firearm or ammunition intended to
18 be used in any offense referred to in paragraph (3) of this
19 subsection, where such intent is demonstrated by clear and
20 convincing evidence, shall be subject to seizure and forfeit-
21 ure, and all provisions of the Internal Revenue Code of 1954
22 relating to the seizure, forfeiture, and disposition of firearms,
23 as defined in section 5845(a) of that Code, shall, so far as
24 applicable, extend to seizures and forfeitures under the provi-
25 sions of this chapter: *Provided*, That upon acquittal of the

1 owner or possessor, or dismissal of the charges against him
2 other than upon motion of the Government prior to trial, the
3 seized firearms or ammunition shall be returned forthwith to
4 the owner or possessor or to a person delegated by the owner
5 or possessor unless the return of the firearms or ammunition
6 would place the owner or possessor or his delegate in viola-
7 tion of law. Any action or proceeding for the forfeiture of
8 firearms or ammunition shall be commenced within one hun-
9 dred and twenty days of such seizure.

10 “(2)(A) In any action or proceeding for the return of
11 firearms or ammunition seized under the provisions of this
12 chapter, the court shall allow the prevailing party, other than
13 the United States, a reasonable attorney’s fee, and the
14 United States shall be liable therefor.

15 “(B) In any other action or proceeding under the provi-
16 sions of this chapter, the court, when it finds that such action
17 was without foundation, or was initiated vexatiously, frivo-
18 lously, or in bad faith, shall allow the prevailing party, other
19 than the United States, a reasonable attorney’s fee, and the
20 United States shall be liable therefor.

21 “(C) Only those firearms or quantities of ammunition
22 particularly named and individually identified as involved in
23 or used in any violation of the provisions of this chapter or
24 any rule or regulation issued thereunder, or any other crimi-
25 nal law of the United States, or as intended to be used in any

1 owner or possessor, or dismissal of the charges against him
2 other than upon motion of the Government prior to trial, the
3 seized firearms or ammunition shall be returned forthwith to
4 the owner or possessor or to a person delegated by the owner
5 or possessor unless the return of the firearms or ammunition
6 would place the owner or possessor or his delegate in viola-
7 tion of law. Any action or proceeding for the forfeiture of
8 firearms or ammunition shall be commenced within one hun-
9 dred and twenty days of such seizure.

10 “(2)(A) In any action or proceeding for the return of
11 firearms or ammunition seized under the provisions of this
12 chapter, the court shall allow the prevailing party, other than
13 the United States, a reasonable attorney’s fee, and the
14 United States shall be liable therefor.

15 “(B) In any other action or proceeding under the provi-
16 sions of this chapter, the court, when it finds that such action
17 was without foundation, or was initiated vexatiously, frivo-
18 lously, or in bad faith, shall allow the prevailing party, other
19 than the United States, a reasonable attorney’s fee, and the
20 United States shall be liable therefor.

21 “(C) Only those firearms or quantities of ammunition
22 particularly named and individually identified as involved in
23 or used in any violation of the provisions of this chapter or
24 any rule or regulation issued thereunder, or any other crimi-
25 nal law of the United States, or as intended to be used in any

1 offense referred to in paragraph (3) of this subsection, where
2 such intent is demonstrated by clear and convincing evidence,
3 shall be subject to seizure, forfeiture, and disposition.”.

4 “(3) The offenses referred to in paragraphs (1) and
5 (2)(C) of this subsection are—

6 “(A) any crime of violence, as that term is defined
7 in section 924(c)(2) of this title;

8 “(B) any offense punishable under the Controlled
9 Substances Act (21 U.S.C. 801 et seq.) or the Con-
10 trolled Substances Import and Export Act (21 U.S.C.
11 951 et seq.);

12 “(C) any offense described in section 922(a)(1),
13 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the
14 firearm or ammunition intended to be used in any such
15 offense is involved in a pattern of activities which in-
16 cludes a violation of any offense described in section
17 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

18 “(D) any offense described in section 922(d) of
19 this title where the firearm or ammunition is intended
20 to be used in such offense by the transferor of such
21 firearm or ammunition;

22 “(E) any offense described in section 922(i),
23 922(j), 922(l), 922(n), or 924(b) of this title; and

1 “(F) any offense which may be prosecuted in a
2 court of the United States which involves the exporta-
3 tion of firearms or ammunition.”.

4 AMENDMENTS TO SECTION 925

5 SEC. 105. Section 925 of title 18, United States Code,
6 is amended—

7 (1) in subsection (c)—

8 (A) by deleting the words “has been convict-
9 ed of a crime punishable by imprisonment for a
10 term exceeding one year (other than a crime in-
11 volving the use of a firearm or other weapon or a
12 violation of this chapter or of the National Fire-
13 arms Act)” and inserting in lieu thereof the words
14 “is prohibited from possessing, shipping, trans-
15 porting, or receiving firearms or ammunition”;

16 (B) by inserting the word “transportation”
17 after the word “shipment”;

18 (C) by deleting the words “and incurred by
19 reason of such conviction,”; and

20 (D) by adding after the words “the public in-
21 terest.” the words “Any person whose application
22 for relief from disabilities is denied by the Secre-
23 tary may file a petition with the United States
24 district court for the district in which he resides
25 for a judicial review of such denial. In a proceed-
26 ing conducted under this subsection, the scope of

1 judicial review shall be governed by section 706
2 of title 5, United States Code. The court may in
3 its discretion admit additional evidence where fail-
4 ure to do so would result in a miscarriage of jus-
5 tice.”; and

6 (2) in subsection (d)—

7 (A) by deleting the words “may authorize”
8 and inserting in lieu thereof the words “shall
9 authorize”;

10 (B) by deleting the words “the person im-
11 porting or bringing in the firearm or ammunition
12 establishes to the satisfaction of the Secretary
13 that”; and

14 (C) by inserting before the semicolon in para-
15 graph (3) the following: “, except in any case
16 where the Secretary has not authorized the im-
17 portation of the firearm pursuant to this para-
18 graph, it shall be unlawful to import any frame,
19 receiver, or barrel of such firearm which would be
20 prohibited if assembled”; and

21 (D) by deleting the words “may permit” and
22 inserting in lieu thereof the words “shall permit”.

23 AMENDMENTS TO SECTION 926

24 SEC. 106. Section 926 of title 18, United States Code,
25 is amended by--

1 (1) inserting "(a)" before "The Secretary" the
2 first place it appears;

3 (2) inserting the word "only" after the word
4 "prescribe";

5 (3) deleting the words "as he deems reasonable"
6 and inserting in lieu thereof the words "as are";

7 (4) deleting the words "The Secretary shall give
8 reasonable public notice, and afford interested parties
9 opportunity for hearing, prior to prescribing such rules
10 and regulations" and inserting in lieu thereof the
11 words: "*Provided*, That no such rule or regulation pro-
12 mulgated after the effective date of this Act may re-
13 quire that records required to be maintained under this
14 chapter or any portion of the contents of such records,
15 be recorded at or transferred to a facility owned, man-
16 aged, or controlled by the United States or any State
17 or any political subdivision thereof, nor that any
18 system of registration of firearms, firearms owners, or
19 firearms transactions or dispositions be established:
20 *Provided further*, That nothing in this section shall be
21 deemed to expand or restrict the Secretary's authority
22 to inquire into the disposition of one or more firearms
23 pursuant to a criminal investigation."; and

24 (5) inserting at the end thereof the following:

1 eighty days after the date of enactment of this Act. At that
2 time the Secretary shall publish and provide to all licensees a
3 compilation of the State laws and published ordinances of
4 which licensees are presumed to have knowledge pursuant to
5 chapter 44 of title 18, United States Code, as amended by
6 this Act. All amendments to such State laws and published
7 ordinances as contained in the aforementioned compilation
8 shall be published in the Federal Register, revised annually,
9 and furnished to each person licensed under chapter 44 of
10 title 18, United States Code, as amended by this Act.

11 (2) The provisions of sections 103(5)(C), 104(2), 105,
12 and 107 of this Act shall be applicable to any action, petition,
13 or appellate proceeding pending on the effective date of this
14 Act. In considering any petitions for Presidential pardons
15 submitted by persons convicted of violations of chapter 44 of
16 title 18, United States Code, prior to the effective date of this
17 Act, the Congress recommends that consideration be given to
18 whether the violation would have been punishable under this
19 Act, and to the purposes and findings contained in the pream-
20 ble thereto.

21 **TITLE II—AMENDMENTS TO TITLE VII OF THE**
22 **OMNIBUS CRIME CONTROL AND SAFE**
23 **STREETS ACT OF 1968**

24 **SEC. 201.** Title VII of the Omnibus Crime Control and
25 Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of

1 the appendix to title 18, United States Code) is hereby
2 amended to read as follows:

3 "SEC. 1201. (a) In the case of a person who violates
4 section 922(g) of title 18, United States Code, and who has
5 three previous convictions by any court referred to in section
6 922(g)(1) of title 18, United States Code, for robbery or bur-
7 glary, or both, such person shall be fined not more than
8 \$25,000 and imprisoned not less than fifteen years, and, not-
9 withstanding any other provision of law, the court shall not
10 suspend the sentence of, or grant a probationary sentence to,
11 such person with respect to the conviction under section
12 922(g) of title 18, United States Code, and such person shall
13 not be eligible for parole with respect to the sentence im-
14 posed under this subsection.

15 "(b) As used in this title—

16 "(1) 'robbery' means any crime punishable by a
17 term of imprisonment exceeding one year and consist-
18 ing of the taking of the property of another from the
19 person or presence of another by force or violence, or
20 by threatening or placing another person in fear that
21 any person will imminently be subjected to bodily
22 injury; and

23 "(2) 'burglary' means any crime punishable by a
24 term of imprisonment exceeding one year and consist-
25 ing of entering or remaining surreptitiously within a

1 building that is property of another with intent to
2 engage in conduct constituting a Federal or State
3 offense.”.

Passed the Senate July 9 (legislative day, July 8),
1985.

Attest:

JO-ANNE L. COE,
Secretary.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU ALASKA 99811

Senate

March 17, 1986

MEMORANDUM

TO: Senator Rodey, Chairman
Senate Judiciary Committee

FROM: Senator Jan Faiks

SUBJECT: Background on Senate Joint Resolution 41,
proposing amendments to the Constitution of the
State of Alaska relating to an appropriation
limit.

This resolution will allow the voters to amend the current appropriation limit contained in Article IX, Section 16 of the Alaska Constitution.

The present constitutional section limits annual appropriations to \$2.5 billion. It provides for several exceptions to this limit and allows it to rise according to changes in population and inflation which have occurred since 1981.

The present limit can be exceeded for capital projects only if the expenditure is approved by the voters. The present limit will be reconsidered by the voters during the 1986 elections.

SJR 41 will change the basis for calculating the appropriation limit. It provides both a spending and a revenue component. The spending component would tie the appropriation limit to the previous year's appropriation plus a population and inflation adjustment factor. The revenue component would tie the limit to the unrestricted revenue forecast plus a population and inflation adjustment factor. For any fiscal year, the lesser of the two components would become the appropriation limit.

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

The resolution will also expand the safety valve provision. If the voters approve, the limit can be exceeded for an operational appropriation as well as a capital one.

Otherwise, the SJR 41 has the same features as the present law. One-third of the annual appropriation would continue to be reserved for capital projects and loans. Permanent fund dividends, revenue bond proceeds, debt service, and non-state restricted revenues would continue to be excluded from the limit, and it will be resubmitted to the voters at the 1990 election. If passed this year, the new limit will apply to FY 88 and to budgets thereafter.

Passage of this amendment to our Constitution will stretch out the period for dissipating current windfalls and surpluses. At the present time, there is approximately a \$1 billion surplus outside of the Permanent Fund. Spending and unrestricted revenues are now about equal. By keeping them in close proximity, current surpluses will last longer. If we want to dip into surpluses for future needs, any such action will have to be approved by the voters.

Secondly, this amendment will add discipline to our budgeting process. The process will become more predictable, and this will be an improvement to our current system.

Finally, if revenues begin to increase, the amendment will restrain future spending growth. When revenues increase from one year to the next, spending will be limited by the previous year's expenditures, provided they are less than the projected new revenues. To spend beyond the previous adjusted year, voter approval will be required.

I believe that this amendment is essential for the long-term fiscal health of of Alaska's state and local governments. Thank you for considering it.



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

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CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

February 3, 1986

Senator Patrick Rodey
Chairman
Senate Judiciary Committee
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Senator Rodey:

The Alaska Judicial Council and the Commission on Judicial Conduct, to assist the Judicial Council in its evaluation of judges up for retention, seek to amend Sec. 2. AS 22.30.011(f). The proposed amendment would allow private reprimands to be provided to the Judicial Council by the Commission on Judicial Conduct, enabling the Council to make informed recommendations on questions of judicial retention.

Proposed that Sec. 2. AS 22.30.011(f) be amended to read:

If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court and to the judicial council. A private reprimand is confidential.

Thank you for your assistance. If I can provide any additional information, please do not hesitate to write or call.

SINCERELY,

MARLA N. GREENSTEIN
STAFF ATTORNEY

MG/jz

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3730



JAN FAIKS
POLCH V
CAPITOL BUILDING
JUNEAU ALASKA 99811

Senate

February 25, 1986

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Senator Jan Faiks

SUBJECT: Background Information on Senate Bill 412, an Act relating to claims against the state

Alaska Statutes 44.77.010 - 070 establish procedures for a person who wishes to file a claim for labor, services, materials, or supplies furnished to the State.

The claim must first be submitted to an administrative or executive officer. If the officer denies his claim, then the claimant may obtain review of the denial by the Department of Administration.

Only if both the officer and the Department deny the claim, or the latter takes no action on the request for one year, may the person seek judicial review of the State's decision. In that event, the current law says that a person can file a legal action in Superior Court. There, his claim would be governed by the procedures for introducing evidence and all of the other formalities of a civil lawsuit.

Section 1 and 2 of this bill will change this system by entitling the person to a judicial review according to simpler procedures which are now contained in our Administrative Procedure Act. Rather than beginning anew with the issue, the court would be able to review the evidence already presented on the claim and then judge the State's decisions accordingly.

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These amendments were suggested by the Alaska Supreme Court in order to further judicial economy without significantly impairing the rights of claimants. These persons will still have full court review of their denied claims. However, they will avoid the expense and delay of having to present these claims in the context of a formal, civil lawsuit.

Section 3 deals with the consequences of a November, 1985, court decision. In the case of State v. Dupere, the Supreme Court decided that the claims procedure applied not only to the executive branch, but also to the legislative and judicial branches.

Currently, AS 44.77.070 exempts from this system any department in the executive branch which has adopted its own mandatory claims and appeal procedure.

Section 3 of the bill will extend this exemption to departments of the legislative and judicial branches once they adopt a claims and appeals procedure. By allowing the judicial and legislative branches to adopt their own system and to avoid a review of their matters by a department of the executive branch, the bill will further the principle of separation of powers.

POSITION PAPER

SB 412


SB 412 provides an alternate appeal process although the impact on the State is virtually the same. Additionally, the bill brings the legislative and judicial branches under the caveat of deferral to that agency or branch of government if they have their own mandatory claims and appeal procedure.

Risk Management's position on SB 412 is neutral as its passage will not materially impact our operations.



Donald J. Hitchcock
Director
Division of Risk Management
Department of Administration

2-26-86
Date



Commissioner Eleanor Andrews
Department of Administration

2/26/86
Date

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/24/86

REQUEST
Bill/Resolution No.: SB 412
Title: An act relating to claims
against the State.

FISCAL DETAIL
Agency Affected: Administration
BRU: _____

Sponsor: Jan Faiks
Requestor: _____
Date of Request: 2/21/86

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|-------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: Attach a separate page if necessary

Prepared By: Don Hitchcock
Division: Risk Management

Phone: 465-2180
Date: 2/24/86

Approved by Commissioner: Eleanor Andrews
Agency: Department of Administration

Date: 2/26/82

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : March 5, 1986

FROM:

Karla L. Forsythe *Karla L. Forsythe*
Staff Counsel

SUBJECT: SB 412 - Analysis

You asked me to outline the provisions of SB 412, an act relating to claims against the state, and to compare the proposed changes with existing law.

Under current law, a person who has a claim against the state for reimbursement for money, or for compensation for labor, materials or supplies furnished or services given to or for the state, must first submit the claim to the appropriate administrative officer. If that officer disallows all or part of the claim, the person may seek review through the Department of Administration. If the Department of Administration disallows the claim, the person must file a new action in superior court in order to pursue the claim.

Sections 1 and 2 of SB 412 would change this procedure by eliminating the requirement that a claimant file a completely new lawsuit. Instead, the person would follow the judicial review provisions of the administrative procedure act (AS 44.62.560-.570) by filing a notice of appeal with the superior court. The court would review the hearing record compiled by the Department of Administration, and could overturn the decision if it found that the agency did not have jurisdiction, that the hearing was not fair, or that there was a prejudicial abuse of discretion. Court resources would be used more efficiently by handling these claims as administrative appeals rather than new lawsuits.

Under current law, an executive branch agency can establish a claims procedure which is independent from the Department of Administration. However, under a recent Alaska supreme court decision interpreting AS 44.77.070, claims against the legislative and judicial branches must be submitted through the Department of Administration (State v. Dupere, No. 2995, November 22, 1985). Section 3 of SB 412 would permit the legislative and judicial branches to establish separate claims procedures, giving them the same option available under current law to executive branch agencies.

KF/k1