

HB

186



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Firearm freedom a priority for Fairbanks Rep. Kelly

by Christopher Eshleman/ceshleman@newsminer.com

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FAIRBANKS — An Interior lawmaker said he'll push to curb federal regulation of guns built and sold solely within Alaska, saying his research has failed to convince him Congress can justify regulating, or requiring registration of, firearms built and sold within a single state's boundaries.

Federal commerce laws regulate firearm producers and dealers, limiting them to license-holders. The proposed Alaska Firearms Freedom Act, pitched by Rep. Mike Kelly, R-Fairbanks, seeks to preclude federal regulation of guns, ammunition, magazines or other accessories made and sold only within Alaska.

Kelly said federal rules should apply to firearms sold across state borders, where the federal government has clear constitutional authority to regulate interstate commerce. He cited, as justification of his plan, the Bill of Rights' protection of state and individual firearm rights.

"It says, 'Thank you just the same, but we'll control the things — powers — left to us as a state or as individual Alaskans,'" Kelly said.

The bill's presentation during last winter's legislative retreat coincided with, in Fairbanks and Outside, a wave of anti-federal government public sentiment. Kelly said he finds himself at least partly aligned with that movement and the act, along with a planned "health care freedoms" resolution, aim to reinforce Alaskans' rights in the face of federal initiatives.

The bill easily passed the state House of Representatives in April after picking up 11 co-sponsors. It now sits before the Senate Judiciary Committee, whose chairman is Anchorage Democrat Sen. Hollis French. French said Tuesday he'll schedule a committee hearing for the bill this winter, a hearing that likely will come relatively soon if sponsors have an accompanying information packet ready.

The act would allow unlicensed gun suppliers and dealers to make and sell firearms if the products remain in the state, according to Kelly's explanation.

The guns would need to prominently display the words "made in Alaska." The state attorney general's office would defend businesses prosecuted by the federal government for failure to hold a license.

The bill could insert Alaska into a broader national discussion about gun rights. Similar bills have passed in Montana and Tennessee. Fairbanks attorney Lynn Levengood said many gun rights advocates are closely following debate about gun rights following a shift in Congress and the White House to Democratic control.

"It's a fail-safe position," Levengood said. "If federal law tries to undo our Second Amendment rights, we've got a fail-safe."

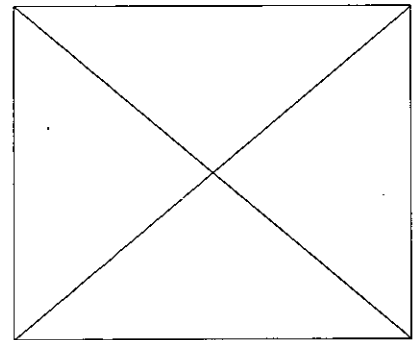
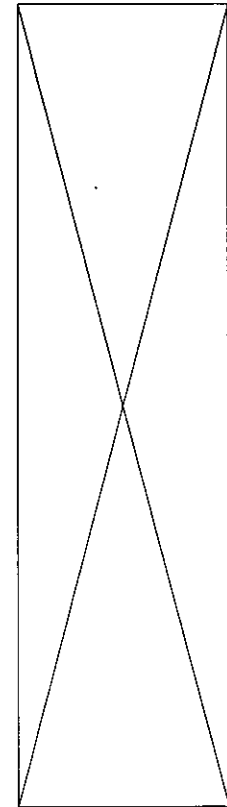
Alan Gottlieb, founder of the Bellevue, Wash.-based Second Amendment Foundation, said he expects similar proposals to emerge in many states next year. Gottlieb said past court rulings could create hurdles as states look to protect intrastate gun trade. But he said if enough states jump on board, the momentum could force Congress to rethink the federal government's role in firearm regulation.

"The more states that join in, the more ammunition and clout it gives to the argument," Gottlieb said of firearm freedom laws.

Kelly's bill is House Bill 186.

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Member

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Representative Mike Kelly

House District 7

Sponsor Statement – CSHB 186(FIN)

"ALASKA FIREARMS FREEDOM ACT"

The United States Constitution gives Congress the authority to regulate Interstate Commerce between the states and 18 USC 922 makes it unlawful for any person not licensed as a manufacturer or dealer in firearms to engage in the business of manufacturing or dealing in firearms. Collectively, the Interstate Commerce Clause and 18 USC 922 are used by the federal government as a means to regulate firearms.

The Alaska Firearms Freedom Act addresses this by exempting firearms, firearm accessories, and ammunition manufactured and retained in the state from all federal firearm control laws including registration, as firearms that meet these criteria shouldn't be regulated by the federal government because they have not traveled in interstate commerce. Firearms exempt from this Act must have the words "Made in Alaska" clearly stamped on a central metallic part such as the receiver or frame. CSHB 186(FIN) also requires the Attorney General of Alaska to defend a citizen of this State who is prosecuted by the federal government under their authority to regulate interstate commerce for violating federal law regarding the manufacture, sale, transfer, or possession of a firearm, firearm accessory, or ammunition manufactured and retained in this state.

This bill frees certain firearms from federal regulation as long as certain conditions are met. It frees the state of Alaska from restrictive federal firearm regulation and allows the state to take responsible firearm regulation into her own hands. The federal government has historically used the Interstate Commerce Clause to regulate firearms and has consistently pursued legislation that imposes its will on states. Outdoorsmen, hunters, and Alaskans defending their families and property will benefit from the passage of CSHB 186(FIN).

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Member

House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: January 20, 2010

TO: Representative Mike Kelly

FROM: Derek Miller

RE: Sectional Analysis for CSHB 186(FIN) – (26-LS0627\P.A)

A sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.

Findings Section. The authority of this Act is the Second, Ninth, and Tenth Amendments to the Constitution of the United States. The Second Amendment reserves to the people the right to keep and bear arms, the Ninth Amendment guarantees to the people rights not granted in the constitution, and the Tenth Amendment guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution. The United States Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearm accessories, and ammunition. Article I, Section 19 of the Constitution of the State of Alaska secures to the citizens and prohibits government interference with the right of individual Alaska citizens to keep and bear arms.

Section 2.

(a) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in this state and that remains in the state is not subject to federal law or federal regulation including registration under the authority of the United States Congress to regulate intrastate commerce.

(b) This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in this state from basic materials without the inclusion of significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer applications are not firearms, firearm accessories, or ammunition and their incorporation into a firearm, firearm accessory, or ammunition manufactured in this state does not subject them to federal regulation. Basic materials, such as unmachined steel and unshaped wood are not firearms, firearm accessories, and ammunition and are not subject to federal regulation under intrastate commerce. Firearm accessories imported into this state from another state and are attached to or used in conjunction with a firearm in this state does not subject the firearm to federal regulation under intrastate commerce.

(c) A firearm manufactured or sold in this state and not subject to federal regulation must have the words "Made in Alaska" clearly stamped on a central metallic part, such as the receiver or frame.

(d) Permits the Attorney General of Alaska to defend a citizen of the state who is prosecuted by the government of the United States under power to regulate interstate commerce for violating federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within this state.

(e) Definitions section.

"Firearm accessory" – an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. This includes: a telescope or laser sight, magazine, flash or sound suppressor, folding or aftermarket stock and grip, speedloader, ammunition carrier, and light for target illumination.

"Generic and insignificant parts" – includes springs, screws, nuts, and pins.

"Manufactured" – means a firearm a firearm accessory, or ammunition that has been created from basic materials for functional usefulness, including forging, casting, machining, or other processes for working materials.

Section 3.

Applicability section. This Act applies to firearms, firearm accessories, and ammunition that are manufactured and retained in this state after October 1, 2009.

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Member

House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: April 7, 2009
TO: Representative Mike Kelly
FROM: Derek Miller
RE: Changes to HB 186 in CSHB 186(JUD)
(26-LS0627\S)

Section 1. (Minor Changes)

Page 1, line 10

Delete "understood"

Insert "intended"

Page 2, line 2

Delete "understood"

Insert "intended"

Page 2, line 12

Delete "understood"

Insert "intended"

Section 2.

The CSHB 186(JUD) deleted a section requiring the Attorney General to defend a citizen of the state who is prosecuted by the government of the United States under the Congressional power to regulate interstate commerce for violation of a federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within this state.

Page 3, lines 18 – 26

Delete

Section 3

No changes.

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Member

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Representative Mike Kelly

House District 7

MEMORANDUM

DATE: April 7, 2009

TO: Representative Mike Kelly

FROM: Derek Miller

RE: Changes to CSHB 186(JUD) in CSHB 186(FIN)
(26-LS0627\P)

Section 1.

No changes.

Section 2.

Added subsection (d) – page 3, lines 18 – 24.

New section (d) requires the Attorney General of Alaska to defend a citizen of the state who is prosecuted by the government of the United States under the Congressional power to regulate interstate commerce for violation of a federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within this state.

Re-numbered the definitions subsection accordingly.

Section 3.

No changes.

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Member

House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: January 20, 2010
TO: Representative Mike Kelly
FROM: Derek Miller
RE: Changes to CSHB 186(FIN) in CSHB 186(FIN) am
(26-LS0627\ P.A.)

Section 1.

No changes

Section 2.

Page 3, line 18
Delete "shall"
Insert "may"

Section 3

No changes.

Firearms Freedom Act

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The Firearms Freedom Act (FFA) is sweeping the Nation.

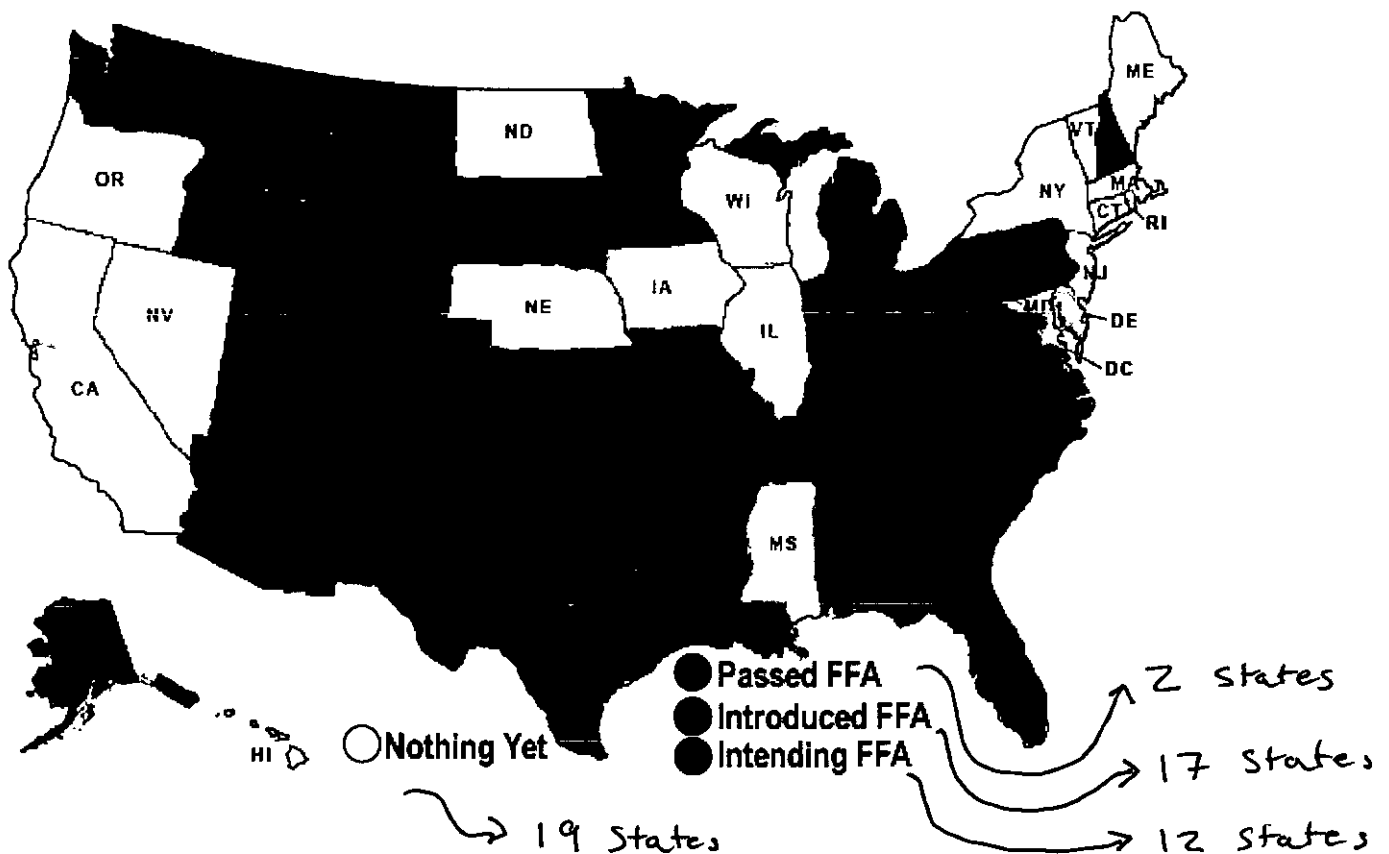
January 15th, 2010 [Leave a comment](#) [Go to comments](#)

Originally introduced and passed in Montana, the FFA declares that any firearms made and retained in-state are beyond the authority of Congress under its constitutional power to regulate commerce among the states.

Since its passage in Montana, a clone of the Firearms Freedom Act has been enacted in Tennessee, and has been introduced in the legislatures of Alaska, Texas, South Carolina, Minnesota and Florida. Legislators in many other states have announced that they will introduce FFA clones when their legislatures next convene.

The FFA is primarily a Tenth Amendment challenge to the powers of Congress under the "commerce clause," with firearms as the object – it is a state's rights exercise.

Help Fund the Lawsuit – Donate



Gun Groups File Lawsuit to Validate Montana Firearms Freedom Act

FOR IMMEDIATE RELEASE

**Contact: Gary Marbut, 406-549-1252
Alan Gottlieb, 425-454-7012**

MISSOULA - The Montana Shooting Sports Association (MSSA) and the Second Amendment Foundation (SAF) filed a lawsuit in federal court in Missoula today to validate the principles and terms of the Montana Firearms Freedom Act (MFFA).

The MFFA was enacted by the 2009 Montana Legislature, signed by Governor Schweitzer, and becomes effective today, Oct. 1.

Lead attorney for the plaintiffs' litigation team is Quentin Rhoades of the Missoula firm of Sullivan, Tabaracci & Rhoades, PC. The MFFA litigation team also includes other attorneys located in Montana, New York, Florida, Arizona and Washington.

"We feel very strongly that the federal government has gone way too far in attempting to regulate a lot of activity that occurs only in-state," explained MSSA President Gary Marbut. "The Montana Legislature and governor agreed with us by enacting the MFFA. It's time for Montana and her sister states to take a stand against the bullying federal government, which the Legislature and Governor have done and we are doing with this lawsuit. We welcome the support of many other states that are stepping up to the plate with their own firearms freedom acts."

"We're happy to join this lawsuit," said SAF founder Alan Gottlieb, "because we believe this issue should be decided by the courts."

The MFFA declares that any firearms made and retained in Montana are not subject to any federal authority under the power given to Congress in the U.S. Constitution to regulate "commerce ... among the several states." The MFFA relies on the Tenth Amendment and other principles to challenge Congress' commerce clause power to regulate a wide spectrum of in-state activities. This is a states' rights effort, using firearms as the object of the exercise. The MFFA exempts Montana-made and retained firearms, firearm accessories and ammunition from federal power, saying that if these items do not cross state lines, they are strictly INTRAsate commerce, not INTERstate commerce, and not subject to federal authority.

MSSA continues to strongly urge that no Montana citizen attempt to manufacture an MFFA-covered item, even after the law takes effect today, until MSSA can prove the

principles of the MFFA in court. Until the courts rule in support of the MFFA, any such manufacturer could be subject to federal criminal prosecution.

This concept has caught national attention. Tennessee has passed a clone of the MFFA. Other clones have been introduced in Alaska, Texas, Florida, South Carolina, Pennsylvania, Michigan and Minnesota. Legislators in 20 other states have indicated that they will introduce MFFA clones in their states once their legislatures reconvene, Marbut said. Information about the Firearms Freedom Act movement is being accumulated and made publicly available at firearmsfreedomact.com.

This movement follows multi-state rejection of Washington-mandated Real ID, a law passed by Congress requiring state drivers licenses to conform to federal identification standards. The FFA movement also works in tandem with resolutions introduced or passed in many states asserting state sovereignty under the Ninth and Tenth Amendments to the U.S. Constitution. As is the rest of the Bill of Rights, the Ninth and Tenth Amendments are limitations on federal power. The Ninth Amendment says: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The Tenth Amendment declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Under our federated system of government in the U.S., Marbut noted, states and the federal government are widely recognized to share power and authority, with definite limits placed on federal power by the states, the creators of the federal government. The MFFA lawsuit is designed to test and define those limits, to assert states' authority, and to limit what many see as overbearing authority assumed by Congress and the federal government.

Beginning during the New Deal, federal courts have generally upheld federal commerce clause authority, initially in the 1942 case of *Wickard v. Filburn* and continuing recently with the 2005 case of *Gonzales v. Raich*. *Raich* was the Supreme Court case allowing federal regulation of medical marijuana in California. However, other cases such as the 1995 case of *US v. Lopez* suggest that federal commerce power is not infinitely elastic, that there are limits to federal commerce power, and that it has just not yet been determined what those limits may be. The MFFA litigation is structured to clarify and affirm those limits.

The modern era of dramatically-expanded federal commerce clause power was ushered in with the *Wickard* decision. The Supreme Court allowed this considerable expansion of federal commerce power under *Wickard* only after President Roosevelt threatened to pack the Court with cronies if the Court didn't cease declaring

Roosevelt's New Deal programs to be unconstitutional and beyond federal reach. (http://en.wikipedia.org/wiki/Commerce_clause)

MSSA is the primary political advocate for Montana gun owners. SAF is a national organization headquartered in Bellevue, WA that works nationally to advance the interests of gun owners.

Copy of Complaint available at: <http://www.marbut.com/complaint.html>

Derek Miller

From: Maria Rensel [akconservative@ymail.com]
Sent: Thursday, February 04, 2010 5:42 PM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

I am writing in support of the Alaska Firearms Freedom Act. I am a member of the Second Amendment Task force as well as a Founder of the Interior Alaska Conservative Coalition (IACC). I am in touch on a daily basis with Alaskans in the Interior who are committed to the restoration of all of our Constitutional Rights.

This bill will be a step in the right direction for a state that has many, many citizens who want their legislature to stand up for our liberty, state sovereignty and second amendment rights as well as the entire Constitution. We are simply insisting that all levels of government uphold the Law of the Land. Why do we even have to ask?

Sincerely,

Maria Rensel

Derek Miller

From: Brandi Fleshman [bfleshman2@alaska.edu]
Sent: Thursday, February 04, 2010 12:34 PM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Representative Kelly:

Please support the Firearms Freedom Act in the House Judiciary Committee.

Brandi Fleshman
2026 Kendall Ave.
North Pole, AK 99705

Derek Miller

From: Tomaszewski [sparkyelectricalservices@gmail.com]
Sent: Thursday, February 04, 2010 12:11 PM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

I support this Bill and would appreciate your support.

Frank Tomaszewski

Derek Miller

From: Douglas Hart [dsimshart@gmail.com]
Sent: Thursday, February 04, 2010 11:23 AM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Representative Kelly,

I wish to add my name to those who have written to you in support of this act. I know that there are many who do not believe Barack Obama can, could, or would do anything to "abridge" our 2nd Amendment Rights. The fact remains, however, that I do believe he/they (I include his 'friends') would like to curtail these rights and will do so if given the opportunity. I believe that, in these present circumstances, apathy and complacency are our Worst Enemies!

I've recently read where there are many in the current administration that wish for the United States to ratify a United Nations Treaty that would adversely affect the 2nd Amendment Rights of American Citizens. My question, sir, is how can the United States Federal Government enter into a Treaty in an Area that is NOT granted to it by the Constitution but is Reserved unto the States of the Union?

With Appreciation,

Doug Hart

Douglas S. Hart, Sr
Master Sergeant, US Army (Retired)

"ΜΟΛΩΝ ΛΑΒΕ"

Derek Miller

From: s.murray@gci.net on behalf of Susan Murray [s.murray@gci.net]
Sent: Thursday, February 04, 2010 10:37 AM
To: Rep. Mike Kelly
Subject: FFA

Follow Up Flag: Follow up
Flag Status: Completed

Please support the Alaska Firearms Freedom Act. Thank you

Derek Miller

From: Al Weber [al@tlcgeneral.com]
Sent: Thursday, February 04, 2010 9:05 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Mr. Kelly,

Thank you for the work you are doing to restore states' rights in Alaska and the USA. Our Federal Government has arrogantly usurped power not granted to it by the Constitution and as a result it has grown into a dangerous monster with a salacious appetite for more and more power. The Firearms Freedom Act is a big step in returning the power to the states and to the people as intended by the framers of our Constitution as they clearly stated in the 10th Amendment.

The Fire Arms Freedom Act is big step in the right direction, but it is only the first step. We have a long way to go to undo the damage that has and is being done.

God Bless you and all the men and women who are willing to take a stand for what is right rather than for what is convenient. You are in my prayers. Keep up the good work.

Al Weber

<><

cell 907 378-9427

work 907-479-8810

Derek Miller

From: Phil Evans [philevans@pbevans.com]
Sent: Thursday, February 04, 2010 8:59 AM
To: Rep. Mike Kelly
Subject: Fire Arms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Dear Rep Kelly:

I wholeheartedly support the Fire Arms Freedom Act. For states like Alaska, firearms are an integral part of our lively hood. Hunting with all of the associated support is an important industry for our state. Shooting sports and all of us who are involved with the various ranges help cultivate the talented shooters who go on to UAF Nanooks Rifle Team and make us national champions.

Simply put, our second amendment rights shall not be infringed. Many have died to defend our Constitution. Currently, there are those who have never served in the military to defend our freedoms who are hell bent on taking them away. We must stand together to protect our rights.

Thank you for your service!

Phil Evans

Derek Miller

From: Carl St. George [cstgeorge@gci.com]
Sent: Thursday, February 04, 2010 8:40 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Hey Mike,

I just wanted to take a minute to thank you for everything you are & have been doing to protect our 2nd Amendment rights, and our State sovereignty. Please do everything in your power to get this act of legislation through. Have a good day, and may God bless you & your work there.

Thanks,
Carl St. George
330 Gold Claim Ave
Fairbanks AK 99712

Derek Miller

From: akinvest@gci.net on behalf of Rodger Hopp [akinvest@gci.net]
Sent: Thursday, February 04, 2010 8:19 AM
To: Rep. Mike Kelly
Subject: FFA

Follow Up Flag: Follow up
Flag Status: Completed

Rep Mike Kelly, I am writing to show support for the "Firearms Freedom Act" and related issues currently being considered. I view this as a very important action that is sorely needed to help establish the position of Alaska sovereignty from oppressive, restrictive and highly regulatory actions from legislators and regulators in the Federal Government. You have a massive base of support in the Interior. Thanks Mike!
Sincerely, Rodger P Hopp

Derek Miller

From: Michael Lockery [northern_templar@yahoo.com]
Sent: Thursday, February 04, 2010 8:16 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom act

Follow Up Flag: Follow up
Flag Status: Completed

Mr. Kelly, Please forward this letter to whom ever you need too. I support this act 100% I am an active voter and plan on continuing to fight the politicians (no matter which party) who are trying to sell our God given rights away. Thank you for your service,
Michael Lockery Two Rivers, Alaska.

Montana Firearms Freedom Act

From Wikipedia, the free encyclopedia

The **Montana Firearms Freedom Act**, also known as Montana House Bill Number 246,^[1] was introduced January 13, 2009 by Joel Boniek, Gerald Bennett, Edward Butcher, Aubyn Curtiss, Lee Randall and Wendy Warburton. The bill was signed in to law by Governor Brian Schweitzer on April 15, 2009 and became effective on October 1, 2009. On that effective date, supporters of the law filed suit as a test case in federal district court.

The law exempts firearms made and kept in the state of Montana from United States federal firearms regulations. It also has no requirements for registration, background checks or dealer licensing. It applies to firearms other than machineguns, along with ammunition and accessories such as silencers,^[2] provided that these items are manufactured in the state, and do not leave the state.

It makes several references to a contract made between the United States and the state and people of Montana. It goes on to say the United States agreed to the compact and it was adopted by Montana and the United States in 1889.

Contents

- 1 Legislative declarations of authority
- 2 Definitions
- 3 Prohibitions
- 4 Exceptions
- 5 Marking of firearms
- 6 Codification
- 7 Applicability
- 8 Similar laws and expected challenges
- 9 ATF response
- 10 Legal Challenge
- 11 External links
- 12 References

Legislative declarations of authority

The legislature declares that the authority for this law is derived from the Second, Ninth and Tenth amendments from the Bill of Rights to the United States Constitution. This act reaffirms the right of the people to keep and bear arms. It guarantees to the people rights not mentioned in the constitution, as well as to the states and their people all powers not

granted to the federal government elsewhere in the constitution. The law also states that Article II, section 12, of the Montana constitution prohibits government interference with the right of individual Montana citizens to keep and bear arms.

Definitions

This section defines, the borders of Montana, what firearms accessories, as well as, generic and insignificant parts are and defines what manufactured means in relation to this law.

Prohibitions

This law prohibits federal law or federal regulation on any personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana.

Exceptions

However, this law does not apply to a firearm that cannot be carried and used by one person, a firearm that has a bore diameter greater than 1½ inches and uses smokeless powder, ammunition that uses exploding projectiles or fully automatic firearms.

Marking of firearms

Applicable firearms must be clearly stamped "Made in Montana" on a central metallic part.

Codification

This law has been assigned Chapter 205 in Title 30, of the Montana Code Annotated.^[3]

Applicability

This law became effective October 1, 2009 and applies to the items defined manufactured after that date.

Similar laws and expected challenges

The drafters of the law intend setting off a legal challenge with the Bureau of Alcohol, Tobacco, Firearms and Explosives.^[4] Currently only Montana and Tennessee have passed these bills into law. However Texas, Alaska, Utah, Minnesota, Ohio, South

Carolina and most recently Florida^[5] have introduced similar bills.^[4]

Supporters assert that the legislation is really about curbing excessive Federal regulation in areas such as education, animal management and intrastate trade.^[4]

ATF response

On July 16, 2009, the Bureau of Alcohol, Tobacco, Firearms and Explosives published an open letter to Montana Federal Firearms Licensees, clarifying the bureau's position on the Montana Firearms Freedom Act. According to this letter, "... because the Act conflicts with Federal firearms laws and regulations, Federal law supersedes the Act, and all provisions of the Gun Control Act and the National Firearms Act, and their corresponding regulations, continue to apply." The letter then summarizes ATF requirements for FFL holders.^[6]

On August 24, 2009, the Montana Shooting Sports Association and the Second Amendment Foundation announced that they were planning on filing a lawsuit on October 1, 2009 — the date that the Montana Firearms Freedom Act became effective — to stop federal regulations from being enforced for the firearms covered under the new state law.^[7]

Legal Challenge

Plaintiffs filed suit in support of the law, in federal district court, on October 1, 2009. These plaintiffs are the Montana Shooting Sports Association, the Second Amendment Foundation, and MSSA president Gary Marbut. The legal complaint states that Marbut "wishes to manufacture and sell small arms and small arms ammunition to customers exclusively in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable federal laws."^{[8][9][10][11]} One firearms manufacturer in Kalispell, Montana has stated that because they cannot afford to litigate, they do not plan to sell their AR-15s or AR-10/AR-15 family receivers to private parties without a Form 4473. But they did state that they intend to do so, once a court ruling clears the way.^[12]

External links

- The Firearms Freedom Act

References

- ↑ 2009 Montana Legislature, HB 246
- ↑ Ernest Hancock (4 May 2009). "Montana Governor Signs Revolutionary New Gun Law".

Republic Magazine. <http://www.republicmagazine.com/montana-governor-signs-revolutionary-new-gun-law/>. Retrieved 2009-05-09.

3. ^ LAWS Detailed Bill Information Page, HB 246
4. ^ *a b c* Kahrin Deines (29 April 2009). "Montana fires a warning shot over states' rights". *Associated Press*.
http://www.helenair.com/articles/2009/04/16/legi/top/65st_090416_statesrights.txt. Retrieved 2009-05-08.
5. ^ House Bill 21, Florida House of Representatives
6. ^ "Open Letter to All Montana Federal Firearms Licensees", Bureau of Alcohol, Tobacco, Firearms and Explosives, July 16, 2009
7. ^ McKee, Jennifer (24 August 2009). "Missoula Gun Rights Group Will Challenge Feds over Montana Firearms Freedom Act", *The Missoulan*
8. ^ [1], Complaint (PDF)
9. ^ [2] AP: "Montana to feds: we don't want your gun control"
10. ^ [3] Montana News Station: "Gun groups file suit supporting Montana law"
11. ^ [4] CBS: "Montana Gun Suit Challenges Federal Authority"
12. ^ <http://www.sonju.net/faq.html>

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MEMORANDUM

April 8, 2009

SUBJECT: Interstate Commerce Clause and CSHB 186(JUD)
(Work Order No. 26-LS0627\5)

TO: Representative Lindsey Holmes

FROM: Gerald P. Luckhaupt
Legislative Counsel *GLP*

You have asked if the declarations in CSHB 186(JUD) regarding interstate and intrastate commerce would successfully prevent someone from being prosecuted for a firearms violation under federal law. In my opinion, CSHB 186(JUD) would not prevent the federal government from prosecuting someone for a firearms violation under federal law.¹

The commerce clause is found at Article I, § 8, of the Constitution of the United States:

The Congress shall have power . . . [t]o regulate commerce with foreign nations, and among the several states and with the Indian tribes

The extent of the commerce clause was first interpreted to not apply to commerce "which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States."² Over the years, "certain categories of activity such as 'production,' 'manufacturing,' and 'mining' were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause."³ As the interpretation of the commerce clause continued, the United States Supreme Court allowed incidental effects on purely interstate commerce if that

¹ 18 U.S.C. §§ 921 - 931 regulate certain firearms and activities. For example, 18 U.S.C. § 922(g) prohibits a felon from possessing in or affecting commerce firearms or ammunition.

² *Gibbons v. Ogden*, 9 Wheat. 1, 189 - 190 (1824)

³ *United States v. Lopez*, 514 U.S. 549 (1995).

regulation was necessary to regulate interstate commerce.⁴ The development of the commerce clause continued as explained in this excerpt from *United States v. Lopez*:⁵

In *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 550 (1935), the Court struck down regulations that fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly. In doing so, the Court characterized the distinction between direct and indirect effects of intrastate transactions upon interstate commerce as "a fundamental one, essential to the maintenance of our constitutional system." *Id.*, at 548. Activities that affected interstate commerce directly were within Congress' power; activities that affected interstate commerce indirectly were beyond Congress' reach. *Id.*, at 546. The justification for this formal distinction was rooted in the fear that otherwise "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government." *Id.*, at 548.

Two years later, in the watershed case of *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), the Court upheld the National Labor Relations Act against a Commerce Clause challenge, and in the process, departed from the distinction between "direct" and "indirect" effects on interstate commerce. *Id.*, at 36-38 ("The question [of the scope of Congress' power] is necessarily one of degree"). The Court held that intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions" are within Congress' power to regulate. *Id.*, at 37.

In *United States v. Darby*, 312 U.S. 100 (1941), the Court upheld the Fair Labor Standards Act, stating:

"The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." *Id.*, at 118.

See also *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119 (1942) (the commerce power "extends to those intrastate activities which

⁴ *Houston, E. & W. T. R. Co. v. United States*, 234 U.S. 342 (1914)

United States v. Lopez, 514 U.S. 549 (1995) (syllabus and majority opinion enclosed).

in a substantial way interfere with or obstruct the exercise of the granted power").

In *Wickard v. Filburn*, the Court upheld the application of amendments to the Agricultural Adjustment Act of 1938 to the production and consumption of home grown wheat. 317 U. S., at 128-129. The *Wickard* Court explicitly rejected earlier distinctions between direct and indirect effects on interstate commerce, stating:

"[E]ven if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" *Id.*, at 125.

The *Wickard* Court emphasized that although Filburn's own contribution to the demand for wheat may have been trivial by itself, that was not "enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Id.*, at 127-128.

Jones & Laughlin Steel, Darby, and *Wickard* ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." 301 U. S., at 37; see also *Darby, supra*, at 119-120 (Congress may regulate intrastate activity that has a "substantial effect" on interstate commerce); *Wickard, supra*, at 125 (Congress may regulate activity that "exerts a substantial economic effect on interstate commerce"). Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate

commerce. See, e.g., *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-280 (1981); *Perez v. United States*, 402 U.S. 146, 155-156 (1971); *Katzenbach v. McClung*, 379 U.S. 294, 299-301 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252-253 (1964).

Similarly, in *Maryland v. Wirtz*, 392 U.S. 183 (1968), the Court reaffirmed that "the power to regulate commerce, though broad indeed, has limits" that "[t]he Court has ample power" to enforce. *Id.*, at 196, overruled on other grounds, *National League of Cities v. Usery*, 426 U.S. 833 (1976), overruled by *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). In response to the dissent's warnings that the Court was powerless to enforce the limitations on Congress' commerce powers because "[a]ll activities affecting commerce, even in the minutest degree, [*Wickard*], may be regulated and controlled by Congress," 392 U.S., at 204 (Douglas, J., dissenting), the *Wirtz* Court replied that the dissent had misread precedent as "[n]either here nor in *Wickard* has the Court declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities," *id.*, at 197, n. 27. Rather, "[t]he Court has said only that where a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." *Ibid.* (first emphasis added).

Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power. *Perez v. United States*, *supra*, at 150; see also *Hodel v. Virginia Surface Mining & Reclamation Assn.*, *supra*, at 276-277. First, Congress may regulate the use of the channels of interstate commerce. See, e.g., *Darby*, 312 U. S., at 114; *Heart of Atlanta Motel*, *supra*, at 256 ("[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question." (quoting *Caminetti v. United States*, 242 U.S. 470, 491 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. See, e.g., *Shreveport Rate Cases*, 234 U.S. 342 (1914); *Southern R. Co. v. United States*, 222 U.S. 20 (1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez*, *supra*, at 150 ("[F]or example, the destruction of an aircraft (18 U.S.C. § 32), or . . . thefts from interstate shipments (18 U.S.C. § 659)"). Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *Jones & Laughlin Steel*, 301 U. S., at 37, *i.e.*,

those activities that substantially affect interstate commerce. *Wirtz, supra*, at 196, n. 27.

Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare *Preseault v. ICC*, 494 U.S. 1, 17 (1990), with *Wirtz, supra*, at 196, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.

Lopez, at 554 - 559. The *Wickard* case is particularly relevant as it involved an individual farmer who grew his own wheat for his own consumption. As noted, *Wickard* was still subject to federal regulation even though as an individual his potential effect on interstate commerce was small but when combined with others the court noted that the potential effect on interstate commerce could be great.

In *Lopez*, the Court struck down 18 U.S.C. § 922(q), the "Gun Free School Zones Act of 1990," which made it a federal crime to possess a gun within a school zone. The Court found that

Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly one might define those terms. Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

Second, §922(q) contains no jurisdictional element which would ensure, through case by case inquiry, that the firearm possession in question affects interstate commerce.

.....

The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

Id., at 561. See also *United States v. Morrison*, 529 U.S. 598 (2000) (striking down the "Violence Against Women Act" that created civil liability for the commission of any gender based violent crime and noting that again there was no "express jurisdictional element which might limit its reach" to those acts connected with or affecting interstate commerce).⁶

The limits of the *Lopez* and *Morrison* decisions were found in the context of medical marijuana. In *Gonzales v. Raich*, 545 U.S. 1 (2005),⁷ the Court held the commerce clause authorized Congress to enact federal laws regulating and criminalizing activities involving controlled substances even if those activities were wholly intrastate and were pursuant to a state statutory scheme that authorized the activities.

Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the CSA [Controlled Substances Act] are quintessentially economic. "Economics" refers to "the production, distribution, and consumption of commodities." Webster's Third New International Dictionary 720 (1966). The CSA is a statute that regulates the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market. Prohibiting the intrastate possession or manufacture of an article of commerce is a rational (and commonly utilized) means of regulating commerce in that product. Such prohibitions include specific decisions requiring that a drug be withdrawn from the market as a result of the failure to comply with regulatory requirements as well as decisions excluding Schedule I drugs entirely from the market. Because the CSA is a statute that directly regulates economic, commercial activity, our opinion in *Morrison* casts no doubt on its constitutionality.

...
Second, limiting the activity to marijuana possession and cultivation "in accordance with state law" cannot serve to place respondents' activities beyond congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is "superior to that of the States to provide for the welfare or necessities of their inhabitants," however legitimate or dire those necessities may be. *Wirtz*, 392 U.S., at 196 (quoting *Sanitary Dist. of Chicago v. United States*, 266 U.S. 405, 426 (1925)). See also 392 U.S., at 195-196; *Wickard*, 317 U.S., at 124 ("[N]o form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress"). Just as state acquiescence to federal regulation

⁶ Syllabus and majority opinion enclosed.

⁷ Syllabus and majority opinion enclosed.

Representative Lindsey Holmes
April 8, 2009
Page 7

cannot expand the bounds of the Commerce Clause, see, e.g., *Morrison*, 529 U.S., at 661-662 (Breyer, J., dissenting) (noting that 38 States requested federal intervention), so too state action cannot circumscribe Congress' plenary commerce power. See *United States v. Darby*, 312 U.S. 100, 114 (1941) ("That power can neither be enlarged nor diminished by the exercise or non-exercise of state power").

Raich, *id.* at 25 - 26.

The *Wickard* and *Raich* cases seem especially relevant to CSHB 168(JUD). They clearly stand for the proposition that the Commerce Clause allows federal regulation of purely intrastate activities and products if Congress could rationally conclude that those activities could enter or affect interstate commerce. The production of wheat in *Wickard* and the production of marijuana in *Raich* could enter and could affect interstate commerce. Similarly, the production of a firearm, even if performed wholly intrastate and with materials found only in that state, could seemingly affect interstate commerce in firearms generally.

Indeed, this was the decision of the Ninth Circuit Court of Appeals in *United States v. Stewart*, 451 F.3d 1071 (9th Cir. 2006).⁸ Robert Stewart manufactured homemade machine guns and machine gun kits wholly within California and was convicted of possessing a machine gun in violation of federal law. Stewart appealed and the Ninth Circuit Court of Appeals, based upon *Lopez* and *Morrison*, and before *Raich* was decided, initially reversed his conviction finding that the simple possession of homemade machines did not have a substantial effect on interstate commerce. See *United States v. Stewart*, 348 F.3d 1132(2003). After the United States Supreme Court decided *Raich*, the Supreme Court vacated the decision of the Ninth Circuit and told the court to reconsider their opinion in light of *Raich*.⁹ On remand, the Ninth Circuit found that Congress had the authority to regulate machine guns, including one's wholly a product of intrastate commerce. The court found that "[h]omemade guns, even those with a unique design, can enter the interstate market and affect supply and demand."¹⁰

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Enclosures

⁸ Opinion enclosed.

⁹ *United States v. Stewart*, 545 U.S. 1112 (2005).

¹⁰ *Stewart*, 451 F.3d at 1077.



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

JUL 16 2009

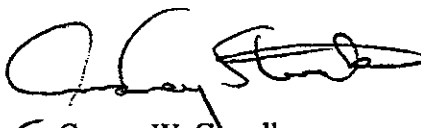
OPEN LETTER TO ALL TENNESSEE
FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide guidance on your obligations as a Federal firearms licensee ("FFL"). The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") is dedicated to your success in meeting your requirements as a Federal firearms licensee. The following guidance is intended to assist you in accomplishing this goal.

The passage of the Tennessee Firearms Freedom Act, H.B. 1796, 106th Leg. (Tenn. 2009) 1796 ("Act"), effective June 19, 2009, has generated questions from industry members as to how this State law may affect them while engaged in a firearms business activity. The Act purports to exempt personal firearms, firearms accessories, and ammunition manufactured in the State, and which remain in the State, from most Federal firearms laws and regulations. However, because the Act conflicts with Federal firearms laws and regulations, Federal law supersedes the Act, and all provisions of the Gun Control Act and the National Firearms Act, and their corresponding regulations, continue to apply.

As you may know, Federal law requires a license to engage in the business of manufacturing firearms or ammunition, or to deal in firearms, even if the firearms or ammunition remain within the same state. All firearms manufactured by a licensee must be properly marked. Additionally, each licensee must record the type, model, caliber or gauge, and serial number of each firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required must be recorded in the licensee's records not later than the seventh day following the date such manufacture or other acquisition was made. Firearms transaction records and NICS background checks must be conducted prior to disposition of firearms to unlicensed persons. These, as well as other Federal requirements and prohibitions, apply whether or not the firearms or ammunition have crossed state lines.

If you have any questions regarding the Federal firearms laws and regulations, please contact your local ATF office. ATF works closely with the firearms industry and appreciates the important role the industry plays in combating violent crime. A listing of ATF office phone numbers can be found at <http://www.atf.gov/contact/field.htm>.


Carson W. Carroll
Assistant Director
(Enforcement Programs and Services)

ATF – Bureau of Alcohol, Tobacco, Firearms and Explosives

Identify Prohibited Persons

The Gun Control Act (GCA) makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms. 18 USC 922(g). Transfers of firearms to any such prohibited persons are also unlawful. 18 USC 922(d).

These categories include any person:

Under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year;

convicted of a crime punishable by imprisonment for a term exceeding one year;

who is a fugitive from justice;

who is an unlawful user of or addicted to any controlled substance;

who has been adjudicated as a mental defective or has been committed to any mental institution;

who is an illegal alien;

who has been discharged from the military under dishonorable conditions;

who has renounced his or her United States citizenship;

who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or

who has been convicted of a misdemeanor crime of domestic violence (enacted by the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, effective September 30, 1996). 18 USC 922(g) and (n).

The Arms Export Control Act (AECA) prohibits the issuance of licenses to persons who have been convicted of:

Section 38 of the AECA, 22 USC 2778;

Section 11 of the Export Administration Act of 1979, 60 USC App. 2410;

Sections 7903, 794, or 798 of Title 18, USC, relating to espionage involving defense or classified information;

Section 16 of the Trading with the Enemy Act, 50 USC App. 16;

Section 30A of the Securities Exchange Act of 1934, 15 USC 78dd-1, or section 104 of the Foreign Corrupt Practices Act, 15 USC 78dd-2;

Chapter 105 of Title 18, USC, relating to sabotage;

Section 4(b) of the Internal Security Act of 1950, 50 USC 783(b), relating to communication of classified information;

Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954, 42 USC 2077 2122, 2131, 2234, 2272, 2275, and 2276;

Section 601 of the National Security Act of 1947, 50 USC 421, relating to the protection of the identity of undercover intelligence officers, agents, and other sources;

Section 371 of Title 17, USC, when it involves conspiracy to violate any of the above statutes; and

International Emergency Economic Powers Act, 50 USC 1702 and 1705.

Prohibitions on Certain Types of Firearms

Federal firearms laws prohibit transactions in and possession of certain types of firearms. These include, for example:

Transfer or possession of a machinegun, 18 USC 922(o);

Manufacture, importation, sale, or possession of any firearm not detectable by airport security devices, 18 USC 922(p);

and Possession of a firearm not registered as required by the National Firearms Act (NFA), 26 USC 5861(d).

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ATF – Bureau of Alcohol, Tobacco, Firearms and Explosives

Manufacturers

1. Must a person who engages in the business of manufacturing and importing firearms have a separate license to cover each type of business?
2. May a person licensed as a manufacturer of ammunition also manufacture firearms?
3. May a person licensed as a manufacturer of firearms also manufacture ammunition?
4. Is a person who reloads ammunition required to be licensed as a manufacturer?
5. Must a licensed manufacturer pay excise taxes?
6. May a person engage in gunsmithing under a dealer's license (type 01), or do gunsmiths need to be licensed as "manufacturers" of firearms?

Q: Must a person who engages in the business of manufacturing and importing firearms have a separate license to cover each type of business?

Yes. A separate license is required to cover each of these types of businesses.

[27 CFR 478.41]

Q: May a person licensed as a manufacturer of ammunition also manufacture firearms?

No. A person licensed as a manufacturer of ammunition may not manufacture firearms unless he or she obtains a license as a firearms manufacturer.

Q: May a person licensed as a manufacturer of firearms also manufacture ammunition?

Yes. The person may also manufacture ammunition (not including destructive device ammunition or armor piercing ammunition) without obtaining a separate license as a manufacturer of ammunition.

Q: Is a person who reloads ammunition required to be licensed as a manufacturer?

Yes, if the person engages in the business of selling or distributing reloads for the purpose of livelihood and profit. No, if the person reloads only for personal use.

[18 U.S.C. 922(a) (i) and 923(a), 27 CFR 478.41]

Q: Must a licensed manufacturer pay excise taxes?

Yes. Licensed manufacturers incur excise tax on the sale of firearms and ammunition manufactured. See Item 17, "Federal Excise Tax" in the General Information section of this publication.

Q: May a person engage in gunsmithing under a dealer's license (type 01), or do gunsmiths need to be licensed as "manufacturers" of firearms?

Generally, a person engaged in gunsmithing requires only a dealer's license (type 01). There are circumstances in which a gunsmith might require a manufacturing license. Generally, a person should obtain a license as a manufacturer of firearms if the person is: 1. performing operations which create firearms or alter firearms (in the case of alterations, the work is not being performed at the request of customers, rather the person who is altering the firearms is purchasing them, making the changes, and then reselling them), 2. is performing the operations as a regular course of business or trade, and 3. is performing the operations for the purpose of sale or distribution of the firearms.

Below are examples of operations performed on firearms and guidance as to whether or not such operations would be considered manufacturing under the Gun Control Act (GCA). These examples do not address the question of whether the operations are considered manufacturing for purposes of determining excise tax. Any questions concerning the payment of excise tax should be directed to the Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of the Treasury.

1. A company produces a quantity of firearm frames or receivers for sale to customers who will assemble firearms.

The company is engaged in the business of manufacturing firearms and should be licensed as a manufacturer of firearms.

2. A company produces frames or receivers for another company that assembles and sells the firearms.

Both companies are engaged in the business of manufacturing firearms and each should be licensed as a manufacturer of firearms.

3. A company provides frames to a subcontractor company that performs machining operations on the frames and returns the frames to the original company which assembles and sells the completed firearms.

Both companies are engaged in the business of manufacturing firearms and should be licensed as manufacturers of firearms.

4. A company produces barrels for firearms and sells the barrels to another company that assembles and sells complete firearms.

Because barrels are not firearms, the company that manufactures the barrels is not a manufacturer of firearms. The company that assembles and sells the firearms should be licensed as a manufacturer of firearms.

5. A company receives firearm frames from individual customers, attaches stocks and barrels and returns the firearms to the customers for the customers' personal use.

The operations performed on the firearms were not for the purpose of sale or distribution. The company should be licensed as a dealer or gunsmith, not as a manufacturer of firearms.

6. A company acquires one receiver, assembles one firearm, and sells the firearm.

The company is not manufacturing firearms as a regular course of trade or business and is not engaged in the business of manufacturing firearms. This company does not need to be licensed as a manufacturer.

7. An individual acquires frames or receivers and assembles firearms for his personal use, not for sale or distribution.

The individual is not manufacturing firearms for sale or distribution and is not required to be a licensed manufacturer.

8. A gunsmith regularly buys military type firearms, Mausers etc., and "sporterizes" them for resale.

The gunsmith is in the business of manufacturing firearms and should be licensed as a manufacturer.

9. A gunsmith buys semiautomatic pistols or revolvers and modifies the slides to accept new Style f sights. The sights are not usually sold with these firearms and do not attach to the existing mounting openings.

The gunsmith offers these firearms for sale. This would be considered the manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

10. A gunsmith buys government model pistols and installs "drop-in" precision trigger parts or other "drop-in parts" for the purpose of resale.

This would be considered the manufacturing of firearms, as the gunsmith is purchasing the firearms, modifying the firearms and selling them. The gunsmith should be licensed as a manufacturer.

11. A gunsmith buys surplus military rifles, bends the bolts to accept a scope, and then drills the receivers for a scope base. The gunsmith offers these firearms for sale.

This would be considered the manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

12. A gunsmith buys surplus military rifles or pistols and removes the stocks, adds new stocks or pistol grips, cleans the firearms, then sends the firearms to a separate contractor for bluing. These firearms are then sold to the public.

This would be considered manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

13. A company purchases surplus firearms, cleans the firearms then offers them for sale to the public.

The company does not need to be licensed as a manufacturer.

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TITLE 18 > PART I > CHAPTER 44 > § 921

§ 921. Definitions

(a) As used in this

chapter—

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(B) the frame or receiver of any such weapon;

(C) any firearm muffler or firearm silencer; or

(D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means

(A) any person engaged in the business of selling firearms at wholesale or retail,

(B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or

(C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17)

(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Attorney General" means the Attorney General of the United States ^[1]

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means—

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921 (a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921 (a)(11)(B), a person who devotes time, attention, and labor to

engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which—

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845 (b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned,

and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means—

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

[(30) , (31) Repealed. Pub. L. 103-322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)

(A) Except as provided in subparagraph (C),^[2] the term "misdemeanor crime of domestic violence" means an offense that—

(i) is a misdemeanor under Federal, State, or Tribal^[3] law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person

similarly situated to a spouse, parent, or guardian of the victim.

(B)

(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means—

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the

product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

[1] So in original. Probably should be followed by a period.

[2] So in original. No subparagraph (C) has been enacted.

[3] So in original. Probably should not be capitalized.

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TITLE 18 > PART I > CHAPTER 44 > § 922

§ 922. Unlawful acts

(a) It shall be

unlawful—

(1) for any person—

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

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

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

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

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails

pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

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

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

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

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to

(A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and

(B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

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

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

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

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

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

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

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

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General; ^[1]

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

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

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

knows or has reasonable cause to believe is less than twenty-one years of age;

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

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

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

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

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

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

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

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

XXXXXXXXXXXXXXXXXXXXXXXXXX

Signature XXXXXXXXX Date XXXX."

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

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

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

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

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

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

(2) is a fugitive from justice;

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

- (4)** has been adjudicated as a mental defective or has been committed to any mental institution;
- (5)** who, being an alien—
- (A)** is illegally or unlawfully in the United States; or
 - (B)** except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26)));
- (6)** who ^[2] has been discharged from the Armed Forces under dishonorable conditions;
- (7)** who, having been a citizen of the United States, has renounced his citizenship;
- (8)** is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—
- (A)** was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
 - (B)**
 - (i)** includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii)** by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9)** has been convicted in any court of a misdemeanor crime of domestic violence.

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

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment

in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)

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

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

(g) It shall be unlawful for any person—

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

(2) who is a fugitive from justice;

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

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

(5) who, being an alien—

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

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

- (6)** who has been discharged from the Armed Forces under dishonorable conditions;
- (7)** who, having been a citizen of the United States, has renounced his citizenship;
- (8)** who is subject to a court order that—
 - (A)** was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (B)** restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (C)**
 - (i)** includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii)** by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9)** who has been convicted in any court of a misdemeanor crime of domestic violence,

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

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

- (1)** to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or
 - (2)** to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.
- (i)** It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or

having reasonable cause to believe that the firearm or ammunition was stolen.

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

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

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

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

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

(o)

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

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

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

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)

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

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

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

(2) For purposes of this subsection—

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

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

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

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

(ii) suitable for testing and calibrating metal detectors:

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

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

The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

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

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

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

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

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

(q)

(1) The Congress finds and declares that—

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

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

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary ^[3] the House of Representatives and the Committee on the Judiciary of the Senate;

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

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

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

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

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

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

(2)

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

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

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

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

(iii) that is—

(I) not loaded; and

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

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

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

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

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

(3)

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

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

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

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

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

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

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

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

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

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

(s)

(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any

licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

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

(i) the transferor has—

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

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

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

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

(ii)

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

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

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

(C)

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

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

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

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

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

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

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

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

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

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

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

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

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 (d)(1) ^[4]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

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

(ii) is not a fugitive from justice;

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

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

(v) is not an alien who—

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

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

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

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

(C) the date the statement is made; and

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

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

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

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

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

(6)

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

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

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

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

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

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

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

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

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

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

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

(t)

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

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

(B)

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

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

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

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

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

(B) provide the licensee with the number; and

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

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

(A)

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

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

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

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

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

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

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

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

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

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

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

the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.

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

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

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

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

[(v) , (w) Repealed. Pub. L. 103-322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)

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

(A) a handgun; or

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

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

(A) a handgun; or

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

(3) This subsection does not apply to—

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

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission

of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

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

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

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

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

(iv) in accordance with State and local law;

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

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

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

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

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

(6)

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

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

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

(y) Provisions Relating to Aliens Admitted Under Nonimmigrant Visas.—

(1) Definitions.— In this subsection—

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

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

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

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

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

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

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

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

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

(3) Waiver.—

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

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

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

- (i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and
- (ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

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

- (i) would be in the interests of justice; and
- (ii) would not jeopardize the public safety.

(z) Secure Gun Storage or Safety Device.—

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

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

(A)

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

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

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

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

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

(3) Liability for use.—

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

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

(C) **Defined term.**— As used in this paragraph, the term “qualified civil liability action”—

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

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

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

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

Repealed. Pub. L. 103-322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

[1] So in original. Probably should be followed with "and".

[2] So in original. The word "who" probably should not appear.

[3] So in original. Probably should be followed by "of".

[4] See References in Text note below.

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TITLE 18 > PART I > CHAPTER 44 > § 923

§ 923. Licensing

(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility for licensing as the Attorney General shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year;

(B) of firearms other than destructive devices, a fee of \$50 per year; or

(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of \$10 per year.

(2) If the applicant is an importer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year; or

(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of \$50 per year.

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of \$1,000 per year; or

(B) who is not a dealer in destructive devices, a fee of \$200 for 3 years, except that the fee for renewal of a valid license shall be \$90 for 3 years.

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility as the Attorney General shall by regulation prescribe. The fee for such license shall be \$10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Attorney General shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license. Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer. If any firearm is so disposed of by a licensee within one year after its transfer from his business inventory into such licensee's personal collection or if such disposition or any other acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of such licensee's business inventory, except that any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and who sells or otherwise disposes of such firearm shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity: Provided, That no other recordkeeping shall be required.

(d)

(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922 (g) and (n) of this chapter;

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application;

(E) the applicant has in a State

(i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or

(ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time;

(F) the applicant certifies that—

(i) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premise is located;

(ii)

(I) within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business; and

(II) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and

(iii) that the applicant has sent or delivered a form to be prescribed by the Attorney General, to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license; and

(G) in the case of an application to be licensed as a dealer, the applicant certifies that secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees (subject to the exception that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement under this subparagraph to make available such a device).

(2) The Attorney General must approve or deny an application for a license within the 60-day period beginning on the date it is received. If the Attorney General fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Attorney General to act. If the Attorney General approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(e) The Attorney General may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement to make available such a device). The Attorney General may, after notice and opportunity for hearing, revoke the license of a dealer who willfully transfers armor piercing ammunition. The Secretary's ^[1] action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)

(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Attorney General stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

(2) If the Attorney General denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Attorney General shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the Attorney General decides not to reverse his decision to deny an application or revoke a license, the Attorney General shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation. In a proceeding conducted under

this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the hearing held under paragraph (2). If the court decides that the Attorney General was not authorized to deny the application or to revoke the license, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Attorney General shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Attorney General more than one year after the filing of the indictment or information.

(g)

(1)

(A) Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, except as expressly required by this section. The Attorney General, when he has reasonable cause to believe a violation of this chapter has occurred and that evidence thereof may be found on such premises, may, upon demonstrating such cause before a Federal magistrate judge and securing from such magistrate judge a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector, or any licensed importer or manufacturer of ammunition, for the purpose of inspecting or examining—

(i) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under this chapter or rules or regulations under this chapter, and

(ii) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises.

(B) The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant—

(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

(ii) for ensuring compliance with the record keeping requirements of this chapter—

(I) not more than once during any 12-month period; or

(II) at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee; or

(iii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(C) The Attorney General may inspect the inventory and records of a licensed collector without such reasonable cause or warrant—

(i) for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period; or

(ii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(D) At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Attorney General designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this paragraph shall not be construed as authorizing the Attorney General to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Attorney General seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Attorney General may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of

such firearms or ammunition, and he may provide information to the extent such information may be contained in the records required to be maintained by this chapter, when so requested by any Federal, State, or local law enforcement agency.

(2) Each licensed collector shall maintain in a bound volume the nature of which the Attorney General may by regulations prescribe, records of the receipt, sale, or other disposition of firearms. Such records shall include the name and address of any person to whom the collector sells or otherwise disposes of a firearm. Such collector shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, except as expressly required by this section.

(3)

(A) Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Attorney General and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place, not later than the close of business on the day that the multiple sale or other disposition occurs.

(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.

(4) Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records required to be kept by this chapter shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, such

records shall be delivered within thirty days after the business discontinuance to the Attorney General. However, where State law or local ordinance requires the delivery of records to other responsible authority, the Attorney General may arrange for the delivery of such records to such other responsible authority.

(5)

(A) Each licensee shall, when required by letter issued by the Attorney General, and until notified to the contrary in writing by the Attorney General, submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify.

(B) The Attorney General may authorize such record information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter. A licensee may use an alternate method of reporting if the licensee describes the proposed alternate method of reporting and the need therefor in a letter application submitted to the Attorney General, and the Attorney General approves such alternate method of reporting.

(6) Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Attorney General and to the appropriate local authorities.

(7) Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Attorney General for information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation. The requested information shall be provided orally or in writing, as the Attorney General may require. The Attorney General shall implement a system whereby the licensee can positively identify and establish that an individual requesting information via telephone is employed by and authorized by the agency to request such information.

(h) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

(i) Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations

prescribe, each firearm imported or manufactured by such importer or manufacturer.

(j) A licensed importer, licensed manufacturer, or licensed dealer may, under rules or regulations prescribed by the Attorney General, conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms in the community, and such location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle.

Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Any inspection or examination of inventory or records under this chapter by the Attorney General at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall be construed to authorize the Attorney General to inspect or examine the inventory or records of a licensed importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell, or otherwise dispose of firearms or ammunition, which is in effect before the date of the enactment of the Firearms Owners' Protection Act, including the right of a licensee to conduct "curios or relics" firearms transfers and business away from their business premises with another licensee without regard as to whether the location of where the business is conducted is located in the State specified on the license of either licensee.

(k) Licensed importers and licensed manufacturers shall mark all armor piercing projectiles and packages containing such projectiles for distribution in the manner prescribed by the Attorney General by regulation. The Attorney General shall furnish information to each dealer licensed under this chapter defining which projectiles are considered armor piercing ammunition as defined in section 921 (a)(17)(B).

(l) The Attorney General shall notify the chief law enforcement officer in the appropriate State and local jurisdictions of the names and addresses of all persons in the State to whom a firearms license is issued.

[1] So in original. Probably should be "Attorney General's".

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TITLE 18 > PART I > CHAPTER 44 > § 927

§ 927. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

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TITLE 18 > PART I > CHAPTER 44 > § 929

§ 929. Use of restricted ammunition

(a)

(1) Whoever, during and in relation to the commission of a crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm, shall, in addition to the punishment provided for the commission of such crime of violence or drug trafficking crime be sentenced to a term of imprisonment for not less than five years.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(b) Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this section, nor place the person on probation, nor shall the terms of imprisonment run concurrently with any other terms of imprisonment, including that imposed for the crime in which the armor piercing ammunition was used or possessed.

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Pro Querente

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

**MONTANA SHOOTING SPORTS
ASSOCIATION, SECOND
AMENDMENT FOUNDATION,
and GARY MARBUT,**

Plaintiffs,

v.

**ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,**

Defendant.

Cause No. _____

COMPLAINT

Plaintiffs, Montana Shooting Sports Association, Second Amendment
Foundation, Inc., and Gary Marbut ("PLAINTIFFS"), by and through the

undersigned counsel of record, allege for their Complaint against Eric H. Holder, Attorney General of the United States of America ("DEFENDANT"), as follows:

1. Plaintiff Montana Shooting Sports Association ("MSSA") is a non-profit corporation organized under the laws of the State of Montana. The purpose of MSSA is to "support and promote firearm safety, the shooting sports, hunting, firearm collecting, and personal protection using firearms, to provide education to its members concerning shooting, firearms, safety, hunting and the right to keep and bear arms, to own and or manage one or more shooting facilities for the use of its members and or others, to conduct such other activities as serves the needs of its members." MSSA regularly lobbies the Montana Legislature, and its efforts were instrumental in the passage of the Montana statutes at issue in this civil action. MSSA has a genuine and viable interest in this case, as its goals and its existence depends upon the protection of the rights and interests of its members, and the enforcement of Montana law.

2. Plaintiff Second Amendment Foundation, Inc. ("SAF"), is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.

SAF has over 650,000 members and supporters nationwide, including Montana. The purposes of SAF include promoting the exercise of the right to keep and bear arms, education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.

3. Plaintiff Gary Marbut is the President of MSSA, a citizen of the United States, and a resident of Missoula, Montana. Marbut is responsible for promoting and protecting the interests of MSSA and its members. Further, as an individual, Marbut desires to manufacture and sell small arms and small arms ammunition per the Montana Firearms Freedom Act.

4. Defendant, Eric H. Holder, Jr., is the appointed, qualified, confirmed, and acting Attorney General and head of the Department of Justice of the United States of America and, as such, is the official charged with administering the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE"), and enforcement of both the National Firearms Act ("NFA"), and the Gun Control Act of 1968 ("GCA"). DEFENDANT maintains his offices as Attorney General in the District of Columbia.

5. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and 18 U.S.C. § 925A and is brought for the

purpose of determining a question of actual controversy between the parties as more fully appears in the complaint below.

6. Jurisdiction of this action is based generally on 5 U.S.C. § 704 and 28 U.S.C. § 1331. Jurisdiction is expressly conferred on this court by 18 U.S.C. § 925A(2).

7. Venue for this action is proper pursuant to 28 U.S.C. § 1391(e) because Plaintiff resides in this district and no real property is involved in this action.

8. The Montana Firearms Freedom Act ("MFFA"), House Bill 246 of the 2009 Montana legislative session, whose language is incorporated herein by this reference, becomes effective today. Its scope is limited to activity occurring exclusively within the state of Montana.

9. The activity authorized under the MFFA is primarily political. It has a commercial element, but the purpose is to allow Montanans who wish to avoid interference by the United States government in their legitimate activity (specifically, manufacturing and selling small arms and small arms ammunition), to do so if they strictly confine such activity to the political boundaries of their own state. Although there are commercial elements to the statutory scheme, they are incidental to the material

purpose and function of the MFFA. Passage of the MFFA was an express exercise by the State of Montana of powers reserved to the states and to the people under the 10th Amendment of the United States Constitution. The MFFA is also authorized under the conditions of the compact with the United States that Montana entered upon admission to the union. The United States Congress therefore has no authority, under the limited powers granted to it by the United States Constitution, to preempt the MFFA.

10. PLAINTIFF MARBUT wishes to manufacture and sell small arms and small arms ammunition to customers exclusively in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable federal laws. MARBUT has sought permission and assurances from BATFE that he may proceed under MFFA without fear of criminal prosecution or civil sanction, so long as he strictly confines such activity to Montana.

11. PLAINTIFF MSSA and PLAINTIFF SAF have members, along with other Montana citizens, who wish to manufacture and sell small arms and small arms ammunition to customers in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable

federal laws.

12. Like PLAINTIFF MARBUT, other members of PLAINTIFF MSSA and PLAINTIFF SAF, and other Montana citizens, have sought permission and assurances from BATFE that they may proceed under MFFA without fear of criminal prosecution or civil sanction, sanction so long as he strictly confines such activity to Montana.

13. BATFE refuses to give permission to Marbut or anyone else to proceed under MFFA, and instead, on September 29, 2009, it issued a letter to Plaintiff Gary Marbut contending that "to the extent the [MFFA] conflicts with Federal firearms laws and regulations, Federal law supersedes the MFFA, and all provisions of the GCA and NFA, and their corresponding regulations, continue to apply." (See copy attached hereto as Exhibit A.) This is consistent with an "open letter" BATFE issued to the general public on July 16, 2009, warning that MFFA conflicts with federal firearms law and regulations, and that federal law therefore supersedes the MFFA. (See copy attached hereto as Exhibit B.)

14. As a result of BATFE'S actions in issuing its July 16, 2009, "open letter," and in its September 29, 2009, letter to PLAINTIFF MARBUT, and its refusal to give other Montana citizens assurances or permission to

exercise their rights under the MFFA, no Montanan who wishes to proceed under the MFFA can do so without fear of federal criminal prosecution and/or civil sanctions, including fines and/or forfeiture.

15. There is therefore a real and actual controversy between PLAINTIFFS and DEFENDANT regarding whether the United States Constitution confers power on Congress to regulate activities contemplated by the MFFA. Under the 10th Amendment, all regulatory authority of all such activities within Montana's political borders is left in the sole discretion of Montana. Federal law therefore does not preempt the MFFA and cannot be invoked to regulate or prosecute Montana citizens acting in compliance with the MFFA, so long as they do so solely within the political borders of Montana.

16. In addition, PLAINTIFFS face irreparable harm from DEFENDANT'S threat to enforce the NFA and/or the GCA and other federal laws and regulations through the prosecution of civil actions and criminal indictments against Montana citizens who proceed in compliance with MFFA. The threat of federal civil action and/or criminal prosecution faced under the circumstances effectively blocks PLAINTIFFS and all law abiding citizens from exercising their rights under and otherwise benefitting from

the MFFA, a wrong for which they have no adequate legal remedy at law.

REQUEST FOR RELIEF

PLAINTIFFS respectfully request:

A. A declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 for the purpose of determining and adjudicating the questions of actual controversy between the parties as set forth above, that:

(i) The United States Constitution confers no power on Congress to regulate the special rights and activities contemplated by the MFFA;

(ii) Under the 10th Amendment of the United States Constitution, all regulatory authority of all such activities within Montana's political borders is left in the sole discretion of Montana; and

(iii) Federal law does not preempt the MFFA and cannot be invoked to regulate or prosecute Montana citizens acting in compliance with the MFFA.

B. A permanent injunction order enjoining DEFENDANT and any agency of the United States of America from prosecuting any civil action or criminal indictment or information under the NFA or the GCA, or any other federal laws and regulations, against PLAINTIFFS or other Montana citizens

acting, solely within the political borders of Montana, in compliance with the MFFA.

C. An order awarding to PLAINTIFFS costs and a reasonable attorney fee under the private attorney general doctrine.

D. PLAINTIFFS request such other and further relief as may be

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proper in the circumstances.

DATED this ____ day of September, 2009.

Respectfully submitted,
SULLIVAN, TABARACCI & RHOADES, P.C.

By: /s/ Quentin M. Rhoades

Quentin M. Rhoades

Pro Querente

Alaska State Legislature

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Member

House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

To: Senator Hollis French – Chair, Senate Judiciary Committee

From: Representative Mike Kelly

MPK

Date: January 20, 2010

Re: Committee Hearing Request – CSHB 186(FIN) “An Act declaring that certain firearms and accessories are exempt from federal regulation”

.....

I respectfully request that CSHB 186(FIN), “An Act declaring that certain firearms and accessories are exempt from federal regulation” be scheduled for a hearing. I have included a sponsor statement, the bill and other items of evidentiary support.

If you have any questions or comments, or require additional material please feel free to contact me at extension 4976 or my staff, Derek Miller at extension 6879.