



FFL NEWSLETTER



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BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
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LEGISLATIVE ISSUES

On September 30, 1996, The Omnibus Consolidated Appropriations Act of 1997 (the Act), was enacted. This legislation made amendments to the Gun Control Act (GCA) which became effective upon the date of enactment. These amendments included a new category of prohibited person and new rules for the disposition of curio and relic firearms. The Bureau of Alcohol, Tobacco and Firearms (ATF) is in the process of drafting regulations to implement this legislation.

New prohibited person category

The GCA was amended to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It is also unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

As defined in the GCA a "misdemeanor crime of domestic violence" is an offense that: (1) is a misdemeanor under Federal or State law; (2) has, as an element, the use or attempted use of physical force, the threatened use of physical force, or the threatened use of a deadly weapon; and (3) was 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.

The prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the effective date of the law, September 30, 1996. Whether a "conviction" has occurred is determined by the law of the jurisdiction where the proceedings were held. The conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights upon conviction for such an offense) AND the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms or ammunition.

Curio and relic sales

The GCA was amended to allow licensees to sell curio or relic firearms to other licensees away from their licensed premises.

Licensees are still subject to all recordkeeping requirements in the regulations concerning the sale or other disposition of curios or relics. In addition, the licensee's record should reflect the location of the sale or disposition.

NEW RESIDENCY REQUIREMENTS FOR PURCHASERS

As a result of the Empire State Building shooting incident, President Clinton announced on March 5, 1997, that the Treasury Department would institute changes to Federal firearms regulations

requiring greater proof of residency from firearms purchasers.

On April 21, 1997, ATF issued temporary regulations to provide for a firearms purchaser's affirmative statement of his or her State of residence on the ATF Form 4473 and to request this information on ATF Form 5300.35 (the Brady form). The regulations also require that aliens purchasing a firearm provide proof of residency through the use of substantiating documentation, such as utility bills or a lease agreement. An alien who is legally in the United States shall be considered to be a resident of a State only if the alien is residing in the State and has resided in the State for a period of at least 90 days prior to the sale or delivery of the firearm.

In the case of an alien who is legally in the United States, the regulations also require the purchaser to provide the licensee with proof of residency through the use of substantiating documentation, such as utility bills or a lease agreement, showing that the individual has resided in the State continuously for at least 90 days prior to the transfer of the firearm. The regulations also require that licensees obtain a government issued photo identification document from an alien purchaser for all firearms purchases, including shotguns and rifles.

The regulations eliminate the language allowing aliens to establish residency by obtaining a letter from their embassy or consulate.

Acceptable forms of identification

We have received many questions concerning the types of documentation necessary to establish the residency of an alien purchaser.

Many licensees have asked ATF whether the required photo identification provides adequate proof of residency where an alien firearms purchaser obtained the identification document from a State within 90 days of the sale of the firearm. It is ATF's position that while such a document satisfies the photo identification requirement, it is not sufficient to meet the separate requirement that the purchaser establish that he or she has resided in a State for at least 90 days.

ATF understands that not every alien firearms purchaser will be able to provide utility bills or a lease agreement in his or her own name. Other forms of documentation will be considered acceptable, as long as such documentation shows the residence address of the purchaser and establishes that the purchaser has resided at that address for a period of at least 90 days.

Acceptable forms of documentation include:

- Lease agreements covering the relevant time period
- Utility bills
- Credit card statements
- Postmarked United States mail addressed to the purchaser at his or her residence (e.g., magazine subscriptions)
- Pay stubs or other documentation from the purchaser's place of employment showing the residence address

Licensees who have questions concerning the sufficiency of specific forms of documentation should contact the Firearms and Explosives Operations Branch at (202) 927-8310.

Return of pawned firearms to resident aliens

ATF interprets the Gun Control Act to permit Federal firearms licensees to return a pawned firearm to a person who is not a resident of the State where the licensee's premises are located. This interpretation is based upon 18 U.S.C. § 922(a)(2)(A), which permits a licensee to return a firearm or replacement firearm to the person from whom it was received, even though the person is an out-of-State resident. In issuing the April 21, 1997, regulations relating to residency requirements, ATF did not intend to alter this interpretation. Accordingly, licensees returning pawned firearms to nonlicensed aliens may return the firearms to the alien from whom they were received upon obtaining evidence that the alien is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm. The type of evidence obtained should be recorded in Section B, item 10 of ATF Form 4473 and, in the case of a handgun transaction, subject to the Brady law, in Section B, item 7b of ATF Form 5300.35.

The temporary regulations will be amended to reflect this policy.

LICENSEE NOTIFICATION

On June 6, 1997, ATF completed the distribution of an information package containing the regulation changes and new transaction forms to all Federal firearms licensees. The package included a cover memo explaining the changes, a copy of the temporary regulations regarding aliens purchasing firearms, 100 copies of ATF F 4473 (5300.9) Firearms Transaction Record, and, for licensees in States subject to the 5-day waiting period provisions of the Brady law, 50 copies of ATF F 5300.35, Statement of Intent to Obtain a Handgun(s).

ASSAULT WEAPON RECEIVERS

ATF has received a number of inquiries concerning the assembly of AR-15 receivers manufactured prior to September 13, 1994, into complete firearms.

Section 922(v), Title 18, U.S.C., prohibits the manufacture, transfer, and possession of semiautomatic assault weapons, with certain exceptions. The law also exempts weapons lawfully possessed on the date of enactment, September 13, 1994, from the prohibitions of the law. The term "semiautomatic assault weapon" is defined to include 19 named models of firearms, copies or duplicates of such weapons, and semiautomatic rifles, semiautomatic pistols and semiautomatic shotguns which have 2 or more of the features specified in the law.

The AR-15 is clearly a "semiautomatic assault weapon," since it is one of the 19 named models of firearms in the definition. However, a frame or receiver alone is not one of the 19 named models of firearms, nor does a frame or receiver have the features necessary to bring it within the definition of "semiautomatic assault weapon." Accordingly, frames or receivers for the AR-15 or for any other weapon which were manufactured on or before September 13, 1994, are not "grandfathered" under the law and may only be assembled into a complete semiautomatic assault weapon for sale to governmental entities.

GOVERNMENTAL EXEMPTION TO SEMIAUTOMATIC ASSAULT WEAPON BAN

The provisions of the Gun Control Act prohibiting the transfer and possession of semiautomatic assault weapons and large capacity ammunition feeding devices provide exceptions for law enforcement officers employed by Federal, State, or local government agencies who require such weapons or devices for official use. In the case of officers purchasing assault weapons or magazines with their own funds, ATF interprets the exception as requiring that (1) the officer is employed by a government agency; and (2) the officer is a law enforcement officer, *i.e.*, the officer is a "peace officer."

For example, ATF has determined that for purposes of the assault weapon and feeding device provisions of the law, Amtrak is an agency of the Federal Government. Thus, Amtrak police officers certified or commissioned as police officers under the laws of the State where they are employed may purchase semiautomatic assault weapons and large capacity ammunition feeding devices for official use.

Most railroads, other than Amtrak, are not owned or operated by State or local government agencies. The exceptions are those railroads operated by mass transit systems, such as Metrorail in the District of Columbia, which are government agencies. Accordingly, rail police officers employed by railroads other than Amtrak would generally not fall within the limited exception of the law and, therefore, may not acquire assault weapons and large capacity ammunition feeding devices.

The status of "reserve" police officers is another area that may need some clarification. "Reserve" police officers are those officers called to duty by police departments on an as-needed basis. As long as the officers are certified or commissioned "peace officers" under State law and are employed by State or local governmental entities, such officers may lawfully acquire semiautomatic

assault weapons and large capacity ammunition feeding devices for official use.

Further, as long as the reserve officer's commission is in effect, sales of such items to the officers and possession of the items by the officers would be lawful even when they are off duty.

IMPORTATION OF MACHINEGUNS

A number of importers have asked whether machineguns manufactured after May 19, 1986, may be imported for scientific or research purposes.

The import provisions of the National Firearms Act (NFA) in 26 U.S.C. § 5844 provide that NFA weapons may be imported for (1) the use of government agencies; (2) scientific or research purposes; or (3) testing or use as a model by a registered manufacturer or as a sample by a registered importer or registered dealer. However, 18 U.S.C. § 922(o) prohibits the transfer and possession of machineguns manufactured or imported after May 19, 1986, except for machineguns transferred to or possessed by government agencies. The regulations in 27 C.F.R. § 179.105 also authorize the importation of machineguns after May 19, 1986, as dealer's sales samples.

Section 922(o) has no exception for machineguns used for scientific or research purposes or for testing by a Federal firearms licensee. Accordingly, after May 19, 1986, ATF has not approved applications to import machineguns for these purposes. The Firearms and Explosives Imports Branch will approve applications to import machineguns only for sale to government agencies or as sales samples in accordance with 27 C.F.R. § 179.105(d). Questions concerning such importations should be directed to the Imports Branch at (202) 927-8320.

RETENTION OF REGISTERED MACHINEGUNS BY LICENSEES WHO DISCONTINUE BUSINESS

Licensees who are qualified to deal in NFA weapons and decide not to renew their payment

of special (occupational) tax must transfer all registered machineguns to another properly qualified licensee who has a legitimate need for the weapons. The weapons may also be exported in accordance with the regulations in 27 C.F.R. §§ 179.114-179.119. These transfers must occur before the expiration of the license and special tax status. Otherwise, the machineguns must be abandoned to ATF or are subject to seizure.

However, qualified dealers who are sole proprietors may retain machineguns they lawfully possessed prior to May 19, 1986, the effective date of 18 U.S.C. § 922(o). Dealers who wish to retain such weapons should make an entry in the acquisition and disposition book indicating that the weapons are now in their possession as an individual. These machineguns are still subject to the restrictions of the NFA and may only be transferred to approved law enforcement agencies.

Licensees who are corporations or partnerships and intend to discontinue business in NFA weapons may not retain registered machineguns, irrespective of their date of manufacture or importation. These licensees must dispose of all NFA weapons, including machineguns, prior to discontinuing business.

TRANSFER OF REGISTERED NFA WEAPONS IN A DECEDENT'S ESTATE

Properly registered NFA firearms in a decedent's estate may be transferred by the executor of the estate on a tax-free basis. The executor should, within a reasonable time after the death of the registrant, file an ATF Form 5 to transfer the registered firearm to a lawful heir. A lawful heir is anyone named in the decedent's will or, in the absence of a will, anyone entitled to inherit under the laws of the State in which the decedent last resided.

Notwithstanding the above, if the heir is prohibited by any law from receiving or possessing the firearm, the transfer application filed by the executor of the estate will be denied. For example, if the weapon is a machinegun imported or manufactured after May 19, 1986, and was lawfully possessed by the decedent (for

example, a sales sample possessed by a qualified dealer), it is subject to the restrictions of 18 U.S.C. § 922(o) and may be lawfully transferred only to a law enforcement agency.

MEET THE NEW CUSTOMER SERVICE SPECIALIST

Hello, my name is Ruth Poole. In February of 1997, I became the Customer Service Specialist for the Firearms and Explosives Licensing Center. I've worked with ATF in firearms for 28 years. During the past 10 years, I supervised the East Coast, Puerto Rico, and the Virgin Islands Firearms and Explosives Licensing.

During the next year, I plan to examine many of the jobs we do and determine if there's a better way to perform the tasks. If you have suggestions for how we can serve you better, I'd like to hear from you.

Another part of my job is to resolve firearms licensing problems you might be experiencing. If you are unsuccessful in resolving a firearms licensing problem through usual channels, please contact me by calling (404) 679-5097, by sending a FAX to (404) 679-5098, or by writing me at Bureau of Alcohol, Tobacco, and Firearms, P.O. Box 2994, Atlanta, Georgia 30370.

GOING OUT OF BUSINESS

During the past three years many licensees have permanently discontinued business. However, many of these licensees have not sent their records to the out-of-business record center. If a business is being discontinued completely, the licensed dealer is required, within 30 days, to forward his records to:

**ATF
Out-of-Business Records Center
Falling Waters, West Virginia 25419**

The records consist of a licensee's bound acquisition/disposition (A/D) records, ATF Forms 4473, ATF Forms 5300.35 (Brady forms), ATF Forms 3310.4 (Multiple Sale), and records

of transactions in semiautomatic assault weapons. If a licensee was granted a variance to use a computerized recordkeeping system, the licensee is required to provide a complete printout of his/her entire A/D records.

If a licensee discontinuing business has no records, he/she should notify the Firearms and Explosives Licensing Center of that fact. If no notification is made, ATF has no way of knowing whether the licensee has records he/she has not turned in, or whether no records exist, and must therefore expend additional resources attempting to make a determination as to records availability. The address for the licensing center is:

**ATF
Firearms and Explosives Licensing Center
2600 Century Parkway
Suite 400
Atlanta, Georgia 30341**

Failure to submit the required records is a felony and could result in a licensee being fined up to \$250,000, imprisoned up to five years, or both.

WALLET GUNS

ATF has received numerous inquiries regarding wallet guns and wallet holsters.

As defined in section 5845(e) of the National Firearms Act (NFA), the term "any other weapon" includes certain concealable weapons. Various types of disguised weapons such as cane guns, belt buckle guns, and briefcase guns (with remote control firing mechanisms) fall within the "any other weapon" category. It is unlawful to make, possess, or transfer such firearms without complying with the provisions of the NFA.

During the 1970's, ATF determined that various small handguns combined with certain "wallet holsters" fall into the "any other weapon" category and are subject to the provisions of the NFA. These wallet holsters are generally rectangular in shape, are designed to disguise the appearance of the handgun, and are designed to allow the weapon to be fired while it is contained within the wallet. The handgun combined with the wallet holster constitutes an NFA firearm.

A conventional pistol or revolver which is possessed without the wallet holster would not be an NFA firearm. A wallet holster alone is not subject to NFA controls and cannot be registered or transferred as a firearm. Firearms contained in conventional holsters, trouser pockets, purses, gun cases, or various other forms of carrying cases have not been determined to fall within the definition of an "any other weapon," even though it may be possible to discharge a firearm while it is carried in such a manner.

In order for an individual to lawfully "make" a wallet gun, that is to say, acquire both the handgun and the wallet holster, the person must first submit an Application to Make and Register a Firearm (ATF Form 1), pay a \$200.00 making tax, and receive approval of the application. The serial number appearing on the handgun should be used to register the firearm. Transfer of a wallet gun requires an approved transfer application and payment of a \$5 transfer tax. A transfer will not be approved unless the wallet gun has been registered to the transferor.

Mere sale or possession of the wallet holster without the handgun is not a violation of the NFA. However, 18 U.S.C. section 2 provides that a person who aids or abets another person in the commission of an offense is also responsible for the offense. Therefore, sale or distribution of a wallet holster with knowledge that it will be used to make an unregistered NFA firearm may also place the seller or distributor of the holster in violation of the NFA.

ATF'S STOLEN FIREARMS PROGRAM

The Violent Crime Control and Law Enforcement Act of 1994 included a requirement for Federal firearms licensees (FFLs) to report the theft or loss of firearms from their business inventory or collection to the Bureau of Alcohol, Tobacco and Firearms (ATF) and local law enforcement within 48 hours after discovery. Regulations require that these thefts/losses be reported to ATF via a firearms theft hotline (1-800-800-3855), which is then followed up by a written report (ATF Form

3310.11, Federal Firearms Licensee Theft/Loss Report). The firearms theft hotline is operational 24 hours per day, seven days per week. By calling the hotline, the FFL will be provided with an incident number which should be recorded in the licensee's bound book. The ATF F 3310.11 is also required to be forwarded to ATF within the same time frame. This form is available from the ATF Distribution Center at (703) 455-7801.

IMPROVING SECURITY

FFLs continue to experience a dramatic increase in the likelihood that they will be victims of a firearms theft. From 1995 to 1996, the number of incidents and firearms reported to ATF regarding FFL thefts/losses increased by 40 percent. By analyzing these incidents, we are able to provide you with a number of security tips in order to reduce your chances of experiencing a firearms theft.

- *Keep display cases locked at all times*
- *Show only one firearm at a time to your customers*
- *Do not leave a customer unattended while handling a firearm*
- *Do not meet with customers after business hours*
- *Strictly control firearms security at gun shows*
- *Institute an employee screening process*
- *Utilize any security measures you have in place regularly*

Display case security and awareness is very essential given the increase in the number of shoplifting incidents. Another area that appears to be increasing is theft of firearms from gun shows. Many times the firearms are not stolen at the show itself, but from the FFLs vehicle. Extra attention should be paid if your vehicle containing firearms will be left for an extended

period of time. Consider removing the firearms from the vehicle and storing them in a more secure location, especially if the vehicle will remain parked overnight.

In analyzing FFL theft/loss data from 1995 and 1996, the most popular method of entry continues to be via a broken window or the front door. The next most popular entry points are utilizing a vehicle to smash the front of the building, entering through the back door, and entries made via the roof.

Based on this information, we suggest that the best investment to make is the addition of a burglar alarm with central monitoring. Burglar alarms come in many different styles with prices ranging from a hundred dollars to several thousand dollars. Since there are a wide range of security systems on the market, we suggest you contact a number of local professionals in your area for an analysis of your needs. Contact the National Burglar and Fire Alarm Association (301) 907-3202 for a list of reputable security alarm firms in your area. Also, contact your local Better Business Bureau for additional information.

Burglar bars on windows and barriers, such as concrete filled posts placed around your business, will also help prevent smash and grabs. Securing your inventory at the end of the day, either by locking via hardened cable or placing in a vault, will also be beneficial. If a vault is not available to you, another option would be to build a small room inside your business location to store firearms. This room should utilize 10-gauge expanded steel wire mesh along with typical wood frame and drywall construction. This room must use an exterior security type door along with, high security, single key deadbolt locks.

Many small businesses feel that expending resources on a security system is beyond their budget. Just remember that the criminals think alike and will be more inclined to target the small business with little or no security as opposed to the big business with a security system. We also advise you to review your State law, as some States mandate certain security procedures for FFLs. For additional security tips, contact your local police department's crime prevention officer.