

THE FEDERAL FIREARMS OWNER PROTECTION ACT

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 914

**A BILL TO PROTECT FIREARMS OWNERS' CONSTITUTIONAL RIGHTS,
CIVIL LIBERTIES, AND RIGHTS TO PRIVACY**

OCTOBER 4, 1983

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DEPUTY ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

October 24, 1983

Dear Mr. Chairman:

I am responding to your letter of October 14 in which you forwarded follow-up questions for the Committee's hearing record with respect to my views on S. 914, the Federal Firearm Owners Protection Act.

My responses to the follow-up questions from my testimony at the hearing on October 4, 1983 are enclosed. I am also enclosing the corrected copy of my testimony before the Senate Committee on the Judiciary on October 4, 1983.

I wish to thank you and your staff for the courtesies extended to me personally and to the Treasury Department in connection with the hearing on October 4 and the handling of this important legislation.

Sincerely,

Robert E. Powis
Deputy Assistant Secretary
(Enforcement)

The Honorable
Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Enclosures

QUESTIONS SUBMITTED BY SENATOR DOLE

1. In June of 1982, the Senate Judiciary Committee reported out S. 1030 as amended. One of the amendments which the Committee adopted was a Dole compromise amendment which provided for a 14 day cooling-off period for purchase of certain handguns. What is Treasury's view on this amendment? Does Treasury have a position on the original 21 day waiting period amendment offered by Senator Kennedy?

The Administration believes that cooling-off periods or waiting periods should be implemented by State and/or local governments if they so desire. The amendment offered by Senator Kennedy, in addition to imposing a 21-day waiting period, would require a name search of the criminal history records of the FBI to determine whether the purchaser would be prohibited from purchasing, transporting, receiving or possessing firearms. As the Report of the Senate Committee on the Judiciary noted in its report on S. 1030, as amended, this approach has substantial difficulties. The FBI's criminal identification program is already seriously over-burdened in dealing with its current workload. Furthermore, in order to avoid misidentification of the prospective handgun purchaser, positive identification of the purchaser can be accomplished only by comparing ten fingerprint images against fingerprint cards in Federal or State criminal identification files. This procedure would be expensive, burdensome and filled with delays far beyond the 21-day period.

2. Since 1968, the Gun Control Act has provided for mail order sales of firearms from licensed firearms dealers to individuals residing in the same state. What has been the experience of BATF with this provision? Has it been utilized much? If so, have you found significant evidence of abuse of its provisions?

According to ATF, the intrastate mail-order provision of the Gun Control Act has not been heavily utilized. Consequently, there is no evidence of any abuse of its provisions.

3. In December of 1982, Congress enacted into a law amendments to the Gun Control Act relating to .22 caliber rimfire ammunition. I understand that Treasury has recently issued regulations implementing this amendment. Have you encountered any problems to date in the administration of this provision? If so, do you have any recommendation for change of the provision?

The amendment to the recordkeeping provisions has been well-received by industry. After some initial confusion on the extent of its provisions (some licensees apparently thought that it eliminated the age restrictions for purchase of ammunition), its implementation has run smoothly. We see no reason to change this liberalizing provision.

4. The Treasury Department has offered an amendment to S. 914 on intrastate gun show participation by FFA dealers. I understand that many dealers attend gun shows out of their state of residence. If a gun is purchased at an out of state show, the transaction must be handled through an intermediary dealer. Would Treasury object to an expansion of its proposal to include out of state gun shows?

The Administration does not support extending the gun show amendment to include out-of-State gun shows. Under existing law, unchanged by S. 914, licensees may acquire firearms in any State. Extending the gun show amendment would tend to frustrate State and local control over firearms transactions and firearms businesses within their jurisdictions since firearms dealers would remove information as to those activities from the reach of State and local authorities at the conclusion of the show. A serious problem would also be presented if such dealer violates State and local law. His return to his permanent State would place the dealer outside the reach of law enforcement authorities where the violation occurred.

5. Please comment on the proposed amendments offered by Senator Dole at today's hearing (October 4, 1983). Amendments are attached.

See attached comments on proposed amendments.

6. The Gun Control Act of 1968 contains a wide array of sentencing provisions which range from indeterminate to minimum mandatory provisions. Is any information available as to the relative value of the different penalty provisions and their operation as deterrants to violations of the Act?

The Treasury Department does not have any information as to the relative value of the different penalty provisions and their operation as deterrants to violations of the Act. Perhaps the Justice Department would be in a better position to provide such information.

7. Has either the Treasury Department or the Administration given consideration to the potential impact of its proposed amendment on minimum mandatory sentences with respect to Federal prison population? If this recommendation were enacted and vigorously enforced, would it not add significantly to the overcrowded conditions that already exist in the Federal prisons? Do you have an impact study of the potential correctional costs of this amendment? If so, please provide.

It is our understanding that the Department of Justice may have information relative to these questions.

ANSWER TO QUESTION 5

1. Amendment 1 would provide a four-tiered penalty scheme for Gun Control Act violations. A violation of certain provisions of the Act would be punishable by not more than 5 years imprisonment provided that the violation charged was one of a continuing series of at least five violations occurring within a 2-year period. (Less than five violations would constitute a misdemeanor or subject the violator to a civil fine.) It is unclear whether the Government must convict the individual of five violations or merely convict on one violation with evidence of additional violations. Furthermore, the five-violation requirement before the crimes are accorded felony treatment would practically mean that most violations would have to be prosecuted, not as felonies, but as misdemeanors which may not be seriously and vigorously prosecuted in the courts. Indeed, some violations could never amount to a felony, e.g., a continuing, unlicensed firearms business would constitute one misdemeanor violation regardless of the volume of firearms illegally sold or the number of transactions.

The amendment would also repeal the seizure and forfeiture provision of S. 914. Thus, no firearms, even those used in a crime could be seized and forfeited. Such a provision is not in the best interest of effective law enforcement. At a minimum, the provisions of S. 914 with the proposed Treasury amendments should be retained.

2. Amendment 2 would allow licensees to sell firearms by mail in interstate commerce to nonlicensees. The amendment could be interpreted to permit the circumvention and contravention of State and local laws governing the acquisition of firearms in that the resident of any State may acquire a firearm outside that State by mail order, notwithstanding that the transaction violated State or local law. It would conflict with provisions of S. 914 with the Treasury amendments permitting licensees to sell firearms to nonlicensees only if the sale and delivery occurs at the licensee's premises and the transaction does not violate State or local laws.

3. Amendment 3 would add a new section 929 to Title 18, U.S.C., to provide for a mandatory term of imprisonment for using armor-piercing handgun ammunition during and in relation to a Federal crime of violence. This provision is identical to the proposed revision contained in S. 1762, the Administration's Comprehensive Crime Control Act, which was recently favorably reported by the Senate Committee on the Judiciary. The Administration favors this amendment.

4. Amendment 4 would provide a continuing registration period during which possessors of previously unregistered National Firearms Act (NFA) weapons could register such weapons. This amendment, coupled with the proposal to allow disclosure of NFA registration information to State and local law enforcement authorities, presents a potential constitutional problem. In other words, the registration provisions may be subject to a Fifth Amendment challenge as being self-incriminating since information supplied to the Government by a person registering a firearm in his possession would be available to, and could be used by, State and local authorities for prosecution purposes.

Significantly, the amendments would restore constitutional defects in the Act that existed prior to its amendment in 1968. These defects resulted in the Supreme Court's decision in *Haynes v. United States*, 390 U.S. 85 (1968), which held that the hazards of self-incrimination created by the Act's registration requirements were real and appreciable and that a claim of the constitutional privilege against self-incrimination would provide a full defense to prosecutions under the Act. Consequently, the Act was amended to preclude the registration of weapons by their possessors and repeal the provision allowing the disclosure of NFA registration information to State and local authorities. Under current law, NFA weapons can only be registered upon their lawful making or manufacture or pursuant to the lawful transfer of previously registered weapons. Possessors of unregistered weapons may not register their weapons and such weapons are contraband.

A continuing registration period, tantamount to an unlimited amnesty, would be contrary to the purpose of the NFA to restrict the flow and availability of NFA weapons. The limited amnesty period in 1968 was to assist in overcoming a constitutional defect in the Act concerning self-incrimination with respect to the registration requirement placed upon possessors of NFA weapons. Having provided a 30-day period within which possessors of unregistered weapons could register them with impunity, the 1968 amnesty served its purpose. Therefore, unregistered weapons could no longer be legitimately registered and possessors' retention of them violated the law. In addition, a continuing registration period would tend to make violations of the Act appear trivial, i.e., offenses may be perceived as technical violations resulting from the neglect to file the requisite registration form rather than the serious violation of knowingly possessing contraband weapons.

The NFA definition of silencer would be amended to include any major part or combination of major parts of a silencer which when used individually or with another item is designed or redesigned to be used as a silencer of a firearm. This amendment would strengthen law enforcement since it would address the current problem presented by the distribution of incomplete silencer kits free of NFA control.

The amendment of the machinegun definition under the NFA would include any firearm which may be "readily converted" to a machinegun. Thus, the Act would specifically cover those semi-automatic weapons frequently used in crime that the design characteristics of machineguns contain and can be easily altered to fire automatically. However, the additional proposal to classify all semi-automatic firearms not exempted by regulation as machineguns would be unnecessarily burdensome for the Government, the firearms industry, and firearms owners. The purpose of the amendment might be achieved in a more reasonable manner by regulating readily converted, semi-automatic weapons as machineguns only when they are identified and classified as machineguns.

This amendment would also provide that information obtained from NFA records could be used to impeach testimony offered in a court by a person who supplied the information when the testimony offered by that person is inconsistent with the NFA records. The situation addressed by this amendment would only arise in a judicial proceeding in which the person's registration of a weapon under the NFA is at issue. Because current law, unaltered by S. 914, would permit such impeachment testimony in the case, the amendment is unnecessary.

179810.433

AMENDMENT 4

S.L.C.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To amend the National Firearms Act of 1934.

IN THE SENATE OF THE UNITED STATES--97th Cong., 2d Sess.

S. 914

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

Amendments intended to be proposed by Mr. Dole

Viz:

- 1 On page 21, after line 21, insert the following:
- 2 TITLE II--AMENDMENTS TO THE INTERNAL REVENUE CODE
- 3 Sec. 281. The Internal Revenue Code of 1954 is amended--
- 4 (1) in section 5841--
- 5 (A) by inserting "Tax" before "Act in" in
- 6 subsection (d); and
- 7 (B) by adding at the end thereof the following:
- 8 "(f) Continuing Registration.--Any person coming into
- 9 possession of a firearm not reflected in records maintained
- 10 by the Secretary prior to the effective date of the Act
- 11 entitled "An Act to protect firearms owners' constitutional
- 12 rights, civil liberties, and rights to privacy", may
- 13 register such firearm with the Secretary in accordance with
- 14 the provisions of this Act after the effective date of such
- 15 Act without incurring civil or criminal liability under this
- 16 Act upon payment of the requisite tax. Such registration
- 17 shall not, however, be a defense to any civil or criminal
- 18 charge, arising from the failure of any person to register
- 19 such firearm under the provisions of the National Firearms
- 20 Act in effect on the day prior to the effective date of the
- 21 Act entitled "An Act to protect firearms owners'
- 22 constitutional rights, civil liberties, and rights to
- 23 privacy", which may be pending before any court of law on

1 the effective date of such Act; nor shall such registration
2 be effective as to any person not authorized under Federal or
3 State law or local published ordinance to possess the weapon
4 so registered; nor shall such registration be a defense to
5 any civil or criminal charge which was known to the
6 registrant to have been under investigation by the Secretary
7 or his representative at the time of such registration.

8 “(g) Registration of Firearms Acquired Through Devise or
9 Descent.--Any natural person who comes into possession and
10 ownership of any weapon required to be registered under this
11 Act through devise or descent, and who applies to register
12 such weapon with the Secretary in a good faith effort to
13 ensure that the ownership of such weapon is in compliance
14 with the law, may register such weapon without incurring
15 civil or criminal liability under the provisions of this Act
16 or the National Firearms Act in effect upon the date of the
17 enactment of the Act entitled “An Act to protect firearms
18 owners’ constitutional rights, civil liberties, and rights to
19 privacy”, provided that such person is otherwise not
20 prohibited by existing Federal or State law or local
21 published ordinance from possessing the weapon sought to be
22 registered. Any person so registering a weapon under this
23 subsection shall not be required to pay any transfer tax upon
24 such weapon if the previous owner of such weapon had
25 previously paid such a tax upon the weapon.”;

26 (2) in section 5845--

27 (A) by amending subsection (a) (7) to read as
28 follows: “(7) a muffler or a silencer for any
29 firearm whether or not such firearm is included
30 within this definition; or any major part of same, or
31 combination of major parts of same, which, used
32 individually or together with any other item, are
33 designed or redesigned principally for use as a
34 muffler or silencer with any firearm; and”;

1 (B) by amending subsection (b) to read as
 2 follows:
 3 "(b) Machinegun.--The term 'machinegun' means any weapon
 4 which--
 5 "(1) shoots, is designed to shoot, or can be readily
 6 converted or restored to shoot automatically more than
 7 one shot, without manual reloading, by a single function
 8 of the trigger. The term shall also include the frame or
 9 receiver of any such weapon, any part or combination of
 10 parts which are designed and intended for use in
 11 converting any weapon into a machinegun, and any
 12 combination of parts from which a machinegun can be
 13 assembled if such parts are in the possession or under
 14 the control of a person; and
 15 "(2) any semiautomatic weapon, as defined herein,
 16 unless such weapon has been found by the Secretary,
 17 pursuant to regulation promulgated by the Secretary, to
 18 be one which is not capable of being readily converted or
 19 restored to shoot automatically more than one shot,
 20 without manual reloading, by a single function of the
 21 trigger.";
 22 (C) by inserting after "propellant," in
 23 subsection (f) (2) the following: "whether
 24 incendiary or nonincendiary in nature,";
 25 (D) by striking out paragraph (3) and all that
 26 follows in subsection (f) and inserting in lieu
 27 thereof the following: "(3) any high energy device,
 28 including those employing laser, atomic, or other
 29 energy radiation technology, which is capable of
 30 emitting particles that can be used as or readily
 31 converted to an instrument of destruction; (4) any
 32 projectile which is designed or redesigned to shatter
 33 or explode upon impact from the action of any
 34 internal mechanism or substance after being expelled

1 from a device designed or redesigned for use as a
 2 weapon, and (5) any part or combination of parts
 3 either designed or intended for use in converting any
 4 device into a destructive device as defined in
 5 paragraphs (1), (2), (3), and (4) of this subsection,
 6 or from which a destructive device may be readily
 7 assembled. The term 'destructive device' shall not
 8 include any device which is neither designed nor
 9 redesigned for use as a weapon; any device, although
 10 originally designed for use as a weapon, which is
 11 redesigned for use as a signaling, pyrotechnic, line
 12 throwing, safety, or similar device; surplus ordnance
 13 sold, loaned, or given by the Secretary of the Army
 14 pursuant to the provisions of section 4684 (2), 4685,
 15 or 4686 of title 10 of the United States Code, or any
 16 other device which the Secretary of the Treasury or
 17 his delegate finds is not likely to be used as a
 18 weapon, or is an antique or is a rifle which the
 19 owner intends to use solely for sporting purposes.'';

20 (E) by striking out 'importing or' in
 21 subsection (l);

22 (F) by striking out 'manufacturing' in
 23 subsection (m) and inserting in lieu thereof
 24 'making'; and

25 (G) by adding at the end thereof the following:

26 '(n) Semi-automatic Weapon.--The term 'semi-automatic
 27 weapon' means any weapon which shoots or is designed to shoot
 28 more than one shot, without manual reloading with a separate
 29 function of the trigger for each shot. The term shall also
 30 include the frame or receiver of any such weapon.'';

31 (3) by amending section 5847 to read as follows:

32 'SEC. 5847. EFFECT ON OTHER LAWS.

33 'Nothing in this chapter shall be construed as modifying
 34 or affecting the requirements of section 38 of the Arms

1 Export Control Act, (22 U.S.C. 2278) with respect to the
2 manufacture, exportation, and importation of arms,
3 ammunition, and implements of war."'; and

4 (4) in section 5848--

5 (A) by inserting in subsection (b) before the
6 period at the end thereof the following: "; nor
7 shall it preclude the use of such information for the
8 purpose of impeaching testimony offered in a court of
9 law by such person who supplied the information
10 sought to be used, where the testimony offered is
11 inconsistent with the information so supplied"; and

12 (B) by adding at the end thereof the following:

13 "(c) The Secretary of the Treasury to Share
14 Information.--The Secretary of the Treasury shall freely
15 share all information generated by the Secretary, or obtained
16 or collected under the provisions of this title, which may
17 provide evidence concerning violations of the provisions of
18 this title or any other law relating to the control of
19 firearms, with Federal and State law enforcement agencies
20 upon proper request."

21 FILING RETURN

22 Sec. 202. (a) Section 6103 (b) (1) of the Internal
23 Revenue Code of 1954 is amended by inserting at the end
24 thereof the following: "The word 'return' shall not mean,
25 however, any information, in whatever form, provided to the
26 Internal Revenue Service by any person in connection with the
27 payment of a transfer or registration tax on firearms."

28 (b) Section 6103 (b) (2) of the Internal Revenue Code of
29 1954 is amended by inserting before the period at the end
30 thereof, the following: ", or any information produced by,
31 or obtained by, the Secretary in connection with the payment,
32 or lack of payment, of any tax on the transfer or
33 registration of firearms by any person".

34 EFFECTIVE DATE

1 Sec. 203. The amendments made by this title shall become
2 effective one hundred and eighty days after the date of
3 enactment of this Act.

4 On page 22, line 1, strike out ``II`` and insert in lieu
5 thereof ``III``.

6 On page 22, line 5, strike out ``201`` and insert in lieu
7 thereof ``301``.