

HARRY L. HOGAN

McClure-Volkmer Amendments to the Gun Control Act:

The McClure-Volkmer Amendments to Federal statutes controlling firearms and ammunition (18 U.S. Code 921 *et seq.* and 26 U.S. Code 5801 *et seq.*) were signed into law by the President on May 19, 1986, and in general will become effective on November 15, 1986. The culmination of a campaign pressed since 1979 by the National Rifle Association and other pro-gun groups, these amendments were fought by gun control leaders in Congress as an attempt to "gut" the Gun Control Act of 1968 (GCA). They are viewed by proponents, however, as needed reforms—to prevent law enforcement abuses and to relieve gun buyers, owners and licensees from restrictions perceived as irrelevant or needlessly onerous.

The bill signed by the President differed from the one introduced in 1979 by Sen. James A. McClure (R., Idaho) and Rep. Harold L. Volkmer (D., Missouri) and a number of co-sponsors. It had undergone numerous changes during lengthy consideration by the Senate, over the course of several Congresses, and had been further modified in the House. The alterations—many of which were worked out through consultations between the principal Congressional players and Executive Branch officials—made the final product more palatable to the bill's opponents. However, enactment was still seen as a win for the National Rifle Association and its allies.

How will the amendments affect you as a private individual?

Interstate Purchase

If you ever need to buy a hunting weapon—a rifle or shotgun—while away from your home State, the new law will make it possible. Previously, the only legal out-of-State transfers were long gun transfers made in a State contiguous to one's home State, provided both State legislatures had enacted legislation specifically allowing it. Now you will be able to obtain one in *any* State as long as you get it from a licensed dealer. However, the existing restriction on out-of-State handgun purchase (or sale to an out-of-Stater) remains in effect.

Transport Through Jurisdictions with Restrictive Laws

You will now be able to transport any legally owned and carried gun, in your automobile or other vehicle, through a jurisdiction* with a law that might otherwise prohibit you from doing so, as long as you would not be in violation of the laws of the place you are traveling to. The gun, however, must be unloaded and inaccessible. A separate bill—passed after the McClure-Volkmer bill was cleared—specifies how the term "inaccessible" is to be interpreted.

Purchase of Ammunition

You will again be able to buy ammunition and components by "mail order." Also, since dealers will no longer be required to keep records of ammunition sales (except in the case of "armor-piercing" ammunition), and since establishments that sell ammunition only (i.e., no firearms) will not be required to be licensed, you may now find ammunition carried by some stores that were previously reluctant to do so.

Transferring a Gun to a Prohibited Person

As a private individual—i.e., someone not licensed to engage in the firearm business—you will now be committing a Federal offense if you sell or otherwise transfer a gun to any person knowing or having reasonable

WHAT THEY MEAN to YOU

'cause to believe that that person is included in one of seven "high risk" categories enumerated in the statute: convicted felons, unlawful users of controlled substances or addicts to such substances, persons having been adjudicated as mental defectives or committed to a mental institution, and so forth.

Relief from Legal Disabilities

Under the old law, of all people in the prohibited person categories, only convicted felons whose crime did not involve use of a firearm or a violation of the Gun Control Act could be granted relief from the Act's sanctions against shipment, receipt, and possession of firearms; and State expunction proceedings did not erase Federal disabilities. Now, relief will be allowed for all categories of persons with firearms disabilities, and there is no longer a bar to relief for felons whose crime involved a firearm or who violated the GCA.

Transfers by Collectors or Casual Sellers

The GCA requires all persons "engaged in the business" of manufacturing, importing or dealing in firearms to secure a license from the Secretary of the Treasury. The amendments define "engaged in the business" as involving the "principal objective of livelihood and profit." The qualification is designed to protect unlicensed

An Act

18. United States Code, to provide for better control of the interstate traffic in firearms.

Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be known as the Gun Control Act of 1968.

STATE FIREARMS CONTROL ASSISTANCE

PURPOSE

That Congress hereby declares that the purpose of this title is to support Federal, State, and local law enforcement efforts to fight against crime and violence, and it is not the intent to place any undue or unnecessary Federal restrictions on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purposes of hunting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage private ownership or use of firearms by law-abiding citizens, or provide for the imposition by Federal law of any restrictions or requirements other than those necessary to prevent and effectuate the provisions of this title.

United States Code, is amended *Act*, p. 226.

collectors, traders and casual sellers from being charged with illegal dealing.

Seizure and Forfeiture of Firearms

The forfeiture of firearms will be limited to those "used or intended to be used" in an alleged offense, to preclude the seizure of an entire collection. Further, forfeiture proceedings must be started within 120 days of seizure and, if the gun owner prevails, the court must award lawyer fees and return his property.

Registration

The Bureau of Alcohol, Tobacco and Firearms may not prescribe any new regulation requiring that licensee records be recorded at or transferred to any governmental facility. Moreover, any other additional requirement that might create a system of registration is prohibited.

Federal Crimes Committed with Guns

Under existing law, if you are convicted of committing a Federal "crime of violence" while using or carrying a gun, you are subject to a minimum enhancement penalty over and above any sentence you receive for the underlying offense. The amendments expand the provision to cover "drug trafficking" offenses and also provide that if a machine gun or a silencer is used in such instances, the enhancement penalty is doubled.

Machine Gun Freeze (Effective May 19, 1986)

It is now illegal for you to own or transfer a machine gun that was not lawfully manufactured and possessed

(by someone, if only the manufacturer) before the President signed the amendments into law. In other words, any machine gun that was registered with the Secretary of the Treasury and otherwise legally possessed on May 19, 1968 continues to be legally owned and may be transferred, in accordance with the provisions of the National Firearms Act of 1934.

Intent Requirements, for Conviction of Violation

Under existing law, in order to secure conviction for an offense against the Act, the Government need only demonstrate in most instances that the person charged acted "knowingly." The amendments create a two-category system of state-of-mind requirements, specifying that with respect to a number of offenses—those that might be perceived as less serious—it will be necessary to show that the violation was done "willfully." Among the offenses subject to the higher intent standard, which you are most likely to commit if you are a nonlicensee, are:

- (1) unlicensed dealing,
- (2) transport into your home State of a handgun obtained from out of State, and
- (3) transfer of a gun to a person who is from out of State.

How will the amendments affect you as a licensee?

Sale of Long Guns to Non-residents

Under existing law, you can't sell a firearm to a person from another State. An exception is made for sale of a rifle or shotgun to a person from a State contiguous to your own if both State legislatures have enacted laws permitting it; and such a sale is subject to police notification and waiting period requirements. The amendments will now permit you to sell a long gun to an individual from any State as long as the sale is legal in both the place where it occurs and the buyer's place of residence.

Government Inspections

Existing law allows Bureau of Alcohol, Tobacco and Firearms (BATF) agents to inspect your records and inventory at all reasonable times. Under the amendments, BATF will be restricted to one compliance inspection, without notice, within any 12-month period. Otherwise, inspections will be restricted to those where the government has a warrant based on reason-

able cause to believe that evidence of a violation of law may be found upon your premises, except in the course of a criminal investigation of a person other than the licensee or for tracing a firearm.

Records and Reports

Records on the sale of ammunition will no longer be required except in the case of armor-piercing ammunition. If you sell a firearm transferred from inventory to a personal collection and held for a year, you will be required to keep only minimal records, essentially the same as those now required in the case of a transfer by a licensed collector. Existing regulations concerning reports required to be made to BATF are incorporated into the statute and no further reporting requirements may be made that would have the effect of transferring licensee records, or information based thereon, to any government facility.

Administrative Sanctions Against Licensees

The government will no longer be able to deny or revoke your license upon charges in a criminal case if you are acquitted or the case is terminated other than upon the government's motion prior to trial. A revocation action must take place within one year of the filing of an indictment or information, and all denials or revocations will be subject to *de novo* judicial review.

Selling at Gun Shows

Presently, going strictly by the statute, you are unable to sell firearms anywhere except on the premises specified on your license. The amendments incorporate the current BATF regulation allowing sale at temporary premises in connection with a show or event sponsored by a recognized organization interested in guns or gun use.

Importation

You will no longer be able to import the barrels of guns which have been designated as non-importable because they failed to meet the "sporting purposes" criteria under existing law.

Harry L. Hogan is a specialist in American national government, Government Division.

*As revised by P.L. 99-360, the provision's original reference to "interstate commerce" is deleted. Despite a colloquy in House floor debate, which appears to make clear that application of the revised provision is meant to be limited to interstate transport, opinion is divided as to the end result.