

6-1965

Firearms Legislation

Joe B. Brown

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Second Amendment Commons](#)

Recommended Citation

Joe B. Brown, Firearms Legislation, 18 *Vanderbilt Law Review* 1362 (1965)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol18/iss3/26>

This Note is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

is preferable to the present tax treatment of multiple corporations because the present law allows "big business" to have the benefit of tax concessions designed for "small business." The tax avoidance limitations of the present law on the allowance of the tax concessions to multiple corporations are not meaningful. Whether solutions superior to Surrey's are possible depends in large measure upon overcoming the difficulty of designing effective limitations on the tax benefits in the case of multiple corporations which would accord with a well-defined purpose of these tax benefits. Adoption of Surrey's proposal would also effect a simplification of the law and could lead to a more equitable distribution of the tax burden among corporate taxpayers which in turn might eventually lead to an overall reduction in corporate tax rates. When Congress again undertakes a revision of tax law, the problem of multiple corporations deserves a close re-examination.

JAMES T. O'HARE

Firearms Legislation

I. INTRODUCTION

Throughout recorded history men have armed themselves with weapons for use against their fellow men and for protection from environmental hazards. An increasing population combined with increasingly effective and deadly weapons has created a problem in the control of private weapons. At the present time every state and district in the United States and the federal government have some

a tax of 47 per cent while his competitor next door would be subject to a tax of only 22 per cent. These two corporations face the same risks and rewards, but under the President's proposal one would be given a considerably greater tax advantage." *Statement of Chester M. Edelman, Chairman, Committee on Taxation and Fiscal Policy, American Retail Federation, Hearings Before the House Committee on Ways and Means on Tax Recommendations of the President, 88th Cong., 1st Sess. 2653 (1963).*

If the purpose of the tax concessions is to aid small competitors, this argument misses the point so far as it applies to large corporate chains operating identical businesses in different locations. Presumably, the corporate chain as a whole is much larger than the small competitor next door and the purpose of the tax concession is defeated if it does not give an advantage to the smaller competitor.

Other proposals of Professor Surrey concerning the tax treatment of multiple corporations were adopted in the 1964 act. Repeal of the 2% tax on consolidated returns had been recommended by Surrey several years earlier. Also, Congress used Surrey's definition of corporations which should be limited to a single surtax exemption in defining controlled groups of corporations.

restrictions on firearms.¹ Are they adequate? Many think not. A recent Gallup Poll shows that seventy-three per cent of the people in the United States would favor a law requiring a police permit before a person could buy a gun. Even among gun owners sixty per cent favor such a law. This poll, taken several months after President Kennedy's assassination with a mail order rifle, indicates a growing concern with the problem of sale of firearms in this country.² President Johnson has expressed concern about private armed groups and requested additional legislation to control mail order sales.³ Presently, there are ten major bills to regulate firearms pending in the Congress of the United States,⁴ and additional legislation was introduced in

1. ALA. CODE tit. 14, §§ 161 to -82 (1958); ALASKA STAT. §§ 11.55.010-070 (1962); ARIZ. REV. STAT. ANN. §§ 13-911 to -919 (1956); ARK. STAT. ANN. §§ 41-4501 to -4517 (1964); CAL. PEN. CODE §§ 12001-550; C.Z. CODE tit. 6, §§ 2571-75 (1963); COLO. REV. STAT. ANN. §§ 40-11-1 to -10 (1953); CONN. GEN. STAT. REV. §§ 27-33 to -36, 53-202 to -207 (1958); DEL. CODE ANN. tit. 11, §§ 461-67, tit. 24, §§ 901-05 (1953); D.C. CODE ANN. §§ 22-3201 to -3217 (1961); FLA. STAT. ANN. §§ 790.01-24 (Supp. 1964); GA. CODE ANN. §§ 26-5101 to -5112 (1953), §§ 92A-901 to -11 (Supp. 1963); HAWAII REV. LAWS §§ 157-1 to -15, 157-30 to -33 (1955); IDAHO CODE ANN. §§ 18-3301 to -3311 (1947); ILL. REV. STAT. ch. 38, §§ 24-1 to -6 (1964); IND. ANN. STAT. §§ 10-4701 to -4751 (1950), 10-4752 to -4759 (Supp. 1964); IOWA CODE ANN. §§ 695.11-28, 696.1-11 (1946); KAN. GEN. STAT. ANN. §§ 21-2411, 21-2601 to -2609, 38-701 to -702 (1949), 21-2610 to -2614 (Supp. 1961); KY. REV. STAT. ANN. §§ 435.200-235 (1963); LA. REV. STAT. 40:1751-91 (1950); ME. REV. STAT. ANN. ch. 25, § 2031, ch. 15, §§ 391-93 (1965); MD. ANN. CODE art. 27, §§ 36,441-44 (Supp. 1964); MASS. GEN. LAWS ANN. ch. 269, §§ 10-12c, ch. 140, §§ 121-31c (Supp. 1964); MICH. STAT. ANN. §§ 28.419-437 (1962); MINN. STAT. ANN. §§ 411.63 (1958), 609.66-.67, 624.61, 625.16 (1964); MISS. CODE ANN. §§ 2079-86 (1942); MO. ANN. STAT. §§ 564.590-630 (1949); MONT. REV. CODES ANN. §§ 94-3524 to -30, 94-3578 to -79 (1947); NEB. REV. STAT. §§ 28-1000 to -11 (1943), §§ 28-1011.07-.11 (Supp. 1963); NEV. REV. STAT. §§ 202.280-360 (1963); N.H. REV. STAT. ANN. §§ 159:1-.13 (1964); N.J. STAT. ANN. §§ 2A:151-1 to -63 (1953); N.M. STAT. ANN. §§ 40A-7-1 to -7 (1964); N.Y. PEN. LAW §§ 1896-1905; N.C. GEN. STAT. §§ 14-269 (1953); N.D. CENT. CODE §§ 62-01-01 to -04-05 (1960); OHIO REV. CODE ANN. §§ 2923.01-.06 (Baldwin 1964); OKLA. STAT. ANN. tit. 21, §§ 1271-82 (1958); ORE. REV. STAT. §§ 166.210-.520 (1963); PA. STAT. ANN. tit. 18, §§ 3841-63, 4416, 4628 -4829, tit. 34, § 1311 (1963); PHILIPPINE ANN. LAWS tit. 56, § 57 (1957), ADM. CODE §§ 877-97 (1963); P.R. LAWS ANN. tit. 25, §§ 411 -54 (1964); R.I. GEN. LAWS ANN. §§ 11-46-1 to -56 (Supp. 1964); S.C. CODE ANN. §§ 16-93 to -145 (1962); S.D. CODE §§ 13.1608-1610 (1939); TENN. CODE ANN. §§ 39-2801 to -08, 39-4901 to -4913 (1955); TEX. PEN. CODE ANN. art. 483-89c (Supp. 1964); UTAH CODE ANN. §§ 76-23-1 to -7 (1953), § 76-28-8 (Supp. 1964); VT. STAT. ANN. tit. 13, §§ 4001-12 (Supp. 1963); VA. CODE ANN. §§ 18.1-65 to -70, -241 to -272 (1960), § 18.1-269 (Supp. 1964); V.I. LAWS ANN. tit. 14, §§ 2251-55, tit. 23, §§ 451-58 (1964); WASH. REV. CODE ANN. §§ 9.41.010-.260 (1961); W. VA. CODE ANN. §§ 6043-55 (1961); WIS. STAT. ANN. §§ 941.20 to .28 (1958); WYO. STAT. ANN. §§ 6-287 to -246 (1957).

2. Gallup Poll, A Well-Armed Nation (Dec. 1964). This poll also showed that 48% of the homes in America have at least one firearm.

3. Wall Street Journal, Mar. 9, 1965, § 1, p. 1, col. 4.

4. S. 14, S. 1180, S. 1591, S. 1592 (all by Senator Dodd) H.R. 510, H.R. 637, H.R. 1539, H.R. 2021, H.R. 4000, H.R. Res. 24, 89th Cong., 1st Sess. (1965).

twenty-three states between January and April of 1965 alone.⁵

The purpose of this note is to examine existing laws of both state and federal governments, to consider the constitutional restrictions on firearms legislation, to discuss the need for additional or improved legislation, and to suggest legislation for federal adoption and a model statute for state consideration.

II. PRESENT STATUS OF FIREARMS CONTROL

A. Federal Regulation

It has often been stated that there is no general police power vested in the federal government.⁶ Under both the revenue clause and the commerce clause of the Constitution, however, the federal government has regulated the licensing of parties who may ship weapons in interstate commerce or carry them on interstate trips,⁷ and it has levied heavy taxes on certain types of weapons, such as machine guns, which are felt to be highly dangerous.⁸

1. *The National Firearms Act.*—The National Firearms Act of 1934 is styled as a revenue bill and is administered by the Internal Revenue Service.⁹ It places a two hundred dollar tax on each transfer of a firearm and defines a "firearm" for tax purposes as a machine gun, any weapon equipped with a silencer, a shotgun with barrel less than eighteen inches, or a rifle with barrel less than sixteen inches, excluding pistols and revolvers. The act requires that these weapons be registered with the Internal Revenue Service and that no weapon be shipped or received in interstate commerce in violation of this act. The purpose of the act was to end the use of automatic weapons so prevalent in the gangster era of the twenties and the thirties. Police officers have testified that the act has resulted in a great reduction in the use of sawed off shotguns and machine guns in organized crime.¹⁰ The act also imposes an annual five hundred dollar tax on pawn brokers dealing in such weapons and an annual two hundred dollar tax on all other dealers. For any dealer not handling these items the tax

5. *The American Rifleman*, Mar. 1965, p. 26, April 1965, p. 24. These two articles digest briefly the bills introduced in the state legislatures during 1965.

6. *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146 (1919); FORKOSCH, *CONSTITUTIONAL LAW* 254-56 (1963).

7. Federal Firearms Act, 52 Stat. 1250 (1938), 15 U.S.C. §§ 901-09 (1958) [hereinafter cited to U.S.C. only].

8. National Firearms Act, INT. REV. CODE OF 1954, §§ 5801-62; FORKOSCH, *op. cit. supra* note 6, at 256-58.

9. INT. REV. CODE OF 1954, §§ 5801-02.

10. *Hearings Before the Subcommittee To Investigate Juvenile Delinquency of the Committee on the Judiciary*, 88th Cong., 1st Sess., p. 14, at 3255 (1963) [hereinafter cited *Judiciary Hearings*].

rates are much lower.¹¹

2. *Federal Firearms Act*.—In 1938 the Federal Firearms Act was enacted to control the interstate shipment of firearms.¹² In this act, “firearm” is defined broadly to cover any weapon that fires a projectile.¹³ All dealers and manufacturers who ship in interstate commerce are required to be licensed. The act prohibits anyone who is a fugitive from justice, under indictment, or a convicted felon from shipping or receiving firearms and ammunition, excluding .22 caliber ammunition, in interstate commerce. The act also prohibits the shipment of stolen weapons or any weapons which have had the serial numbers altered.¹⁴

Section 902(c) makes it illegal to ship to anyone not having a license to purchase, if such is required by local law. This section was designed to allow the states to regulate incoming interstate shipments by requiring local residents to have a license to purchase, even for out-of-state mail order purchases. Thus, in Rhode Island the purchaser of a hand gun must send the dealer a purchase form approved by the local police before an out-of-state dealer can ship into the state.¹⁵ However, as pointed out in a recent Senate hearing, very few states have coordinated their local laws with this federal provision.¹⁶ Thus, while South Carolina forbids the sale of handguns in the state, it does not regulate shipments of handguns into the state. A dealer may legally ship to any resident of South Carolina unless he has reason to believe the person is a convict, fugitive from justice, or under indictment.¹⁷ As a practical matter, therefore, the Federal Firearms Act has not been effective to regulate interstate shipment of firearms. Also, due to the low licensing fee of one dollar, the Treasury Department does not closely check applications for a dealer’s license. Consequently, anyone who is willing to state that he is not a felon is normally able to secure a dealer’s license upon payment of the one dollar fee.¹⁸ Apparently the danger of perjury prosecution is not great, for in recent Senate hearings it was brought out that there were almost no prosecutions for perjury under the act.¹⁹ Also, under this act there are no age restrictions on applicants; a child

11. INT. REV. CODE OF 1954, § 5801 (1952). Section 5848 of the act defines firearms in a very limited category. As used in this act firearm actually means only a “sawed off rifle or shotgun,” machine gun, or a weapon equipped with a silencer.

12. 15 U.S.C. §§ 901-09 (1958).

13. 15 U.S.C. § 901(3) (1958).

14. 15 U.S.C. § 902 (1958).

15. R.I. GEN. LAWS ANN. § 11-46-36 (Supp. 1964).

16. *Hearings Before the Senate Committee on Commerce on S. 1975 and S. 2345*, 88th Cong., 1st Sess., ser. 45, pt. 1, at 10-15 (1963) [hereinafter cited *Commerce Hearings*].

17. S.C. CODE ANN. § 16-144 (1962); *Commerce Hearings* 13.

18. *Judiciary Hearings* 3209-10, 3426.

19. *Id.* at 3220-21.

could not be denied a license on the basis of age alone. There are currently about sixty thousand dealers' licenses outstanding, and it has been estimated that only about one half are bona fide dealers.²⁰

Thus, due to the lack of the states' use of section 902 of the Federal Firearms Act, its loose licensing provisions, and the lack of strict enforcement, the act has not been very effective in regulating the shipment of interstate arms.²¹

3. *Miscellaneous Federal Regulations.*—Postal regulations prohibit the shipping of explosives, including ammunition, through the mails. Moreover, the regulations limit the shipments of weapons capable of being concealed on the person to shipments between dealers and manufacturers.²² However, since other common carriers such as the Railway Express Agency legally ship all of these items, this is not a restriction on firearms shipments generally. The Federal Aviation Agency, through regulations, forbids any passenger to carry a deadly weapon about his person in an air carrier; unloaded weapons in baggage are not prohibited.²³ In addition to these regulations, firearms are generally excluded from national parks and monuments except by permit.

Thus, at the present time, there is no federal prohibition against ownership of any type of arms; only heavy taxes on some types and limitation on firearms shipments in general. Whether the federal government could constitutionally prohibit the possession of firearms generally will be considered later.

B. State Regulations

Among the several states, there is no uniformity on firearms laws. There is often diversity within each state, for many cities and counties have their own regulations. Under the positive controls imposed by the states we find the following provisions. New York, with its Sullivan Law of 1889, is the most restrictive of all the jurisdictions, at least with respect to handguns.²⁴ In New York, a private citizen must have a police permit even to keep a handgun in his own home. Permits, especially in New York City, are expensive and difficult to secure. In fact, in the city of New York, with a population of over eight million, there are only seventeen thousand permits, and the

20. *Id.* at 3426-30.

21. *Commerce Hearings* 10-21.

22. 39 C.F.R. § 14.2c (1962); 39 C.F.R. § 15.5 (1962).

23. 75 Stat. 466 (1961); 49 U.S.C. 1472(1) (Supp. IV, 1962); FAA Special Civil Air Regulations No. SR-448A (Oct. 1961).

24. Only New York requires a citizen to have a permit to possess a handgun in his own home. N.Y. PEN. LAW § 1903. *Commerce Hearings* 210-23.

police frankly and openly seek to discourage applicants.²⁵ Hawaii requires that all firearms, whether capable of being concealed or not, must be registered.²⁶ Twenty-three states and the District of Columbia require dealers to be licensed in order to sell firearms.²⁷ Nine states require a permit or its equivalent from the police or other licensing body before a handgun may legally be purchased.²⁸ Nine states²⁹ and the District of Columbia require a waiting period between the time of purchase and the time of delivery, varying from forty-eight hours in Alabama to seven days in New Jersey to fifteen days in Tennessee.³⁰ Twenty-nine states³¹ and the District of Columbia require a permit to carry only if a weapon is to be carried concealed.

The carrying of firearms in a vehicle has always posed a special problem for police since such a weapon can be readily accessible and yet well hidden from an officer approaching a car. Thus, eighteen states³² require a license for a party to carry a pistol in a car. Twenty-one states have no licensing requirements for handguns but prohibit certain forms of carrying a handgun on the person.³³ South Carolina

25. *Commerce Hearings* 219; for the procedure and delays one must go through to secure a license, see *id.* at 144-54, 210-23. Also, if a person's license to possess is revoked, the weapon is confiscated and destroyed unless it can be sold to someone able to own it legally—usually at a great loss. *Id.* at 215.

26. HAWAII REV. LAWS § 157-2 (1955).

27. Alabama, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Indiana, Iowa, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota (certain counties), Oregon (certain counties), Pennsylvania, Rhode Island, South Dakota, Texas, Virginia (certain counties), Washington, West Virginia, and the District of Columbia. A handy summary of local state regulations may be secured from the National Rifle Association by writing the Firearms Legislative Service, National Rifle Association, 1600 Rhode Island Ave., Washington, D.C. 20036, and asking for "Basic Facts of Firearms Control."

28. Hawaii, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Rhode Island, and Virginia.

29. Alabama, California, Connecticut, Indiana, New Jersey, Pennsylvania, Rhode Island, South Dakota, and Tennessee.

30. ALA. CODE tit. 14, § 179 (1959); N.J. STAT. ANN. § 2A:151-24 (1953); TENN. CODE ANN. § 39-4904 (Supp. 1964).

31. Alabama, California, Connecticut, Hawaii, Idaho, Iowa, Maine, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, Washington, West Virginia, and Wyoming.

32. Concealed in a car—California and Idaho. Concealed or openly carried—Alabama, Connecticut, Hawaii, Indiana, Iowa, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, and Washington.

33. Concealed—Alaska, Arizona, Illinois, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Wisconsin; Concealed or openly—Arkansas (as a weapon), Oklahoma, South Carolina, Tennessee (with the intent to go armed), Texas. With the intent to assault—Minnesota and Vermont. Kentucky forbids carrying a concealed weapon in a car, but in interpreting its statute, the Kentucky courts have held that a weapon carried in an unlocked glove compartment is not a concealed weapon since it is not in the possession of the driver-

prohibits the sale or manufacture of firearms in the state.³⁴

Other than these general provisions twenty-four states³⁵ place some prohibitions on the possession of various types of firearms by aliens, ranging from total prohibition³⁶ to requiring a special permit.³⁷ Most of the states forbid possession by convicted felons, persons who are drunkards, dope addicts, or minors.³⁸

In almost any state one must examine city and county ordinances as well as state statutes in order to determine all the applicable laws for firearms.³⁹ In New York, for example, a permit to carry a handgun issued by the state is not valid in New York City.⁴⁰ In Los Angeles all weapons must be registered and inspected for safety at the time of registration.⁴¹ Very few states have provisions for reciprocity in recognizing valid permits or customs of other states.⁴²

Also, all states seem to have some restrictions on automatic weapons, although the definition of machine gun varies from the simple definition of any weapon capable of firing two or more shots with a single function of the trigger⁴³ to the California definition which includes a semi-automatic firearm with a magazine of over ten rounds.⁴⁴ Under this definition many .22 caliber rifles are machine guns, but there seems to be no enforcement of this section.⁴⁵

To summarize this confusing mass of data, we may state that in general there are few restrictions on ordinary rifles and shotguns. In

owner. *Williams v. Commonwealth*, 261 S.W.2d 807 (Ky. Ct. App. 1953). Such a prohibition does little to protect police or to prevent the carrying of a readily available concealed weapon. Many of these statutes have exceptions for people carrying weapons on their own land or in their place of business or in their own home, so each state statute must be examined in detail to see exactly what acts are prohibited.

34. S.C. CODE ANN. § 16-144 (1962).

35. Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wyoming.

36. ORE. REV. CODE § 166.270 (1963).

37. WASH. REV. CODE ANN. § 9.41.170 (1961).

38. See authorities cited note 1 *supra*, for individual state limitations. The definition of the term "minor" varies from fourteen years to twenty-one years of age.

39. Many states allow local cities to regulate the carrying of handguns within the city limits. Also, some states allow local county options. *E.g.*, N.Y. PEN. LAWS § 1903.

40. N.Y. PEN. LAWS § 1903.

41. The procedure for purchasing a concealable weapon in Los Angeles is described in *Judiciary Hearings* 3320.

42. *Commerce Hearings* 107.8. The lack of reciprocity causes some problems for people who travel into another state to shoot in pistol matches. New York is considering passage of a law that recognizes foreign permits of persons who participate in these matches. *Id.* at 222.

43. MO. ANN. STAT. § 564.590 (1949).

44. CAL. PEN. CODE § 12200.

45. *The American Rifleman*, Sept. 1964, p. 55.

all states there are some restrictions on carrying handguns and on machine guns.⁴⁶

III. CONSTITUTIONAL LIMITATIONS AND PROBLEMS IN FIREARMS CONTROL

A. Federal Constitution

The second amendment to the federal constitution provides that "a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." The Supreme Court has consistently held that this provision applies only to the federal government, not to the states.⁴⁷ The Court has hinted, however, that state legislation so extreme that it deprived the federal government of its reserve armed forces would be unconstitutional.⁴⁸

In cases upholding the National Firearms Act, the Court said that the "right to bear arms" clause was tied in with the needs of a well regulated militia and that weapons not used in conventional warfare, for example, a sawed off shotgun, could be prohibited.⁴⁹ Also, the Court has reasoned that, where the government furnished weapons such as machine guns to its militia, there is no legal right for a citizen to possess a private machine gun, even if its use is needed in conventional warfare.⁵⁰ The Federal Firearms Act was also held not to violate the right to bear arms, but to be a valid exercise of the commerce and taxing powers.⁵¹ In *Sonzinsky v. United States*,⁵² the Court stated that Congress can choose its subject to tax and the authority is not lost because the tax has a regulatory effect. As a rule, the courts will not probe into the hidden motives of Congress where the tax is itself valid. Thus, it appears at present that, despite many cases extending the Bill of Rights to the states, the second amendment does not so apply; and that under the taxing authority and the commerce clause the federal government may tax weapons and regulate their interstate movement without constitutional objection.

The argument has consistently been raised that regardless of con-

46. See authorities cited note 1 *supra*. A recent digest of handgun laws may be found in *The American Rifleman*, Dec. 1964, p. 32-33.

47. *Presser v. Illinois*, 116 U.S. 252 (1886); *United States v. Cruikshank*, 92 U.S. (2 Otto) 542 (1875).

48. *Presser v. Illinois*, *supra* note 47, at 265.

49. *United States v. Miller*, 307 U.S. 174 (1938); *Cases v. United States*, 131 F.2d 916 (1st Cir.), *cert. denied*, 319 U.S. 770 (1942).

50. *United States v. Miller*, 307 U.S. 174 (1939); Comment, 13 So. CAL. L. REV. 129 (1939); 14 ST. JOHN'S L. REV. 167 (1939).

51. *Cases v. United States*, *supra* note 49; *United States v. Tot*, 131 F.2d 261 (3d Cir. 1942), *rev'd on other grounds*, 319 U.S. 463 (1943).

52. 300 U.S. 506 (1937); Basil, *Federal Firearms Controls*, *The American Rifleman*, Sept. 1964, p. 54, gives an excellent summary of the law in this area.

stitutional safeguards in the second amendment, the right to bear arms for the government as a member of the militia is separable from the right to bear arms for self defense.⁵³ The argument continues that the people have a pre-constitutional, natural right to bear arms for their own personal protection and use which cannot be prohibited whether used in the militia or not. It appears, however, that even at common law there was no recognized natural right to bear arms, and several statutes regulating arms are found in early English statute books.⁵⁴ Also, firearms are closely and strictly regulated in England at the present time.⁵⁵ Hence, apart from the second amendment, there seems little basis in common law for holding that the government cannot regulate private arms not connected with the militia.

B. State Constitutional Limitations

Thirty-five states have some constitutional limitation on the power of the legislature to deny their citizens the right to keep and bear arms.⁵⁶ Fifteen states have no constitutional guarantees at all.⁵⁷ New York, one of the fifteen, has a statute protecting the right to bear arms, but this statute is not superior to any later statute passed by the legislature.⁵⁸ Even those states with constitutional protection of firearms often provide that nothing shall prohibit the state from regulating the carrying of concealed arms. This exception is probably the result of early experience in Kentucky. Kentucky passed the first state statute regulating firearms in 1813 and it was held unconstitutional under the Kentucky Constitution.⁵⁹ The constitution was then amended to allow regulation of the right to carry concealed weapons.⁶⁰

53. Hays, *The Right To Bear Arms, A Study in Judicial Misinterpretation*, 17 WASH. & LEE L. REV. 381 (1960).

54. "No one shall come before the justices, or go, or ride armed" Statute of Northumberland 1328. Note, 98 U. PA. L. REV. 905 (1950); Smith, *Firearms Regulation*, 1 LAW & CONTEMP. PROB. 400 (1937); Emery, *The Constitutional Right To Keep & Bear Arms*, 28 HARV. L. REV. 473 (1915).

55. 1936, 1 Edw. 8 & 1 Geo. 6, ch. 12.

56. Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington and Wyoming.

57. California, Delaware, Illinois, Iowa, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Virginia, West Virginia, and Wisconsin.

58. N.Y. CIV. RIGHTS LAW art. II, § 4; *Darling v. Warden of City Prison*, 154 App. Div. 413, 139 N.Y. Supp. 277 (1st Dep't 1913).

59. *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822).

60. The present Kentucky Constitution provides that persons shall have "the right to bear arms in defense of themselves and of the State, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons." Ky. CONST. art. I, § 7.

Thus, it would appear that in the vast majority of states, firearms, or at least handguns, can be regulated by state authorities as long as the regulation bears a reasonable relation to the police power of the state and does not violate due process. In many states, the right to have a weapon in the home for self defense is fully guaranteed and may not be regulated even under the police power.⁶¹ It appears, however, that in the vast majority of states a statute regulating concealable weapons or weapons not used in civilized warfare that satisfies due process requirements, and has a reasonable relation to a state power such as the taxing or police power will not fall under either a federal or state constitutional bar.⁶²

IV. NEED FOR FIREARMS LEGISLATION

A. *Interests of the State*

The state, to protect both the public and its police officers, should regulate in some fashion the sale and use of weapons by its citizens. In England, the general police are not armed and criminals have rarely, until recently, made armed attacks against the police.⁶³ In the United States, the tradition of both armed police and armed criminals seems too well established to propose adoption of the English system. Thus, most states have enacted legislation designed to protect the police and other citizens against surprise from parties carrying concealed weapons. It is believed by these states that if a person who carries a weapon is forced to carry it openly, he will be less likely to surprise a police officer and can be easily identified.

Second, it is often felt that, if weapons of violence, especially handguns, are not readily available to people in general, but are restricted to people of good character, there will be fewer crimes of violence. A person committing a crime armed with a weapon is generally given a longer sentence than if he were not armed. These statutes, it is felt, will deter the criminal use of firearms and, thus, reduce crimes of violence involving firearms.⁶⁴ The statistics in this area are in confusion. In England, where very strict penalties are in force, there seems to be a definite reduction in armed crimes.⁶⁵

61. *E.g.*, ARIZ. CONST. art. 1, § 26; KY. CONST. art. 1, § 7; TENN. CONST. art. 1, § 26.

62. Emery, *supra* note 54; McKenna, *The Right to Keep and Bear Arms*, 12 MARQ. L. REV. 138 (1928); Smith, *supra* note 54; Note, 54 HARV. L. REV. 123 (1940); Note, 43 KY. L.J. 523 (1955); Note, 35 N.C.L. REV. 149 (1956); Note, 31 U. CHI. L. REV. 780 (1964); Note, 98 U. PA. L. REV. 905 (1950).

63. CBS Reports, *Murder and the Right to Bear Arms*, Televised Report, June 10, 1964; CBS News, *Report on England*, Feb. 15, 1963.

64. *E.g.*, THE UNIFORM FIREARMS ACT § 2; UNIFORM PISTOL ACT § 2. Both these acts have added penalties for armed crimes and they represent the vast majority of the several state acts. *E.g.*, ALA. CODE tit. 14, § 172 (1958).

65. CBS Reports, *supra* note 63. Comment, 76 LAW J. 317 (1933).

In this country, however, there seems to be little correlation between the states having strict laws and those with few restrictions. Many police officers attribute this to a failure to enforce existing penalties and to the ease with which state regulations may be circumvented by mail order or out-of-state purchases. It is the firm belief of many high police officials that a national program of stiff penalties and uniform restriction would cause a marked decrease in the use of firearms in crime.⁶⁶

Third, the public has an interest in being protected from attack by its more volatile members. A simple argument may result in tragedy when one party suddenly, in a fit of anger, produces a concealed weapon.⁶⁷ Again, police believe that if the weapon were not concealed, or better yet, totally prohibited, there would be fewer arguments ending in a serious act of violence. Certainly, the private citizen, especially in a large metropolitan area, is entitled to some assurance that he will not be subjected to armed attack. Of course no law can end all such attacks, but many state officials believe that they can be substantially reduced by various restrictions on handguns and other concealed deadly weapons such as switch blade knives and blackjacks.⁶⁸

On the other hand, there is a countervailing need of the state to have available a well trained militia for its protection from both domestic and foreign enemies. If citizens are effectively denied the use of weapons in time of peace, there may be insufficient time to train them in their use in time of war. In the Korean War, some commentators have attributed the poor riflery of the American soldiers to a lack of proper training.⁶⁹ The state must therefore balance the need to allow training, especially with the rifle, against the need to

66. Mr. Orth, Executive Vice-President of the National Rifle Association, presented detailed statistics in the Judiciary Hearings on the lack of correlation between firearm control and crime rates. *Judiciary Hearings* 3467-90. He attributed much of the problem to a lack of strict enforcement of laws. *Id.* at 3482. For comments of various state police officials see *id.* at 3388, 3453, 3390, 3319, 3435, 3449, 3383. Also the Justice Department position favors strict laws. *Id.* at 3366. See also *Commerce Hearings* 99, 210.

67. Senator Dodd cites many examples of the use of firearms to kill or injure people. 111 CONG. REC. 5358 (daily ed. Mar. 22, 1965). On the other hand, the National Rifle Association publishes each month a number of examples in which the use of firearms by private citizens stopped crimes or protected lives. See *The Armed Citizen*, in *The American Rifleman*.

68. See comments of Mr. Reisman, Deputy Comm'r of Police N.Y. City, explaining why the Sullivan Law was needed and why it should be expanded. *Commerce Hearings* 210. See also note 66, *supra*.

69. Mr. Porter, a member of the National Board for the Promotion of Rifle Practice, stated that on the basis of selective service reports only seven per cent of the men inducted into the army had received prior marksmanship training. He felt that this fact showed up in combat reports. *Commerce Hearings* 142-43. See also *Judiciary Hearings* 3467; Editorial, *The American Rifleman*, Oct. 16, 1964.

prevent the indiscriminate use of firearms and handguns by the general public. That such a compromise is being attempted may readily be seen in the general lack of regulation on rifles and shotguns and the relatively greater restriction on handguns which, when concealed, pose a threat to the police power of the state.⁷⁰ Although in Switzerland the militiamen are allowed to keep their government weapons, including fully automatic weapons, in their homes and are encouraged by the furnishing of free ammunition to practice, there seems to have been no increase in armed crime.⁷¹ Just how far this balancing may be carried is a problem currently unresolved in our country.

B. *Interest of the Individual*

The individual citizen also has a deep and long standing interest in firearms. The sporting goods industry does millions of dollars of business every year, and the hunters, target shooters, gun collectors, and sportsmen generally are a significant segment of our economic population.⁷² These people enjoy the lawful use of firearms in hunting and target shooting. In every state there is a hunting program which is designed to keep wildlife population in balance. The ending of hunting programs by severe restrictions on firearms could result in an imbalance in the game population, and would also result in some imbalance in state budgets as the loss of revenue from hunting licenses, related taxes on sporting goods, and reduction of payrolls of sporting goods manufacturers would be substantial.⁷³ The target shooters, especially the pistol shooters, would be greatly hampered by any increase in firearms regulations,⁷⁴ and as pointed out above the value of well trained marksmen in time of war is great. However, since serious target shooters generally use fairly heavy and long barreled pistols, many states have worded their regulations on hand-

70. *E.g.*, New York with its restrictive pistol law does not place nearly as many restrictions on rifles and shotguns. N.Y. PEN. LAW §§ 1896-1902.

71. *Commerce Hearings* 186.

72. Statistics show that between 1954 and 1958 there were on the average 1,748,000 firearms sold each year. *Commerce Hearings* 163. It is estimated that 50,000,000 people own firearms in the United States. *Id.* at 162. The National Rifle Association at present has over 600,000 members.

73. The concern of these individuals may be seen by examining the committee reports on the various firearms bills. *Commerce Hearings* 47, 82, 75, 135, 138, 120, 144, 155, 192, 178, 192, 199, 128. *Judiciary Hearings* 3498, 2467, 3490, 3495, 3504. In the appendix of both hearings appear further statements concerning the scope of the problem of restricting firearms.

74. Civilian pistol shooters by necessity travel by car to matches which may be held out-of-state. Any laws making it illegal to carry even an unloaded pistol in a car without a license would work a hardship on them since, as non-residents, they could not easily secure a license. S. 1592, *infra* note 80, could place restrictions on anyone transporting a firearm across a state line. Such regulation could make traveling to rifle or pistol matches very difficult and expensive.

guns so as to hamper only the pocket pistol, which has no real utility for target shooters. The shooting public is a well organized group of considerable size and many see any regulation of the right to bear arms as a violation of some fundamental right.⁷⁵ Any gun legislation provokes heated comments and opposition from many of these groups. They fear that if guns are regulated reasonably now, they will be regulated unreasonably in the future.

Aside from the sporting aspect there is a real need in some parts of the country for the possession of weapons for self-protection against both man and beast. In rural areas, especially in some of the western states, dangerous animals may be found. In Tennessee, a recent increase of rabid foxes has caused much concern. Many of these diseased animals have been killed by armed private citizens.⁷⁶ Also, in rural areas, people are often far from neighbors and police authorities, and if attacked, must fend for themselves. Even in metropolitan areas there have been shocking reports of people being attacked in full view of numerous witnesses without the police being called or aid given.⁷⁷ In New York City, a young woman fought off an attacker with a switch blade knife, and was arrested for carrying a concealed deadly weapon.⁷⁸ In New York, a tear gas pen for a purse is illegal whereas in the District of Columbia they are highly recommended for self protection.⁷⁹ No one can deny that there will often be times when police are not available and self-help must be used. Balancing the risk of having people in general carry weapons, especially when many are untrained and may injure innocent parties, against the basic right of self defense is very difficult. The balance is obviously different in New York City from that of rural Arizona. No one seems able to arrive at a consistent standard.

C. Classification of Firearms

Firearms are grouped in several classes, and to properly evaluate legislation concerning them it is helpful to understand the basic differences. Classification usually includes rifles and shotguns, handguns which may be subdivided into target or non-target handguns, machine

75. The use of the phrase "right to bear arms" is admittedly awkward, and perhaps "privilege" would be preferable. The phrase is, however, so commonly used in the intended sense that it is retained here. The National Rifle Association has already published a letter for all members opposing the new Dodd Bill, *infra* note 97. For articles expressing general opposition to any legislation, see Hays, *supra* note 53; Shead, *Do Laws Requiring Registration of Privately Owned Firearms Lower Murder Rates?*, 3 So. Tex. L.J. 317 (1958). For articles urging moderation see Rummel, *To Have and Bear Arms*, *The American Rifleman*, June 1964, 38; Note, 98 U. PA. L. REV. 905 (1950).

76. WSM TV News, Jan. 10, 1965.

77. *The Genovese Murder*, *Time*, June 26, 1964, p. 22; *id.* at 43.

78. *Time*, July 17, 1964, p. 62.

79. *Commerce Hearings* 219.

guns or other automatic weapons, and finally hybrid weapons such as sawed off shotguns, and handguns with shoulder stocks.⁸⁰ As pointed out above, the utility of a rifle and shotgun to the state for militia training and to the public generally is greater than the utility of an easily concealable handgun. The criminal armed with a concealed weapon is potentially more dangerous than one who carries a large cumbersome rifle. Most states recognize these differences and place greater restrictions on weapons capable of being concealed on the person. The place of machine guns and weapons equipped with silencers is special. Certainly, these weapons have military value, and having citizens well trained in their use would be helpful in time of war. However, war is not the norm, and the average citizen has no need for these weapons. The risk to the police and public from the widespread possession of machine guns is understandably great. Hence, these weapons are placed in a special category and are the most closely regulated of all.⁸¹

At present, we do have a balancing of interests in terms of classes of weapons. This factor must not be lost in any popular revulsion against firearms generally so as to result in a blanket restriction on weapons. The utility of rifles and shotguns should not be eradicated by misuse of individual weapons such as the rifle used to assassinate President Kennedy or by the misuse of any other single class of firearm. Each class must continue to be judged on its individual merits apart from other classes.

D. *Criteria for Workable Legislation*

The range of opinion on firearms legislation extends from that of the National Rifle Association's belief that none is needed⁸² to that of many individuals that only police should have weapons and that any private citizen having any type of weapon should be fingerprinted, investigated, charged a high registration fee, and have his weapons registered with police with license subject to revocation at

80. These are general classifications. Most state acts define only handguns and machine guns specifically. The National Firearms Act uses some of these definitions. INT. REV. CODE OF 1954, § 5848. The new Dodd Bill has an even more complete set of definitions of individual classes of firearms. S. 1592, 89th Cong., 1st Sess., § 1 (1965).

81. National Firearms Act. INT. REV. CODE OF 1954, § 5811. States generally prohibit the general public from possessing these weapons. *E.g.*, CAL. PEN. CODE § 12200; DEL. CODE ANN. tit. 11, 465 (1953). Howe, *Problem of Submachine Guns in Post War Crime*, 35 J. CRIM. L., C. & P.S. 69 (1944).

82. "The National Rifle Association believes that firearms legislation is of insufficient value in the prevention of crime to justify the inevitable restrictions which such legislation places on law abiding citizens." The Gun Law, Problem 12 (booklet published by the National Rifle Association, 1600 Rhode Island Ave., Washington, D.C. It is available on request.) The association believes that the illegal use of weapons should be covered—not the weapons themselves. *Id.* at 13-14.

any time.⁸³ Neither of these positions is easily maintained. The NRA in effect admits this when it sets out standards which it feels would not be unduly restrictive.⁸⁴ It does not object to legislation designed to prevent possession of firearms by people who have been convicted of a crime of violence, fugitives from justice, mental incompetents, drug addicts, and persons who are habitual drunkards. Furthermore, the NRA has no objection to imposing added penalties for the use of firearms in crime. It offers no objection to subjecting the sale of firearms to juveniles to parental consent and the use of weapons by juveniles to adequate supervision. Finally, the NRA does not object to regulation of carrying concealed handguns so long as the requirements are clear and one meeting them may not be arbitrarily denied a license by the police and so long as the weapon is not registered by serial number.⁸⁵ In support of this position, the fact that experience with such statutes in other countries shows no definite crime reduction from strict firearm control or an increase from the lack of it may be cited.⁸⁶

There are several basic questions which should be answered in the affirmative before any bill should be passed. First, is it necessary? Will the bill solve an existing problem without creating additional problems, and could the problem be better solved by additional training and education rather than by additional restrictions? Second, is the bill reasonable? That is, does the bill's utility outweigh the burden that any restrictions are sure to place on some persons? Often, restrictions become so complicated that many people are unable to ascertain the law or to follow it. Finally, is it enforceable? Many states have very strict laws on crimes committed with firearms, yet the courts time after time give suspended sentences or reduce the charges. The Sullivan Law in New York has been amended more than sixty times,

83. *Commerce Hearings* 78 (Reprint from the Nov. 29, 1963 ed. of the Rocky Mountain News).

84. *The Gun Law Problem*, *supra* note 82, at 12-13.

85. The National Rifle Association is opposed to any central registration of firearm serial numbers. They feel that such central files would make it easy for an enemy invader to confiscate private weapons. They cite the ease with which Germany, in World War II, seized weapons in Poland, France, and Denmark. They also fear that the police will use these files to harass honest gun owners, and this will lead to a reduction in the number of privately owned firearms. *The Pro & Con of Firearms Registration* (booklet published by the National Rifle Association available on request). It would seem that these fears are greatly enlarged and that the actual use of a central file would aid in tracing weapons and even in returning stolen weapons to their owners.

86. Slead, *supra* note 75. *Judiciary Hearings* 3469-78. The F.B.I. *Uniform Crime Reports for the United States* do not list firearms control as a factor affecting the crime rate. However, there are figures that show that New York has a lower rate of murders committed with firearms than states with laxer laws. *Commerce Hearings* 211. It would appear that strict laws reduce the number of crimes committed with firearms, but that they do not reduce the total crime rate in any measurable way.

and at times no one was exactly sure what it provided until the 1964 codification.⁸⁷ Also, when a bill is found to cover some person not really intended to be covered (*e.g.*, the tear gas pen), the faith of the public in that law and in laws in general is shaken. A law that is not or cannot be enforced, such as the prohibition law of the twenties, causes all laws to fall into disrepute.

Since firearms laws affect such a wide number of people, before any such bill is passed it should be shown that the restriction proposed is clearly necessary, that it is a reasonable law designed for a specific purpose, and that it will not have adverse side effects, which effects might bring the legal process into disrepute. Within these standards there are numerous firearms laws, such as those which regulate machine guns, that are necessary, reasonable, and enforceable.

V. PROPOSED FEDERAL LEGISLATION

A. *The Original Dodd Bill*

In the 89th Congress there are a number of bills to amend in one way or another both the National Firearms Act and the Federal Firearms Act.⁸⁸ Senate Bill 14 has received the most extensive study. It has been the subject of two Senate committee studies extending over two years.⁸⁹ It is substantially the same as Senate Bill 1975,⁹⁰ introduced in 1963. It would amend the present Federal Firearms Act, first, to require written notice to a common carrier before a shipment of firearms could be made in interstate commerce. Second, it would prohibit the carrier from delivering any firearm to a person under eighteen years of age. Third, it would require that a prospective purchaser enclose with his order a notarized statement to the effect that he is over eighteen years old and not prohibited by any state or federal law from receiving a firearm. Fourth, it would require in the same statement the name and address of the chief law enforcement officer in the locality where the firearm would be shipped. Fifth, the shipper would have to mail a copy of the sworn statement⁹¹ along with a description (excluding serial number)⁹² of the weapon by return receipt registered mail to that police officer and have received in turn a receipt for the letter. Sixth, it would exempt from the law the shipment of minor parts and weapons which are

87. *Commerce Hearings* 210.

88. See note 4 *supra*.

89. *Commerce Hearings; Judiciary Hearings*.

90. 88th Cong., 1st Sess. (1963).

91. The sworn statement would be the basis for later federal prosecution for perjury. It would also end the practice of dealers taking ordinary statements and using them as a defense when charged with violation of the act.

92. This exclusion of the serial number was put in at the request of the National Rifle Association. *Commerce Hearings* 8.

shipped to a manufacturer or dealer for authorized repairs. The act would then establish a minimum age of twenty-one for dealers and raise the basic dealer's license fee to ten dollars and that of manufacturer and pawnbroker to fifty dollars.

Senator Dodd has expressed the belief that this bill will effectively regulate the present mail order gun business and reduce substantially the flow of illegal weapons in interstate commerce.⁹³ The raised license fee will enable the Treasury Department to investigate applicants for federal licenses and will eliminate those persons who have obtained such a license only to avoid state and federal restrictions on shipments of firearms. The bill is also designed to end sales to young children and to parties with criminal records. The fact that the police officers in the locality will receive notice of the shipment and of the party to whom the weapon is shipped should enable these officers to enforce local laws more effectively. The bill does not require that local authorities approve the sale or that they be sent the serial number of the weapon. The National Rifle Association, which helped draft this bill, was strongly opposed to such a provision, since they felt that requiring police approval would give the police the power to deny arbitrarily a person the right to receive the weapon. The NRA opposed registration of firearms because they fear that it might be used to harass the citizens, and that, in case of war, might aid any potential enemy to confiscate civilian weapons which would be necessary to continue a guerilla war.⁹⁴

Basically, this bill is an excellent piece of legislation. There are only a few provisions that might be changed. It would probably be a good idea to require the shipper to state the address and means by which he intends to ship the weapon in the notice to the local police. Otherwise, if a fictitious name and address were used in the statement, the police might have difficulty in preventing the receipt of the weapon should they fail to discover the fraud upon first receipt of the notice. If they were given this information, they would have more time for a check and if anything were proved amiss, they could still intercept the shipment at the time of delivery. Since the receipt is necessarily returned at once, under the present bill they might have insufficient time to adequately check the applicant's statement.

Also, the bill might make it a federal crime for one person to purchase a weapon for another with the intent to evade the provision of the Firearms Act. This provision would reduce the practice of ordering for another who is under some disability, thus, making it

93. *Id.* at 8-10.

94. See note 85 *supra*. The National Rifle Association approved S. 14 as a reasonable piece of legislation, since it did not require registration. *Commerce Hearings* 281.

more difficult for one under a disability to secure weapons.

One further addition should be made. Anyone applying for a federal firearms license should be required to submit his fingerprints to the Treasury Department. This would greatly aid checking on the qualifications of applicants. Since much of the effectiveness of the program depends on dealers being reputable, this would not be an unreasonable requirement.

B. *The New Dodd Bills*

On March 22, 1965, Senator Dodd introduced two new bills dealing with firearms.⁹⁵ These bills are based on the recommendations of the Justice Department and on the President's legislative recommendations. One bill would amend the National Firearms Act.⁹⁶ Under this bill the act would be amended to include within its provisions destructive weapons which would include bombs, grenades, missiles, large caliber weapons such as mortars, and anti-tank guns. It would make possession of these devices illegal unless a federal tax were paid on them. Also, transfers of these arms would be limited by the payment of a high tax on each transfer in the same way as the transfers of machine guns are limited under the present act. The bill would also raise the taxes already imposed by the National Firearms Act to twice their present level. This would mean a four hundred dollar tax on a permit to possess any weapon covered by the act and on each transfer of these weapons. Since these devices have little peaceful use, it would appear that this may be a reasonable bill. The higher taxes on these weapons would insure that they would not be widely possessed by the public.

The major changes proposed by Senator Dodd are found in Senate Bill 1592 to amend the Federal Firearms Act.⁹⁷ In this bill, Senator Dodd proposes that, in general, it would be illegal for anyone not a dealer, manufacturer, or importer to ship, receive, or transport firearms in interstate commerce. This provision is designed to eliminate completely the mail order firearms business. It would also require a person crossing state lines with a weapon in his personal possession to comply with regulations promulgated by the Treasury Department.⁹⁸ The bill would prohibit any federally licensed person from

95. S. 1591, S. 1592, 89th Cong., 1st Sess. (1965).

96. S. 1591, *supra* note 95.

97. *Supra* note 95. This bill is an even stronger Justice Department bill than was proposed in *Commerce Hearings* 298-99. It was suggested by President Johnson as reported in *The Wall Street Journal*, March 9, 1965, p. 1, col. 4.

98. S. 1591, *supra* note 95, § 2. Thus, a person living near a state line who carries a firearm across a state line or anyone traveling to matches across state lines would have to comply with Treasury Regulations which are as yet undefined. This could cause a great inconvenience to the ordinary citizen who happens to carry his own personal firearm across state lines even where the weapon is lawful in both states.

selling a rifle or shotgun to anyone under eighteen years of age or from selling any other type of fire arm to anyone under twenty-one or to any nonresident.⁹⁹ Further, the bill would drastically raise the fees for licenses as a manufacturer, dealer, or pawnbroker. The dealer's fee, for example, would be raised from one dollar to one hundred dollars.¹⁰⁰ This fee would apply to local hardware stores that sold only .22 caliber ammunition. If the dealer sold destructive weapons including mortars, bombs, *et cetera*, the fee would be one thousand dollars. Finally, the bill would forbid the importation of surplus military weapons from any foreign country.¹⁰¹

However, such a bill would run into strong opposition from sportsmen and at this time seems unnecessarily restrictive.¹⁰² It would place a heavy burden on a rural purchaser who might have to go a considerable distance to find a licensed dealer under the higher fee system.¹⁰³ It would appear that milder legislation of the type suggested in the original Dodd Bill should be tried. If it is found unsatisfactory, then stricter measures could be enacted.

Certainly Senator Dodd has not presented sufficient information at this time to justify this radical departure from his previous stand.¹⁰⁴ His original bill, Senate Bill 14, was the product of two years of

99. *Ibid.* This provision may not be completely unreasonable as many states require a person to be eighteen to own a firearm, but it does, in effect, dictate state minimum requirements as most state dealers are required to have a Federal Dealers License.

100. For a dealer who does a large volume of business this may not be a hardship, but since a dealer's license is required to sell even .22 Caliber ammunition this might drive many small dealers out of business. This does not seem to be an equitable result—especially in rural areas where the need is greatest and stores are generally small. Also a gun club that sold reloads to its members might be required to take out a one thousand dollar manufacturer's license. Certainly, this would end most club reloading operations and make the cost of ammunition to members prohibitively high.

101. Since there is little civilian use for these destructive weapons, this is not an unreasonable fee to discourage traffic in these weapons. However, the restriction on *all* surplus weapons seems to go too far. Many of these have utility in this country since they provide cheap shooting for people otherwise unable to afford a factory priced weapon.

102. A letter dated April 9, 1965 has already been sent out by the National Rifle Association Legislative Service to all members of the association protesting this bill and urging them to write their representatives in Congress to defeat this bill. Certainly, many of the provisions of the bill seem to be a complete reversal of the compromise bill worked out in S. 14, 89th Cong., 1st Sess. (1965).

103. See note 100 *supra*.

104. "Senator Cannon. Senator Dodd the Justice Department has proposed, made a proposal, to ban all interstate shipments of firearms except to dealers and manufacturers. *Do you support that type of proposal?* [Emphasis added.] Senator Dodd. No, Senator, I think it goes too far. . . . We listened to some people who urged that: We talked to a lot of people, and we heard a lot of people whose consensus was that we should not go that far at this time." *Commerce Hearings* 17. Senator Dodd in two places in his remarks in the Congressional Record refers to S. 14 as a moderate or reasonable bill yet he proposes in S. 1592 to completely overthrow two years of work. 111 CONG. REC. 5358 (daily ed. March 22, 1965).

committee work and had reconciled most of the conflicting interests involved in firearms legislation. There are many reputable dealers who maintain mail order sales. This bill would drastically reduce their business.¹⁰⁵ While no one will deny that there are abuses to mail order sales, it seems that milder measures as proposed in the original Dodd Bill should first be adopted to determine if these abuses could be curbed before abolishing the business entirely. Apart from mail order sales, the bill's prohibition against a dealer selling to a non-resident would damage the local trade of a dealer who was unfortunate in living near a state line. It would also work a hardship for the citizen who lived across a state line from the nearest city with a licensed dealer. The prohibition on importation of surplus weapons may have some merit; many of these weapons have little sporting value. However, many surplus military weapons—such as Mauser 98 rifles—are easily converted into fine, inexpensive, sporting rifles. The bill should consider some differentiation in the types of weapons forbidden before condemning all surplus imports.

Therefore, despite the strong government support for this new bill, it appears at this time to go too far. The one hundred dollar fee for dealers is too high; restricting shipments in interstate commerce to persons holding a federal license is unreasonable; regulations for personally transporting a firearm across state lines have not been set out in the bill; and forbidding sales to nonresidents is too restrictive of local trade affected by a nearby state line. These provisions should be eliminated from any new federal legislation.

C. *Other Federal Bills*

House Resolution 510¹⁰⁶ is very similar to Senate Bill 14 except that it requires the local police to certify that the information contained in the notarized statement is true. This bill then would not require the shipper to notify the local police. This bill will run into strong opposition from many sporting groups because of the requirement, in effect, of police approval of purchases. These groups fear that the police would often refuse to certify, thus effectively barring the citizen from buying guns through interstate commerce.¹⁰⁷ Also, as a practical matter, the police in large cities will not know the applicants and may be very reluctant to sign any statement in which they state that such

105. Under the bill all shipments would have to be made to an out of state dealer. Direct sales are prohibited. S. 1591, *supra* note 95, § 2. An interstate dealer who has a large stock of weapons on hand, in all probability, would be unable to sell them for a fair price under this bill.

106. 89th Cong., 1st Sess. (1965).

107. *Commerce Hearings* S. S. 14, *supra* note 95, was amended at the request of the National Rifle Association to provide that police could not stop shipments without positive evidence of a violation of the federal act. *Ibid.*

information is true. The investigational expense in such cases might be more than police are willing to pay.

House Resolution 1539¹⁰⁸ is the same as the 1963 Dodd Bill and applies only to shipments of handguns. It requires only notice by the shipper to the carrier and a simple notarized statement. There is no provision for notice to police or requirement that the police certify the order.

House Resolution 24¹⁰⁹ would authorize the House Commerce Committee to investigate the interstate shipment of firearms. This bill seems unnecessary in view of the two committee reports already in existence.

C. *Recommended Federal Legislation*

Added federal legislation over interstate firearms sales is needed to alleviate the great problem caused by loose regulation of mail order firearms shipments. The states cannot effectively police these interstate sales. The original Dodd Bill, as discussed above, and approved by the NRA proves a very satisfactory model for legislation. To this act has been added the provision requiring notice to the police of the manner of shipment, the clause making it unlawful to purchase weapons for one unable to purchase weapons himself, and the provision that all license applicants be fingerprinted. The purpose of this new legislation is not to prohibit the shipment of ordinary sporting firearms, but to regulate interstate shipments and aid the states in their enforcement of local laws. Therefore, it is recommended that the Federal Firearms Act be amended as set out in Appendix B of this article.

VI. STATE LEGISLATION

The problem in the enactment of state firearms legislation is essentially different from that of the federal government. On the federal level the concern is more with the regulation of the interstate movement than with outright prohibition, although some of the taxes are designed to make the cost of ownership prohibitively high. Also, the second amendment does put the federal government under some restrictions even though they are not yet clearly defined.¹¹⁰ At the state level, as we have seen, there is little to prevent the state from regulating the carrying of concealed weapons and in many cases requiring the registration and licensing of other firearms as well. The greatest problem, both to the gun owners and to the states themselves, is the lack of uniformity in state legislation. Our population

108. 89th Cong., 1st Sess. (1965).

109. *Ibid.*

110. See notes 49, 50, & 53 *supra*.

is more mobile than ever before; gun owners are continually crossing state lines either temporarily or permanently. These owners are thus subjected to a number of different laws. What is legal in one state may be a felony in the next state and a misdemeanor in an adjoining state.¹¹¹ From the state's point of view, a state with a very strict law on purchases may find its law rendered virtually ineffective, since the citizens, by driving perhaps ten miles into another jurisdiction, may secure a firearm with no restrictions placed on the sale.¹¹² Thus, the state with strict laws tends to hurt its own local dealers without effectively enforcing its gun laws. The District of Columbia is a prime example of a set of strict laws being rendered generally ineffective by mail order sales and by less restricted sales in surrounding jurisdictions.¹¹³

There is a clear need for uniformity in laws to simplify enforcement and to aid people who must travel from state to state.¹¹⁴ However, there is also a need for differences; the restrictions needed in a populous area such as the District of Columbia or New York City would be totally unworkable in the sparsely populated areas of our country. Thus, based on population and the surrounding environment, there is a need for differences in our gun laws. It is the attempt to balance these interests that has led in large part to the diversity we presently have in our gun laws. Some of this diversity may be necessary, but much of it, including the different definitions of machine guns, pistols, and other terms, is completely unnecessary.¹¹⁵

Several uniform acts have been proposed.¹¹⁶ None of them secured wide acceptance and since the last—the Uniform Pistol Act—was withdrawn in 1949, no new ones have been promulgated.¹¹⁷ Let us now

111. A sale by a dealer to a party without a permit is a felony in New York. N.Y. PEN. LAW § 1898. It is a misdemeanor in Missouri. MO. ANN. STAT. § 564.630 (1949). No permit is required in Kentucky.

112. This problem is particularly acute in the District of Columbia. There are five area boundaries touching upon the District—all with different laws and all less restrictive. *Judiciary Hearings* 3402. Pennsylvania has the same problem on a smaller scale. *Id.* at 3449.

113. See note 112 *supra*.

114. Frederick, *Pistol Regulation: Its Principles and History*, 23 J. CRIM. L. C. & P. S. 531 (1933); Imlay, *The Uniform Firearms Act*, 12 A.B.A.J. 767 (1926); Imlay, *Uniform Firearms Act Reaffirmed*, 16 A.B.A.J. (1930); Note, 31 U. CHI. L. REV. 780 (1964).

115. ALA. CODE tit. 14, § 172 (1958), defines a pistol as a weapon with a barrel of less than twelve inches length. S.C. CODE ANN. § 16-144 (1962), defines a pistol as a weapon weighing less than three pounds with a length of less than twenty inches. Although differences in regulations may be needed, there seems to be no reason to have different terms when the same items are being regulated.

116. UNIFORM FIREARMS ACT (1930); UNIFORM PISTOL ACT (1940); UNIFORM PISTOL ACT (1938) (proposed by the Interstate Crime Commission).

117. PROCEEDINGS, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1949).

consider some of the suggested uniform acts and other provisions, either presently in force in some states or suggested by interested groups, with a view toward suggesting a model act with uniform definitions and guidelines for various restrictive provisions on different types of firearms.

A. *The Uniform Firearms Act*

Work on the Uniform Firearms Act began in 1922 and continued until it was approved in 1926 by the Commissioners on Uniform Laws and the American Bar Association.¹¹⁸ The act was substantially adopted in seven states.¹¹⁹ However, the police officials of New York City objected to the act and it was temporarily withdrawn pending further study. The committee working with the act became convinced that the only area needing attention was that of handguns. Thus, while the act was styled the Uniform Firearms Act, it applied only to handguns. In the summer of 1930, the act was reissued in substantially its original form.¹²⁰ The principal provision of the act may be summarized as follows: A handgun may not be carried concealed on the person or carried in a vehicle by anyone not a police officer, a member of the armed forces or reserves in the line of duty, or a member of certain other limited classes without a license from the state. The license may be issued on payment of a fee by the chief of police or the judge of a local court of record. No license is needed to purchase a handgun or to possess one so long as it is not carried concealed beyond one's abode or place of business. An added penalty is imposed for committing a crime while armed with a firearm. Minors under eighteen, convicted felons, and other incompetents are not allowed to buy firearms. The sale of handguns is handled through dealers who are licensed to sell only after a proper investigation is made. Dealers are required to observe a forty-eight hour waiting period before delivering any handgun to a purchaser and to have the purchaser complete an application for purchase, one copy of which the dealer sends to the local police. If the police instruct the dealer not to sell for good cause or the dealer knows of sufficient cause, the delivery may not be made. The seller also signs the purchase order and must know the buyer or have clear proof of his identity before selling. Another copy of the sale order is sent to the state police for a central filing. Finally, the pawning of any handgun is forbidden.

118. REPORT, COMMITTEE ON A UNIFORM FIREARMS ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 260 (1930).

119. *Id.* at 262.

120. PROCEEDINGS, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 334 (1940).

This act was not widely adopted and some of its provisions were held unconstitutional.¹²¹ Then in 1938, the Interstate Commission on Crime drafted its own model act, which was much more severe than the Uniform Firearms Act.¹²² In order to avoid having two competing uniform acts the two groups met to draft a single act. In 1940, the Uniform Pistol Act was drafted and approved.¹²³

B. *The Uniform Pistol Act*

This act is much more restrictive than the Uniform Firearms Act. It provides that a person convicted of a crime who committed another armed crime be given a minimum sentence of two and half years without possibility of parole. Another section creates a presumption that, if an illegal pistol is found in a vehicle, all the occupants possessed it illegally. This section was designed to alleviate the problem of proving possession when a weapon is found in a car with several occupants all of whom deny ownership or possession. The constitutionality of statutes of this nature have been upheld in some state courts, although the question is not free from doubt.¹²⁴ Sections four and five allow a law enforcement officer, even where he does not have reasonable grounds, to search a person for weapons and to arrest him for carrying a pistol illegally. Evidence thus obtained is declared admissible. The constitutionality of both sections is open to question, but the New York courts have recently upheld the New York "stop and frisk" law which allows police to stop a person and search him.¹²⁵ This is in many cases a practical necessity to protect the police from concealed weapons and to allow enforcement of the law, although it may go against the grain to allow a search and arrest without warrant or even probable cause. The carrying of pistols in places other than the home or business or unloaded between those places is prohibited unless a person is exempted as a police officer or has a license to carry. The act sets up two licenses. One is the general license which is the same as that provided by the older uniform act, except that it requires that all licenses be issued by one state office on recommendation of local officials. This was designed

121. For a history of the problem faced by the Uniform Firearms Act, see Warner, *The Uniform Pistol Act*, 29 J. CRIM. L., C. & P. S. 529 (1938). A Washington case held the penalty provision of the act unconstitutional because it had unreasonable classifications. *Olsen v. Delmore*, 48 Wash. 2d 545, 295 P.2d 324 (1956).

122. See note 116 *supra*.

123. PROCEEDINGS, note 120 *supra*, at 158.

124. *People v. Gerschinsky*, 281 N.Y. 581, 22 N.E.2d 160 (1939); *People v. Russo*, 303 N.Y. 673, 102 N.E.2d 834 (1951). *But see* *United States v. Tot*, 319 U.S. 463 (1943).

125. N.Y. CODE CRIM. PROC. § 180A (Supp. 1964); *People v. Rivera*, 14 N.Y.2d 441, 201 N.E.2d 32, 252 N.Y.S.2d 458 (1964); *People v. Pugach*, 14 N.Y.S.2d 976, 202 N.E.2d 553, 254 N.Y.S.2d (1964). *But see* *Mapp v. Ohio*, 367 U.S. 643 (1961).

to promote uniformity of licensing in the state. The second is a special target shooter's license. This is a license to carry a pistol with a barrel of at least six inches in length or a government .45 caliber openly while in a place where the owner can lawfully shoot, and to carry the same unloaded and boxed in his car.¹²⁶ Provision is made to recognize licensings of other states for a period of thirty days and to issue target licenses to nonresidents. The act requires a license to purchase a pistol and forbids any alterations of serial numbers. The act then exempts pistols over fifty years old so long as they are not concealed. This act was violently opposed by many shooting groups because of its requirement of a license to purchase and a license for target shooters to carry.¹²⁷ It was withdrawn in 1949 without having been adopted in any state.¹²⁸ Since that time there have been no uniform acts promulgated.

Examining the various state acts, one sees the following items to be fairly common: A license generally is required to carry a handgun; dealers who sell at retail are required to be licensed; and many states also require a license to carry weapons in a car.¹²⁹ A minority of states impose a waiting period, require a permit to purchase a handgun, require a license to possess, or require registration of all firearms.¹³⁰ Any model statute which departs greatly from the majority will come under severe attack from sporting groups and fail to pass. Also, it seems reasonable to conclude that the extreme measures employed in New York have not solved the problem and have indeed disarmed the honest citizen without greatly reducing the illegal use of firearms by criminals.¹³¹ A model act should tie in closely with the present Federal Firearms Act and be designed to utilize the provisions of any new federal legislation. It is submitted that the act should not place any restrictions on rifles and shotguns, as these weapons have not caused any great problem in law enforcement and are easily traced.¹³² A requirement that the dealer record the name and address of the purchaser and a description of the weapon including the serial number

126. It was felt that a pistol of that size and weight would not appeal to the criminal and that its use by target shooters should be encouraged. Warner, *supra* note 121.

127. The Gun Law Problem, *supra* note 82, at 12-14.

128. See note 117 *supra*.

129. See note 32 *supra*.

130. See notes 24, 25, 26, 28, & 29 *supra*.

131. *Judiciary Hearings* 3470-78. *Contra*, *Commerce Hearings* 210-15. In balancing the various factors, it appears that the Sullivan Law does more harm to the honest citizen by depriving him of his handguns than it has benefited him through crime reduction.

132. The rifle used to kill President Kennedy was quickly traced. The dealer who sold it had kept the records required under the present Federal Firearms Act and, hence, had the serial number in his files. Complete records of all sales are required by 26 C.F.R. § 319.31 (1949).

would probably be sufficient. It is estimated that in this country alone there are some forty million rifles and shotguns presently in existence.¹³³ It would be administratively impractical to try to establish a registry of all these weapons, especially when there appears to be no pressing necessity for such controls. The possession of machine guns, which should be defined as any weapon capable of firing two or more shots with a single function of the trigger mechanism, should be strictly regulated. There is little civil need for these dangerous weapons. Possession should be made illegal except for police and banks or other businesses where a clear need for such weapons exists. The remaining major class of weapons, namely handguns, should be placed under restrictions, since handguns pose a threat to society despite their usefulness to sportsmen in general. Dealers should be licensed in all states so as to allow the states to maintain adequate records on handgun sales. Carrying a concealed pistol should be forbidden for all except a few classes of persons such as police and guards. Carrying a loaded gun in an automobile should also be strictly regulated since it is very difficult to have a weapon carried openly in a car. Certain classes of people, such as those convicted of a crime of violence and those with disabilities due to drugs or alcohol, should similarly be denied the right to possess weapons. Minors under the age of eighteen should be denied the right of possession except when under the supervision of a responsible adult. Finally, since there are times when a private citizen may have cause to carry a concealed weapon, a licensing provision should be set up. Licenses should be issued for good cause only by a central state office and only to parties who have demonstrated that they are qualified to use a handgun. Since no restrictions are suggested for carrying a weapon openly or unloaded in a vehicle, there is no need for a provision recognizing out of state permits; although where out of state permits have similar requirements there would seem to be no reason not to recognize one should its possessor show a need for carrying a weapon in the locality. Exceptions could be made for members of the armed forces, the police, and express company or bank employees engaged in the line of duty. In those states where population problems demand stricter regulations, the local law could require all purchases of handguns to be made with police approval, although approval should be made automatic where no cause for denial is shown. This would be permissible under the Federal Firearms Act and would allow the police to check parties who may

133. See note 72 *supra*.

134. 15 U.S.C. § 902(c) (1958), makes it illegal to ship a firearm into a state where a license is required until the license is shown to the shipper. At present only seven states require this: Hawaii, Massachusetts, Michigan, Missouri, New Jersey, New

purchase firearms.¹³⁴ To deal with the problem of the nonresident out of state purchaser, it would appear reasonable to provide in the act that any dealer selling to a nonresident send notice of the sale to the buyer's local police officials.¹³⁵ Where warranted by local conditions, a "stop and frisk" section could be added. However, due to the objectionable nature of this type of statute and the strong protests made by many citizens, a very clear need should be shown before the "stop and frisk" provisions are added.¹³⁶

If a statute embodying the above recommendations were enacted with some uniformity in the states, the enforcement problem concerning handguns would be greatly relieved.¹³⁷ Citizens who were entitled to possess handguns could buy them with a minimum of inconvenience and with no chance of arbitrary police refusal. Persons not entitled to possess them would run the risk of heavy criminal penalties for carrying concealed weapons or for buying them illegally. The uniform provision of the state and federal governments would insure that adequate records would be kept and that mail order sales and out of state purchases would not make a mockery of a sister state's laws. Of course, a determined criminal will not be prevented from securing a weapon. He may steal one from a dealer or other citizen or he can probably buy one through the black market or from an ordinary retailer by cleverly falsifying a document. However, no law has proved strong enough to stop these acquisitions. The proposed model would greatly increase chances of detection without unduly burdening the great majority of honest citizens who have legitimate and often imperative needs for handguns. It is believed that this act would not be too objectionable to any sporting group or to any police organization, although there will always be those that will say that any law is too strict and those who will say that any law allowing a citizen to own a firearm is too lax. This model statute is designed to prohibit harmful and illegal uses of firearms, not to prohibit the possession and reasonable use of firearms.

JOE B. BROWN

York, and North Carolina. *Judiciary Hearings* 3410.

135. See notes 151, 155 *infra*.

136. The only places where these laws seem remotely defensible are in densely populated areas such as New York City, Chicago, etc.

137. Uniformity would end the problem of people avoiding laws by crossing state lines. It would also prevent a person from being arrested for violations that did not exist in his state.

APPENDIX A

PROPOSED MODEL STATE STATUTE

Section 1. *Definitions*.¹³⁸

(1) The term "concealed weapon" means any firearm concealed from general view while carried on or about the person.

(2) The term "crime of violence" means any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, burglary (housebreaking), breaking and entering, kidnapping and larceny.

(3) 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 such firearms or of manufacturing 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 statute.

(4) The term "firearm" means any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of any springs or expanding gas, or any device which may be readily converted to such use and a firearm muffler or silencer or the frame receiver or barrel of any such weapon.

(5) The term "fugitive from justice" means any person who has fled from any state, the District of Columbia, or any possession of the United States, (a) to avoid prosecution for a crime punishable by imprisonment for a term exceeding one year, or (b) to avoid giving testimony in any criminal proceeding.

(6) The term "handgun" means any weapon with a barrel of less than twelve inches in length designed to be fired with one hand.

(7) The term "interstate commerce" means transportation from any state or district, or any insular possession of the United States, to any other state or to the District of Columbia.

(8) The term "machine gun" means any weapon which shoots, or is designed to shoot, more than one shot, automatically, without manual reloading, by a single function of the trigger.

(9) The term "manufacturer" means any person engaged in the manufacture or importation of firearms for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this statute.

(10) The term "persons" means an individual, partnership, association, or corporation.

(11) The term "prohibited weapon" means any machine gun, any firearm equipped with a silencer or muffler, any rifle with a barrel less than sixteen inches in length, or shotgun with a barrel less than eighteen inches in length.

(12) 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 the explosive in a fixed metallic cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger.

(13) 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 the explosive in a fixed shotgun shell

138. This section attempts to list and define all terms used or reasonably likely to be used in any state statute. They are intended to conform to standard usage.

to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

Section 2. *Dealer's Licenses.*

No retail dealer, without being licensed to do so, shall sell or otherwise transfer or expose for sale or transfer, any firearm, or have in his possession with intent to sell or otherwise transfer any firearm. The State Commissioner of Safety shall license persons of full age and good reputation who have not been convicted of any crime with a punishment exceeding one year in forms prescribed by the Commissioner of Safety effective for not more than one year from the date of issue, permitting the licensee to sell firearms at retail within this state subject to the following conditions in addition to those specified in Section 3 hereof, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this act.

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority shall be displayed on the premises where it can easily be read by the public.

3. No firearm shall be sold (a) in violation of any provision of this act, nor (b) shall a firearm be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

4. A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Commissioner of Safety and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, description and place of birth of the purchaser and a statement signed by the purchaser that he has never been convicted in this state or elsewhere of a crime of violence. One copy shall within six hours be sent by registered mail to the chief of police of the municipality or the sheriff of the county of which the dealer is a resident; the duplicate the dealer shall within seven days send to the Commissioner of Safety; the triplicate the dealer shall retain for six years.

5. Where it appears that the purchaser is a nonresident of this state, additional copies of the record of the sale shall be sent within six hours by registered mail to the chief of police or sheriff of the county where the purchaser resides and to the Commissioner of Safety of the state where the purchaser is a resident.¹³⁹

6. The fee for issuing said dealer's license shall be \$_____ which fee shall be paid into the (-Treasury).

Section 3. *Sales Regulated.*

No seller shall deliver a firearm to the purchaser thereof until three days excluding holidays shall have elapsed from the time of the application for the purchase thereof, and, when delivered, said firearm shall be securely wrapped and shall be unloaded.¹⁴⁰ At the time of applying for the purchase of a firearm

139. This subsection is designed to aid interstate enforcement. It insures that local police will have a record of purchases by local citizens no matter in what state they are made. The section does not forbid sales to nonresidents—an unreasonable distinction—but it does provide for reasonable regulations.

140. A three day waiting period is provided for all sales. This should allow sufficient time for the local police to check out all people desiring to purchase a weapon. However, there is no requirement that a permit be secured to purchase a firearm. The waiting period should also discourage any "fit of anger" purchases.

the purchaser shall sign in triplicate and deliver to the seller a statement containing his full name, address, description, occupation, place of birth, the date and hour of application, the caliber, make, model, and manufacturer's number¹⁴¹ of the firearm to be purchased and a statement that he has never been convicted in this state or elsewhere of a crime of violence. The seller shall within six hours after such application sign and attach his address and forward by registered mail one copy of such statement to the chief of police of the municipality or the sheriff of the county of which the seller is a resident; the duplicate duly signed by the seller shall within seven days be sent by him with his address to the Commissioner of Safety; the triplicate he shall retain for six years. This section shall not apply to sales at wholesale.

Section 4. *Delivery to Minors and Others Forbidden.*

No person shall deliver a pistol to any person under the age of eighteen or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

Section 5. *Certain Transfers Forbidden.*

No person shall make any loan secured by a mortgage, deposit, or pledge of a firearm; nor shall any person lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this act.¹⁴²

Section 6. *Committing a Crime While Armed.*¹⁴³

If any person commits or attempts to commit a crime of violence while armed with a firearm, he may, in addition to the punishment provided for the crime, be punished by an additional sentence of not more than three years in the state penitentiary.

Section 7. *Certain Persons Forbidden to Possess Arms.*

(a) No person who has been convicted of a crime of violence in this state or elsewhere, or any person who is an habitual drunkard, or a person of unsound mind, or any person addicted to habit-forming drugs, shall own or have in his possession a firearm. However, upon the certification of a local court of record that such disability has been ended or that the person is not again likely to commit a crime of violence, such person shall again have the right to own firearms.¹⁴⁴

141. Despite the objection of the National Rifle Association, it is felt that registration by serial number of firearms bought in the state is reasonable. There is no need for existing weapons to be registered. There appears to be no danger of police abuse of such a procedure. The threat of an enemy invader using such lists seems remote.

142. This section is designed to stop the pawnbroker trade in weapons as this source of weapons is used by the criminal element to a great extent. Due to the dangerous nature of firearms, it is felt that they are not a fit subject to be used as collateral for a loan.

143. There is some question as to the need for this section. Heavy penalties are already prescribed for many crimes, and many already take into account the fact that the criminal was armed. However, this language is widely used and urged by the sporting interests. It is possible that the added penalty will deter some persons, although it does provide for repetitious penalties in the criminal law. If the section does not prove useful, it should be repealed.

144. Almost all states restrict the right of felons to possess firearms. See note 38 *supra*. It is felt that the classes listed here are particularly unsuited for handling firearms safely; however, since man's habits change, it is felt that a provision for removing the disability should be provided. In some states, this section may have to be limited to concealed weapons only due to constitutional limitations.

(b) No person under the age of eighteen years shall own any firearm. However a person under eighteen may use a firearm for hunting or target practice under the personal supervision of a responsible adult.

Section 8. Carrying Concealed Weapons.

No person shall carry any concealed weapon or handgun on or about his person, except in his place of abode, or fixed place of business, or on his own land, without a license as provided in Section 12.¹⁴⁵

Section 9. Weapons in Vehicles.

No person shall carry any loaded firearm in any vehicle unless the same is attached to the car's dashboard in plain view,¹⁴⁶ except as provided in Section 12.

Section 10. Prohibited Weapons.

No person shall possess or use any machine gun or other prohibited weapon except as provided in Section 13.

Section 11. Exceptions.

The provisions of Sections 8, 9, and 10 shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or organized reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person lawfully engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a firearm in the usual or ordinary course of such business, or to any common carrier.

Section 12. Issue of License to Carry.

(a) A person desiring a license to carry a concealed weapon shall apply to the chief of police or corresponding police officer of the municipality in which he lives. If the municipality has no such officer, or if the applicant does not reside in a municipality, he shall apply to the sheriff of the county where he resides, or if he is a resident of another state and has a regular place of business in this state, to the sheriff of the county in which he has regular business or employment. The officer to whom application is made shall ascertain from the applicant his name, address, length of residence in the community, race, citizenship, age, criminal record if any, place of business, character, reputation, experience with firearms¹⁴⁷

145. It is felt that the real danger to the public lies in concealed weapons, thus, they are regulated. So long as one carries a weapon openly he does not pose a great threat, but, even so, the problems of control are greatly increased when open carrying is also prohibited. A citizen, however, should have a right to be armed in his home, business, or on his land without restrictions.

146. The problem of a weapon in a car is a difficult one. People use cars a great deal and often need to transport weapons from place to place. It is felt that if a weapon was placed in full view, it would not pose any great threat to the public. If the firearm is unloaded, then it poses no threat in any case and may be carried anywhere in the car.

147. Rhode Island requires a person to qualify on a pistol range before he may secure a license to carry a handgun. R.I. GEN. LAWS ANN. § 11-47-11 (Supp. 1964). Where the state has the administrative capability, this would be an excellent provision.

and reason for desiring a license. The officer to whom this application is made shall forward this information, together with his recommendation, to the State Commissioner of Safety,¹⁴⁸ who may make whatever further investigation he deems necessary and who shall issue the applicant a license to carry a concealed handgun for a period not to exceed one year, if it appears that the applicant has a proper reason to carry a concealed handgun and is of good character and reputation and a suitable person to be licensed.

(b) The Commissioner of Safety shall prescribe the form of all licenses and applications for licenses and the manner in which the information concerning each applicant is to be obtained and furnished to him. If he requires applicants to furnish their fingerprints in order to determine whether they have criminal records, these shall not be kept in the same file with those of persons convicted of crime. All licenses shall be in triplicate and shall, if the state licensing officer so prescribes, contain a recent photograph of the licensee. The original license shall be delivered to the licensee, the duplicate shall within seven days be sent to the officer recommending the issuance of the license and the triplicate shall be preserved for six years by the state licensing officer. The fee for issuing the license shall be five dollars, which fee shall be paid into the state treasury. The state licensing officer may revoke any license at any time upon proof that the licensee is not a proper person to be so licensed.

(c) Every application for any license provided for by this act shall be granted or rejected within thirty days after the application is filed. If an application for renewal of an existing license is filed thirty days before its expiration, the existing license is automatically extended until the application for renewal is passed upon. Any person aggrieved by the failure of the officer to whom the application is made to recommend him for any license provided for by this act or of the state licensing officer to issue such license, or by a revocation of his license, may have the decision reviewed by the (circuit) court.¹⁴⁹

(d) A bond of () dollars will be posted with the Commissioner to insure the lawful exercise of the privileges afforded the licensee.¹⁵⁰

Section 13. *Producing License on Demand.*

Every person while carrying a handgun for which carrying a license is required shall have on his person the license issued to him and shall exhibit it for inspection upon demand to any peace officer. The failure of any person to so exhibit his license shall justify his arrest for illegally carrying a concealed weapon.

Section 14. *License to Possess Any Forbidden Weapon.*

The Commissioner of Safety may issue a license to own and use a machine gun to any bank, armored car company, express company, or other similar bona

Certainly, one who desires to carry a weapon concealed should be experienced in its use for his own protection and for the safety of the general public.

148. A central office is used to issue licenses. This will insure that a uniform standard is applied throughout the state and will provide a central file of all applications. Of course, the local police also have a record of people holding licenses in their locale.

149. Differences of opinion may arise over licenses and the police may, at times, take a very restrictive view. A procedure to allow impartial review should be provided.

150. Since a concealed weapon poses added dangers to the community, it seems reasonable to require that a bond be secured to insure that this privilege be lawfully exercised. In § 14 *infra*, a very large bond is required for machine gun licenses. The added danger requires that the holder be required to exercise care in their use. A large bond should secure careful compliance with the statutory provisions.

fide company or person engaged in storing or transporting money or other negotiable instruments, upon showing a need for such weapons in their lawful business. Any person licensed under this section shall post a (\$10,000) bond to secure the lawful exercise of such privilege. Such weapons licensed under this section shall be registered with the Commissioner on such forms as he shall prescribe and shall contain a full description of the weapon's uses. Such weapons, except when in lawful use or while being repaired, shall be stored in a secure place at the applicant's principal place of business.

Section 15. *Interstate Sales.*

No person shall purchase a firearm in interstate commerce unless he first sends notice on a form furnished by the Commissioner of Safety in triplicate to the chief of police or county sheriff of the place of his residence. Such notice shall contain a statement that the applicant is not forbidden by any state or federal law from receiving such weapon and the name and address of the out of state seller. The chief of police or sheriff on receipt of the notice shall retain one copy of the statement, send one copy to the Commissioner of Safety and return the other copy to the applicant stamped received within three days, provided the notice is in order. It shall be unlawful for any resident of this state to receive or for any person to ship a weapon to a resident without having received from the purchaser such stamped copy which the seller shall retain for his records.¹⁵¹

Section 16. *False Information Forbidden.*

No person shall, in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry the same, give false information or offer false evidence of his identity.

Section 17. *Alteration of Identifying Marks Prohibited.*

No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any firearm. Possession of any pistol upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor had changed, altered, removed or obliterated the same.

Section 18. *Existing Licenses Revoked.*

All licenses heretofore issued within this state permitting the carrying of firearms concealed upon the person shall expire at midnight of the day of, 19.....

Section 19. *Excluded Firearms.*

This act shall not apply to antique firearms unsuitable for use as such and possessed as curiosities or ornaments.¹⁵²

Section 20. *Penalties.*

Any violation of any provision of this act constitutes an offense punishable by a fine of not more than (\$.....) or imprisonment for not more than

151. This section is designed to complement the present Federal Firearms Act, and to regulate mail order shipments in the same way that local sales are regulated. If the Federal Firearms Act were amended to require the seller to send notice to the police, this section could be repealed. However, it could effectively regulate interstate shipments until such time as the Federal Firearms Act is made to so provide.

152. It is difficult to define antique firearms but if they are not usable as firearms it seems to make little difference what they are called. If the antique could be fired, then it would have to meet all the requirements imposed on other firearms.

(.....) or both, or by imprisonment in the penitentiary for not less than (.....), nor more than (.....).

Section 21. *Constitutionality.*

If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act.

Section 22. *Short Title.*

This act may be cited as the "Model Firearms Act."

Section 23. *Uniform Interpretation.*

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 24. *Effective Date.*

This act shall take effect on the day of, 19.....

Section 25. *Certain Acts Repealed.*

All laws or parts of laws inconsistent herewith are hereby repealed.

APPENDIX B

PROPOSED FEDERAL FIREARMS ACT

SEC. 901. *Definitions.* As used in this chapter:

(1) The term "crime punishable by imprisonment for a term exceeding one year" shall not include 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 as the Secretary may by regulation designate.

(2) 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 such firearms or of manufacturing 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 Act.

(3) The term "firearm" means any weapon, by whatsoever name known, which will, or is designed to, or which may be readily converted to, expel a projectile or projectiles by the action of an explosive, the frame or receiver of any such weapon, or any firearm muffler or firearm silencer.

(4) The term "fugitive from justice" means any person who has fled from any State, the District of Columbia, or possession of the United States, (a) to avoid prosecution for a crime punishable by imprisonment for a term exceeding one year; or (b) to avoid giving testimony in any criminal proceeding.

(5) The term "indictment" includes an indictment or an information in any court of the United States, the several States, possessions, or the District of Columbia under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(6) The term "interstate or foreign commerce" means commerce between any State or possession (not including the Canal Zone), or the District of Columbia, and any place outside thereof; or between points within the same State or possession (not including the Canal Zone), or the District of Columbia, but through any place outside thereof; or within any possession of the District of Columbia. The term "State" shall be held to include the Commonwealth of

Puerto Rico and the District of Columbia.

(7) The term "manufacturer" means any person engaged in the manufacture or importation of firearms for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this Act.

(8) 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 repayment of money loaned thereon.

(9) The term "persons" includes an individual, partnership, association, or corporation.

(10) The term "Secretary" or "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

SEC. 902. *Transporting, Shipping or Receiving Firearms in Interstate or Foreign Commerce; Acts Prohibited.*

(a) It shall be unlawful for any manufacturer or dealer, except a manufacturer or dealer having a license issued under the provisions of this chapter, to transport, ship, or receive any firearms in interstate or foreign commerce.

(b) It shall be unlawful for any person to receive any firearm transported or shipped in interstate or foreign commerce in violation of subdivision (a) of this section, knowing or having reasonable cause to believe such firearms to have been transported or shipped in violation of subdivision (a) of this section.

(c) It shall be unlawful for any licensed manufacturer or dealer to transport or ship any firearm in interstate or foreign commerce to any person other than a licensed manufacturer or dealer in any State the laws of which require that a license be obtained for the purpose of such firearms, unless such license is exhibited to such manufacturer or dealer by the prospective purchaser.¹⁵³

(d) It shall be unlawful for any person to ship, transport, or cause to be shipped or transported in interstate or foreign commerce any firearm to any person knowing or having reasonable cause to believe that such person is under indictment or has been convicted in any court of the United States, the several States, possessions, or the District of Columbia of a crime punishable by imprisonment for a term exceeding one year or is a fugitive from justice.

(e) It shall be unlawful for any person who is under indictment or who has been convicted of a crime punishable by imprisonment for a term exceeding one year or who is a fugitive from justice to ship, transport, or cause to be shipped or transported in interstate or foreign commerce any firearm.

(f) It shall be unlawful for any person who is under indictment or who has been convicted by any court of a crime punishable by imprisonment for a term exceeding one year, or who is a fugitive from justice, to receive any firearm which has been shipped or transported in interstate or foreign commerce.

(g) It shall be unlawful for any person to transport or ship or cause to be transported or shipped in interstate or foreign commerce any stolen firearm, knowing, or having reasonable cause to believe, same to have been stolen.

(h) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any firearm or to pledge or accept as security for a loan any firearm moving in or which is a part of interstate or foreign commerce, and which while so moving or constituting such part has been stolen, knowing, or having rea-

153. This section is designed to enable the individual states to use their local laws in conjunction with federal laws. Those states that complain of the ease with which their local laws are evaded by mail order sales have only to require a citizen to exhibit a license to the shipper before purchasing a weapon.

sonable cause to believe the same to have been stolen.

(i) It shall be unlawful for any person to transport, ship, or knowingly receive in interstate or foreign commerce any firearm from which the manufacturer's serial number has been removed, obliterated, or altered.

(j) It shall be unlawful for any manufacturer or dealer 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 dealers or manufacturers, any package or other container in which there is any firearm without written notice to the carrier that a firearm is being transported or shipped.¹⁵⁴

(k) It shall be unlawful for any common or contract carrier to deliver or cause to be delivered in interstate or foreign commerce any firearm to any person with knowledge or with reasonable cause to believe that such person is under eighteen years of age.

(l) It shall be unlawful for any person to purchase through interstate commerce any firearm for a person who is prohibited by this Act from receiving such firearm, and it shall be unlawful for any person prohibited by this Act from receiving any firearm to have any other person purchase such firearm for him. Provided however that this shall not prevent a parent or guardian from purchasing a weapon to be used by his child or ward under proper supervision.¹⁵⁵

(m) It shall be unlawful for any manufacturer or dealer to ship, or cause to be shipped, any firearm in interstate or foreign commerce to any person (other than to a licensed manufacturer or to a licensed dealer, or to a person exhibiting a state license as prescribed in subsection (c) of this section, or for exportation to a foreign country) unless the person to whom such firearm is to be shipped has submitted to such manufacturer or dealer a sworn statement, in duplicate, in such form and manner as the Secretary shall by regulations prescribe, to the effect that (1) such person is eighteen years or more of age, (2) he is not a person prohibited by this Act from receiving a firearm in interstate or foreign commerce, (3) there are no provisions of law, regulations, or ordinances applicable to the locality to which the firearm will be shipped which would be violated by such person's receipt or possession of the firearm, and (4) that (Title, Name, and Official Address) (blanks to be filled in with the title, true name, and address) are the true name and address of the principal law enforcement officer of the locality to which the firearm will be shipped. It shall be unlawful unless such manufacturer or dealer has, prior to the shipment of such firearm, forwarded by United States registered mail (return receipt requested) to the local law enforcement officer named in the sworn statement, the description (including (1) manufacturer thereof, (2) the caliber or gauge, (3) the model and type of firearm but not including serial number identification) of the firearm to be shipped, the manner of shipment and destination, and one copy of the sworn statement, and has received a return receipt evidencing delivery of the registered letter or such registered letter has been returned to the manufacturer or dealer due to the refusal of the named law enforcement officer to accept such letter as evidenced in accordance with United States Post Office Department regulations. It shall be unlawful for any person to cause to

154. This section is designed to insure that the shippers will have to be informed of any firearm shipments. Thus, if the local law requires an express company to notify the local authorities of firearm shipments, this will aid local authorities to control mail order sales.

155. This section should give wider scope to the federal act by preventing one person from purchasing for another who is forbidden to buy through interstate commerce.

be transmitted by United States mail, or to cause to be transmitted in interstate commerce, such a sworn statement which contains any false statement as to any material fact for the purpose of obtaining a firearm from a licensed manufacturer or a licensed dealer.¹⁵⁶

This subsection shall not apply in the case of any firearm shipped to a licensed manufacturer or dealer for authorized service and which is being returned to the sender by the manufacturer or dealer and the records of the manufacturer or dealer shall properly show such information.

SEC. 903. *License to Transport, Ship, or Receive Firearms or Ammunition.*

(a) Any manufacturer or dealer desiring a license to transport, ship, or receive firearms in interstate or foreign commerce shall file an application, including his fingerprints therein, for such license with the Secretary, in such form and containing such information as the Secretary shall by regulation prescribe. Each such applicant shall be required to pay a fee for obtaining such license as follows:

- (1) If a manufacturer of firearms, a fee of \$50 per annum;
 - (2) If a dealer (other than a pawnbroker) in firearms, a fee of \$10 per annum;
- or
- (3) If a pawnbroker, a fee of \$50 per annum.¹⁵⁷

(b) Upon filing by a qualified applicant of a proper application and the payment of the prescribed fee, the Secretary shall issue to such applicant the license applied for, which shall, subject to the provisions of this Act, entitle the licensee to transport, ship, and receive firearms in interstate or foreign commerce during the period stated in the license. Except that, no license shall be issued pursuant to this Act (1) to any applicant who is under twenty-one years of age; (2) to any applicant, if 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 prohibited by the provisions of this Act from transporting, shipping, or receiving firearms in interstate or foreign commerce.

(c) The provisions of Section 2 (d), (e), and (f) of this Act shall not apply in the case of a licensed manufacturer or licensed dealer who is under indictment for a term exceeding one year, provided that such manufacturer or dealer gives notice to the Secretary by registered or certified mail of his indictment within thirty days of the date of the indictment. A licensed manufacturer or licensed dealer who has given notice of his indictment to the Secretary, as provided in this subsection, may continue operations pursuant to his existing license during the term of such indictment, and until any conviction pursuant to the indictment becomes final, whereupon he shall be fully subject to all provisions of this Act and operations pursuant to such license shall be discontinued.¹⁵⁸

156. This is the key section of the new federal act. It would greatly reduce the abuses of the existing act and enable the states to enforce their local laws whether or not they are now tied in with S. 902(c). States will have clear information on all shipments of firearms into the state by interstate dealers. The use of a sworn statement of one under penalty of perjury is used rather than a notarized statement. The penalties for false statements would be the same in either case. However, there would be much less inconvenience and expense in securing a notarized statement.

157. The higher fees should enable a better investigation of all license applications. Persons who do not intend to engage in a bona fide business would be excluded.

158. A large manufacturing company may be placed under an indictment for some act not related with its firearms business. In such case, the Secretary of the Treasury could relieve such a manufacturer of the disability under regulations provided for in § 907.

(d) Each licensed manufacturer and licensed dealer shall maintain such permanent records of production, importation, shipment, and other disposal of firearms as the Secretary may by regulation prescribe.

SEC. 904. *Excepted Persons.*

(a) The provisions of this Act shall not apply with respect to the transportation, shipment, receipt, or importation of any firearms sold or shipped to, or issued for the use of, (1) the United States or any department, independent establishment, or agency thereof; (2) any State, or possession, or the District of Columbia, or any department, independent establishment, agency, or any political subdivision thereof; (3) any duly commissioned officer or agent of the United States, a State, or possession, or the District of Columbia, or any political subdivision thereof; (4) to any bank, public carrier, express, or armored truck company organized and operated in good faith for the transportation of money and valuables, which is granted an exemption by the Secretary; (5) to any research laboratory designated as such by the Secretary; or (6) to the transportation, shipment, or receipt of antique or unserviceable firearms (other than a "firearm" as defined in section 5848 (1) of the Internal Revenue Code of 1954) possessed and held as a curio or museum piece.

(b) Nothing contained in this Act shall be construed to prevent shipments of firearms to institutions, organizations, or persons to whom firearms may be lawfully delivered by the Secretary of Defense or his delegate, nor to prevent the receipt or transportation of such firearms by their lawful possessors while they are engaged in military training or in competitions.

SEC. 905. *Penalties.*

(a) Any person violating any of the provisions of this chapter or any rules and regulations promulgated hereunder, or who makes any statement in applying for the license or exception provided for in this chapter, knowing such statement to be false, shall, upon conviction thereof, be fined not more than \$2,000, or be imprisoned for not more than five years, or both.

(b) Any firearm involved in any violation of the provisions of this chapter or any rules or regulations promulgated thereunder shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms as defined in Section 5848 of said Code shall, so far as applicable, extend to seizures and forfeitures incurred under the provisions of this chapter.

SEC. 906. *Effective Date of Chapter.*

The amendments made by this Act shall become effective on the first day of the second month beginning after the date of enactment of this Act.

SEC. 907. *Rules and Regulations.*

The Secretary of the Treasury may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter.

SEC. 908. *Separability Clause.*

Should any section or subsection of this chapter be declared unconstitutional, the remaining portion of the chapter shall remain in full force and effect.

SEC. 909. *Short Title.*

This chapter may be cited as the Federal Firearms Act.

SEC. 910. *Mutual Security Act.*

Nothing in this Act shall be construed as modifying or affecting the requirements of Section 414 of the Mutual Security Act of 1954, as amended, with respect to the manufacture, exportation, and importation of arms, ammunition, and implements of war.