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Gun Control Legislation in the 108th Congress

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Gun Control Legislation in the 108th Congress

SUMMARY

Congress continues to debate the efficacy and constitutionality of federal regulation of firearms and ammunition. Since 1934, various federal laws have been enacted to promote such regulation. The two most significant federal statutes controlling firearms held by civilians are the National Firearms Act of 1934 and the Gun Control Act of 1968. The 1934 Act established strict registration requirements and a transfer tax on machine guns and short-barreled long guns. The 1968 Act prohibits mail-order and interstate sales of firearms, prohibits transfers to minors and other prohibited persons, and sets forth penalties and licensing requirements for manufacturers, importers, and dealers. Gun control advocates argue that federal regulation of firearms curbs access by criminals, juveniles, and other “high-risk” individuals. They contend that only federal measures can successfully reduce the availability of guns throughout the nation. Some seek broad policy changes such as near-prohibition of non-police handgun ownership or the registration of all firearm owners or firearms. They assert that there is no constitutional barrier to such measures and no significant social costs. Others advocate less comprehensive policies that they maintain would not impede ownership and legitimate firearm transfers. Opposition to federal controls is strong. Gun control opponents deny that federal policies keep firearms out of the hands of high-risk persons; rather, they argue, controls often create burdens for law-abiding citizens and infringe upon constitutional rights provided by the Second Amendment. Some argue further that widespread gun ownership is one of the best deterrents to crime as well as to potential tyranny, whether by gangs or by government. They may also criticize the notion of enhanc-

ing federal, as opposed to state, police powers. Mortality and crime statistics are often used in the gun control debate. From 1993 to 2000, firearm fatalities from all causes and for all age groups decreased by 28%; for juveniles, they decreased by 53%. The number of homicides committed annually with a firearm by persons in the 14- to 24-year-old age group increased by 173% from 1985 to 1993, decreased by 87% from 1993 to 1999, and increased by 1% in 2000. The increase in 2000 can be attributed to firearms-related homicides committed by offenders in the 18 to 24-year-old age group, a 3% increase. Several dozen gun control-related proposals have been introduced in the 108th Congress that represent a variety of positions on federal regulation of firearms. Only two bills have received significant legislative action. One bill (H.R. 1036), as passed by the House, would prohibit lawsuits against firearm manufacturers or dealers for unlawful or criminal use of their products by other persons. The other bill (S. 253), reported in the Senate, would exempt certain law enforcement officers from state laws prohibiting the carry of concealed handguns. Several firearms-related provisions are also included in the House-passed Commerce-Justice-State appropriations bill (H.R. 2799). Legislative debate and action may develop in the following issue areas as well: (1) extending, making permanent, or allowing to expire, the semiautomatic assault weapons ban, which sunsets on September 13, 2004; (2) expanding electronic access to disqualifying records under the Brady criminal background check system; (3) expanding federally-supported ballistic imaging to enhance law enforcement efforts; and (4) further regulating firearm transfers at gun shows.

MOST RECENT DEVELOPMENTS

The 108th Congress is likely to continue the national debate over the efficacy and constitutionality of further federal regulation of firearms and ammunition. Several dozen gun control-related proposals have been introduced that represent a variety of positions on federal regulation of firearms. Only a handful of bills have received significant legislative action. One bill (H.R. 1036), as passed by the House, would prohibit law suits against firearm manufacturers or dealers for unlawful or criminal use of their products by other persons. The Senate may act on a similar measure (S. 659). The other bill (S. 253), reported in the Senate, would exempt certain law enforcement officers from state laws prohibiting the carry of concealed handguns. In addition, the House-passed Commerce-Justice-State (CJS) appropriations bill (H.R. 2799) includes limitations in the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) appropriations language that would prohibit the agency from using funding that would be provided under this bill to require the submission of certain transfer and inventory records from firearm licensees, and would prohibit ATF from not renewing firearm licenses for “lack of business.” Another provision in the CJS appropriations bill would prohibit charging of a firearm background check fee and would require the immediate destruction of approved firearm background check records (rather than being retained for 90 days).

BACKGROUND AND ANALYSIS

Pro/Con Debate

Through the years, legislative proposals to restrict the availability of firearms to the public have raised the following questions: What restrictions on firearms are permissible under the Constitution? Does gun control constitute crime control? Can the nation’s rates of homicide, robbery, and assault be reduced by the stricter regulation of firearm commerce or ownership? Would restrictions stop attacks on public figures or thwart deranged persons and terrorists? Would household, street corner, and schoolyard disputes be less lethal if firearms were more difficult and expensive to acquire? Would more restrictive gun control policies have the unintended effect of impairing citizens’ means of self-defense?

In recent years, proponents of gun control legislation have often held that only *federal* laws can be effective in the United States. Otherwise, they say, states with few restrictions will continue to be sources of guns that flow illegally into restrictive states. They believe that the Second Amendment to the Constitution, which states 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,” is being misread in today’s modern society. They argue that the Second Amendment: (1) is now obsolete, with the presence of professional police forces; or (2) is intended solely to guard against suppression of state militias by the central government and therefore restricted in scope by that intent; or (3) does not guarantee a right that is absolute, but one that can be limited by reasonable requirements. They ask why a private citizen needs any firearm in today’s modern society that is not designed primarily for hunting or other recognized sporting purposes.

Proponents of firearm restrictions have advocated policy changes on specific types of firearms or components that appear to be useful primarily for criminal purposes or that pose unusual risks to the public. Fully automatic firearms (i.e., machine guns) and short-barreled rifles and shotguns have been subject to strict regulation since 1934. Fully automatic firearms have been banned from private possession since 1986, except for those legally owned and registered with the Secretary of the Treasury on May 19, 1986. More recently, “Saturday night specials” (loosely defined as inexpensive, small handguns), “assault weapons,” ammunition feeding devices with capacities for more than seven rounds, and certain ammunition have been the focus of control efforts.

Opponents of gun control vary in their positions with respect to specific forms of control but generally hold that gun control laws do not accomplish what is intended. They argue that it is as difficult to keep weapons from being acquired by “high risk” individuals, even under federal laws and enforcement, as it was to stop the sale and use of liquor during Prohibition. In their view, a more stringent federal firearm regulatory system would only create problems for law-abiding citizens, bring mounting frustration and escalation of bans by gun regulators, and possibly threaten citizens’ civil rights or safety. Some argue that the low violent crime rates of other countries have nothing to do with gun control, maintaining instead that multiple cultural differences are responsible.

Gun control opponents also reject the assumption that the only legitimate purpose of ownership by a private citizen is recreational (i.e., hunting and target-shooting). They insist on the continuing need of people for effective means to defend person and property, and they point to studies that they believe show that gun possession lowers the incidence of crime. They say that the law enforcement and criminal justice system in the United States has not demonstrated the ability to furnish an adequate measure of public safety in all settings. Some opponents believe further that the Second Amendment includes a right to keep arms as a defense against potential government tyranny, pointing to examples in other countries of the use of firearm restrictions to curb dissent and secure illegitimate government power.

The debate has been intense. To gun control advocates, the opposition is out of touch with the times, misinterprets the Second Amendment, or is lacking in concern for the problems of crime and violence. To gun control opponents, advocates are naive in their faith in the power of regulation to solve social problems, bent on disarming the American citizen for ideological or social reasons, or moved by irrational hostility to firearms and gun enthusiasts.

Gun-Related Statistics

Number of Guns. The National Institute of Justice (NIJ) reported in a national survey that in 1994, 44 million people, approximately 35% of households, owned 192 million firearms, 65 million of which were handguns. Seventy-four percent of those individuals were reported to own more than one firearm. The Bureau of Alcohol, Tobacco, and Firearms (ATF) estimates that as of the end of 1996, approximately 242 million firearms were available for sale to or were possessed by civilians in the United States. That total includes roughly 72 million handguns (mostly pistols, revolvers, and derringers), 76 million rifles, and 64 million shotguns.

Most guns available for sale are produced domestically. In recent years, one to two million handguns were manufactured each year, along with one million rifles and less than one million shotguns. Annual imports are considerably fewer — from 200,000 to 400,000 handguns, 200,000 rifles, and 100,000 to 200,000 shotguns. Retail prices of guns vary widely, from \$50 or less for inexpensive, low-caliber handguns to more than \$1,500 for high-quality rifles or shotguns. Data are not available on the number of “assault weapons” in private possession or available for sale, but estimates prepared in 1989 by a firearms expert associated with the Smithsonian Institution placed the number of such firearms at that time in the range of one to four million, less than 3% of the number of guns estimated to exist in the civilian market.

Criminal Use. Reports submitted by state and local law enforcement agencies to the Federal Bureau of Investigation (FBI) and published annually in the *Uniform Crime Reports* indicate that both the crime rate and the violent crime rate have declined since 1981. Of the homicides in which the type of weapon could be identified, from 60% to almost 70% have involved firearms each year. The number of homicides and the proportion involving firearms have declined in recent years. In 2001 of the 13,752 homicides reported, 63% (8,719) were committed with firearms. Of those committed with firearms, 78% (6,790) involved handguns. From 1993 to 1999, the number of firearm-related homicides decreased by an average rate of nearly 11% annually, for an overall decrease of 49%. In 2000, however, firearm-related homicides *increased* to 8,661, about 2%. In 2001, they increased again to 8,719, less than 1%.

The other principal source of national crime data is the *National Crime Victimization Survey* (NCVS) conducted by the Bureau of the Census and published by the Bureau of Justice Statistics. The NCVS database provides some information on the weapons used by offenders, based on victims’ reports. Based on data provided by survey respondents in calendar year 2001, BJS estimated that, nationwide, there were 5.7 million violent crimes (rape or sexual assault, robbery, aggravated assault, and simple assault). Weapons were used in about 1.5 million of these criminal incidents. Firearms were used by offenders in about 524,000 of these incidents, or roughly 9%. For further information, see *Criminal Victimization 2001: Changes 2000-2001 with Trends 1993-2001*, by Callie Rennison [<http://www.ojp.usdoj.gov/bjs/abstract/cv01.htm>].

Gun Violence and Youth. Youth crime statistics have often been used in the gun control debate. The number of homicides committed annually with a firearm by persons in the 14- to 24-year-old age group increased sharply from 1985 to 1993; they have declined since then, but not back to the 1985 level. According to the Bureau of Justice Statistics, from 1985 to 1993, the number of firearm-related homicides committed by 14- to 17-year-olds increased by 294%, from 855 to 3,371. From 1993 to 2000, the number of firearm-related homicides committed by persons in this age group decreased by 68%, from 3,371 to 1,084.

From 1985 to 1993, firearm-related homicides committed by 18- to 24-year-olds increased by 142%, from 3,374 to 8,171. From 1993 to 1999, firearm-related homicides committed by persons in this age group decreased by 39%, from 8,171 to 4,988. They increased by 3% to 5,162 in 2000. For further information, see *Homicide Trends in the United States*, by James Alan Fox and Marianne W. Zawitz, at [<http://www.ojp.usdoj.gov/bjs/homicide/teens.htm>].

Although gun-related violence in schools is statistically a rare event, a Department of Justice survey indicated that 12.7% of students age 12 to 19 reported knowing a student who brought a firearm to school. For further information, see CRS Report RL30482, *The Safe and Drug-Free Schools and Communities Program: Background and Context*, by Edith Fairman Cooper.

Suicides, Accidents, and Other Deaths. Firearm fatalities have decreased continuously since 1993. The source of national data on firearm deaths is the publication *Vital Statistics*, published each year by the National Center for Health Statistics. Firearm deaths reported by coroners in each state are presented in four categories: homicides and legal intervention, suicides, accidents, and unknown circumstances. In 2000, a total of 28,663 firearm deaths occurred, according to such reports. Of this total, 11,071 were homicides or due to legal intervention; 16,586 were suicides; 776 were unintentional (accidental) shootings; and 230 were of unknown cause. From 1993 to 2000, firearm-related deaths decreased by an average rate of nearly 5% annually, for an overall decrease of nearly 28%. Also in 2000, there were 1,544 juvenile (under 18 years of age) deaths attributed to firearms. Of the juvenile total, 834 were homicides or due to legal intervention; 537 were suicides; 150 were unintentional; and 23 were of unknown cause. From 1993 to 2000, firearm-related deaths for juveniles have decreased by an average rate of 10% annually, for an overall decrease of 53%.

Self-defense. According to the Bureau of Justice Statistics, NCVS data from 1987 to 1992 indicate that in each of those years, roughly 62,200 victims of violent crime (1% of all victims of such crimes) used guns to defend themselves. Another 20,000 persons each year used guns to protect property. Persons in the business of self-protection (police officers, armed security guards) may have been included in the survey. Another source of information on the use of firearms for self-defense is the “National Self Defense Survey” conducted by criminology professor Gary Kleck of Florida State University in the spring of 1993. Citing responses from 4,978 households, Dr. Kleck estimated that handguns have been used 2.1 million times per year for self-defense, and that all types of guns have been used approximately 2.5 million times a year for that purpose, during the 1988-1993 period.

Why do these numbers vary by such a wide margin? Law enforcement agencies do not collect information on the number of times civilians use firearms to defend themselves or their property against attack. Such data have been collected in household surveys. The contradictory nature of the available statistics may be partially explained by methodological factors. That is, these and other criminal justice statistics reflect what is *reported* to have occurred, not necessarily the actual number of times certain events occur. Victims and offenders are sometimes reluctant to be candid with researchers. So, the number of criminal incidents can only be estimated, making it difficult to state with certainty the accuracy of statistics such as the number of times firearms are used in self-defense. For this and other reasons, criminal justice statistics often vary when different methodologies are applied.

Survey research can be limited, since it is difficult to produce statistically significant findings from small incident populations. For example, the sample in the National Self-Defense Survey might have been too small, given the low incidence rate and the inherent limitations of survey research.

Recreation. According to the National Institute of Justice (NIJ), in 1994 recreation was the most common motivation for owning a firearm. There were approximately 15 million hunters, about 35% of gun owners, in the United States and about the same number and percentage of gun owners engaged in sport shooting in 1994. The U.S. Fish and Wildlife Service reported that 31.6 million persons purchased hunting licenses or permits in 1993 and, according to the National Sporting Goods Association, in that year approximately 18.5 million persons took part in firearms sporting activities.

Federal Regulation of Firearms

As stated in the Gun Control Act of 1968, as amended (P.L. 90-618; Title 18, *United States Code*, Chapter 44), the purpose of federal firearm regulation is to assist federal, state, and local law enforcement in the ongoing effort to reduce crime and violence. In the same act, however, Congress also stated that the intent of the law is not to place any undue or unnecessary burdens on law-abiding citizens in regard to the lawful acquisition, possession, or use of firearms for hunting, trapshooting, target shooting, personal protection, or any other lawful activity.

Indeed, issues related to federal firearm regulation currently under debate generally revolve around the following questions. One, who should be ineligible to possess firearms? Two, what types of firearms are appropriate for statutorily enumerated lawful firearm activities? Three, when, where, and how is it appropriate to check persons seeking to acquire a firearm for possession eligibility?

Federal Regulation of Firearm Transfers. Under current law, federal firearm licensees (hereafter referred to as licensees) may ship, transport, and receive firearms that have moved in interstate and foreign commerce. Licensees are currently required to verify with the Federal Bureau of Investigation (FBI) through a background check that nonlicensed persons are eligible to possess a firearm before subsequently transferring a firearm to them. Licensees must also verify the identity of nonlicensed transferees by inspecting a government-issued identity document, *e.g.*, a driver's license.

Under current law, there are 9 classes of persons prohibited from possessing firearms: 1) persons convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year; 2) fugitives from justice; 3) drug users, or addicts; 4) persons adjudicated mental defectives, or committed to mental institutions; 5) unauthorized immigrants and nonimmigrant visitors; 6) persons dishonorably discharged from the Armed Forces; 7) U.S. citizenship renunciates; 8) persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner; and 9) persons convicted of misdemeanor domestic violence (18 U.S.C. § 922(g) and (n)).

Licensees may engage in interstate transfers of firearms between themselves without conducting background checks. While they may transfer long guns (rifles or shotguns) to out-of-state residents, as long as there are in-person meetings and such transfers would not knowingly be in violation of the laws of the state in which the nonlicensed transferees reside, they may not transfer handguns to unlicensed out-of-state residents. Transfer of handguns by licensees to anyone under 21-years-of-age is prohibited, as is the transfer of long guns to anyone under 18-years-of-age (18 U.S.C. § 922(b)). Also, licensees are required to submit

a “multiple sales reports” to the Attorney General of the Treasury if any person purchases two or more handguns within 5 business days.

Furthermore, licensees are required to maintain records on all acquisitions and dispositions of firearms. They are obligated to respond to Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) agents requesting firearm tracing information within 24 hours. Under certain circumstances, ATF agents may inspect, without search warrants, their business premises, inventory, and records.

Nonlicensees are prohibited from acquiring firearms from out-of-state sources (except for long guns acquired from licensees under the scenario described above). Nonlicensees are also prohibited from transferring firearms to any persons who they have reasonable cause to believe are not residents of the state in which the transaction occurs. In addition, since 1986, it has been a federal offense for nonlicensees to knowingly transfer a firearm to prohibited persons. It is also notable that firearm transfers initiated through the Internet are subject to the same federal laws as transfers initiated in any other manner. (For further information, see CRS Report RS20957, *Internet Firearm Sales*, by T.J. Halstead.)

Finally, since 1994, it has been a federal offense for any nonlicensed person to transfer a handgun to anyone under 18-years-of-age. It has also been illegal for anyone under 18 years-of-age to possess a handgun (there are exceptions to this law related to employment, ranching, farming, target practice, and hunting) (18 U.S.C. § 922(x)).

Brady Act Implementation. According to the Bureau of Justice Statistics, since the implementation of the Brady Act on February 29, 1994, through calendar year (CY) 2001, nearly 38 million firearm background checks were completed, resulting in 840,000 denials (an overall 2.2% denial rate). During the interim period of the Brady Act (phase I), from February 1994 through November 1998, there was a waiting period of up to 5 days for handgun transfers in states without instant check systems. Nearly 13 million firearm background checks were completed, resulting in 312,000 denials. Note: Brady background check statistics through CY2002 are given below for the FBI, but not state agencies.

The permanent provisions (phase II) of the Brady Act became effective on November 30, 1998. As part of phase II, the Federal Bureau of Investigation rolled out the National Instant Criminal Background Check System (NICS). Through NICS, under the permanent Brady provisions, background checks are conducted of applicants for both hand and long gun transfers. In 26 states, federal firearm licensees contact the FBI to conduct background checks through NICS. Through CY2002, the FBI had completed nearly 36 million background checks for firearm transfer applications. Of this number, nearly 282,000 background checks, or about 2%, resulted in firearm transfers being denied. Of these checks, nearly 58% of denials occurred because the applicant was a felon or was under felony indictment. The next most common reason for denial, about 14% of cases, was a domestic violence misdemeanor conviction. In addition, protective orders accounted for 4% of denials. For further information on phase II of the Brady Act, see *National Instant Criminal Background Check System (NICS): 2001/2002 Operational Report* (Washington, May 2003), p. 5, [http://www.usdoj.gov/opa/pr/2003/May/nics_opreport.pdf].

In 24 states, state agencies serve as points of contact (POCs) and conduct background checks for handgun transfers. In 14 states, state agencies serve as POCs and conduct

background checks for both long gun and handgun transfers. In 10 states, state agencies serve as POCs for handgun transfers only. In POC states, federal firearm licensees contact the state agency, and the state agency contacts the FBI. In non-POC states, federal firearm licensees contact the FBI directly through the NICS system. During phase II, State POCs completed roughly the same number of background checks as the FBI, resulting in a 2% denial rate as well. Between November 1998 and December 2002, the FBI estimates that 563,000 firearm transfers have been denied by the Bureau and state agencies, combined.

For state agencies (POCs), background checks may not be as expeditious, but they may be more thorough, since state agencies may have greater access to databases and records that are not available through NICS. According to GAO, this is particularly true for domestic violence misdemeanor offenses and protective orders. See GAO Report GAO-02-720, *Gun Control: Opportunities to Close Loopholes in the National Instant Criminal Background Check System* (Washington, July 2002), p. 27.

NICS eligibility determination rates – how expeditiously the system makes eligibility determinations, have been controversial. According to GAO, about 72% of the NICS checks handled by the FBI resulted in immediate determinations of eligibility. Of the remaining 28% that resulted in a non-definitive response, neither a “proceed” nor a denial, 80% were turned around within 2 hours. The remaining 20% of delayed transactions took hours or days for the FBI NICS examiners to reach a final determination. In many cases these sales were delayed because there was an outstanding charge without a final disposition against the person seeking to purchase the firearm. Such cases necessitate that the FBI examiners contact local or state authorities for additional information. Under current law, the FBI is authorized to delay the sale for 3 business days in order to determine the outcome of the charge and, thus, establish the eligibility of the transferee to possess a firearm. For further information, see GAO Report GGD/AIMD-00-64, *Gun Control: Implementation of the National Instant Criminal Background Check System* (Washington, February 2000) p. 68. The FBI reports that, from July 2002 through March 2003, the immediate determination rate for NICS increased to 91%, as compared to just under 77% from November 2001 through July 2002. (See *NICS 2001/2002 Operational Report*, p. 8.)

NICS system availability — how regularly the system can be accessed during business hours and not delay legitimate firearm transfers — has also been a source of complaint. GAO found, however, that in the first year of NICS operation, the FBI had achieved its system availability goal of 98% for 4 months. System availability for the remaining 8 months averaged 95.4%. (See GAO Report GGD/AIMD-00-64, *Implementation of NICS*, p. 94.) The FBI reports that NICS service availability has been increased to 99% in FY2001 and FY2002. (See *NICS 2001/2002 Operational Report*, p. 6.)

Federal Firearm Prosecutions. Regarding enforcement of the Brady Act, from November 1998 through June 2000, the FBI referred 134,522 Brady-related cases to the ATF, and 37,926 of these cases were referred to ATF field offices for investigation. According to ATF, in FY2000 there were 1,485 defendants charged with firearm-related violations as a result of NICS checks under Brady. Of these defendants, 1,157 were charged with providing falsified information to federal firearm licensees (18 U.S.C. § 922(a)(6)); another 86 were persons ineligible to possess firearms under the domestic violence gun ban (18 U.S.C. §§ 922(g)(8) and (9)); and 136 were convicted felons (18 U.S.C. § 922(g)(1)).

According to the Bureau of Justice Statistics, however, federal firearm prosecutions decreased by 19% from 1992 to 1996, they leveled off through 1997, and increased in 1998 and 1999. The decline in federal prosecutions can be attributed in part to a Supreme Court decision (*Bailey v. United States* (516 U.S. 137, 116 S.Ct. 501)) that limited the use of the charge of using a firearm during a violent or drug-related offense (18 *United States Code*, § 924(c)). See *Federal Firearm Offenders, 1992-98 (with Preliminary Data for 1999)* (Washington, June 2000), at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/ffo98.pdf>].

Major Federal Firearm and Related Statutes. Two major federal statutes regulate the commerce in firearms, or their ownership: the National Firearms Act of 1934 (26 U.S.C. § 5801 *et seq.*) and the Gun Control Act of 1968, as amended (18 U.S.C. Ch. 44, § 921 *et seq.*). The National Firearms Act was originally designed to make it difficult to obtain types of firearms perceived to be especially lethal or to be the chosen weapons of “gangsters,” most notably machine guns and short-barreled long guns. This law also regulates firearms, other than pistols or revolvers, that can be concealed on a person (e.g., pen, cane, and belt buckle guns). It taxes all aspects of the manufacture and distribution of such weapons. And, it compels the disclosure (through registration with the Secretary of the Treasury) of the production and distribution system from manufacturer to buyer.

The Gun Control Act of 1968, as amended, contains the principal federal restrictions on domestic commerce in small arms and ammunition. The statute requires all persons manufacturing, importing, or selling firearms *as a business* to be federally licensed; prohibits the interstate mail-order sale of all firearms; prohibits interstate sale of handguns generally, sets forth categories of persons to whom firearms or ammunition may not be sold (such as persons under a specified age or with criminal records); authorizes the Secretary of the Treasury to prohibit the importation of non-sporting firearms; requires that dealers maintain records of all commercial gun sales; and establishes special penalties for the use of a firearm in the perpetration of a federal drug trafficking offense or crime of violence. Transactions between persons “not engaged in the business” are not covered by the Act. These transactions and other matters such as possession, registration, and the issuing of licenses to the owners of firearms may be covered by state laws or local ordinances. It also prohibits federal firearm licensees from selling or delivering a rifle or shotgun to a person under 18 years of age, or a handgun to a person under 21 years of age.

Supplementing federal law, many state firearm laws are stricter than federal law. For example, some states require permits to obtain firearms and impose a waiting period for firearm transfers. Other states are less restrictive, but state law cannot preempt federal law. Federal law serves as the minimum standard in the United States.

The following principal changes have been enacted to the Gun Control Act since 1968.

- The “Firearms Owners Protection Act,” McClure-Volkmer Amendments (P.L. 99-308, 1986) eases certain interstate transfer and shipment requirements for long guns, defines the term “engaged in the business,” eliminates some record-keeping requirements, and bans the private possession of machine guns not legally owned prior to 1986.
- The “Armor Piercing Ammunition” Ban (P.L. 99-408, 1986, amended in P.L. 103-322, 1994) prohibits the manufacture, importation and delivery of

handgun ammunition composed of certain metal substances and certain full-jacketed ammunition.

- The Federal Energy Management Improvement Act of 1988 (P.L. 100-615) requires that all toys or firearm look-alikes have a blazed orange plug in the barrel, denoting that it is a non-lethal imitation.
- The Undetectable Firearms Act (P.L. 100-649, 1988), also known as the “plastic gun” legislation, bans the manufacture, import, possession, and transfer of firearms not detectable by security devices.
- The Gun-Free School Zone Act of 1990 (P.L. 101-647), as originally enacted, was ruled unconstitutional by the U.S. Supreme Court (*United States v. Lopez*, 514 U.S. 549 (1995), April 26, 1995). The Act prohibited possession of a firearm in a school zone (on the campus of a public or private school or within 1,000 feet of the grounds). In response to the Court’s finding that the Act exceeded Congress’s authority to regulate commerce, the 104th Congress included a provision in P.L. 104-208 that amended the Act to require federal prosecutors to include evidence that the firearms “moved in” or affected interstate commerce.
- The Brady Handgun Violence Prevention Act, 1993 (P.L. 103-159) requires that background checks be completed on all nonlicensed person seeking to obtain firearms from federal firearm licensees.
- The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) prohibits the manufacture or importation of semiautomatic assault weapons and large capacity ammunition feeding devices (for a 10-year period). In the case of high capacity ammunition feeding devices, the ban on importation applies to those devices manufactured after September 1994. This Act provides an exception for the transfer, sale, or possession of semiautomatic assault weapons and large capacity ammunition feeding devices lawfully possessed on the date of enactment. This Act also bans the sale or transfer of handguns and handgun ammunition to, or possession of handguns and handgun ammunition by, juveniles (under 18 years of age) without prior written consent from the juvenile’s parent or legal guardian; exceptions related to employment, ranching, farming, target practice, and hunting are provided. In addition, the Act disqualifies persons under court orders related to domestic abuse from receiving a firearm from any person or possessing a firearm. It also enhances penalties for the criminal use of firearms and makes other changes to existing law.
- Federal Domestic Violence Gun Ban (the Lautenberg Amendment, in the Omnibus Consolidated Appropriations Act for FY1997, P.L. 104-208) prohibits persons convicted of misdemeanor crimes of domestic violence from possessing firearms and ammunition. The ban applies regardless of when the offense was adjudicated: prior to, or following enactment. It has been challenged in the federal courts, but these challenges have been defeated. (See CRS Report RL31143, *Firearms Prohibitions and Domestic Violence Convictions: The Lautenberg Amendment*, by T.J. Halstead.)
- The Omnibus Consolidated and Emergency Appropriations Act, 1999 (P.L. 105-277), requires all federal firearm licensees to offer for sale gun storage and safety devices. It also bans firearm transfers to, or possession by, most nonimmigrants, and those nonimmigrants who have overstayed the terms of their temporary visa.

- The Treasury, Postal and General Government Appropriations Act (P.L. 106-58) requires that background checks be conducted when former firearm owners seek to redeem a firearm that they sold to a pawnshop.
- The Homeland Security Act of 2002 (P.L. 107-296) establishes a Bureau of Alcohol, Tobacco, Firearms and Explosives by transferring the law enforcement functions, but not the revenue functions, of the former Bureau of Alcohol, Tobacco and Firearms from the Department of the Treasury to the Department of Justice.

Possible Issues for the 108th Congress

Several dozen gun control-related proposals have been introduced in the 108th Congress that represent a range of positions on federal regulation of firearms. Only handful of bills have received significant legislative action. A bill, as passed by the House, would prohibit law suits against firearm manufacturers or dealers for unlawful or criminal use of their products by other persons. The Senate may act of a similar measure. The other bill, reported in the Senate, would exempt certain law enforcement officers from state laws prohibiting the carry of concealed handguns. In addition, the House-passed Commerce-Justice-State (CJS) appropriations bill includes limitations in the ATF appropriations language that would prohibit the agency from using funding that would be provided under this bill to require the submission of certain transfer and inventory records from firearm licensees, and would prohibit ATF from not renewing firearm licenses for “lack of business.” Another provision in the CJS appropriations bill would prohibit charging a fee for firearms background checks and would require the immediate destruction of approved background check records (rather than being retained for 90 days). Legislative debate and action may develop in the following issue areas as well: (1) extending, making permanent, or allowing to expire, the semiautomatic assault weapons ban, which sunsets on September 13, 2004; (2) expanding electronic access to disqualifying records under the Brady criminal background system; (3) expanding federally-supported ballistic imaging to enhance law enforcement efforts; and (4) further regulating firearm transfers at gun shows.

ATF Appropriation Limitations. During full committee markup, several gun-related provisions limiting the authority of the Bureau of Alcohol, Tobacco, Firearms (ATF), and Explosives were accepted as amendments to the Bureau’s salaries and expenses account in the CJS appropriations bill (H.R. 2799), which was passed by the House on July 23, 2003. One provision would prohibit the use of any ATF funding under this bill for the purposes of acquiring certain firearm transfer records from federal firearm licensees pursuant to 18 U.S.C. § 923(g)(5), unless such a request was part of a criminal investigation. In FY2000, the ATF issued “demand letters” to 41 federal firearm licensees who allegedly did not respond to crime gun trace requests by the ATF in a timely manner. Current law requires that they do so within 24 hours. The demand letters, which are analogous to administrative subpoenas, directed the licensees in question to turn over 3 years of transfer records, and to continue doing so until they were found to be in compliance.

In U.S. District Court for the District of Maryland, ATF’s practice of issuing demand letters was challenged on several grounds, including the ground that amassing such records would conflict with 18 U.S.C. § 926(a), which prohibits any registration system of firearms, owners, or transaction/disposition records. While the District Court originally sided with the

plaintiffs (RSM, Inc.), that ruling was overturned by the 4th Circuit Court of Appeals on June 6, 2001. In a limited holding, the 4th Circuit Court found that the ATF *had not* exceeded its authority (See *RSM, Inc. v. Buckles*, 94 F. Supp. 2d 692 (D. Md. 2000), rev'd, 254 F.3d 61 (4th Cir. 2001)). Notwithstanding this court case, this limitation could be interpreted as preventing ATF from issuing demand letters in FY2004. While no federal firearm licensees are currently under demand letters for the purposes described above, the ATF relies on the same authority to issue demand letters to licensees who have 15 or more firearms that are traced back to their businesses that were used in crimes shortly after purchase – specifically used firearms. Moreover, the ATF relies on that authority to acquire data used to compile the annual firearms import and manufacturing report, among other things. Other provisions would possibly prohibit ATF from using funding under this bill to require licensees to conduct physical inventories of their businesses, or to deny an application for, or the renewal of, a license for “lack of business activity.”

Background Check Fee and Record Retention. A provision in the House-passed FY2004, CJS appropriations bill (H.R. 2799) would prohibit the collection of any fee for firearms-related background checks made through the National Instant Criminal Background Check Systems (NICS). Similar provisions had been included in CJS appropriations acts for the past 5 years for fiscal years 1999 through 2003.

The background check fee prohibition provision includes additional language that would require the “immediate destruction” of any identifying records associated with approved firearm transfer background checks. Under Attorney General Janet Reno, the Department of Justice published a final rule allowing such records to be maintained for up to 90 days for audit purposes on January 22, 2001. Under Attorney General John Ashcroft, the Department delayed implementation of this rule and, later on July 6, 2001, issued an alternative proposed rule calling for the “next-day” destruction of these files. In July 2002, the General Accounting Office (GAO) issued a report on the next-day destruction of records proposal, finding that their destruction would hinder (“adversely affect”) certain NICS operations in the following areas:

- NICS audit log searches in support of law enforcement agencies;
- firearm-retrieval actions;
- NICS audit log checks for previous background checks;
- verifications of NICS determinations for federal firearms licensees; and
- ATF inspections of federal firearms licensees’ record keeping.

GAO reported that the FBI is considering certain measures that would mitigate the effects that the next-day destruction of records would have on routine NICS system audits. Such measures include performing audits on an hourly basis, rather than a monthly or quarterly system basis, and by increasing NICS staff (from 10 to 19 persons). Under the next-day records destruction proposal, on the other hand, the FBI would not be able to conduct “nonroutine” NICS audit log searches requested by other law enforcement agencies to determine whether a person, whom subsequent information showed was a prohibited person, had been transferred a firearm within the previous 90 days. The FBI informed GAO that such searches were routinely conducted, but were a “secondary benefit” given that the audit log was maintained primarily to check for system “accuracy, privacy, and performance.” In a legal opinion issued by Justice’s Office of Legal Policy that was provided to GAO, it was stated that nothing in current regulations prohibit using the audit log to assist

in criminal investigations. However, the next-day destruction of records would eliminate the FBI's capability to run such searches.

In addition, according to GAO, the next-day destruction of records would also complicate firearms-retrieval actions following "erroneous" transfers to prohibited persons. According to the FBI, this occurs when courts or law enforcement agencies contact the Bureau with disqualifying information that would prohibit a firearms transfer, but the transfer had already gone forward – often at the licensee's discretion following a default proceed, i.e., when three business days elapse without a definitive NICS response. The Department of Justice indicated that incomplete or missing state criminal records or protective orders – usually due to a lack of computer automation and record linkages between the charging agency, prosecutors and trial courts – were the cause for most erroneous transfers. In those cases, the FBI changes the NICS determination to "denial" and notes the erroneous transfer in the record's comment field. The FBI also contacts the ATF special agent in charge and the chief law enforcement officer (CLEO) in the area where the prohibited person reportedly resides with instructions to initiate a firearms-retrieval action. Furthermore, under the next-day destruction of records proposal, the information in the 90 day audit log identifying the prohibited person would be lost, necessitating the ATF to send an inspector or agent to the federal firearms licensee's place of business to retrieve information from the licensee's records identifying the prohibited person – a lengthier process.

According to GAO, the next-day destruction of records may also make eligibility determinations lengthier, since NICS examiners would no longer be able to search the 90 day audit log for previous determinations, the information in which could expedite a subsequent determination. In the case of incomplete state or local criminal history records, this scenario could also mean duplicating work for the NICS examiners in cases where they would need to re-contact state or local officials for the same information regarding outstanding criminal charges or protective orders. It could also result in a greater number of default proceeds, that would later be reversed, necessitating firearms-retrieval actions. Moreover, information currently included in the 90 day audit log would no longer be available to answer requests from federal firearms licensees seeking to verify a determination, or to correct inaccurate or lost records. In terms of NICS appeals, the FBI is considering allowing applicants to opt for a "voluntary appeals file" in which information resulting in an approved background check would be maintained in the system, so that future background checks would not be delayed.

Finally, GAO reported that some federal officials (3 out of 5 interviewed) indicated that the next-day destruction of records would diminish the ability of ATF inspectors to audit the records of federal firearms licensees to verify that approved background check records were being lawfully maintained. For further information on these issues, see GAO Report GAO-02-653, *Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records*, (Washington, July 2002).

Gun Industry Liability. The House has passed the Protection of Lawful Commerce in Arms Act (H.R. 1036) on April 9, 2003. This bill, previously reported by the House Committee on the Judiciary on April 7 (H.Rept. 108-59), would prohibit certain types of law suits against firearm manufacturers and dealers to recover damages related to the criminal or unlawful use of their products (firearms or ammunition) by other persons. The Senate may consider a similar measure (S. 659). (For further information, see CRS Report

RS21486, *Protection of Lawful Commerce in Arms Act, H.R. 1036, 108th Congress: Legal Analysis*, by Henry Cohen.)

Concealed Carry. On March 26, 2003, the Senate Committee on the Judiciary reported S. 253 (S.Rept. 108-29), a bill that would exempt certain current and former law enforcement officers from state laws prohibiting the carry of concealed handguns. As current federal statute does not address this issue, concealed carry of firearms has traditionally been a matter of state law. In states that allow concealed carry, there are two types of laws: “may issue” and “shall issue.” States with discretionary, or “may issue,” laws leave the decision to issue or deny permits with the issuing authority (usually the state police). States with non-discretionary, or “shall issue,” laws require that permits be issued to applicants who meet certain criteria. Representative Randy Cunningham reintroduced a similar measure (H.R. 218). In the 107th Congress, Representative Cunningham brought a concealed carry for law enforcement bill (also H.R. 218) to the House floor under a discharge position, but this bill was narrowly defeated on November 13, 2001.

Semiautomatic Assault Weapons Ban. Congress banned for ten years the possession, transfer, or further domestic manufacture of semiautomatic assault weapons and high capacity ammunition feeding devices (detachable magazines that hold more than 10 rounds) that were not legally owned or available prior to September 13, 1994. Even before the ban, the Administration of George H.W. Bush had halted the importation of some of these firearms under existing legal authority provided by the 1968 Gun Control Act. The Clinton Administration halted the importation of additional firearms, which were not technically semiautomatic assault weapons, but had been modified to overcome the importation ban, under the determination that they were unsuitable for sporting purposes. Semiautomatic assault weapons that were legally owned prior to the ban are not restricted and can be transferred under applicable federal and state laws.

Semiautomatic firearms, including semiautomatic assault weapons, fire one round per pull of the trigger. Statute classifies a rifle as a semiautomatic assault weapon, if it is able to accept a detachable magazine, and includes two or more of the following five characteristics: (1) a folding or telescoping stock; (2) a pistol grip; (3) a bayonet mount; (4) a muzzle flash suppressor or threaded barrel capable of accepting such a suppressor; or (5) a grenade launcher. Different, but similar, definitions are provided for semiautomatic assault weapons that are shotguns or pistols (18 U.S.C. § 921(a)(30)). It is illegal to assemble a semiautomatic assault weapon from legally or illegally obtained parts. The semiautomatic assault weapons ban will expire on September 13, 2004.

Many firearm manufacturers have modified the design of firearms that were classified as semiautomatic assault weapons, so they no longer meet the statutory definition of an assault weapon. It is not uncommon today to hear references to pre-ban and post-ban assault weapons, the latter having been modified and, hence, not subject to the ban. As a result, it is likely that some proposals to extend or make permanent the semiautomatic assault weapons ban may also include provisions to expand the list of certain makes and models of firearms that are statutorily enumerated as banned semiautomatic assault weapons. For example, a proposal (S. 1034) introduced by Senator Dianne Feinstein would make the ban permanent, as would a proposal (H.R. 2038) introduced by Representative Carolyn McCarthy. The latter measure, however, would also expand the list of banned semiautomatic assault weapons. Senator Frank Lautenberg introduced a proposal (S. 1431) that would

modify the ban and make it permanent. Others, opposed to the ban, have argued that the statutorily defined characteristics of a semiautomatic assault weapon are largely cosmetic, and that these weapons are potentially no more lethal than other semiautomatic firearms that are designed to accept a detachable magazine and are equal or superior in terms of ballistics and other performance characteristics.

Assault rifles were originally developed to provide a lighter infantry weapon that could fire more rounds, more rapidly (increased capacity and rate of fire). To increase capacity of fire, detachable, self-feeding magazines were developed. These rifles were usually designed to be fired in fully automatic mode, meaning that once the trigger is pulled, the weapon continues to fire rapidly until all the rounds in the magazine are expended, or the trigger is released. In close-quarters combat, these weapons could be fired in a low slung position. Often these rifles were designed with a “select fire” feature that allowed them to be fired in short bursts, e.g., three rounds per pull of the trigger, or in semiautomatic mode, i.e., one round per pull of the trigger, as well as in fully automatic mode.

Under current law, any firearm, including “assault weapons,” that can be fired in fully automatic mode or in multi-round bursts are classified as “machine guns,” and must be registered with the federal government under the National Firearms Act of 1934. Furthermore, it is illegal to assemble a machine gun with legally or illegally obtained parts. The population of legally owned machine guns has been frozen since 1986, and they are not covered by the semiautomatic assault weapons ban. According to firearms experts, there are about 177,000 machine guns available in the civilian market; about 22,000 of these machine guns are owned by law enforcement agencies. According to a survey of 203,300 state and federal prisoners in 1997, who had been armed during the commission of the crimes for which they were incarcerated, fewer than 1 in 50, or less than 2%, used, carried, or possessed a fully automatic or semiautomatic assault weapon. For further information, see *Firearm Use by Offenders*, by Caroline Wolf Harlow [<http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf>].

Brady Act Background Checks. During the 107th Congress, the House passed a bill to expand electronic access to disqualifying records under the National Instant Criminal Background Check System (NICS) on July 23, 2002. This bill, “Our Lady of Peace Act” (H.R. 4757), was introduced by Representative Carolyn McCarthy. Among other things, this proposal would (1) amend the Brady Handgun Violence Prevention Act to require federal agencies to provide, and the Attorney General to secure, any government records with information relevant to determining the eligibility of a person to receive a firearm for inclusion in NICS; (2) require states to make available to the Attorney General certain records that would disqualify persons from acquiring a firearm, particularly those records that relate to convictions for misdemeanor crimes of domestic violence and persons adjudicated as mentally defective; and (3) authorize appropriations for grant programs to assist states, courts, and local governments in establishing or improving such automated record systems. No further action was taken on H.R. 4757, before the 107th Congress adjourned. In the 108th Congress, Senator Daschle has introduced the Justice Enhancement and Domestic Security Act of 2003 (S. 22), which includes the Our Lady of Peace Act (Title V, Subtitle B).

Ballistic Imaging. Linking crime scenes by ballistically imaging and comparing crime scene evidence has been instrumental in the ongoing investigation of a string of shootings in the Washington, DC, metropolitan area during the Fall of 2002. Such linkages were made by the Bureau of Alcohol, Tobacco, Firearms and Explosives with the National

Integrated Ballistics Information Network (NIBIN), a nationally interconnected, computer-assisted ballistics imaging system used by forensic firearm examiners to obtain computerized images of the unique marks made on bullets and/or cartridge cases when fired. As an investigative tool, ballistics imaging complements crime gun tracing. Through crime gun tracing, federal investigators can assist state and local law enforcement agencies in solving firearms-related crime by, among other things, identifying suppliers of multiple-crime guns, and gun trafficking patterns.

Legislative proposals were introduced in the 107th Congress that would have required that all newly manufactured and imported handguns be ballistically imaged. Proponents believe that these measures, if enacted, would significantly increase federal capacity to trace crime guns. Such measures could be controversial, however, since some gun control opponents may view such developments as a first step towards a national firearms registry, which they oppose. Opponents argue further that such a ballistics registry will serve little purpose in tracing illegally obtained firearms. At present, the participation of federal, state, and local law enforcement agencies in NIBIN is restricted by law to the ballistic images associated with crime guns only. Supporters of stronger federal firearm regulations, many of whom may favor a national firearms registry, are likely to support ballistically imaging newly manufactured and imported firearms.

New proposals introduced in the 108th Congress may call for ballistically imaging long guns as well, since a long gun was used in the Fall 2002 string of shootings in the Washington area. For example, H.R. 24, introduced by Representative Xavier Becerra, would require firearm manufactures and importers to ballistically image the cartridge and bullet of all firearms before being transferred to licensed dealers. Similar legislation was introduced by Representative Robert Andrews (H.R. 776) and Senator Herb Kohl (S. 469). In addition, the Justice Enhancement and Domestic Security Act of 2003 (S. 22) includes similar ballistic imaging provisions. (For further information, see CRS Report RL31040, *National Integrated Ballistics Information Network (NIBIN) for Law Enforcement*, William C. Boesman and William J. Krouse.)

Gun Shows. Federal law does not regulate gun shows specifically. Federal law regulating firearms transfers, however, is applicable to such transfers at gun shows. Federal firearm licensees – those licensed by the federal government to manufacture, import, or deal in firearms – are required to conduct background checks on non licensed persons seeking to obtain a firearm from them, by purchase or exchange. Conversely, non licensed persons – those persons who transfer firearms, but who do not meet the statutory test of being “engaged in the business” – are not required to conduct such checks. To some, this may appear to be an incongruity in the law. Why should licensees be required to conduct background checks at gun shows, and not non licensees? To others, opposed to further federal regulation of firearms, it may appear to be a continuance of the status quo, *i.e.*, non-interference by the federal government into private firearm transfers within state lines. On the other hand, those seeking to increase federal regulation of firearms may view the absence of background checks for firearm transfers between non licensed/private persons as a loophole in the law that needs to be closed. A possible issue for Congress is whether federal regulation of firearms should be expanded to include private firearm transfers at gun shows and other similar venues.

Among gun show-related proposals, there were two basic models. The first, which passed the Senate in the 106th Congress, is known by its sponsor in the 106th Congress, Senator Frank Lautenberg. Several members introduced variations of the Lautenberg proposal in the 107th Congress. The second is based on a proposal (S. 890) introduced in the 107th Congress by Senators John McCain and Joseph Lieberman. Both proposals address several questions. In the 108th Congress, Representative John Conyers – ranking minority member of the Judiciary Committee – introduced H.R. 260, which is similar to the Lautenberg proposal. In addition, Senator Daschle introduced the Justice Enhancement and Domestic Security Act of 2003 (S. 22), which includes gun show language that is similar to the Lautenberg proposal. Other proposals may be introduced to prohibit further federal regulation of private firearm transfers at gun shows that are conducted within state lines. Nonetheless, the issues associated with greater regulation of firearm transfers at gun shows include:

- How would the term “gun show” be defined? The Lautenberg proposal defines a gun show as any event at which 50 or more firearms are offered for sale or transfer and there are not less than 10 vendors. Instead of gun show, the McCain/Lieberman proposal uses the term “special firearms event,” defining it as any event at which 75 or more firearms are offered for sale or transfer.
- Should gun show promoters/special firearms event operators be required to register with the Secretary of the Treasury? Both bills would require promoters/operators to register with the Secretary of the Treasury. Unlike the Lautenberg proposal, the McCain/Lieberman proposal would also require frequent operators who organize two or more of these events in a 6-month period to be licensed, and it would require both frequent and infrequent operators to submit ledgers of nonlicensed vendors before and after each event to the Secretary of the Treasury.
- Should all firearms transactions at gun shows be conducted by federal firearm licensees, or should a special licensee be responsible for conducting NICS checks for nonlicensees? The Lautenberg proposal adopts the former approach, the McCain/Lieberman, the latter. Also, the McCain/Lieberman proposal would prohibit special licensees from displaying firearms for sale or transfer at events where they are designated to conduct background checks for nonlicensees.
- How many days should the FBI be given to complete background checks at gun shows? The Lautenberg proposal does not address this issue, leaving in place the current statutory 3 business day delayed sale. In contrast, the McCain/Lieberman proposal would establish a certification process by which states could opt for a maximum 24-hour delayed sale, when 95% of the state’s disqualifying records (criminal and otherwise) going back 30 years are made available online.

For further information on gun shows, see *Gun Shows: Brady Checks and Crime Gun Traces* (Washington: January 1999). See: [<http://www.atf.treas.gov/>], click on “Publications.”