



# D.C. Gun Laws and Proposed Amendments

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June 28, 2010

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R40474

## Summary

In the wake of the Supreme Court's decision in *District of Columbia v. Heller*, which declared three firearms provisions of the D.C. Code unconstitutional, a flurry of legislation was introduced both in Congress and in the District of Columbia Council. In the 110<sup>th</sup> Congress, the House of Representatives passed H.R. 6842, the Second Amendment Enforcement Act. In the 111<sup>th</sup> Congress, similar provisions were incorporated as an amendment to the District of Columbia Voting Rights Act of 2009 (S. 160), which was passed by the Senate. At the same time, the District Council also passed its own legislation that made permanent amendments to D.C.'s firearms control regulations. The two bills from the District are the Firearms Control Amendment Act of 2008 and the Inoperable Pistol Amendment Act of 2008, which amended the D.C. Code in an effort to comply with the ruling in *Heller* as well as provide a different range of restrictions on firearm possession. Recently introduced legislation in both the House of Representatives (H.R. 5162) and the Senate (S. 3265) seeks to overturn or loosen many of the District's gun provisions. This report provides an analysis of the District's firearms laws and congressional proposals.

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## Introduction

This report analyzes recent laws that relate to the regulation of guns in the District of Columbia (D.C. or District), and congressional proposals that would further amend these laws. The four main statutes or bills at issue are (1) federal provisions under the National Firearms Act of 1934<sup>1</sup> and the Gun Control Act of 1968;<sup>2</sup> (2) the D.C. Firearms Control Regulation Act of 1976, as in effect prior to the Supreme Court's decision in *District of Columbia v. Heller*<sup>3</sup>; (3) the proposed Second Amendment Enforcement Act introduced in April 2010 (H.R. 5162/S. 3265); and (4) the District's legislation that permanently amends its gun laws—the Firearms Control Amendment Act of 2008 (FCAA),<sup>4</sup> and the Inoperable Pistol Amendment Act of 2008 (IPAA). It is also worth noting another congressional proposal from the 111<sup>th</sup> Congress to amend the District's gun laws, Title II of S. 160 (Title II-S. 160). While this earlier congressional proposal and H.R. 5162/S. 3265 are substantially similar, this report will point out differences where appropriate.

This report begins with an overview of when these bills were introduced and where they stand today. It proceeds to analyze current D.C. law after the passage of the FCAA and the IPAA, and the effect that the congressional proposals would have on the District's firearms laws. In doing so, the report traces the congressional proposals section by section.

## Overview of Congressional and D.C. Legislation

On June 26, 2008, the Supreme Court issued its decision in *District of Columbia v. Heller*, holding by a vote of 5-4 that the Second Amendment protects an individual's right to possess a firearm, unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.<sup>5</sup> The decision in *Heller* affirmed the holding in *Parker v. District of Columbia*,<sup>6</sup> wherein the United States Court of Appeals for the District of Columbia declared unconstitutional three provisions of the District's Firearms Control Regulation Act: (1) D.C. Code § 7-2502.02, which generally barred the registration of handguns; (2) D.C. Code § 22-4504, which prohibited carrying a pistol without a license, insofar as that provision would prevent a registrant from moving a gun from one room to another within his or her home; and (3) D.C. Code § 7-2507.02, which required that all lawfully owned firearms be kept unloaded and disassembled or bound by a trigger lock or similar device. However, the Supreme Court's opinion did not address the District's licensing requirement, making note of *Heller*'s concession that such a requirement *would be permissible* if enforced in a manner that is not arbitrary and capricious.<sup>7</sup>

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<sup>1</sup> 26 U.S.C. §§ 5801 *et seq.*

<sup>2</sup> 18 U.S.C. §§ 921 *et seq.*

<sup>3</sup> For an in-depth review of the decision, see CRS Report R40137, *District of Columbia v. Heller: The Supreme Court and the Second Amendment*, by Vivian S. Chu.

<sup>4</sup> The FCAA is also sometimes cited as the Firearms Registration Amendment Act of 2008.

<sup>5</sup> 128 S. Ct. 2783, 2786 (2008).

<sup>6</sup> 478 F.3d 370 (D.C. Cir. 2007).

<sup>7</sup> *Heller*, 128 S. Ct. at 2819.

After the Supreme Court issued its decision in *District of Columbia v. Heller*, the D.C. Council enacted emergency legislation to temporarily amend the city's gun laws to comply with the ruling in *Heller* while considering permanent legislation.<sup>8</sup> The D.C. Council enacted the Firearms Control Emergency Amendment Act of 2008, the first of several emergency enactments.<sup>9</sup> This first attempt to amend the D.C. gun provisions was met with criticism, as some felt that the changes did not comply with the decision in *Heller*.<sup>10</sup> At the same time, perhaps in reaction to the Court's decision or the District's first attempt to temporarily amend its gun laws, H.R. 6691, the Second Amendment Enforcement Act,<sup>11</sup> was introduced in the 110<sup>th</sup> Congress by Representative Travis Childers. The proposal appeared to overturn or loosen provisions of the District's existing gun laws (i.e., the D.C. Code as it was prior to any of the city's emergency regulations). The content of H.R. 6691 was subsequently adopted in the nature of a substitute into H.R. 6842, which was passed in the House of Representatives by a vote of 266-152. The Senate did not pass H.R. 6842, and the bill did not become law. In the 111<sup>th</sup> Congress, Senator John Ensign introduced S.Amdt. 575 to S. 160, the District of Columbia Voting Rights Act of 2009. This amendment, which also used the language of H.R. 6842 (110th Congress),<sup>12</sup> was approved by the Senate on February 26, 2009, and became Title II of S. 160 (hereinafter Title II-S. 160). Although S. 160 was passed in the Senate by a vote of 61-37, it was later reported that movement on this legislation was stalled.<sup>13</sup>

As the House passed H.R. 6842 (110th Congress) in September 2008, the D.C. Council continued to enact emergency legislation until permanent legislation could become effective.<sup>14</sup> Language contained in the emergency acts later was encompassed in the permanent legislation. In 2009, the

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<sup>8</sup> The process of enacting laws in D.C. is distinctive in that there are three different kinds of bills that can be introduced to the D.C. Council. Bills that are to be either temporary (i.e., expire after 225 days) or permanent must be transmitted to Congress for its consideration once they gain the mayor's approval (or the Council overrides the mayor's veto). Congress then has a certain number of days to enact legislation that rejects or approves the D.C. bill; or, if the period for review passes with no action by Congress, the bill becomes D.C. law. *See* D.C. Code § 1-206.02(c)(2009). Generally, congressional review is for 30 days, unless the bill contains criminal penalties, for which Congress has 60 days to review. The passage of 30 or 60 days is a lengthy process, as the days are counted only when either house is in session but excluding weekdays, holidays, a recess of more than three days or an adjournment of more than three days. Therefore, it can take up to three or four months after a bill gains the Council's or the mayor's approval for it to become a permanent or temporary law.

<sup>9</sup> Emergency legislation must be approved by the mayor but does not need to be submitted for congressional review to be enacted. *See* note 9, *supra*. Such legislation is effective for 90 days unless reenacted for another 90-day period. Thus, more often than not, the D.C. Council will enact emergency legislation while it is considering the permanent form of the legislation.

<sup>10</sup> Another lawsuit was filed by three plaintiffs, including Dick Heller, alleging that the emergency act was not in compliance with the Court's decision in *Heller*.

<sup>11</sup> H.R. 6691, 110<sup>th</sup> Cong., 2d Sess. (2008).

<sup>12</sup> Except that the Senate language contains a "Severability" clause that would leave the provisions of the offered amendment unaffected should the D.C. Voting Rights Act be held unconstitutional. For more information on S. 160, see CRS Report RL33830, *District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, by Eugene Boyd.

<sup>13</sup> Ann E. Marimow, *Bill takes aim at D.C. gun control*, Washington Post B02, Apr. 28, 2010 (The voting rights act was "dropped in part because of deep divisions over the pro-gun language among city leads").

<sup>14</sup> First, on July 15, 2008, the D.C. Council passed and Mayor Adrian Fenty signed into law the Firearms Control Emergency Amendment Act of 2008. Subsequently, on September 16, 2008, the D.C. Council passed and Mayor Fenty signed into law the Second Firearms Control Emergency Amendment Act of 2008. The provisions of this second act differ from the first emergency act, and it is the language of the second act that was subsequently renewed in December 2008 as the Second Firearms Control Congressional Review Emergency Amendment Act of 2008, and again in the Firearms Registration Emergency Amendment Act while the FCAA was pending in Congress.

Firearms Control Amendment Act of 2008 (FCAA)<sup>15</sup> and the Inoperable Pistol Amendment Act of 2008 (IPAA)<sup>16</sup> were passed by the D.C. Council and transmitted to Congress for the requisite 60 days before becoming effective, respectively, on March 31, 2009, and May 20, 2009.

## Analysis of D.C. Gun Laws Under the Proposed Amendments

Overall, the FCAA and IPAA not only amended firearms provisions of the D.C. Code that were at issue in *Heller*, but also provided a different range of restrictions on the regulation of firearms and firearm ownership. It is worth noting that the District's new firearms amendments under the FCAA and IPAA were challenged and upheld in the United States District Court for the District of Columbia on March 26, 2010.<sup>17</sup> As discussed above, the language of Title II-S. 160 was adopted from a bill (H.R. 6842) introduced in the 110<sup>th</sup> Congress, which originated prior to the enactment of the two new D.C. acts. The most recent congressional legislation, H.R. 5162/S. 3265, though it also seeks to overturn or loosen many of the District's gun provisions, takes into consideration the passage of these two new acts, the FCAA and IPAA. Sections 3-8 of H.R. 5162/S. 3265 would amend firearms provisions in the D.C. Code in substantially the same manner as Title II-S. 160,<sup>18</sup> by limiting the District's ability to promulgate rules regulating firearm possession, and repealing the District's registration scheme, among other things. Sections 9-13 would preserve certain provisions of IPAA, while section 14 would repeal other provisions of the IPAA and all of the FCAA.

### Authority of D.C. to Promulgate Rules

In general, federal firearms laws establish the minimum standards in the United States on firearm regulations. The states, territories, and the District of Columbia may choose to supplement the federal statutes—the National Firearms Act of 1934 (NFA) and the Gun Control Act of 1968 (GCA)—with their own more restrictive firearms laws in a manner that does not run counter to the Supreme Court's decision in *District of Columbia v. Heller*.<sup>19</sup>

Under the District of Columbia Self-Government and Governmental Reorganization Act (the Home Rule Act),<sup>20</sup> the District generally has authority to promulgate its own laws pursuant to the act's procedures. For instance, the Home Rule Act provides that “the legislative power of the District shall extend to all rightful subjects of legislation within the District ...”<sup>21</sup> More specifically, the Home Rule Act authorizes the D.C. Council “to make ... all such usual and

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<sup>15</sup> D.C. Legislation Number, B17-0843 (2008); D.C. Law Number, L17-0372 (2009).

<sup>16</sup> D.C. Legislation Number, B17-0593 (2008); D.C. Law Number, L17-0388 (2009).

<sup>17</sup> *Heller v. District of Columbia*, No. 08-1289, 2010 U.S. Dist. LEXIS 29063 (D. D.C. Mar. 26, 2010) (memorandum opinion denying plaintiffs' motion for summary judgment) (holding that the District's handgun registration process, ban on assault weapons, and ban on large capacity ammunition feeding devices are constitutional).

<sup>18</sup> It should be noted that sections 5 and 7 in H.R. 5162/S. 3265 are slightly modified from the version in Title II-S. 160.

<sup>19</sup> 18 U.S.C. § 927 (stating that no provision under the GCA is meant to be construed as indicating Congress's intent to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter).

<sup>20</sup> See *McIntosh v. Washington*, 395 A.2d 744, 746-47 (D.C. 1978).

<sup>21</sup> D.C. Code § 1-203.02 (2009).

reasonable police regulations ... as the Council may deem necessary for the regulation of firearms.”<sup>22</sup> Since much of the District of Columbia’s law that existed prior to home rule consisted of congressional enactments, this power has often been used by the District of Columbia to amend laws passed by Congress.<sup>23</sup>

Congress nonetheless retains the ability to legislate for the District, as well as to impose limits on the legislative authority of the District of Columbia government.<sup>24</sup> In the Home Rule Act, Congress specifically reserved for itself “the right, at any time, to exercise its constitutional authority as legislature for the District by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council ... including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the Council.”<sup>25</sup>

Because the District legislates within delegated congressional authority under the Home Rule Act, the question of whether the District of Columbia can amend or repeal a particular congressional enactment would appear to depend upon whether Congress, either expressly or by inference,<sup>26</sup> intended that such congressional act not be amended by the District. For instance, section 3 of H.R. 5162/S. 3265, like Title II-S. 160, would explicitly provide a limit upon the District of Columbia’s authority to legislate in this area:

Nothing in this section or any other provision of law shall authorize, or shall be construed to permit the Council, the Mayor, or any governmental or regulatory authority of the District of Columbia to prohibit, constructively prohibit, or unduly burden the ability of persons not prohibited from possessing firearms under Federal law from acquiring, possessing in their homes or businesses, *transporting for legitimate purposes*, or using for sporting, self-protection or other lawful purposes, any firearm neither prohibited by Federal law nor subject to the National Firearms Act. The District of Columbia shall not have the authority to enact laws or regulations that discourage or eliminate the private ownership or use of firearms (emphasis added).<sup>27</sup>

It is worth noting that the phrase—“transporting for legitimate purposes”—was added to H.R. 5162/S. 3265 presumably to address the transportation requirements that it would adopt from the IPAA. This new phrase does not otherwise affect the analysis of this section’s language under either H.R. 5162/S. 3265 or Title II-S. 160.

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<sup>22</sup> D.C. Code § 1-303.43 (2009).

<sup>23</sup> For instance, D.C. Code § 22-4503 (2009), which addresses unlawful possession of firearms by drug addicts and persons convicted of felonies or other specified crimes, is based on an act passed by Congress before the Home Rule Act. Under the original act passed by Congress, this provision only applied to persons who had committed crimes of violence. July 8, 1932, 47 Stat. 651, ch. 465, § 3. This act, however, was amended by the District of Columbia to its present form.

<sup>24</sup> Congress is constitutionally vested with exclusive jurisdiction over the District. U.S. Const., Art. I, § 8, cl. 17. For an analysis of Congress’s authority over the District of Columbia, see Note “Democracy or Distrust? Restoring Home Rule for the District of Columbia,” 111 Harv. L. Rev. 2045 (May 1998).

<sup>25</sup> D.C. Code § 1-206.01(2009).

<sup>26</sup> See *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 114-115 (D.C. 1982) (holding that the administration of a private employment workmen’s compensation by the U.S. Department of Labor did not, by inference, insulate that program from regulation by the District of Columbia).

<sup>27</sup> H.R. 5162/S. 3265, Section 3.

This proposed language emphasizes that the Council would not be empowered to promulgate laws relating to firearms regulation either by virtue of the authority granted under the D.C. Code or any other provision of law that could otherwise be interpreted as granting similar police power. It is unclear, however, what would constitute “a constructive prohibition or undue burden” on the ability of individuals to acquire firearms. The language would also appear to prevent the District from barring firearms possession by any persons not prohibited from possessing a firearm under current federal law and, moreover, appears to prevent the District from prohibiting the possession of any firearm that was not already prohibited or regulated under federal law. In other words, with the exception of carrying, discussed below, it appears that District firearms laws would be substantially the same as federal firearms laws because the District would be limited in its ability to create its own stricter provisions beyond that of the NFA and GCA.

Furthermore, the language does not make clear what elements would render a law or regulation in violation of the proscription against discouraging or eliminating the private ownership or use of firearms.<sup>28</sup> In addition, while the proposed language would not directly revoke the District’s general authority to enact and enforce sanctions for the criminal misuse of firearms, it appears that the scope of this authority would be limited as well.

The last part of section 3 *would not* “prohibit the District of Columbia from *regulating the carrying* of firearms by a person, either concealed or openly, other than at the person’s dwelling place, place of business, or on other land possessed by the person” (emphasis added).<sup>29</sup> Under this phrase, it seems clear that the District could regulate concealed or open carry, but it would not be explicitly empowered to prohibit individuals from carrying firearms altogether. Because “regulating the carrying of firearms” could encompass an outright prohibition on such activity, the District could still argue that it would be able to prohibit open or concealed carry altogether (with the stated exceptions), notwithstanding the Childers language; however, an opposing argument could be made that “regulating the carrying of firearms” does not give the District authority to have a ban on the open or concealed carriage of firearms. This last sentence of H.R. 5162/S. 3265 differs from Title II-S. 160, which states that nothing “shall be construed to prohibit the District ... from *regulating or prohibiting* the carrying of firearms” (emphasis added).

## D.C. Semiautomatic Ban

Prior to *Heller*, the D.C. Code’s definition of “machine gun” included “any firearm, which shoots, is designed to shoot or can be readily converted to shoot ... semiautomatically, more than 12 shots without manual reloading.”<sup>30</sup> By virtue of this broad definition, any semiautomatic weapon that could shoot more than 12 shots without manual reloading, whether pistol, rifle, or shotgun, was deemed a “machine gun,” and prohibited from being registered. It appears that under the District’s old definition, registration of a pistol was largely limited to revolvers.<sup>31</sup>

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<sup>28</sup> It is worth noting that Congress could, in the future, exercise its constitutional authority as legislature for the District and repeal this proposed limitation, giving back to the Council its ability to promulgate firearms regulations should H.R. 5162/ S. 3265 become law.

<sup>29</sup> H.R. 5162/S. 3265, Section 3.

<sup>30</sup> D.C. Code § 7-2501.01(10)(B) (2008).

<sup>31</sup> A revolver is generally considered to be a pistol having a revolving cylinder with several cartridges (usually six) that may be fired in succession. In other words, a semiautomatic firearm that shot fewer than 12 shots without reloading would be permissible.



Under the NFA, “machine gun” is defined as

any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled into such parts are in the possession of or under the control of a person.<sup>32</sup>

In the FCAA, the District amended its definition of “machine gun” to conform with the federal definition, above.<sup>33</sup> By doing so, semiautomatic firearms are generally no longer prohibited from being registered. However, the District has also chosen to mirror other state laws, like California, and has enacted a list of prohibited firearms. (See “Assault Weapons/Handgun Roster,” below.)

If H.R. 5162/S. 3265 were enacted, the definition of “machine gun” would be restored to its pre-*Heller* state because the bill would undo any changes made by the FCAA. Thus, section 4 of H.R. 5162/S. 3265 would essentially continue the definition of “machine gun” to conform with the federal definition, above.

## Registration Requirements, Ammunition Sales, and Interstate Purchases

### Registration

Although the D.C. Code has a scheme for registering firearms, the pre-*Heller* D.C. provisions prohibited registration of sawed-off shotguns, machine guns, short barreled rifles, or pistols not validly registered prior to September, 24, 1976. Together, the pre-*Heller* definition of “machine gun” and the ban on registering pistols post-1976 also acted as a virtual prohibition on handguns, which the Supreme Court declared unconstitutional in *Heller*.

Pursuant to the FCAA, the District now allows the registration of pistols for self-defense, and because “machine gun” conforms to the federal definition, semiautomatic handguns are registerable so long as the applicant meets other requirements.<sup>34</sup> Furthermore, the FCAA includes an exemption from the registration requirement for a person who temporarily possesses a firearm registered to another while in the home of the registrant, provided the temporary possessor is not barred from possessing a firearm and the person reasonably believes that possession is necessary for self-defense in that home. The FCAA makes several amendments to the provisions that set forth the qualification and information requirements for the registration of a firearm. For example, a person who has been convicted, within five years prior to applying for a registration certificate, of an intrafamily offense, or two or more violations of the District’s or any other jurisdiction’s law that restricts driving under the influence of alcohol or drugs, is prohibited from

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<sup>32</sup> 26 U.S.C. § 5845(b).

<sup>33</sup> FCAA, Section 3(a)(5).

<sup>34</sup> One can still register and possess a shotgun or rifle under D.C. law so long as the eligibility requirements are met. The provisions that address the carrying of firearms (handguns/shotguns/rifles) are addressed below in “Regulating the Carrying and Transport of Firearms.”

registering. Similarly, applicants who, within five years of applying, (1) have a history of violent behavior; (2) have been a respondent in either an intrafamily proceeding in which a civil protection order was issued against him or her; or (3) have been a respondent in a proceeding in which a foreign protection order was issued against him or her, are prohibited from registering a firearm.<sup>35</sup> The FCAA also requires applicants to complete a firearms training or safety course and provide an affidavit signed by the certified firearms instructor, in addition to expanding the firearms competency test.<sup>36</sup> Additionally, the Chief of Police (Chief) is required to have any registered pistol submitted for a ballistics identification procedure; further, the Chief is barred from registering more than one pistol per registrant during any 30-day period, except for new residents who are able to register more than one pistol if such pistols have been lawfully owned in another jurisdiction for six months prior to the application.

The District's existing registration scheme is all-encompassing, as the registration of a firearm is a method to also license firearms owners and acts as a permit to purchase.<sup>37</sup> Though H.R. 5162/S. 3265 would continue to prohibit the possession of sawed-off shotguns, short barreled rifles, and machine guns, it would, however, repeal all sections pertaining to the registration requirement.<sup>38</sup> Thus, D.C. residents would no longer be required to have a registration certificate for the firearm, or as a prerequisite to purchasing a firearm, and there would be no provision for licensing of gun owners. H.R. 5162/S. 3265 would also make other conforming amendments to eliminate all registration language.<sup>39</sup>

It is worth noting that with the repeal of the FCAA provisions under H.R. 5162/S. 3265, it appears that the Chief would no longer be required to have any pistol submitted for ballistics testing, nor would the Chief be required to limit registration of pistols to one per month. In other words, there would be no restriction on how many handguns an individual would be able to purchase per month.

## **Ammunition Sales and Registration**

H.R. 5162/S. 3265 would amend D.C. Code § 7-2505.02, which sets forth permissible sales and transfers of both ammunition and firearms. Currently, under D.C. law, a licensed dealer may sell or transfer ammunition only to “any nonresident person or business licensed under the acts of Congress,” “any other licensed dealer,” or “any law enforcement officer.” A provision under section 5 of H.R. 5162/S. 3265 would allow the transfer of ammunition, excluding restricted

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<sup>35</sup> Post-*Heller*, courts have continued to uphold charges and convictions against felons who have been found to be in illegal possession of a firearm, generally holding that the decision in *Heller* did not make all restrictions on firearm possession constitutionally suspect. *See, e.g.*, *United States v. Yancey*, No. 08-cr-103-bbc, 2008 U.S. Dist. LEXIS 77878 (W.D. Wis. October 3, 2008); *United States v. Brunson*, 292 Fed. Appx. 259 (4<sup>th</sup> Cir. 2008).

<sup>36</sup> With respect to the firearms training/safety course, the FCAA requires that it be for at least one hour on a firing range and at least four hours in classroom instruction. The applicant also needs to provide an affidavit signed by the certified firearms instructor attesting to the completion of the course. Additionally, the FCAA expands the current firearms competency test to include “in particular, the safe and responsible use, handling and storage” of firearms. *See* FCAA, Section 3(d).

<sup>37</sup> D.C. Code §§ 7-2502.01, 7-2502.037-2505.02(d) (2009).

<sup>38</sup> H.R. 5162/S. 3265 would repeal D.C. Code §§ 7-2502.02 to 7-2502.11.

<sup>39</sup> One example of a provision that would be affected by the removal of the registration scheme is the requirement to obtain a dealer's license. Under the D.C. Code, one must be eligible to register a firearm to be eligible for a dealer's license. H.R. 5162/S. 3265 would remove the “register a firearm” language and would make those who are not otherwise prohibited by federal law or District law eligible to apply for a dealer's license.

pistol bullets, “to any person,” which would include D.C. residents. In addition to eliminating any ammunition certificate language,<sup>40</sup> this section would also eliminate the requirement of a licensed dealer to keep track of ammunition received or sold from his or her inventory.<sup>41</sup>

## Interstate Transfers of Firearms

Under 18 U.S.C. § 922(b)(3), a firearm dealer is generally prohibited from selling handguns to out-of-state persons, and must conduct such transactions by transferring the handgun to another firearm dealer in the state where the purchaser resides.

Both H.R. 5162/S. 3265 and Title II-S. 160 permit interstate purchase of firearms, but do so in different ways. In Title II-S. 160, there would have been an amendment to the federal statute that would carve out an exception to the federal law to allow federal licensees whose places of business are located in Maryland or Virginia to sell and deliver handguns to residents of the District of Columbia. H.R. 5162/S. 3265, however, would place the amendment of interstate firearm transfer in the D.C. Code itself. Thereafter, under the D.C. Code, a federally licensed importer, manufacturer, or dealer of firearms in Maryland or Virginia would be treated as a dealer licensed under D.C. law. Thus, notwithstanding 18 U.S.C. § 922(b)(3), Maryland and Virginia firearms dealers would be permitted to sell handguns to District residents if “the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions in both the District of Columbia and the jurisdiction in which the transfer occurs.”<sup>42</sup>

## Trigger Lock Requirement

The GCA requires that licensed dealers sell or deliver handguns with a secure gun storage or a safety device,<sup>43</sup> but there is no federal requirement on how firearms should be stored or whether trigger locks must be used.

The District’s trigger lock requirement, which was declared unconstitutional by the Supreme Court, went further than federal law and required any firearm in the possession of a registrant, even if within the home, to be “unloaded and disassembled or bound by a trigger lock or similar device” unless the firearm was kept at the owner’s place of business, or was being used for lawful recreational purposes within the District.<sup>44</sup>

Under the FCAA, the District amended the provisions of the trigger lock requirement so that it would be the *policy* of the District that any firearm in one’s lawful possession be unloaded and either disassembled or secured by trigger lock. The FCAA prohibits a person from storing or keeping any loaded firearm on any premises under his control if “he knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the parent or guardian of the minor” unless he or she “keeps the firearms in a securely locked box ... container ... or in a location which a reasonable person would believe to be secure” or “carries the firearm

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<sup>40</sup> H.R. 5162/S. 3265, Section 5(b)(6) and Section 6.

<sup>41</sup> D.C. Code §§ 7-2504.04(a)(3)(D)-(E) (2009). See H.R. 5162/S. 3265, Section 5(b)(9).

<sup>42</sup> H.R. 5162/S. 3265, Section 5(b)(9).

<sup>43</sup> 18 U.S.C. § 922(z).

<sup>44</sup> D.C. Code § 7-2507.02 (2008).

on his person or within such close proximity that he can readily retrieve and use it as if he carried it on his person.”<sup>45</sup> The FCAA further provides that a person in violation of these firearm storage responsibilities can be found guilty of criminally negligent storage of a firearm or other criminal penalties.

Title II-S. 160 would repeal this section of the FCAA.<sup>46</sup> By contrast, section 7 of H.R. 5162/S. 3265, similar to existing D.C. law, would create penalties for allowing access of minors to loaded firearms if injury results. Under this section of H.R. 5162/S. 3265, a person would be guilty of unlawful storage if

- the person knowingly stores or leaves a loaded firearm at any premises under the person’s control;
- the person knows or reasonably should know that a minor is likely to gain access to the firearm without permission of the minor’s parent or legal guardian; and
- the minor kills or injures any person (including the minor) by discharging the firearm.

Any person who violates this section would be subject to a fine not to exceed \$1,000 and/or a term of imprisonment not to exceed one year. However, there would be several exceptions. Penalties would not apply if (1) the firearm was stored in a securely locked container and the person did not inform the minor of the location of the key to, or the combination of, the container’s lock; (2) the firearm was secured by a trigger lock and the person did not inform the minor of the location of the key to, or the combination of, the trigger lock; (3) the firearm was stored on the person’s body or in such proximity that it could be used as quickly as if it were on the person’s body; (4) the minor’s access to the firearm was as a result of unlawful entry; (5) the minor was acting in self-defense; (6) the minor was engaged in hunting or target shooting under the supervision of a parent or adult over the age of 18; or (7) the firearm is in possession or control of a law enforcement officer while the officer is engaged in official duties. If the victim of a shooting under the section is the child of the person who committed the violation, “no prosecution shall be brought ... unless the person who committed the violation behaved in a grossly negligent manner, or unless similarly egregious circumstances exist.”<sup>47</sup>

## **Criminal Penalties for Possession of Unregistered Firearms**

Currently, under D.C. law, a general violation of the registration scheme, including the maintenance of an unregistered firearm in a dwelling place, place of business, or on other land possessed by the owner of a firearm, warrants a fine of not more than \$1,000 or not more than one year’s imprisonment, or both.<sup>48</sup> A person who is convicted a second time for unregistered possession of a firearm in such areas shall be fined not more than \$5,000 or imprisoned not more than five years, or both.<sup>49</sup>

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<sup>45</sup> FCAA, Section 3(o).

<sup>46</sup> Title II-S. 160, Section 207.

<sup>47</sup> H.R. 5162/S. 3265, Section 7.

<sup>48</sup> D.C. Code § 7-2507.06(a) (2009).

<sup>49</sup> D.C. Code § 7-2507.06(a)(2) (2009).

As a conforming amendment to repealing the registration scheme, H.R. 5162/ S. 3265 would amend the D.C. Code to remove this provision. It is worth noting that Title II-S. 160 would have further removed the criminal penalties for the intentional sale or transfer of a firearm or destructive device to a person under the age of 18.<sup>50</sup>

## **Regulating Inoperable Pistols and Harmonizing Definitions for Certain Types of Firearms**

When the District amended its firearms laws, it also amended several definitions such as “machine gun,” (discussed above) “sawed off shotgun,” and “firearm.” The FCAA and IPAA are presumably meant to complement each other so that amended definitions or newly created terms are consistent in both Titles 7 and 22 of the D.C. Code.

Section 9 of H.R. 5162/S. 3265 would continue the harmonization of definitions between Titles 7 and 22 for certain definitions. These include the terms “firearm,” “machine gun,” “pistol,” “place of business,” “sawed off shotgun,” and “shotgun.”

## **Prohibitions of Firearms from Private and Sensitive Public Property**

The IPAA amended D.C. law to permit the District of Columbia to prohibit or restrict the possession of firearms on its property or any property under its control. It also allows private persons or entities who own property in the District to prohibit or restrict possession of firearms on their property, with the exception of law enforcement personnel when they are lawfully authorized to enter.<sup>51</sup>

Section 10 of H.R. 5162/S. 3265 also addresses property owners restricting firearms on their premises. Under the first part of this section, “[p]rivate persons or entities owning property in the District of Columbia may prohibit or restrict the possession of firearms on their property by any persons, other than law enforcement personnel when lawfully authorized to enter onto the property or *lessees occupying residential or business premises*” (emphasis added). This provision is unlike existing D.C. law because it would further prohibit the ability of private landlords of businesses or residential premises to restrict their tenants from possessing firearms on such premises.

The second part of section 10 relates to the District’s authority to restrict or prohibit the possession of firearms on public property. Specifically, the District would be able to

prohibit or restrict the possession of firearms within any building or structure under its control, or in any area of such building or structure, which has implemented security measures (including but not limited to guard posts, metal detection devices, x-ray or other scanning devices, or card-based or biometric access devices) to identify and exclude

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<sup>50</sup> Title II-S. 160, Section 208.

<sup>51</sup> D.C. Code § 22-4503.02 (2009).

unauthorized or hazardous persons or articles, except that no such prohibition or restriction may apply to lessees occupying residential or business premises.<sup>52</sup>

This proposed language is arguably narrower in application in that it would apply to “buildings or structures under its control,” whereas current law gives the District authority to regulate over “property under its control.” Under the proposed language, it is not clear if the District could regulate firearms on real property under its control other than buildings and structures.

Furthermore, while it is explicit that the District would not be able to exercise the granted authority upon lessees that occupy buildings under the District’s control, it is unclear as to what kinds of buildings over which the District would be able to exercise this authority. Would the District be able to regulate the possession of firearms in any building that is under its control but that does not necessarily have the requisite security measures, or would it be limited to regulating firearm possession only in buildings and structures that have security measures. Should the phrase—“, or in any other area of such building or structure, which has implemented security measures ...”—be read as disjunctive from the preceding phrase? Alternatively, could the phrase be read to relate back to describe the buildings or structures under D.C.’s control, thereby narrowing the range of areas that would fall under this provision?

## **Regulating the Carrying and Transport of Firearms**

Under the IPAA, the District repealed the Chief’s authority to issue licenses to a carry a concealed firearm.<sup>53</sup> This provision would be repealed upon enactment of H.R. 5162/S. 3265, thus re-permitting the Chief to issue licenses for concealed carry within her discretion.

H.R. 5162/S. 3265 would continue a provision from the IPAA that explicitly prohibits a person from carrying a rifle or a shotgun within the District of Columbia, except as otherwise permitted by law. The exceptions for where a rifle or shotgun may be carried are discussed below.

### **Carrying of Firearms**

Congress passed a provision that regulates a qualified current or retired law enforcement officer’s ability to carry a concealed firearm.<sup>54</sup> Beyond this, states may impose their own laws on carrying firearms. As amended by the IPAA, the District currently permits persons who hold a valid registration for a firearm (handgun/rifles/shotguns) to carry it (1) within the registrant’s home; (2) while it is being used for lawful recreational purposes; (3) while it is kept at the registrant’s place of business; or (4) while it is being transported for a lawful purposes in accordance with the law.<sup>55</sup> Because the Chief’s authority to issue licenses to carry appears to be revoked under the IPAA, these four circumstances currently seem to be the only scenarios under which a person may possess and carry firearms.

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<sup>52</sup> H.R. 5162/S. 3265, Section 10.

<sup>53</sup> Pursuant to D.C. Code § 22-4506 (2008), which was repealed by the IPAA, it was unclear whether one needed a license to carry openly as well. However, there is a strong indicator that one needed to obtain a license to carry a firearm openly because the District imposes a criminal penalty for carrying either openly or concealed without a license. D.C. Code § 22-4504.

<sup>54</sup> 18 U.S.C. §§ 926B, 926C.

<sup>55</sup> D.C. Code § 22-4504.01 (2009).

H.R. 5162/S. 3265 would readapt from the IPAA and slightly modify the provision granting persons authority to carry their firearms in certain places for certain purposes without a license to carry. H.R. 5162/S. 3265 would allow a person to carry a firearm, whether loaded or unloaded, without needing to obtain a license to carry

- in the person's dwelling house or place of business or on other land owned by the person;
- by invitation on land owned or lawfully possessed by another;
- while it is being used for lawful recreational, sporting, education, or training purposes; or
- while it is being transported for lawful purposes as expressly authorized by District or federal law and in accordance with the requirements of that law.<sup>56</sup>

As noted above, because the Chief's authority to issue licenses to carry concealed would be restored if H.R. 5162/S. 3265 were enacted, it is likely that a firearm owner could obtain a concealed carry license and carry his or her firearm outside these four circumstances.

### **Transportation of Firearms**

H.R. 5162/S. 3265 would continue provisions similar to those already enacted by the IPAA pertaining to the lawful transportation of firearms. Thus, it would remain that a person, who is not otherwise prohibited from transporting, shipping, or receiving a firearm, would be permitted to

transport a firearm for any lawful purpose from any place he may lawfully possess the firearm to any other place where he may lawfully possess the firearm if the firearm is transported in accordance with this section.<sup>57</sup>

If the transportation is by vehicle, the firearm shall be unloaded, and neither the firearm nor any ammunition being transported may be readily accessible or directly accessible from the passenger compartment of the transporting vehicle.<sup>58</sup>

Also, if the firearm is not being transported by vehicle, the firearm must be "unloaded, inside a locked container, and separate from any ammunition."<sup>59</sup>

### **Toy and Antique Pistols**

The IPAA made a technical change to the District Code by including toy and antique pistols as types of firearms that are prohibited from being used to commit a violent or dangerous crime, and

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<sup>56</sup> H.R. 5162/S. 3265, Section 11.

<sup>57</sup> H.R. 5162, Section 11.

<sup>58</sup> D.C. Code § 22-4504.02(b) (2009).

<sup>59</sup> D.C. Code § 22-4504.02(c) (2009). Under former District law, a person transporting a pistol would have to have it "unloaded and in a secure wrapper from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business or in moving goods from one place of abode or business to another."

violators are subject to certain criminal penalties. Section 12 of H.R. 5162/S. 3265 would continue this technical change.

## **Providing Jurisdiction to Office of Administrative Hearings**

H.R. 5162/S. 3265 would provide jurisdiction to the Office of Administrative Hearings to hear cases pertaining to the denial or revocation of firearm dealer licenses. The FCAA had provided such authority to the Office of Administrative Hearings, except that it went further to grant the office jurisdiction over the denial or revocation of a firearm registration certificate. However, since the registration scheme would be repealed under H.R. 5162/S. 3265, it is unnecessary to give the office such jurisdiction.

## **Additional District Provisions That Would Be Affected by the Congressional Proposals**

The next provisions discussed were all amendments to the D.C. Code pursuant to the enactment of the FCAA and IPAA. These provisions would no longer exist under the congressional proposal because section 14 of H.R. 5162/ S. 3265 would repeal the two acts, “and any provision of law amended or repealed by either of such Acts [would be] restored or revived as if such Acts had not been enacted into law.”<sup>60</sup>

## **Qualifications and Duties for Dealers of Firearms**

The D.C. Code’s provisions that govern who may qualify to apply for a dealer’s license, who is eligible to sell and transfer firearms to a dealer, and to whom a dealer can sell are dependent upon one’s ability to obtain a registration certificate.<sup>61</sup> Thus, anyone who wishes to obtain a dealer’s license, or engage in purchasing or transferring a firearm, must meet the new requirements created by the FCAA (discussed in “Registration”), to obtain a registration certificate.

Because H.R. 5162/S. 3265 would repeal the District’s registration scheme, it would allow any person who is not prohibited from possessing or receiving a firearm under federal or District law to qualify in applying for a dealer’s license, selling or transferring ammunition or any firearm to a licensed dealer, or making such purchase from a licensed dealer of firearms.<sup>62</sup> The federal prohibitions are discussed in the next section.

Furthermore, as noted in the discussion on “Ammunition Sales and Registration,” duties such as reporting the loss, theft, or destruction of any firearms or ammunition in the dealer’s inventory would be repealed.

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<sup>60</sup> H.R. 5162/S. 3265, Section 14.

<sup>61</sup> See D.C. Code §§ 7-2504.02 (qualifications for dealer’s license); 7-2505.02 (permissible sales and transfers) (2009).

<sup>62</sup> See H.R. 5162/S. 3265, Section 5(b)(4) and (b)(9).



## Transfer or Sale by non-Dealers and by Licensed Dealers

The federal GCA lists nine categories of persons who are prohibited from possessing, shipping, or receiving firearms. They are (1) persons who have been convicted of a crime punishable by imprisonment exceeding one year; (2) persons who are fugitives; (3) persons who are users of or addicted to any controlled substances; (4) persons who have been adjudicated as a mental defective or who have been committed to a mental institution; (5) persons who are unlawfully in the United States or admitted under a nonimmigrant visa; (6) persons who have been dishonorably discharged from the Armed Forces; (7) persons who have renounced U.S. citizenship; (8) persons who are on notice of or are subject to a court order restraining them from harassing, stalking or threatening an intimate partner; and (9) persons who have been convicted in any court of a misdemeanor crime of domestic violence.<sup>63</sup> Among other federal regulations, it is unlawful for both licensed dealers and non-licensed persons to sell or transfer a firearm to another if he knows or has reasonable cause to believe that the purchaser falls within one of the nine categories above.<sup>64</sup>

Because the FCAA imposes new eligibility requirements before an applicant can be approved for a registration certificate (see “Registration”) it follows that a non-licensed person or licensed dealer wishing to transfer firearms must meet not only what is required by federal law but also the additional eligibility requirements under the FCAA since anyone wishing to transfer firearms must be eligible to register a firearm under D.C. law.

Under H.R. 5162/S. 3265, it would still be unlawful for licensed dealers and non-licensed persons to make transfers to those prohibited from receiving or possessing a firearm under federal *or D.C. law*,<sup>65</sup> but because the bill would essentially remove any registration requirement that is required by the D.C. Code,<sup>66</sup> it appears that the only disqualifications that would prohibit a transfer are those listed under federal law.

## Assault Weapons/Handgun Roster

Another amendment to D.C. law that would be affected by section 14 of H.R. 5162/S. 3265 is the assault weapons ban created by the FCAA. The FCAA created a new definition of “assault weapon” that includes a list of specific rifles, shotguns, and pistols and their variations, regardless of the manufacturer. It also includes semiautomatic rifles, pistols, and shotguns based on the presence of a single military-type characteristic.<sup>67</sup> The definition of “assault weapon” also includes any shotgun with a revolving cylinder, except that it does not apply to “a weapon with an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.”<sup>68</sup> Currently, the Chief also has the power to designate as an assault weapon any

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<sup>63</sup> 18 U.S.C. § 922(g).

<sup>64</sup> 18 U.S.C. § 922(a)(3), (5); § 922(d).

<sup>65</sup> H.R. 5162/S. 3265, Section 5(b)(9).

<sup>66</sup> H.R. 5162/S. 3265, Section 5(b)(1) would repeal D.C. Code §§ 7-2502.02 through 7-2502.11.

<sup>67</sup> *E.g.*, FCAA, Section 3(a)(1): “(IV) A semiautomatic, rifle that has the capacity to accept a detachable magazine *and any one of the following*: (aa) a pistol grip that protrudes conspicuously beneath the action of the weapon; (bb) a thumbhole stock; (cc) a folding or telescoping stock; (dd) a grenade launcher or flare launcher; (ee) a flash suppressor; or (ff) a forward pistol grip.”

<sup>68</sup> FCAA, Section 3(a).

firearm that he or she believes would reasonably pose the same threat as those weapons enumerated in the definition. The definition of assault weapon does not include antique firearms or certain pistols sanctioned for Olympic target shooting. The FCAA also makes this new definition of “assault weapon” applicable in the Assault Weapon Manufacturing Strict Liability Act of 1990.<sup>69</sup> Thus, any manufacturer, importer, or dealer of a weapon deemed an “assault weapon” pursuant to this new definition can be held strictly liable in tort for all direct and consequential damage arising from bodily injury or death if either proximately results from the discharge of the assault weapon in the District of Columbia.<sup>70</sup>

These changes made by the FCAA would be repealed by section 14 of H.R. 5162/S. 3265.

## Large Capacity Ammunition Feeding Devices

The FCAA prohibits any person in the District from possessing, selling, or transferring any large capacity ammunition feeding device. The meaning of “large capacity ammunition feeding device” includes a “magazine, belt, drum, feed strip or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.”<sup>71</sup> However, the term does not include “an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.”<sup>72</sup> Thus, even though residents of D.C. are now allowed to register and possess semiautomatic firearms (see “D.C. Semiautomatic Ban”), the FCAA prevents them from possessing large capacity ammunition feeding devices, which some semiautomatic firearms are capable of holding.

This provision would be repealed by section 14 of H.R. 5162/S. 3265.

## Waiting Period

Under the Brady Handgun Violence Prevention Act, which amended the GCA to establish the National Instant Criminal Background Check System (NICS), a licensed dealer is generally prohibited from transferring a firearm to any other non-licensed person without running a background check by contacting NICS.<sup>73</sup> The licensee may transfer the firearm if the system provides the licensee with a unique identification number, or if three business days have elapsed with no response from the system and the licensee has verified the identity of the transferee by examining valid identification documents that contain a photograph of the transferee.<sup>74</sup> Generally, once the background check has been completed and the transferee approved, the licensee may transfer the firearm unless a state imposes a waiting period. Non-licensed persons are not required to perform a background check under federal law.

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<sup>69</sup> D.C. Code § 7-2551.01 *et seq* (2009).

<sup>70</sup> The provision is also applicable to “machine guns.”

<sup>71</sup> FCAA, Section 3(n).

<sup>72</sup> *Id.*

<sup>73</sup> 18 U.S.C. § 922(t).

<sup>74</sup> *Id.*

The D.C. Code imposed a waiting period of 48 hours before a seller within the District can deliver a pistol or handgun. Under the IPAA, however, the waiting period for the transfer of a “firearm” is now 10 days.<sup>75</sup> Firearm, as amended by the IPAA, means “any weapon *regardless of operability*, which will, or is designed or redesigned, made or remade, readily converted, restored or repaired or is intended to expel a projectile or projectiles by the action of an explosive” (emphasis added).<sup>76</sup> Thus, the IPAA makes the new waiting period apply to all firearms, not just pistols. Title II-S. 160 would not change the waiting period, which would remain applicable for the transfer of pistols, and not shotguns or rifles.

It should also be noted that if the IPAA is repealed under H.R. 5162/S. 3265, the waiting period to obtain a handgun will revert back to 48 hours.

## Microstamping and Discharge of Firearms

The FCAA added new provisions with regard to microstamping. The D.C. Code had already prohibited the sale of a firearm which does not have imbedded in it an identification or serial number unique to the manufacturer or dealer of the firearm. The FCAA now adds a new provision requiring that beginning January 1, 2011, “no licensee shall sell or offer for sale any semiautomatic pistol manufactured on or after January 1, 2011, that is not microstamp-ready as required by and in accordance with sec. 503.”<sup>77</sup> The FCAA creates two new sections, 503 and 504. New section 503 sets forth requirements that determine if a semiautomatic pistol is microstamp-ready, and it also contains provisions that require manufacturers to provide the Chief with the make, model, and serial number of the semiautomatic pistol when presented with a code from a cartridge that was recovered as part of a legitimate law enforcement investigation. New section 504 prohibits a pistol that is not on the California Roster of Handguns Certified for Sale (California Roster) from being manufactured, sold, given, loaned, exposed for sale, transferred, or imported into the District of Columbia as of January 1, 2009. Such a pistol is prohibited from being owned or possessed unless it was lawfully owned and registered prior to January 1, 2009. Furthermore, if a resident of D.C. lawfully owns a pistol not on the California Roster, that individual can sell or transfer ownership only through a licensed firearms dealer; or a licensed dealer who has such a pistol in its inventory prior to January 1, 2009, can only transfer it to another licensed firearms dealer. The FCAA also requires the Chief to review the California Roster at least annually for any additions or deletions, and the Chief is authorized to revise, by rule, the roster of handguns determined not to be unsafe.<sup>78</sup>

Under the IPAA, the District also makes unlawful the discharge of a firearm without a special written permit from the Chief except as permitted by law, including legitimate self-defense. It further allows the District to prohibit or restrict the possession of firearms on its property and any

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<sup>75</sup> IPAA, Section 2(e).

<sup>76</sup> *Id.* at Section 2(a).

<sup>77</sup> Microstamp-ready means a semiautomatic pistol that is manufactured to produce a unique alpha-numeric or geometric code on at least two locations on each expended cartridge that identifies the make, model, and serial number of the pistol. FCAA, Section 3(m).

<sup>78</sup> On June 17, 2009, the Metropolitan Police Department issued emergency and proposed rulemaking expanding the types of handguns that can be legally registered in the District. The regulations will establish a District Roster that will include the California Roster and the rosters of handguns determined to not be unsafe from Maryland and Massachusetts. See Metropolitan Police Department, <http://mpdc.dc.gov/mpdc/site/default.asp> (follow “Firearms Registration” hyperlink).

property under its control, and would similarly allow private persons owning property in the District to prohibit or restrict the possession of firearms on their property, except where law enforcement personnel is concerned.

These two new provisions would be also repealed if H.R. 5162/S. 3265 became law.

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