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Gun Control: Straw Purchase and Gun Trafficking Provisions in P.L. 117-159

On June 25, 2022, President Joe Biden signed into law the Bipartisan Safer Communities Act (BSCA; S. 2938; P.L. 117-159). This law includes the Stop Illegal Trafficking in Firearms Act, provisions of which amend the Gun Control Act of 1968 (GCA, 18 U.S.C. §§921 et seq.) to more explicitly prohibit straw purchases and illegal gun trafficking. Related provisions expand federal law enforcement investigative authorities.

Federal Firearms Law

The GCA is the principal statute regulating interstate firearms commerce in the United States. The purpose of the GCA is to assist federal, state, and local law enforcement in ongoing efforts to reduce violent crime. Congress constructed the GCA to allow state and local governments to regulate firearms more strictly within their own borders, so long as state law does not conflict with federal law or violate constitutional provisions. Hence, one condition of a federal firearms license for gun dealers, which permits the holder to engage in interstate firearms commerce, is that the licensee must comply with both federal and state law. Also, under the GCA there are several classes of persons prohibited from shipping, transporting, receiving, or possessing firearms or ammunition (e.g., convicted felons, fugitives, unlawful drug users). It was and remains unlawful under the GCA for any person to transfer knowingly a firearm or ammunition to a prohibited person (18 U.S.C. §922(d)). Violations are punishable by up to 10 years' imprisonment. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the principal agency that administers and enforces the GCA, as well as the 1934 National Firearms Act (NFA, 26 U.S.C. §§5801 et seq.). The NFA further regulates certain firearms deemed to be especially dangerous (e.g., machine guns, short-barreled shotguns) by taxing all aspects of the making and transfer of such weapons and requiring their registration with the Attorney General.

Straw Purchase Provision

Straw purchases are illegal firearms transactions in which a person serves as a middleman by posing as the transferee, but is actually acquiring the firearm for another person. As discussed below, straw purchases are unlawful under two existing laws. Prosecutions under those provisions have been characterized by some as mere paperwork violations and, hence, inadequate in terms of deterring unlawful gun trafficking. P.L. 117-159 amends the GCA with a new provision, 18 U.S.C. §932, to prohibit any person from knowingly purchasing or conspiring to purchase any firearm for, on behalf of, or at the request or demand of any other persons if the purchaser knows or has reasonable cause to believe that the actual buyer

- is a person prohibited from being transferred a firearm under 18 U.S.C. §922(d);
- plans to use, carry, possess, or sell (dispose of) the firearm(s) in furtherance of a felony, federal crime of terrorism, or drug trafficking crime; or
- plans to sell or otherwise dispose of the firearm(s) to a person who would meet any of the conditions described above.

Violations are punishable by a fine and up to 15 years' imprisonment. Violations made by a person knowing or having reasonable cause to believe that any firearm involved will be used to commit a felony, federal crime of terrorism, or drug trafficking crime are punishable by a fine and up to 25 years' imprisonment.

Gun Trafficking Provision

Gun trafficking entails the movement or diversion of firearms from legal to illegal channels of commerce in violation of the GCA. P.L. 117-159 amends the GCA with a new provision, 18 U.S.C. §933, to prohibit any person from shipping, transporting, causing to be shipped or transported, or otherwise disposing of any firearm to another person with the knowledge or reasonable cause to believe that the transferee's use, carrying, or possession would constitute a felony. It would also prohibit the receipt of such firearm if the transferee knows or has reasonable cause to believe that receiving it would constitute a felony. Attempts and conspiracies to violate these provisions are proscribed as well. Violations are punishable by a fine and up to 15 years' imprisonment.

Forfeiture, Fines, and Sentencing Provisions

P.L. 117-159 amends the GCA with a follow-on provision, 18 U.S.C. §934, that makes any person convicted under either Sections 932 or 933 subject to civil forfeiture and fines. Convicted persons could forfeit any property constituting, or derived from, any proceeds obtained, directly or indirectly, from straw purchasing or gun trafficking, as well as any property used, or intended to be used, in the commission of such crimes. Persons convicted of such crimes could also be fined twice the gross profits or other proceeds of such offenses. P.L. 117-159 amends federal electronic surveillance, racketeering, and money laundering provisions, making violations of 18 U.S.C. §§932 or 933 predicate offenses.

GCA Interstate Transfer Prohibitions

The GCA generally prohibits anyone who is not a federal firearms licensee (FFL) from acquiring a firearm from an out-of-state source. Interstate transfers among unlicensed persons may be facilitated through an FFL in the state

where the transferee resides. In addition to 18 U.S.C. §§932 and 933, under the GCA, it was and remains unlawful for

- a non-FFL to transport into or receive in the state where they reside firearms obtained in another state (18 U.S.C. §922(a)(3));
- a non-FFLs to transfer, sell, trade, give, transport, or deliver firearms to any person who does not reside in their state of residence (18 U.S.C. §922(a)(5));
- a non-FFL to ship a firearm out-of-state to anyone other than an FFL (18 U.S.C. §922(e));
- a non-FFL to ship a concealable firearm (handgun) through the U.S. mail, though they may ship handguns by common or contract carrier to an out-of-state FFL (18 U.S.C. §§922(e) and 1715); and
- an FFL to transfer firearms to a non-FFL, out-of-state resident, except for long guns (rifles and shotguns), as long as such a transfer takes place in person and is lawful in the FFL's and the customer's state of residence (18 U.S.C. §922(b)(3)).

GCA Recordkeeping and Straw Purchases

Under the GCA (18 U.S.C. §926), Congress authorized a decentralized system of recordkeeping allowing ATF to trace a firearm's chain of commerce, from manufacturer or importer to dealer, and to the first retail purchaser of record. FFLs must maintain certain records, including ATF Forms 4473, on transfers to non-FFLs as well as a parallel acquisition/disposition log. As part of a firearms transaction, both the FFL and purchaser must truthfully fill out and sign the ATF Form 4473. The FFL must verify the purchaser's name, date of birth, and other information by examining government-issued identification (e.g., driver's license). The purchaser attests on Form 4473 that he or she is not a prohibited person and is the actual transferee/buyer. The completed and signed ATF Form 4473 serves as the authorization for the FFL to initiate a firearms eligibility check through the National Instant Criminal Background Check System (NICS), pursuant to 18 U.S.C. §922(t). In the case of a system "proceed" response, the FFL may complete the transfer. In the case of a system "delayed" response, the FFL may proceed with the transfer at their discretion after three business days have elapsed if they have not received a final NICS eligibility determination. Since the passage of P.L. 117-159, The Office of Management and Budget (OMB) authorized ATF to make an emergency change to Form 4473; it now asks the transferee to attest to whether they live within the city limits of the municipality on their mailing address and if they plan to sell or otherwise provide the weapon to someone who cannot legally own a firearm or to someone who will use it to commit a felony or other offense punishable by imprisonment for more than one year. The form also now requires FFLs to use the letters "PMF" when recording the transfer or acceptance of a privately made firearm.

NICS denials, colloquially referred to as *lying and trying*, are sometimes subject to prosecution under one of the two provisions described below, under which persons are also prosecuted for straw purchases. As noted above, straw purchases are the illegal purchase of a firearm by one person for another, sometimes referred to as *lying and*

buying for the other guy. In addition to 18 U.S.C. §§932 and 933, under the GCA it was and remains unlawful for

- a purchaser to make a false statement to an FFL regarding any fact material to the lawfulness of a prospective firearms transfer under 18 U.S.C. §922(a)(6), punishable by up to 10 years' imprisonment; and
- any person knowingly to make any false statement with respect to the records that FFLs are required to maintain under 18 U.S.C. §924(a)(1)(A), punishable by a fine and up to 5 years' imprisonment.

Straw purchases are not easily detected because they only become apparent when the straw purchase is revealed by a subsequent transfer to a prohibited person.

Other GCA Gun Trafficking Prohibitions

According to ATF, gun trafficking often entails an unlawful flow of firearms from jurisdictions with less restrictive firearms laws to jurisdictions with more restrictive firearms laws, both domestically and internationally. Such unlawful activities can include, but are not limited to, the following:

- straw purchasers or straw purchasing rings in violation of the provisions described above;
- persons engaging in the business of dealing in firearms without a license in violation of 18 U.S.C. §921(a)(1)(A), punishable by up to 5 years' imprisonment;
- corrupt FFLs dealing off-the-books in an attempt to escape federal regulation in violation of 18 U.S.C. §922(b)(5), punishable by up to 5 years' imprisonment; and
- trafficking in stolen firearms in violation of 18 U.S.C. §922(j), punishable by up to 10 years' imprisonment.

Under current law, offenders could potentially be charged with multiple offenses under both the preexisting GCA provisions such as those discussed above and 18 U.S.C. §§932 and 933.

Since P.L. 117-159 went into effect on October 31, 2023, 250 defendants have been charged with gun trafficking, including 80 charged with violating the law's straw purchase provision.

In January 2024, the National Shooting Sports Foundation—an industry trade group for the firearms industry—noted that the ATF has yet to implement two parts of P.L. 117-159: "Firearm Handler Background Checks" (FHCs) and instant point-of-sale background checks when an FFL buys from a private individual. The former would allow FFLs to use the NICS to background check FFL employees and has been in regulatory review since September 26, 2023. The latter would allow FFLs to instantly identify if a weapon is stolen at the point of sale by authorizing importers, manufacturers, and dealers of firearms to access records of stolen firearms in the National Crime Information Center; it has been in the interim final rule stage since May 17, 2023.

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