Calendar No. 1108

98TH CONGRESS
2d Session

SENATE

REPORT
98-583

FEDERAL FIREARMS OWNERS PROTECTION ACT

AUGUST 8 (legislative day, AUGUST 6), 1984.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany S. 914]

The Committee on the Judiciary, to which was referred the bill (S. 914) to protect firearms owners' constitutional rights, civil liberties, and rights to privacy, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. PURPOSES OF THE BILL

The purpose of S. 914, as reported by the Committee on the Judiciary, is to further numerous constitutional rights guaranteed to firearms owners [1] by correcting substantial deficiencies in the Federal firearms laws,[2] which, in part, have given rise to certain questionable enforcement policies. It accomplishes these goals, while preserving the necessary statutory foundation for legitimate law enforcement efforts.

In particular, S. 914 reaffirms the intent clearly expressed by Congress in 1968 that it is not the purpose of Federal firearms laws to place "any undue or unnecessary Federal restrictions or burdens

[1] Protections are provided, inter alia, by the following amendments to the United States Constitution: amendment II (right to keep and bear arms), amendment IV (unreasonable searches and seizures), amendment V (due process, double jeopardy, uncompensated taking of property), amendment IX (enumeration of certain rights not to be construed to deny others), and amendment X (powers reserved to the States or the people).

[2] 18 U.S.C. 921-928; 18 U.S.C. app. 1201-1203.

31-010 O

on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of . . . any . . . lawful activity." Rather, it is the purpose of such laws "to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence. . . ." [3]

II. Background

S. 914 was introduced on March 23, 1983, by Senator James A. McClure (R.-Idaho) and was referred to the Committee on the Judiciary. Thirty-eight original cosponsors joined Senator McClure, including the following Members of the Judiciary Committee: Chairman Strom Thurmond (R.-S.C.), Senator Orrin G. Hatch (R.-Utah), Senator Alan K. Simpson (R.-Wyo.), Senator John P. East (R.-N.C.), Senator Charles E. Grassley (R.-Iowa), Senator Jeremiah Denton (R.-Ala.), Senator Dennis DeConcini (D.-Ariz.), Senator Max Baucus (D.-Mont.) and Senator Howell Heflin (D.-Ala.). When the bill was ordered reported by the Committee, 16 additional cosponsors had been added, including Senator Paul Laxalt (R.-Nev.), Senator Robert C. Byrd (D.-W.Va.), and Senator Robert Dole (R.-Kan.), also Members of the Committee.

S. 914, as introduced, was identical to S. 1030, which was reported by the Senate Judiciary Committee in the 97th Congress,[4] except for the deletion of provisions relating to a Federal "waiting period" for the purchase of certain firearms.[5] The reporting of S. 1030 followed four mark-up sessions,[6] three days of hearings on that particular bill,[7] and other hearings on the subject of deficiencies in Federal firearm laws and questionable enforcement policies.[8] In light of the extensive consideration which legislation akin to S. 914 received in previous Congresses, Chairman Thurmond again held the bill at the full Committee.

On October 4, 1983, the full Committee held a hearing on S. 914 [9] at which testimony was heard from the sponsor of the bill, the Reagan Administration, the National Rifle Association of America, the Citizens Committee for the Right to Keep and Bear Arms, Gun Owners of America, and Handgun Control, Inc. Written statements were also received from Congressman Harold L. Volkmer (D.-Mo.), the sponsor of companion legislation in the House of Representatives,[10] the National Council for a Responsible Firearms Policy, Neal Knox, and the Police Executive Research Forum.

---

[3] Gun Control Act of 1968, Public Law 90-618, sec. 101, 82 Stat. 1214 (18 U.S.C. 921n).

[4] S. 1030, 97th Cong., 1st sess. (1981); S. Rep. 476, 97th Cong., 2d sess. (1982) (hereinafter cited as S. 1030 report).

[5] S. 1030, sec. 102(e)(4) (amending 18 U.S.C. 922(b)(5)).

[6] S. 1030 was considered by the committee on Mar. 10, 1982, Mar. 17, 1982 Apr. 20, 1982, and Apr. 21, 1982.

[7] The full committee held hearings on Dec. 9, 1981, Dec. 11, 1981, and Feb. 8, 1982. The Firearms Owner Protection Act: Hearings on S. 1030 before the Senate Committee on the Judiciary, 97th Cong., 1st and 2d sess. (1981-1982) (hereinafter cited as S. 1030 hearings).

[8] Gun control and Constitutional Rights: Hearing before the Subcommittee on the Constitution of the Senate Committee on the Judiciary on Constitutional Oversight of a Regulatory Agency—the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—on the enforcement of the Gun Control Act of 1968, 96th Cong., 2d sess. (1980); oversight hearings on the Bureau of Alcohol, Tobacco and Firearms, fiscal year 1980, before the Senate Committee on Appropriations, 96th Cong., 1st sess. (1979). These hearings are described in more detail in the S. 1030 report, supra note 4, at 14-17.

[9] The Federal Firearms Owner Protection Act: Hearing before the Senate Committee on the Judiciary on S. 914, 98th Cong., 1st sess. (1983) (hereinafter cited as *S. 914 hearings*).

[10] H.R. 2420, 98th Cong., 1st sess.

As in previous Congresses, the Committee heard considerable testimony at the hearing concerning the pressing need for substantial revisions in the Gun Control Act of 1968 to achieve a more appropriate balance between the constitutional rights of law-abiding gun owners and dealers, on the one hand, and legitimate law enforcement interests, on the other. The Administration witness quoted the President of the United States as follows: "I look forward to signing a bill that truly protects the rights of law-abiding citizens, without diminishing the effectiveness of criminal law enforcement against the misuse of firearms." [11] In that spirit, the Administration, whose representative described S. 914 as "a bill that represents substantial progress toward rationalizing and modernizing our gun laws," [12] proposed amendments relating to interstate sales, mandatory penalties, gun shows and other provisions. Many of those amendments, with some modifications, were incorporated into an amendment in the nature of a substitute offered by Senator Hatch and adopted by the Committee, which is discussed in more detail infra.

Most of the public witnesses who testified repeated the urgent need for changes in current law to prevent the recurrence of abuses documented in detail in earlier Committee hearings and in hearings held by other Committees.[13] In particular, witnesses strongly urged the Committee to report reforms relating to an "engaged in the business" definition, private collections of dealers, limitations on warrantless inspections, forfeitures of firearms owned by acquitted persons, and criminal states of mind with respect to offenses.[14]

III. Committee Consideration

The Committee considered S. 914 on November 17, 1983, April 5, 1984, April 12, 1984, and May 10, 1984. On November 17, 1983, Senator Hatch offered an amendment in the nature of a substitute (later modified on April 5, 1984, based on discussions between Senator Hatch, the sponsor of the bill, and the Administration) generally incorporating the Administration's sugestions, other improvements, and some technical changes. The Committee took action on the following amendments to that substitute, which are described in more detail in Part V, infra.

A. WAITING PERIOD

By a vote of 3 to 11, the Committee did not adopt an amendment offered by Senator Kennedy to require a Federal fourteen-day waiting period for the purchase of handguns. The vote was as follows:

YEAS	NAYS
Mathias [1]	Laxalt
Kennedy	Hatch
Metzenbaum	Simpson

[11] S. 914 hearings, supra note 9, at 11.
[12] Id.
[13] See hearings cited in notes 7 and 8, supra.
[14] See, e.g., S. 914 hearings, supra note 9, at 78-79 (testimony of Warren Cassidy on behalf of the National Rifle Association of America, Inc.).

East [1]
Grassley [1]
Denton
Specter
DeConcini [1]
Baucus
Heflin
Thurmond

[1] By proxy.

B. ARMOR-PIERCING BULLETS

By a vote of 14 to 1, the Committee adopted an amendment offered by Senator Kennedy, as modified by an amendment in the nature of a substitute offered by Senator Hatch on behalf of Senator Dole, to impose mandatory minimum penalties for using armor-piercing bullets in the commission of a Federal crime of violence. This provision was adopted in lieu of a total ban on the importation, manufacture and sale of such bullets. The 13 to 3 vote on the Hatch-Dole substitute was as follows:

YEAS	NAYS
Mathias [1]	Biden
Laxalt	Kennedy
Hatch	Metzenbaum [1]
Dole [1]	
Simpson	
East [1]	
Grassley [1]	
Denton [1]	
Specter	
DeConcini [1]	
Baucus	
Heflin	
Thurmond	

[1] By proxy.

The vote on the Kennedy amendment, as amended by the Hatch-Dole substitute, was as follows:

YEAS	NAYS
Mathias [1]	Kennedy
Laxalt	
Hatch	
Dole [1]	
Simpson	
East [1]	
Grassely [1]	
Denton [1]	
Specter	
Biden	
DeConcini	
Baucus	
Heflin	
Thurmond	

[1] By proxy.

C. INTERSTATE SALES

By a voice vote, the Committee adopted an amendment offered by Senators Biden and Thurmond, modifying a Kennedy amendment, to retain present law with respect to the interstate sales of firearms with a barrel length of three inches or less.

D. FINAL PASSAGE

On May 10, 1984, a quorum being present, the Committee adopted the modified Hatch amendment in the nature of a substitute, as amended, by voice vote, and ordered the bill favorably reported to the Senate by a roll call vote of 16 to 0, as follows:

YEAS	NAYS
Laxalt	
Hatch	
Dole	
Simpson	
East [1]	
Grassley	
Denton [1]	
Specter	
Biden	
Kennedy	
Byrd [1]	
DeConcini	
Leahy [2]	
Baucus	
Heflin	
Thurmond	

[1] By proxy.
[2] Recorded.

NOTE.—Senator Mathias was absent on Official Business.

IV. COMMITTEE AMENDMENT

The amendment in the nature of a substitute adopted by the Committee makes the following significant changes in S. 914, as introduced:

1. It further clarifies what constitutes being "engaged in the business" of dealing in firearms by defining "with the principal objective of livelihood and profit."

2. It retains current law with respect to the interstate sale of handguns with a barrel length of three inches or less and permits interstate sales of other firearms where the sale complies with the law of the licensee's state and the state of the purchaser's residence. In the absence of evidence to the contrary, dealers are presumed to have actual knowledge of the laws of both states. The Secretary is required to provide such information to licensees on a timely basis.

3. It spells out circumstances under which the inventory and records of licensed collectors can be inspected.

4. It permits licensed importers, manufacturers and dealers to conduct business at gun shows.

5. It sets out procedures pursuant to which out-of-business records will be stored in the joint custody of the Administrator of General Services and the Secretary of the Treasury and disposed of after twenty years.

6. It spells out some of the information-gathering procedures for tracing firearms and precludes criminal charges based solely on information provided under those procedures.

7. It requires certain reports relating to multiple sales of pistols and revolvers and provides for the subsequent storage and disposition of those reports.

8. It applies a "knowing" state of mind with respect to some offenses in Chapter 44 and a "willful" state of mind with respect to others. Prosecutions are prohibited where the conduct involves "simple carelessness."

9. With one significant change, it incorporates the provisions from the Comprehensive Crime Control Act of 1984 (S. 1762) relating to mandatory

penalties for using a firearm or armor-piercing bullet to commit a Federal crime of violence. A person may not be sentenced to mandatory penalties for so using a firearm if the court finds that (1) the use was to protect himself or another, unless the danger resulted from the protected or protecting person's commission of a felony and (2) the imposition of such penalties would constitute "a severe and substantial miscarriage of justice."

10. Firearms may be seized under limited circumstances where they were "intended to be used" in specified crimes, including crimes of violence.

V. Section-by-Section Analysis

The following is a Section-by-Section Analysis of S. 914, as reported by the Senate Judiciary Committee:

The unnumbered section of the bill contains Congressional findings underlying the legislation. The Congress finds that: (1) rights secured to Americans under the Second, Fourth, Fifth, Ninth and Tenth Amendments to the Constitution require additional protective legislation; and (2) Congressional intent in 1968 that Federal firearms laws are not intended to restrict lawful activities of law-abiding citizens, nor to discourage or eliminate private ownership or use of firearms by law-abiding citizens for lawful purposes, should be reaffirmed.

TITLE I—AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE

Section 101, Paragraph (1) clarifies the definition of "manufacturer" in 18 U.S.C. 921(a)(10) by limiting it to those "engaged in the *business* of manufacturing" firearms.[15] This is in keeping with the general purpose of the legislation to limit Federal regulation to those involved in more than isolated activities.

---

[15] Emphasis supplied.

Paragraph (2) through (4) delete references to "ammunition" in the definitions of "dealer," "pawnbroker," and "collector," thus exempting from licensing requirements those who distribute only ammunition. Regulation of such persons, including convenience and general stores, has proved excessively burdensome, without corresponding law enforcement utility.

Paragraph (5) amends 18 U.S.C. 921(a)(20), which contains the definition of a "crime punishable by imprisonment for a term exceeding one year." Conviction of such a crime bars a person from receiving, shipping or possessing firearms under 18 U.S.C. 922 (d), (g), and (h), as amended by S. 914.

The bill makes four changes in this Paragraph. First, it makes the court, rather than the Secretary, the final arbiter as to what constitutes a "similar offense relating to the regulation of business practices." Second, it removes the exception relating to state firearms laws so that state misdemeanors punishable by two years of imprisonment or less would not be disabling crimes under any circumstances. Third, it requires that a "conviction" must be determined in accordance with the law of the jurisdiction where the underlying proceeding was held. This is intended to accommodate state reforms adopted since 1968, which permit dismissal of charges after a plea and successful completion of a probationary period, or which create "open-ended" offenses, conviction for which may be treated as misdemeanor or felony at the option of the court. Since the Federal prohibition is keyed to the state's conviction, state law should govern in these matters. In the case of "open-ended" offenses which are classed as felonies, but which may be reduced by the trial court, it is intended that these constitute a "crime punishable by imprisonment for a term exceeding one year" unless and until the court enters a decision to treat the offense as a misdemeanor.[16]

Finally, S. 914 would exclude from such convictions any for which the person has received a pardon, civil rights restoration, or expungement of the record. Existing law incorporates a similar provision with respect to pardons in 18 U.S.C. app. 1202, relating to possession of firearms, but through oversight does not include any conforming provision in 18 U.S.C. 922, dealing with their purchase or receipt. This oversight, which resulted in a ruling that a state pardon does not permit a pardoned citizen to receive or purchase a firearm, despite the express provision in the pardon that he may possess it,[17] would be corrected. In the event that the official granting the pardon, restoration of rights, or expungement of record does not intend that it restore the right to firearm ownership, this provision honors that intent as expressly provided in the order or pardon.

Paragraph (6) adds two new definitions to 18 U.S.C. 921(a). Proposed Section 921(a)(21) would define "engaged in the business" with respect to manufacturing firearms and ammunition, dealing

---

[16] For instance, the Supreme Court, in *Dickerson* v. *New Banner Institute, Inc.*, 103 S. Ct. 986 (1983), construed this definition to include guilty pleas where no final judgment had been rendered by the Court. S. 914, as reported, would leave such a determination to the states and would render the *Dickerson* decision inapposite where individual State courts or legislatures have decided to the contrary.

[17] *Thrall* v. *Wolfe*, 503 F.2d 318 (7th Cir. 1974), cert. denied, 420 U.S. 972 (1975).

in firearms, and importing firearms and ammunition. Existing 18 U.S.C. 922(a)(1) and 923(a) require that those engaged in these businesses obtain a Federal license. Many firearm hobbyists sell or trade firearms from their collections, and hearings have repeatedly established that many such hobbyists have been charged and convicted for technically violating the broad reading which courts had given this phrase.

Lower courts have applied two different, but similar tests for "engaging in the business." Neither is especially clear, and both can be applied to a hobbyist to whom profit is a secondary objective. Under one test, anyone who "is engaged in any business of selling firearms, . . . which occupies time, attention and labor for the purpose of livelihood or profit" has "engaged in the business." Under the other, anyone who "has guns on hand" or can obtain them and is willing to sell has so engaged.[18] S. 914 would substantially narrow these broad parameters by requiring that the person undertake such activities as part of a "regular course of trade or business with the principal objective of livelihood and profit." It expressly provides with respect to dealers that these requirements do not extend to hobbyists who make occasional sales, exchanges or purchases of firearms for the enhancement of their personal collection, or who sell all or part of a personal collection, nor to those who occasionally do gunsmithing work. In addition to the obvious benefits that would accrue to licensees as a result of this increased specificity, the Administration has indicated that it would benefit law enforcement as well by establishing clearer standards for investigative officers and assisting in the prosecution of persons truly intending to flout the law.[19]

At the suggestion of the Administration,[20] a definition of "with the principal objective of livelihood and profit" was added. Under proposed Section 921(a)(22), that term means that "the intent underlying the sale or disposition of firearms is predominately one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection." It does not require that the sale or disposition of firearms be, or be intended as, a principal source of income or a principal business activity. Nor does it apply to isolated sales, unless, of course, such sales are part of a regular course of business with the principal objective or livelihood and profit. Thus, this provision would not remove the necessity for licensing from part-time businesses or individuals whose principal income comes from sources other than firearms, but whose main objective with regard to firearm transfers is profit, rather than hobby. A sporting goods or retail store which derived only a part of its income from firearm sales, but handled such sales for the "principal objective of livelihood and profit," would still require a license.

Unlike S. 1030, and at the request of the Administration,[21] the Committee amendment deletes the reference to 18 U.S.C.

---

[18] Cf. *U.S.* v. *Williams*, 502 F.2d 581 (8th Cir. 1974) (quoting *Stone* v. *District of Columbia*, 198 F.2d 601, 603 (D.C. App. 1952)), with *U.S.* v. *Swinton*, 521 F.2d 1255 (10th Cir. 1975), cert. denied, 424 U.S. 918 (1975).

[19] S. 914 hearings, supra note 9, at 47.

[20] Id. at 16, 26.

[21] Id. at 25.

921(a)(11)(C), which defines a "dealer" to include "any person who is a pawnbroker," from the definition of "engaged in the business" of dealing with firearms. This was a purely technical change. 18 U.S.C. 921(a)(11)(C), unlike 18 U.S.C. 921(a)(11) (A) and (B), does not use the term "engaged in the business." Thus, that definition is inapplicable to pawnbrokers. Under 18 U.S.C. 921(a) (11)(C) and (12), all pawnbrokers whose business includes the taking of any firearm as security for the repayment of money would automatically be a "dealer." [22]

Section 102 of the bill makes several changes throughout 18 U.S.C. 922 to reflect the deregulation of ammunition-only sales and shipments.

Paragraph (2) of Section 102 permits an individual to mail firearms legally owned under Federal, state and local law to a licensed manufacturer, importer, dealer or collector. Under existing law, such shipments to licensed manufacturers, importers and dealers were specifically authorized for the purpose of repair or customizing. There was no specific prohibition against shipments to licensees for other lawful purposes. This change would clarify existing law and would authorize shipments to licensed collectors, but would not authorize mail-order sales by licensees to non-licensees.

Paragraph (4) of Section 102 makes a significant change in current law. Under existing 18 U.S.C. 922(b), licensees are prohibited from selling or delivering firearms to persons whom they know or have reasonable cause to believe are non-residents of the licensee's state, with five exceptions. First, under 18 U.S.C. 922(b)(3)(A), rifles or shotguns can be sold to residents of contiguous states if (1) the purchaser's state law permits the sale, (2) it fully complies with the "legal conditions of sale" in both states, and (3) prior to the sale or delivery, (A) the purchaser executes a sworn statement that he is not a prohibited person and that his receipt of the firearm would not violate his state or local law, (B) the licensee sends to, and receives evidence of receipt or refusal of receipt by the chief law enforcement officer of the purchaser's state, a copy of that statement and a description of the firearm, and (C) the purchaser delays shipment for seven days after receiving such evidence (i.e., complies with a "waiting period"). Second, 18 U.S.C. 922(b)(3)(B) permits a licensee to rent or loan a firearm to a person for temporary use for lawful sporting purposes. Third, under 18 U.S.C. 922(a)(2)(A), certain licensees may return a firearm or replacement to the person from who it was received and individuals may mail legally owned firearms to certain licensees for repairs.[23] Fourth, a person participating in an out-of-state hunt or contest may purchasea replacement rifle or shotgun under 18 U.S.C. 922(b)(3)(C) if he executes a sworn statement that his own was lost, stolen, or rendered inoperative and identifies his chief law enforcement officer. Finally, under 18 U.S.C. 922(a)(2)(B), certain licensees may mail firearms capable of being concealed on the person to certain persons for use in connection with their official duties if those persons are eligible to receive firearms through the mail under 18 U.S.C. 1715.

[22] The S. 1030 report, supra note 4, at 18, specifically emphasized the committee's intent to cover pawnbrokers among persons required to be licensed.

[23] Such transactions must also comply with 18 U.S.C. 1715.

Under the Hatch substitute adopted by the Committee, the exceptions contained in 18 U.S.C. 922(b)(3) (A) and (C) would be expanded to permit a licensee to sell a firearm with a barrel length of greater than three inches to a resident of any other state, if the sale, delivery and receipt of that firearm fully comply with the length conditions of sale in both states. Licensed manufacturers, importers, and dealers are presumed, in the absence of evidence to the contrary, to have actual knowledge of the state laws and published local ordinances of both states. Current exceptions relating to loans and rentals would remain unchanged. Like S. 1030, S. 914, as reported by the Committee, would not permit "mail-order" sale to non-licensees.

Existing restrictions were intended to prevent the use of interstate sales to defeat state and local gun restrictions. However, according to the Administration, the conditions which must accompany those sales (i.e., the paperwork and "waiting period") have proved so cumbersome that they are rarely used. As a result, as in the 97th Congress, the Committee decided to enlarge the circumstances under which licensees could sell firearms to non-residents, with limited conditions designed to facilitate effective and legitimate law enforcement. The provisions in S. 914 contain two major changes from S. 1030.

First, based on the suggestions from the Administration,[24] interstate sales are restricted to those made by a licensee. The Administration felt, and the Committee agreed, that this change would facilitate Federal law enforcement by limiting it to recorded sales and would "enable the states to exercise more effective control over illegal firearms traffic within their own jurisdictions and * * * avoid the circumvention and contravention of state and local laws governing the acquisition of firearms.[25]

The second change made by the Committee retained existing law with respect to firearms with a barrel length of three inches or less. This amendment was adopted in response to concerns expressed by some Members of the Committee. However, there was strong sentiment in support of relieving purchasers of long handguns, rifles and shortguns from the burdensome paperwork and waiting period requirements which exist in current law. The Committee's decision to except firearms with a barrel length of three inches or less from changes in existing interstate sale restrictions applies to one limited instance and is not intended to be construed as a determination that such a distinction among firearms is necessarily appropriate in any other instance.

Since licensees are presumed to have knowledge of existing state law and published local ordinances under the Committee amendment, Section 109(1) of the bill requires the Secretary of the Treasury, upon the effective date of the Act, the publish and provide to all licensees a compilation of the state laws and published ordinances of which licensees are presumed to have knowledge. Any amendments thereto are required to be published in the Federal Register, revised annually, and furnished to each licensee

---

[24] S. 914 hearings, supra note 9, at 12, 15, 30.
[25] Id. at 12.

In view of the stiff penalties to which a licensee is potentially subject under the bill, the Committee anticipates that the Secretary will make every effort to ensure the accuracy and completeness of the information required to be provided. Furthermore, where a dealer feels uncertain about the requirements of the law of the state of the purchaser's residence, he may, or course, decline to make a sale to such person. Alternatively, he could require of the purchaser that the transaction be conducted through a licensee in the purchaser's own state.

With respect to the requirement that the purchase comply with the laws of both states, restrictions which are meant to have no extraterritorial application are not violated by transactions outside the locality. A law restricting modes of conducting business within a locality, and applicable only to sales within the locality and not to purchases made by its residents elsewhere, is not violated by a resident's purchase of a firearm outside its boundaries. Conversely, a waiting period on delivery of a firearm to a resident, wherever bought in the state, and permit systems relating to ownership or possession of a firearm, wherever bought, are intended to have application outside a locality's boundaries and must be honored.

Paragraphs (C), (D), and (E) of Section 102(4) of the Committee's amendment repeal 18 U.S.C. 922(b)(3)(C), which permits a non-resident participating in an organized rifle or shotgun match or hunting to purchase a rifle or shotgun if his own is stolen, lost or rendered inoperative, upon compliance with certain conditions. The changes made by the Committee amendment in the general interestate sales provisions in clause (A) alleviate the need for this specific authority.

In the 97th Congress, the Committee adopted an amendment offered by Senator Kennedy, as modified by an amendment offered by Senator Dole, which would have amended 18 U.S.C. 922(b)(5) to require a Federal fourteen-day waiting period prior to the delivery of handguns by licensees, with two exceptions. First, the delay period did not apply where the chief law enforcement officer of the purchaser's place of residence certified to the seller that immediate delivery was necessary to protect against a threat of immediate danger to the physical safety of the buyer. Second, immediate delivery would have been permitted where the purchaser provided proof that he had purchased another handgun within the previous twelve months in compliance with the fourteen-day waiting period.

By a vote of 11 to 3, the Committee declined to adopt a similar amendment offered by Senator Kennedy to S. 914. That amendment would have added a new Paragraph (6) to 18 U.S.C. 922(b) to prohibit licensees from selling handguns unless (1) the purchaser provided the licensee with a sworn statement like the one currently prescribed in 18 U.S.C. 922(c)(1); (2) the licensee forwarded that statement and a description of the handgun to the chief law enforcement officer in the purchaser's place of residence; and (3) the licensee delayed delivery for at least fourteen days after receiving evidence of receipt by such law enforcement officer. The latter requirement would not apply in the case of notice from the law enforcement officer that immediate danger necessitated immediate delivery of the handgun.

As the Administration arged,[26] the question of whether a waiting period should be imposed in connection with the purchase of firearms is a matter of decision for the states. The burden of a waiting period should not be imposed on legitimate sportmen and persons concerned with self-defense in light of the fact that guns used by criminals can be obtained through illegal channels.[27] In addition, most crimes are committed late at night when firearms generally cannot be procured from licensees. Finally, studies do not consistently and conclusively demonstrate that state- and locally imposed waiting periods have been effective in reducing crime.

Paragraph (5) of the Committee amendment expands 18 U.S.C. 922(d), which prohibits sales or dispositions of firearms or ammunition by licensees to those commonly referred to as "prohibited persons," to include sales by non-licensees as well. In the Committee's judgment, legitimate law enforcement interests will be substantially furthered by Federal penalties for such sales where the seller knows or has reasonable cause to believe that the purchaser is a prohibited person and willfully engages in the proscribed conduct.

Paragraphs (5), (6), and (7) of Section 102 are designed to provide consistency in the lists of persons prohibited from possessing, receiving and transporting firearms and ammunition under current law. Existing law is deficient in that 18 U.S.C. 922 (d), (g) and (h) list four classes of persons forbidden firearms receipt, shipment, and transportation, while 18 U.S.C. app. 1202 defines five classes—only two of which resemble the categories contained in Section 922. Thus, for instance, fugitives from justice and users of certain drugs are forbidden firearms receipt, but not firearm possession.

S. 914 replaces these inconsistent rules with a straightforward and consistent one. As amended by the Committee, the affected subsections of 18 U.S.C. 922 would prohibit firearm and ammunition possession, receipt or transportation, in commerce, by convicted felons, fugitives from justice, users of certain drugs, persons subject to an adjudication as a mental defective or a commitment order, illegal aliens, those who have received a dishonorable discharge, and those who have renounced their citizenship. Furthermore, 18 U.S.C. app. 1202 would be repealed under Section 201 of the bill.

Paragraph (7) of Section 102 also amends 18 U.S.C. 922(h) to impose a prohibition on shipping, transporting, possessing or receiving firearms in commerce while knowingly in the course of employment by any prohibited person. For purposes of this Subsection, a "prohibited person" would not include one under indictment for a felony. Finally, Paragraph (8) of Section 102 adds a new 18 U.S.C. 922(n) retaining the current ban on firearm receipt and shipment by one under indictment for a felony.

Section 103 makes several changes in 18 U.S.C. 923, which relates to the issuance of Federal firearms licenses and duties of licensees.

Paragraph (1)(A) exempts from Federal licensing requirements imposed by 18 U.S.C. 923(a) persons who are engaged in the business of dealing in ammunition only. As stated earlier, the Commit-

---

[26] Id. at 14.
[27] Id. at 91-93 (testimony of Senator McClure).

tee determined that such licensing was not necessary to facilitate legitimate Federal law enforcement interests. Conforming changes relating to deregulation of ammunition-only sales are made throughout Section 923 by the Committee amendment.

Paragraph (1)(A) also specifies that information required by the Secretary of the Treasury in connection with a license application is limited to that "necessary to determine eligibility for licensing." This is designed to avoid informational burdens on licensees which are not needed for legitimate law enforçement purposes. A similar limitation appears in Paragraph (2) with respect to information required to be supplied by licensed collectors under 18 U.S.C. 923(b).

Paragraph (3) of Section 103 adds two provisos to 18 U.S.C. 923(c), which permits Federal licensees to transport, ship and receive firearms and ammunition in interstate or foreign commerce. The effect is to clearly authorize licensees to maintain private firearms collections which are completely independent of their business operations. Existing requirements that licensees maintain inventory and disposition records on the business premises, and records on firearms sold, have led to a construction that all sales by a licensee, even of firearms from his own collection, kept at his home, and never part of the business inventory, must be recorded.[28] The Committee has heard testimony from one licensee who, on the one hand, was told by Federal agents that sales from his personal collection did not have to be recorded, and on the other hand, was arrested and convicted for failure to record such sales. The Committee has also received evidence that the enforcing agency itself vacillated on the question of whether and how much sales must be recorded.[29] The need for a concise, clear standard is evident.

Section 103(3) of S. 914, as reported, sets such a standard. It amends 18 U.S.C. 923(c) to clarify that a licensee is permitted to maintain and dispose of a private firearms collection on equal terms with a private, non-licensed person. S. 914, as reported, also incorporates two restrictions on his right. First, if the licensee transfers firearms from his inventory into his collection, they are deemed to remain part of the inventory for one year after the transfer, and are subject to all recording requirements if sold during that period. The licenssee would be required to re-transfer any such firearms into his inventory, then transfer them at his premises with approriate recording. A second restriction would deem the firearm part of the licensee's business inventory if he made the transfer or any acquisition with the intent of willfully evading his duties as a licensee—with primary intent to make improper transfers later, rather than to promote his collection. These limitations will prevent a licensee from acquiring or transferring firearms into his personal collection in order to evade his duties as a license.

At the suggestion of the Administration, in the modified Hatch substitute, evasive acquisitions, as well as dispositions, would result in the firearms being deemed part of the business inventory. This change was made in order to ensure that circuitous transfers are not exempt from otherwise applicable licensee requirements.

---

[28] See, e.g., *U.S.* v. *Scherer*, 523 F. 2d 371 (7th Cir. 1975), cert. denied, 424 U.S. 911 (1976).
[29] See, S. 1030 report, supra note 4, at 20, citing S. 1030 hearings, supra note 7.

Paragraph (4) of Section 103 amends 18 U.S.C. 923(e) to provide that the Secretary may revoke a license only for "willful" violations of Chapter 44 or any regulation prescribed by the Secretary thereunder. The purpose of this change is to ensure that licenses are not revoked for inadvertent errors or technical mistakes. Furthermore, it codifies current case law by requiring "willful" violations of Chapter 44 as a ground for license revocation, just as a "willful" violation of Chapter 44 would preclude mandatory issuance of a license under 18 U.S.C. 923(d)(1) (C) and (D).[30]

Paragraph (5) of Section 103 amends in two respects 18 U.S.C. 923(f), which sets out license denial and revocation procedures. First, it expressly provides that judicial review by the Federal district court shall be "de novo," and emphasizes that the court may consider any evidence submitted by the parties to the judicial review proceeding, whether or not that evidence was considered in any administrative hearing held under 18 U.S.C. 923(f)(2).

These changes address decisions by some courts which have construed existing law to authorize avoiding a formal fact-finding hearing unless "substantial doubt" as to the factual findings of the Secretary is apparent.[31] The Committee's amendment is intended to encourage de novo judicial hearings under 18 U.S.C. 923(f).

A second change, which adds a new Paragraph (4) to 18 U.S.C. 923(f), bars license revocation based on charges of which the licensee has been vindicated in a criminal action. The purpose is to eliminate the situation, documented in hearings before the Committee, where a license was acquitted of charges, then revocation proceedings were subsequently instituted. This situation had the result of burdening an affected licensee with additional costs of legal defense, despite his initial vindication. Thus, in cases where a defendant has been acquitted of criminal charges, or where charges are terminated (except upon motion by the government prior to trial), proposed 18 U.S.C. 923(f)(4) would prohibit the Secretary from denying or revoking a license where his action is based in whole or in part on facts which formed the basis of the criminal charges. In no event may any such revocation proceeding be instituted by the Secretary more than one year after the filing of an indictment or information.

To ensure that the prosecuting agency has needed flexibility to drop criminal charges and proceed with revocation where its evidence proves insufficient for the former, but sufficient for the latter, the government is permitted to terminate criminal proceedings voluntarily prior to trial and still proceed civilly. Furthermore, this Section is not meant to preclude license revocation or denial where the acquittal relates to transactions or activities which are different from those involved in the license revocation proceedings.

---

[30] See, e.g., *Rich* v. *U.S.*, 383 F. Supp, 797, (S.D. Ohio, 1974) (". . . [R]evocation [for error, inadvertence, or simple ignorance of regulation] then becomes an exercise in futility if thereafter the Secretary by the plain language of Subsection 923(d) must reissue the license absent a showing of willful violation. It cannot be that Congress intended this formalistic paradox."); *Shyda* v. *Director, BATF*, 448 F. Supp. 409 (M.D. Pa. 1977); *Mayesh* v. *Schultz*, 58 F.R.D. 537 (S.D. Ill. 1973).

[31] See, e.g., *Perri* v. *Dept. of Treasury*, 637 F.2d 1332 (9th Cir. 1981); *Cucchiara* v. *Secretary*, 652 F.2d 28 (9th Cir. 1981).

18 U.S.C. 923(g), relating to recordkeeping and administrative searches of licensee premises, is amended by Paragraph (6) of Section 103 of the bill reported by the Committee to grant licensees protection against warrantless or unreasonable searches and seizures. Under current law, all licensees are required to maintain with respect to their activities such records as the Secretary may prescribe in regulations. Records must be made available for inspection at "all reasonable times" and licensees must submit to the Secretary any reports required by regulations. Agents of the Secretary are authorized to enter the licensee's business premises during business hours to inspect required records and inventory.

As reported by the Committee, S. 914 amends 18 U.S.C. 923(g) to distinguish between licensed collectors and other licensees, since the need for recordkeeping and inspections differs with respect to each. Under proposed Section 923(g)(1), licensed dealers, importers, and manufacturers continue to be required to maintain records pursuant to regulations prescribed by the Secretary. Such licensees are only required to report to the Secretary concerning such records where explicitly required by S. 914. This would include, for instance, multiple sales reports and certain informational reports used in connection with tracing.[32]

With respect to records and inventory inspections, proposed Section 923(g)(1) would permit enforcing agents to enter the premises of any licensee during business hours for such examination. This power is subject to two limitations. First, there must be reasonable cause, not necessarily probable cause, to believe a violation of law has occurred and that evidence of the violation may be found on the premises. Second, this reasonable cause must be demonstrated before a Federal magistrate and a warrant must be obtained. The warrant requirement serves to protect against unreasonable exercises of power and to limit the scope of the intrusion. Furthermore, the record created by the application and affidavit will provide a basis upon which to judge the propriety of such actions.

Section 923(g)(1), as amended by the Committee, creates exceptions to the requirements of establishing reasonable cause and obtaining a warrant, where any of three circumstances exists. An exception is granted, first, with respect to investigators where the intrusion is a reasonable inquiry during the course of a criminal investigation of persons other than the licensee himself. Such inquiries may occur before there is reasonable cause to believe that any particular person committed an offense. To require proof of such violation might unduly hinder legitimate law inforcement. Second, an exception is granted for annual inspections, which are frequently routine or "courtesy inspections," the purpose of which is not investigation, but assistance to the licensee by pointing out minor recordkeeping errors. These may be made not more often than once a year, upon reasonable notice, and may not be the basis of a prosecution except for willful violations of recordkeeping requirements and sales to prohibited purchasers. Finally, an exception is granted for inquiries directed at determining the disposition of a particular firearm or firearms in the course of a bona fide criminal investigation.

---

[32] See, e.g., proposed 18 U.S.C. 923(g) (4) and (5), discussed in more detail infra.

S. 1030 would have removed virtually all recordkeeping inspection requirements with respect to licensed collectors. On the recommendation of the Administration,[33] limited requirements were retained to preserve an appropriate balance between legitmate law enforcement interests and the need to minimize any potential for unnecessary governmental intrusion into the activities of licensed collectors. Although the Committee is not aware of substantial problems which have arisen with respect to licensed collectors, minimal inspection requirements were preserved to ensure that no incentive for unlawful activity would be created.

Under the Committee's amendment to 18 U.S.C. 923(g)(1), the Secretary would be permitted to inspect the inventory and records of licensed collectors without reasonable cause of warrant (1) not more than once annually, with reasonable notice, or (2) when necessary for tracing firearms in the course of a bona fide criminal investigation. Criminal charges based on the first type of inspection are limited to those involving willful recordkeeping violations or sales or other dispositions of firearms to prohibited persons. In light of the special needs of collectors, whose "business premises" are more often than not their homes or appurtenances thereto, the proposed amendment to Section 923(g)(1) authorizes, at the election of the licensed collector, the performance of permitted annual inspections of records and inventory at the BATF office designated by the Secretary which is closest to the collector's premises.[34] The collector will thus be afforded an opportunity to avoid any unwanted government entrance into his home. Of course, if he chooses not to avail himself of that opportunity, the inspection may be performed at his "business premises."

Proposed Section 923(g)(2) sets out the records requirements with respect to licensed collectors. Reports to the Secretary concerning such records cannot be mandated, unless explicitly required by S. 914.

Whatever the basis of any inspection or investigation of licensees under proposed 18 U.S.C. 923(g)(1), the enforcing agency is authorized to physically seize only records which are material to a violation of law. Copies of these must be provided to the licensee within a reasonable time. The Secretary is authorized to share with Federal, state, and local law enforcement agencies information obtained under Chapter 44 which relates to the identification of prohibited persons who have purchased or received firearms or ammunition, and a description of items purchased. He may provide information contained in records maintained under Chapter 44 when requested by any such agency.

Paragraph (6) of Section 103 adds three new paragraphs to proposed Section 923(g) which did not appear in S. 1030. As amended by the Committee, 18 U.S.C. 923(g)(3)(A) would require records maintained by a licensee who has discontinued his business to be delivered within 30 days to the joint custody of the Administrator of General Services and the Secretary. Those records will be stored in a records center operated by the GSA. The Administrator and

[33] S. 914 hearings, supra note 9, at 17, 36-37.

[34] Of course, any transporting of inventory to the Secretary's designated office would have to comply with applicable Federal, State, and local law.

the Secretary may arrange for delivery of such records to a state or local authority where required under state or local law.

Proposes Section 923(g)(3)(A) replaces existing Treasury Department regulations pursuant to which the Secretary of the Treasury may retain "out of business" records indefinitely.[35] The requirement that such records be jointly held by the Secretary and the Administrator is intended to reassure law-abidding gun owners that such records will not become part of a centralized record system or system of registration. Furthermore, under proposed Section 923(g)(3)(B), the Secretary's access to records is limited to access needed for tracing firearms used in criminal offenses, organizing and preserving such records, and testifying in court or administrative proceeidngs. The Secretary may remove records for the latter purpose only. Again, these limitations are intended to facilitate bona fide law enforcement needs, while removing any potential for abuse, although the Committee has received no testimony at its hearings of any specific instances where "out-of-business" records have been misused.

Under proposed Section 923(g)(3)(C), the Administrator of General Services is authorized to promulgate "housekeeping" regulations, except insofar as any such regulation might restrict the Secretary's access or removal authority under proposed Section 923(g)(3).

Finally, under proposed Section 923(g)(3)(D), notwithstanding any other provision of law, the Administrator of General Services is required to dispose of stored out-of-business records kept by licensed dealers and collectors, and disposition records maintained by manufacturers and importers, twenty years after receipt. This requirement is patterned after regulations recently proposed by the Department of the Treasury [36] and is designed to preserve only records legitimately needed for law enforcement purposes.

Proposed Section 923(g)(4) is based on existing Treasury regulations [37] describing activities which facilitate the Secretary's ability to trace the disposition of firearms in connection with criminal investigations. When required by a letter from the Secretary, the licensee must submit all record information required under Chapter 44 for specified periods of time. Alternate reporting methods may be accepted under certain circumstances. However, a warrant may not issue, nor may criminal charges be brought against a licensee based solely on information obtained in connection with a request authorized under Paragraph (g)(4). This provision only precludes warrants and charges based solely on information contained in such a report. Warrants and charges based on other information, in addition to that in the report, would not be prohibited. Furthermore, information developed on the basis of report information would not be excludable under any "fruit-of-the-poisonous-tree" theory.

---

[35] 27 CFR 178.127 (1983).

[36] 49 Fed. Reg. 5628 (1984) (to be codified at 27 C.F.R. pt. 178) (proposed February 14, 1984) (hereinafter cited as Proposed Treasury Regulations). After December 15, 1988, the proposed regulations would permit licensed dealers and collectors to dispose of records, and licensed importers and manufacturers to dispose of disposition records, if such records are over 20 years of age or relate to transactions prior to December 16, 1968. Licensed importers and manufacturers would be required to retain acquisition records permanently.

[37] 27 CFR 178.126 (1983).

The purpose of Paragraph (4) is to clarify and ensure the Secretary's authority to conduct legitimate tracing activities in connection with bona fide criminal investigations. The authority granted to the Secretary under this Paragraph is intended to provide access to all information legitimately needed in sensitive criminal investigations, such as the investigation of President Reagan's attempted assassination. However, because of the breadth of the authority granted, limitations on the use of such information, which do not exist under current regulations, were included to restrict any potential for the abuse of the rights of law-abiding licensees.

Paragraph (6) of Section 103 of the bill reported by the Committee also adds a new Section 923(g)(5) to Title 18 of the United States Code, which essentially codifies existing Treasury Department regulations requiring licensees to prepare reports relating to "multiple sales," i.e., sales of two or more pistols and/or revolvers to a non-licensee which take place simultaneously or over the course of five consecutive business days.[38] Such reports must be forwarded to the Secretary by the close of business on the date that the multiple sale or disposition occurred. It is the intent of the Committee that these reports will be kept by the Secretary in a non-centralized fashion during the first ten years after receipt.

Section 923(g)(5), as reported by the Committee, differs from existing regulations in one significant respect. It requires the Secretary to deliver such reports, ten years after receipt, to the joint custody of the Administrator of General Services and himself to be stored and maintained pursuant to proposed 18 U.S.C. 923(g)(3) (B) and (C), as discussed in more detail above. Such records are to be disposed of ten years after receipt into the joint custody of the Secretary and the Administrator. Again, these time limitations are patterned after recently proposed Treasury Department regulations.[39]

The multiple sales, out-of-business records, and tracing provisions, which, in certain respects, codify existing regulations, were included in the Committee amendment to achieve an appropriate balance between legitimate law enforcement needs and the Committee's determination to substantially restrict the circumstances under which inspections are authorized. This, in turn, reduces the potential for unwarranted intrusions into the business affairs of law-abiding licensees. However, the Committee wishes to emphasize that, notwithstanding any other provision of law, the authority granted under 18 U.S.C. 923(g) (3), (4) and (5), as well as that contained in paragraph (1), as amended, are not to be construed to authorize the United States or any state or political subdivision thereof, to use the information obtained from any records or forms which are required to be maintained for inspection or submission by licensees under Chapter 44 to establish any system of registration of firearms, firearms owners, or firearms transactions or dispositions.

Paragraph (7) of Section 103 of the bill is a change from the bill reported in the 97th Congress. As recommended by the Administra-

[38] 27 CFR 178.126a (1983). The committee intends the provisions of proposed 18 U.S.C. 923(g)(5) to apply to cases illustrated in these existing regulations.

[39] Proposed Treasury Regulations, supra note 36.

tion,[40] it would amend 18 U.S.C. 923(j) to permit licensed importers, manufacturers and dealers to conduct business at gun shows for the first time since the Gun Control Act of 1968 was enacted. Under current law,[41] a licensee may not conduct business at any location other than the one specified on his license, i.e., his business premises. This precludes all temporary locations, such as organized gun shows. By contrast, non-licensees, who are not engaged in the business of dealing in firearms, may sell firearms at such gun shows. This situation is unfair to Federally licensed dealers.

To remedy this incongruity, the bill reported by the Committee would permit licensed importers, manufacturers and dealers to conduct business temporarily at locations other than that specified in their licenses, within the same state, pursuant to regulations issued by the Secretary of the Treasury. The licensee would be generally subject to the same legal requirements to which he would be subjected at his business premises, including, in particular, record-keeping requirements. However, for example, the licensee, under this provision, could not be required to produce for inspection at his temporary location records relating to sales at his regular place of business which are required to be kept there.

"Temporary location" for purposes of the proposed subsection is essentially intended to cover legitimate, organized gun shows. For purposes of clarity, proposed 18 U.S.C. 923(j) specifically excludes any business conducted in or from a motorized or towed vehicle. Under no circumstances could this provision be construed to authorize the business sale of firearms by a Federal licensee out of the trunk of a car.

While 18 U.S.C. 923(j), as amended by the Committee, would remove a significant and unnecessary burden on Federal licensees, to ensure that the new provision achieves that purpose, it includes two limitations. First, the Subsection is not to be construed to authorize inspections at temporary locations of records and inventory other than those which are directly related to transactions made at the temporary location within the period of time during which such business was conducted. This will ensure that dealer participation in gun shows does not give rise to any inspections not in keeping with the purposes of S. 914. Second, the provision explicitly states what would otherwise be the case—that the Subsection is not to be construed to diminish in any manner any right to display, sell or otherwise dispose of firearms or ammunition in effect prior to the effective date of the Subsection. This would include, for instance, existing rights of non-licensees to transact exchanges at gun shows.

Section 104 of the bill as reported by the Committee contains amendments to Section 924 of Title 18, which imposes criminal penalties for violations of Chapter 44.

Paragraph (1) of Section 104 makes a major change in 18 U.S.C. 924(a) by requiring for the first time the proof of criminal states of mind with respect to all of the activities proscribed in Chapter 44. Under existing law, the maximum penalties for violating any provision of Chapter 44 or for knowingly making any false statement

---

[40] S. 914 hearings, supra note 9, at 12, 16, 37.
[41] 18 U.S.C. 923 (a), (d)(1)(E), (g), (h); Rev. Rul. 59, 1969-1 C.B. 360.

with respect to information required to be kept in licensee records or supplied in connection with license, exemption or relief from disability applications are a $5,000 fine and/or five years of imprisonment. In short, all violations constitute felonies. While some activities proscribed in Chapter 44 contains a criminal state of mind,[42] many do not.[43] As a result, persons can be subject to prosecution and harsh penalties for what are essentially technical violations of a regulatory scheme. In addition, even where states of mind have been spelled out in Title 18, certain court decisions have created the need for Congress to clarify what type of intent should trigger criminal penalties.

As introduced, S. 914 would have required the prosecution to prove beyond a reasonable doubt that any offense under Chapter 44 had been committed "willfully." The purpose of that change was to avoid prosecutions in cases where, for instance, a licensee carelessly committed a technical recordkeeping violation or other minor, inadvertent infraction. However, the Committee was receptive to concerns expressed by the Administration [44] that requiring a "willful" state of mind in some instances could pose legitimate law enforcement problems.

For this reason, the Committee amendment specifies a "knowing" state of mind with respect to offenses that involve the greatest moral turpitude and danger from a justified law enforcement standpoint. Thus, proposed Sections 924(a) (1) through (4) provide for criminal penalties where the offender knowingly commits specified offenses. Otherwise, under proposed 18 U.S.C. 924(a)(5), a "willful" state of mind is applicable. For purposes of 18 U.S.C. 924(a), the Committee intends "willful" conduct to cover situations where the offender has actual cognizance of all facts necessary to constitute the offense, but not necessarily knowledge of the law.

18 U.S.C. 924(a)(1), as reported by the Committee, would essentially retain existing provisions in Section 924(a) with respect to false statements. Proposed Paragraph (2) would apply the knowing state of mind to 18 U.S.C. 922(a)(4) (unauthorized transportation of destructive devices and other similar items by non-licensees), 18 U.S.C. 922(a)(6) (false statement to licensee in connection with firearm acquisition), 18 U.S.C. 922(f) (unlawful transportation of firearms by common carriers), 18 U.S.C. 922(g) (shipment, possession or receipt of firearms by prohibited persons), 18 U.S.C. 922(h) (shipment, possession or receipt of firearms by employee of prohibited person), 18 U.S.C. 922(i) (shipment of stolen firearms), 18 U.S.C. 922(j) (receipt or disposition of stolen firearms), and 18 U.S.C. 922(k) (shipment or receipt of firearms with altered serial numbers). Paragraph (3) would require a "knowing" state of mind with respect to the portion of 18 U.S.C. 922(l) which relates to unlawful importa-

---

[42] See, e.g., 18 U.S.C. 922(a)(5) (Sale by nonlicensee to person whom he "knows or has reasonable cause to believe" is a nonresident); 18 U.S.C. 922(a)(6) (knowingly making false statement to licensee in acquiring firearm); 18 U.S.C. 922(b)(1) (sale by licensee to purchaser he "knows or has reasonable cause to believe" is under age); 18 U.S.C. 922(d) (sale by licensee "knowing or having reasonable cause to believe" purchaser is a prohibited person); 18 U.S.C. 922(i) (shipment of firearm "knowing or having reasonable cause to believe" it was stolen).

[43] See, e.g., 18 U.S.C. 922(a)(1) (engaging in a firearms-related business without a license); 18 U.S.C. 922(a)(2) (licensee shipments to nonlicensee); 18 U.S.C. 922(g) (shipment of firearm by prohibited person); 18 U.S.C. 922(h) (receipt of firearm by prohibited person).

[44] S. 914 hearings, supra note 9 at 22, 38.

tion of firearms. Receipt of such firearms would require a "willful" state of mind under proposed 18 U.S.C. 924(a)(5). Finally, proposed 18 U.S.C. 924(a)(4) would require a knowing state of mind with respect to offenses contained in Section 924, i.e., shipment or receipt of a firearm with intent to commit an offense or knowledge that one will be committed under 18 U.S.C. 924(b), and use of a firearm to commit a felony under 18 U.S.C. 924(c).

The willfull state of mind applies to all other offenses. These were determined to be generally more regulatory in nature, and warranted a higher state of mind to avoid the application of criminal penalties in inappropriate circumstances. These include purely recordkeeping offenses[45] and others which, from a legitimate law enforcement standpoint, do not require less demanding state of mind requirements.[46]

As reported by the Committee, 18 U.S.C. 924(a) would preclude the prosecution of any person under that Subsection where his conduct involved "simple carelessness." The purpose of this change is to address certain court cases which might give aid and comfort to an interpretation that some conduct which involves a purely subjective state of mind, rather than truly criminal activity, could give rise to prosecution. The change made by the amendment adopted by the Committee is designed to preclude the imposition of penalties in situations which involve simple carelessness, as opposed to any criminal intent. To the extent that they imply otherwise, this language is intended to set aside *United States* v. *Graves,* 394 F.Supp. 429 (W.D.Pa.1975), aff'd, 554 F.2d 65 (3rd Cir. 1977), *United States* v. *Thomas,* 484 F.2d 909 (6th Cir. 1973), cert. denied, 414 U.S. 912 (1973), and any potential application of *United States* v. *Werner,* 160 F.2d 438 (1947), to Chapter 44 offenses.

Paragraph (2) of Section 104 of S. 914, as reported by the Committee, amends 18 U.S.C. 924(c), which established additional penalties for the use of a firearm during the commission of a Federal crime of violence and for carrying a firearm in furtherance of a Federal crime of violence. These changes are intended to increase the penalties for criminal misuse of firearms significantly by making such penalties mandatory at a level above the minimum authorized under current law. Existing law imposes additional penalties, but does not rule out probation except upon a second conviction, and fails to rule out parole or furlough releases even for repeat offenders.

In additional to these problems, certain Supreme Court decisions have negated the Section's use in cases involving statutes which have their own enhanced, but not mandatory, punishment provi-

---

[45] 18 U.S.C. 922(b)(5).

[46] 18 U.S.C. 922(a)(1) (engaging in the business without license); 18 U.S.C. 922(a)(2) (certain shipments by licensees to nonlicensees); 18 U.S.C. 922(a)(3) (receipt or transportation by nonlicensee of firearm from another State); 18 U.S.C. 922(a)(5) (transfer of firearm by nonlicensee to nonresident); 18 U.S.C. 922(b) (licensee sales to juveniles, persons whose State law prohibits such purchase, certain nonresidents; licensee sales of machineguns and destructive devices; licensee sales without required recordkeeping); 18 U.S.C. 922(c) (sales to buyers who do not appear in person); 18 U.S.C. 922(d) (licensee sales to prohibited persons); 18 U.S.C. 922(e) (arranging common carrier transportation to nonlicensees without notice to carrier); 18 U.S.C. 922(l) (only that portion relating to receipt of illegally imported firearms); 18 U.S.C. 922(m) (licensee failure to keep required records); 18 U.S.C. 922(n) (shipment or receipt of firearms by indicted person); 18 U.S.C. 923 (licensing requirements and failure to place serial numbers on imported or manufactured firearms).

sions in situations where the offense is committed with a dangerous weapon.[47] These are precisely the type of extremely dangerous offenses, such as bank robbery [48] and assault on a Federal officer,[49] for which a mandatory punishment for the use of a firearm is the most appropriate. The Committee concluded that Subsection 924(c) should be completely revised to ensure that all persons who commit Federal crimes of violence involving a firearm, including those which already provide for enhanced sentences,[50] should receive a mandatory sentence, without the possibility of a probationary sentence, parole, or the sentence running concurrently with that for the underlying offense or any other crime.

Based on a suggestion by the Administration,[51] the Hatch substitute adopted by the Committee includes an amendment to Section 924(c) which, with some modifications, incorporates virtually verbatim the language from Title X, Part D, of S. 1762, the Comprehensive Crime Control Act of 1984, which passed the Senate on February 2, 1984, by a vote of 91 to 1. It also includes a refinement designed to restrict the applicability of mandatory penalties to cases where they will have the greatest deterrent effect.

As amended by S. 914, Section 924(c) provides for a mandatory, determinate sentence for a person who uses a firearm during and in relation to, or carries a firearm in furtherance of any Federal "crime of violence," including offenses which provide for enhanced punishment if committed by means of a dangerous weapon. A "crime of violence," as defined in S. 914 and in Part A of Title X of S. 1762, essentially includes any offense that is a felony and has as an element the use of physical force against person or property or that involves a substantial risk of such force in the course of the offense.

Under current law, the authorized terms of imprisonment are one to ten years for a first conviction, and two to twenty-five years for a second or subsequent conviction. In the case of a first conviction under proposed Section 924(c), the defendant would be sentenced to imprisonment for five years. For a second or subsequent conviction, he would receive a sentence of imprisonment of ten years. In either case, the defendant could not be given a suspended or probationary sentence, nor could any sentence under the revised Subsection be made to run concurrently with that for the predicate crime or any other offense. In addition, the Committee intends that the mandatory sentence under the revised Subsection 924(c) be served prior to the start of the sentence for the underlying or any other offense. For example, a person convicted of armed bank robbery in violation of 18 U.S.C. 2113 (a) and (d) and of using a firearm in its commission would have to serve five years in the case of a first conviction under the Subsection, less only "good time" credit for proper behavior in prison, before his sentence for the conviction under Section 2113 (a) and (d) could start to run. Finally, a person

---

[47] See, e.g., *Simpson* v. *U.S.*, 435 U.S. 6, 10 (1978); *Busic* v. *U.S.*, 446 U.S. 398 (1980).
[48] 18 U.S.C. 2113.
[49] 18 U.S.C. 111.
[50] These statutes include 18 U.S.C. 111, 112, 113, 2113, 2114, and 2231. Enhancement of sentences varies widely among these sections and the terms called for are generally less than the penalty under sec. 924(c).
[51] S. 914 hearings, supra note 9, at 12-13.

sentenced under the new Subsection 924(c) would not be eligible for parole.

Evidence that the defendant had a firearm in his pocket, but did not display it or refer to it, could nevertheless support a conviction for "carrying" a firearm in furtherance of the crime if from the circumstances or otherwise it could be found that the defendant intended to use the gun if a contingency arose or to make his escape.

As in the Comprehensive Crime Control Act, the requirement in present Section 924(c) that the gun be carried "unlawfully," a fact usually proven by showing that the defendant was in violation of a State or local law, has been eliminated. The "unlawfully" provision was originally added to Section 924(c) because of concern that policemen and persons licensed to carry firearms who committed Federal felonies would be subjected to additional penalities, even where the weapon played no part in the crime.[52] The Committee has concluded that persons who are licensed to carry firearms and abuse that privilege by committing a crime of violence with the weapon are as deserving of punishment as a person whose possession of the gun violates a State or local ordinance. Moreover, the requirement that the firearm's use or carrying be "in relation to" and/or "in furtherance of" the crime would preclude its application in a situation where its presence played no part in the crime.

The Committee made several significant changes in the language in Title X, Part D of the Comprehensive Crime Control Act. First, the offense relating to carrying a firearm specifies that such carrying must be "in furtherance of" the crime of violence. This would cover carrying during the actual offense and in any attempt to escape apprehension. It would not cover the situation where a firearm is carried in a pocket and never displayed or referred to in the course of a barroom fight.

The second change from the language in the Comprehensive Crime Control Act provides that no person may be sentenced under the Subsection if he establishes to the satisfaction of the court that the use of the firearm was for the purpose of protecting himself or another from the good faith perception of immediate danger.[53] However, such danger may not include any which is the direct result of the commission of, or attempt to commit a felony by the person whose protection is sought. Thus, an armed bank robber who used a firearm to protect himself from a bank security guard would not be exempt from the mandatory, additional penalties imposed under 18 U.S.C. 924(c), as amended by the Committee.

In addition to the "self-defense" requirements, the court must find that the imposition of mandatory additional penalties under this Subsection would constitute a "severe and substantial miscarriage of justice." Furthermore, the court must make written findings of fact and law with respect to the conditions required for exemption from mandatory penalties.

The purpose of the proviso is to provide the court with some discretion to restrict the imposition of mandatory, additional penalties

---

[52] See *U.S.* v. *Howard*, 504 F.2d 1281, 1285-1286 (8th Cir. 1974).

[53] This exception is not without precedent. In the Criminal Code Reform Act of 1981, the committee approved a similar provision. See S. 1630 and S. Rept. 307 at 891, 97th Cong., 1st sess. (1981).

in certain rare cases where it might prove unjust. Specifically, while a defendant may be unable to meet the burden of proof for establishing a defense of self or others with respect to the underlying crime of violence, the equities of the case may not call for the imposition of penalties other then those relating to that underlying felony. One possible instance of such a situation would be the use of excessive force in self-defense. While conviction of the underlying crime may be warranted, the defendant, unlike one who initiated force, may not be deserving of additional, mandatory penalties. In such a case, the proviso reported by the Committee would grant to the court needed discretion to weigh the equities of the situation and the public good.

Paragraph (3) of Section 104 would amend 18 U.S.C. 924(d), governing forfeiture of firearms involved in a violation of Federal law. During its hearings, the Committee has received considerable evidence of misuse of existing, overly broad powers to confiscate and forfeit firearms. Finally, the change made by the Committee in response to these particular, documented problems should not be construed as a reflection on the propriety of civil action taken by the government in other criminally related instances. For instance, in cases where a collector or dealer was alleged to have sold a small number of firearms improperly—often without illicit intent—enforcing agents confiscated entire collections or inventories. On occasion, such collections were withheld despite the owner's acquittal on all charges, or, in the absence of criminal charges, for over two years after the seizure. Owners who secured the return of such firearms often did so only at considerable legal expense to themselves. Section 104(3), in addition to other improvements discussed above, addresses these problems at several levels.

First, in cases of actual violations of Chapter 44, seizures are limited to knowing and willful violations, as those distinctions are drawn in the Committee's amendments to 18 U.S.C. 924(a). Thus, no seizures related to Chapter 44 violations are authorized where a criminal state of mind is absent. Second, under current law, seizures are authorized where the firearms are intended to be used, although not actually used, in the commission of the offense. Because of the concern that mere intent to use firearms might occasion improper seizures of an entire collection or inventory based on vague evidence of intent, S. 1030 did not authorize the seizure of firearms intended to be used in crime.[54]

The bill reported by the Committee strikes a balance between the concerns which gave rise to the latter provision in S. 1030, on one hand, and legitimate law enforcement interests, on the other. At the suggestion of the Administration, such seizures are confined to situations where the government can show intent that the firearms were to be criminally used by clear and convincing evidence.[55] This is a more difficult burden of proof than preponderance of the evidence, which applies under current law. Furthermore, the crimes with respect to which weapons are intended to be used are limited to those which are primarily non-regulatory. These are listed in proposed 18 U.S.C. 924(d)(3) as: (1) crimes of vio-

[54] *S. 1030 report*, supra note 4, at 23.
[55] S. 914 hearings, supra note 9, at 21, 39–40.

lence (as defined in proposed 18 U.S.C. 924(c)(2)); (2) offenses punishable under the Controlled Substances and the Controlled Substances Import and Export Acts; (3) offenses described in 18 U.S.C. 922(a)(1) (engaging in the business of firearms importation, manufacture or dealing without a license), 18 U.S.C. 922(a)(3) (transportation of firearms purchased outside a nonlicensee's state into his state), 18 U.S.C. 922(a)(5) (transfer of firearm by non-licensee to another residing in a different state), 18 U.S.C. 922(b)(3) (certain interstate sales by licensees to nonresidents), but only where the firearm is involved in a pattern of activities which includes an actual violation of one of those paragraphs; (4) an offense under 18 U.S.C. 922(d) (sale of firearm by licensee to prohibited person), where the illicit intent is on the part of the transferor; (5) offenses described in 18 U.S.C. 922(i) (shipment of stolen firearms), 18 U.S.C. 922(j) (receipt or disposition of stolen firearms), 18 U.S.C. 922(l) (unlawful importation of firearms and receipt thereof), 18 U.S.C. 922(n) (shipment or receipt of firearms by certain indicted persons), and 18 U.S.C. 924(b) (shipment or receipt of firearms with intent to commit offense or knowledge that offense will be committed); and (6) Federal offenses involving the exportation of firearms or ammunition. The Committee's amendment therefore generally restricts forfeiture of weapons intended to be used in offenses to clearly criminal and dangerous activities.

18 U.S.C. 924(d)(1), as amended by the Committee, also institutes several procedural safeguards against improper seizure or undue retention of seized property. Upon acquittal of the owner or possessor, or dismissal of charges against him (other than upon the Government's motion before trial), seized firearms or ammunition must be returned unless it would place the owner, possessor, or the delegates of either in violation of law. In any event, an action for forfeiture must be commenced, if at all, within 120 days of seizure. Beyond this point, the statutory authority for the Government to obtain forfeitures under Chapter 44 is lost.[56] These changes are in response to particular, documented problems in the firearms area and should not be construed as a reflection on the propriety of civil action taken by the Government in other criminally related instances, such as drug cases.

Under proposed 18 U.S.C. 924(d)(2) (A) and (B), reasonable attorney's fees may be awarded to a person where (1) such person successfully brings a suit for return of the firearms or ammunition or (2) the court finds that proceedings instituted under Chapter 44 were without foundation, or were initiated vexatiously, frivolously, or in bad faith. If an individual has in fact been deprived of his property unjustly or has been unfairly forced to defend himself, and established such in court, there is little reason to put the burden of costs upon the just claimant rather than those who have unjustly taken his possessions or forced him to defend himself in an unreasonable action.

Finally, under proposed 18 U.S.C. 924(d)(2)(C), only those firearms particularly and individually identified as used, involved in or, in certain cases, intended to be used in a violation of Chapter 44, reg-

[56] The Committee's amendment is intended to reverse current law, as interpreted by the Supreme Court in *U.S.* v. *One Assortment of 89 Firearms*, 104 S. Ct. 1099 (1984).

ulations issued thereunder, or any other Federal criminal law, may be seized or forfeited. This is intended both to prevent the issuance of general warrants, leaving it to the executing agents to decide which firearms meet the general criteria of use or involvement, and also to prevent wholesale forfeiture of collections or inventories upon a claim of general intent to use them illegally. These are protections designed to safeguard Fourth Amendment rights. Section 924(d)(2)(C) differs from the bill reported by the Senate in the 97th Congress in that it contains conforming changes to reflect those made in Section 924(d)(1), discussed in more detail above.

Section 105 of the bill reported by the Committee amends 18 U.S.C. 925(c), which prescribes certain administrative procedures peculiar to the Gun Control Act. 18 U.S.C. 925(c) presently empowers the Secretary of the Treasury to grant, upon proper application and investigation, relief from the disability to purchase or possess firearms incurred by persons convicted of a felony. This relief may be granted if it is established to the Secretary's satisfaction that (1) the circumstances surrounding the conviction and the applicant's record and reputation indicate he is unlikely to act in a manner that would endanger the public safety and (2) the granting of relief would not be contrary to the public interest. This is intended to provide a "safety valve" whereby persons whose offenses were technical and nonviolent, or who have subsequently demonstrated their trustworthiness, may obtain relief.

Present law restricts relief to a relatively narrow category of persons convicted of felonies, i.e., those who have been convicted of crimes punishable by imprisoment for a term exceeding one year, as defined in 18 U.S.C 921(a)(20), other than those involving the use of a firearm or Federal firearms offenses. This could arbitrarily exclude from relief persons who might otherwise be more trustworthy than those eligible, particularly if they have been convicted of technical or unintentional violations. Section 105(1) of the bill reported by the Committee amends 18 U.S.C. 925(c) to make any person prohibited from firearm or ammunition possession, shipment, receipt or transportation eligible to apply for relief. In light of evidence before the Committee that Gun Control Act charges have been abused in the past, with resultant convictions of persons not inclined to engage in any criminal activity, making relief available to such persons is essential. Moreover, the Committee's amendments to 18 U.S.C. 921(a)(20), described in more detail above, will also address the problems that have arisen in this regard by reducing the class of prohibited persons who might need to seek relief under this Subsection.

Under current practice, a person whose application is denied may appeal to the Federal district court under Section 702 of the Administrative Porcedure Act (5 U.S.C. 702). The court's review is limited to the BATF Director's statement of reasons for his decision. That statement need not include "detailed findings of fact," but must inform the court of the grounds of the decision and the "essential facts" on which it was based.[57] Section 105(1)(D) of the bill reported by the Committee would codify in 18 U.S.C. 925(c) a right of appeal to the district court from any denial of relief. In a

[57] *Kitchens* v. *BATF*, 535 F.2d 1197 (9th Cir. 1976).

change from existing practice, it authorizes the scope of review provided under 5 U.S.C. 706 [58] and empowers the court to consider additional evidence in making its findings were a failure to do so would result in a miscarriage of justice. In such a case, the court might in its discretion request the presence of an agent representing the Secretary, and stay the action for a suitable time to permit the Secretary to review his finding in light of the additional evidence. It would then proceed if that evidence did not alter the Secretary's determination.

Finally, Section 105(1) of the bill, as amended by the Committee, clarifies that relief will also apply to the transportation of firearms. Section 105(2) amends 18 U.S.C. 925(d), governing importation of firearms. Under that Section, the Secreatry may authorize importation of specified firearms or ammunition, including those which are generally recognized as particularly suitable for or readily adaptable to sporting purposes. The Committee amendment requires the Secretary to authorize the importation of firearms in the listed categories, with a change in Subsection (d)(3) requiring that the firearm be "suitable for or readily adaptable to sporting purposes." It is anticipated that in the vast majority of cases, this will not result in any change in current practices. Finally, the Committee amendment requires the Secretary to permit the conditional importation of firearms to determine whether importation of such firearms will be authorized under the Subsection.

Section 106 of S. 914, as reported, amends 18 U.S.C. 926, which deals with rules and regulations. Section 106 (1) redesignates existing Section 926 as Subsection (a) of that Section. Sections 106 (2) and (3) provide that the Secretary shall promulgate only such regulations as are necessary (as opposed to the redundant "reasonably necessary") to carry out the provisions of the Gun Control Act. It also specifically forbids the promulgation of any rules, after the effective date of the Act, which would (1) transfer or record records maintained under the Act at any government-owned or government-controlled facility, or (2) establish any system of firearm, firearm owner, or firearm transaction registration. A further proviso specifies that nothing in the Section can be deemed to expand or restrict the Secretary's authority to inquire into the disposition of firearms pursuant to a criminal investigation. This "tracing" authority is codified in the Committee's amendment and is discussed in more detail above.

Section 106(5) creates two new subsections in 18 U.S.C. 926. Proposed Subsection (b) would require ninety days' notice of any new regulations in an effort to codify what should constitute "reasonable notice" under current law. Proposed Subsection (c) precludes the requirement of affidavits for black powder transactions permitted under 18 U.S.C. 845(a)(5).

Section 107 of the bill reported by the Committee amends 18 U.S.C. 927 to add a provision nullifying state and local laws and regulations which have the effect of prohibiting the transportation

[58] 5 U.S.C. 706 generally authorizes the court to compel agency action "unlawfully withheld or unreasonably delayed," and to hold unlawful agency actions found to be (1) arbitrary, capricious, or otherwise not in accordance with law; (2) contrary to the Constitution or statute; or (3) unwarranted by the facts.

of a firearm or ammunition in interstate commerce through such state when the firearm is unloaded and not readily accessible. This is intended to prevent local laws, which may ban or restrict firearm ownership, possession or transportation, from being used to harass interstate commerce and travellers. It is anticipated that the firearms being transported will be made inaccessible in a way consistent with the mode of transportation—in a trunk or locked glove compartment in vehicles which have such containers, or in a case or similar receptacle in vehicles which do not.

Section 108 of the bill was added by an amendment in the nature of a substitute offered by Senator Hatch (on behalf of Senator Dole) to an amendment offered by Senator Kennedy during Committee mark-up. It amends Chapter 44 of Title 18 by adding a new Section 929 relating to the use of certain ammunition. That Section is identical to the provision in Title X, Part E of S. 1762, the Comprehensive Crime Control Act of 1984. This provision was developed in response to concerns expressed in recent years about ammunition that will penetrate the type of bullet-resistant vests commonly used by police officers and public officials.

Section 929, as reported by the Committee, would provide a mandatory term of imprisonment of at least five years for using or carrying any handgun loaded with armor-piercing ammunition during and in relation to a crime of violence, as defined in the Committee's proposed amendment to Section 924(c)(2), including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device.[59] A person sentenced under the proposed Subsection may not be given a suspended sentence or placed on probation. Moreover, he is not eligible for parole. The sentence cannot be served concurrently with any other sentence, including a sentence for the underlying crime of or for a conviction under Section 924(c) for using or carrying the firearm itself in connection with the crime of violence.

In short, the Committee intends that the mandatory punishment for the use of the armor-piercing ammunition under Section 929 be in addition to the mandatory punishment for the use or carrying of the firearm under the amended Section 924(c). Thus, a person who robbed a bank with a handgun loaded with armor-piercing ammunition would, if charged with and convicted of a violation of 18 U.S.C. 924 and 929, be sentenced to a mandatory term of at least ten years—five for carrying the firearm and at least five for the bullets—without parole eligibility, before he began to serve any sentence imposed for a conviction of the underlying bank robbery.

---

[59] The latter specification is discussed in more detail supra in connection with proposed changes to 18 U.S.C. 924(c).

A "crime of violence" is defined as it is in 18 U.S.C. 924(c), as amended by the Committee. "Armor-piercing ammunition" is defined as ammunition which, if fired from the handgun used or carried in the crime of violence, under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December, 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type II A of Standard NILECJ-STD 0101.01 as formulated by the United States Department of Justice and published in December of 1978. This is the most commonly worn type of police body armor. Handgun is defined as "any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand." Thus, the definition would not include a sawed-off rifle, but would include a pistol or revolver that had been customized by the addition of an extra-long barrel.

By a vote of 13 to 3, the Committee adopted Senator Dole's mandatory penalties amendment in the nature of a substitute to the original amendment offered by Senator Kennedy. Senator Kennedy's amendment, in addition to containing similar provisions relating to mandatory penalties, would have added Sections 922(o) and 924(e) to Title 18 to make it a Federal felony for a licensed importer, manufacturer, or dealer to import, manufacture or sell "restricted handgun bullets," i.e., those determined by the Secretary of the Treasury to be capable of penetrating body armor when fired from a handgun with a barrel length of five inches or less. The maximum penalties were ten years of imprisonment and/or $10,000.[60]

The Committee declined to adopt that approach because the definition of "restricted handgun bullet" would have criminalized the importation, manufacture, and sale of a large number of bullets currently on the market which are intended to be used for legitimate purposes and not to defeat body armor worn by law enforcement officers. These include certain popular handgun bullets which have long been widely used for legitimate sporting and recreational purposes. The Committee concluded that the most effective way to deal with the problem of armor-piercing bullets at that time would be to use stiff mandatory penalties to discourage the criminal misuse of handguns loaded with bullets which would pierce the most commonly worn type of police body armor. Since the ammunition must be used with a handgun in a crime of violence, the provision would in no way criminalize the legitimate sporting, recreational, or self-defense use of any type of handgun or ammunition. The final vote on the amendment was 14 to 1.[61]

Section 109 of the bill, as reported by the Committee, makes the effective date of the amendments made by the Act 180 days after enactment. The Committee did not include a provision recommended by the Administration which would have provided an alternate effective date with respect to the interstate sales changes made in Section 102(4)(B) of the bill.[62] The 180-day delay in the effective date will adequately fulfill the goal of the Administration's recommendation, i.e., to permit states to respond, if they so desire, to that change.

A new provision based on the suggestion of the Administration, which was not in the bill reported in the 97th Congress, requires the Secretary to publish and provide to all licensees a compilation of the state laws and local ordinances of which licensees are presumed to have knowledge under 18 U.S.C. 922(b)(3)(A), as reported by the Committee. Amendments to those laws and ordinances are

---

[60] These provisions are essentially identical to those of S. 555, 98th Cong., 1st sess. (1983).

[61] Subsequent to the Committee's consideration of this issue on Apr. 12, 1984, the Administration refined the definition of armor-piercing ammunition to ensure that conventional ammunition would not be included. Specifically, it encompassed solid projectiles or projectile cores constructed from specified metals. Certain projectiles, including those determined by the Secretary to be primarily intended for sporting purposes, were excluded.

Because of the refinement in definition, the Administration proposed, in addition to mandatory penalties for possession of such ammunition during a violent felony, restricting the importation and manufacture of armor-piercing ammunition to use by government agencies or for exportation. Furthermore, license fees would be substantially increased. On June 14, 1984, the Administration's proposal was introduced, by request, by Chairman Thurmond, Senator Biden, and 67 original cosponsors, as S. 2766. That bill was reported by the Committee on June 26, 1984.

[62] S. 914 hearings, supra note 9, at 15, 43.

required to be published in the Federal Register, revised annually, and furnished to each licensee.

The purpose of this provision is to ensure that licensees who sell to persons from out-of-state, and who are subject to a substantial, potential criminal liability under the Committee's amendment, have reliable and timely information about state and local firearms laws. The Committee envisions that the materials provided to licensees will be similar in form and substance to the compilations currently disseminated by the Bureau of Alcohol, Tobacco and Firearms.[63]

In Section 109, at the suggestions of the Administration, two additional changes were made in the effective date provisions. First, Section 109(2) states that the provisions of Section 103(5)(C) (relating to license application), Section 104(2) (relating to mandatory penalties for using a firearm to commit a felony), Section 105 (relating to relief from disabilities), and Section 107 (relating to nullification of certain state laws) will apply to cases pending on the effective date of the Act. These are changes which involve very strong public policies and should be implemented as soon as possible after enactment.

The second change contains a Congressional recommendation that, in considering applications for pardons with respect to violations which took place prior to the effective date of the Act, the President should consider (1) whether the defendant's conduct would have constituted an offense under the provisions of S. 914, and (2) the purposes and findings of the Act. The purpose of this provision is to attempt to rectify injustices of the past on a case-by-case basis.

TITLE II—AMENDMENTS TO TITLE VII OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

Section 201 of the bill repeals Title VI of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. app. 1201-1203). These provisions are merged into similar provisions in 18 U.S.C. 922 and are discussed in more detail supra.

VI. Regulatory Impact Statement

In compliance with Paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the Committee finds that the implementation of the bill, as reported, will not result in increased regulation. S. 914, as reported, will decrease regulation of law-abiding citizens who choose to own and use firearms for legitimate purposes. The Committee believes a reduction in regulation by the agencies enforcing this law of law-abiding citizens will allow the agencies to more effectively regulate violators of the firearms laws as originally intended by the Congress. The more effective enforcement of the criminal laws bearing on regulated conduct covered by this bill will have a salutary effect on Federal regulation without increasing impact of the overall regulatory scheme involved.

---

[63] Bureau of Alcohol, Tobacco and Firearms, U.S. Department of Treasury, State Laws and Published Ordinances: Firearms (1983).

VII. Cost of Legislation

In accordance with Paragraph 11(a), Rule XXVI of the Standing Rules of the Senate, the Committee offers the following report of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 21, 1984.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 914, a bill to protect firearms owners' constitutional rights, civil liberties, and right to privacy, as ordered reported by the Senate Committee on the Judiciary, May 10, 1984. We estimate that enactment of this bill would result in no significant costs to federal, state, or local governments.

S. 914 amends sections 921–928 of title 18 U.S.C. by revising the definitions of who can engage in the sale and transportation of firearms or ammunition. The bill also increases penalties, amends procedures for the seizure and forfeiture of firearms and ammunition, and voids any state law which prohibits the transportation of a firearm or ammunition in interstate commerce through the state. The amendments in the bill take effect 180 days after the enactment date of the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner,
Director.

ADDITIONAL VIEWS OF MESSRS. KENNEDY AND METZENBAUM

After six months of review and debate on S. 914 in the Judiciary Committee, this bill was reported by the Committee—but only after an amendment to maintain existing controls on the interstate sale of concealable handguns was adopted by the Committee.

We support the provisions in the bill to reduce unnecessary restrictions and regulations on the purchase and sale of rifles and shotguns for hunting and sporting purposes. But we continue to be concerned about the inadequacy of current law with respect to handgun control, and we are also concerned about the needless new loopholes that the bill opens in this area.

Handgun control is an essential part of effective law enforcement. The ready availability of lethal, concealable handguns undermines the fundamental effort to protect citizens from violent crime. Instead of weakening handgun controls, we should be working to keep handguns from falling into the wrong hands. And we can do so without jeopardizing in any way the legitimate sporting interests of our citizens or their legitimate interest in self-defense.

The toll of handgun deaths is a national disgrace. Each year, handguns are used in more than 10,000 murders in the United States and another 500,000 crimes of violence. A major study conducted by Cox News Service in 1981 found that two out of every three handguns used in murders, rapes, robberies, and muggings have a barrel length of three inches or less. These snub-nosed handguns are the overwhelming weapon of choice by street criminals and assassins.

One of the most effective ways for Congress to carry out its responsibility to protect citizens from violent criminals, killers and psychopaths is to halt the proliferation of handguns. Today, a new handgun is sold every 13 seconds somewhere in America. In a single year, 2.5 million more handguns are added to the national stockpile. By the year 2000, there will be 100 million handguns in circulation in America—enough to arm a third of our population.

We share the basic goal of the sponsors of this bill—to remove unnecessary regulatory burdens on the legitimate purchase of firearms by hunters and others for sporting purposes, and by law-abiding citizens seeking weapons for self-protection.

We should eliminate excessive red-tape and regulations affecting the sale of rifles, shotguns and sporting weapons. But we must not misuse this worthwhile goal as an excuse to weaken the law as it applies to the narrow category of handguns—especially "snubbies" and "Saturday Night Specials"—which have no legitimate sporting purpose and which are often used in crime.

We repeatedly tried to draw this distinction during the Committee's consideration of the bill; Congress can—and should—deal differently with long-guns than it does with handguns. Certainly we

should not weaken existing controls on the interstate sale of concealable handguns. We are gratified that the Committee accepted this distinction for the first time and voted to support the Kennedy proposal to maintain existing law on handguns with a barrel length of three inches or less.

But this is only a very small step in the right direction. We have a responsibility to deal more effectively with the abuse of handguns in our society. And there are reasonable steps available, through amendments to this bill on the Senate floor, if we have the will to take them. For example:

We should stop the manufacture and sale of "snubbies," since they have no legitimate sporting or other purpose; at the very least, we should close the gaping loophole in current law that prohibits the importation of fully assembled snubbies but permits the importation of snubbie parts for assembly in the United States;

We should ban "cop killer" bullets;

We should stop the sale of handguns by pawnshops; and

We should enact a reasonable waiting period for the purchase of a handgun, to permit a check of local police records to ensure that the potential purchaser meets the requirements of current law—i.e. that the handgun is not being sold to anyone in the prohibited categories of a convicted felon, a drug addict, or a person with a history of mental illness. Without such a check, the dealer must simply accept their word and, after filling out a form, hand the gun over the counter.

In addition to these points on strengthening existing law, we cannot ignore several provisions in this bill which would unnecessarily weaken existing law.

For example, this bill authorizes licensed dealers to sell at "gun shows" but as drafted the bill uses the words "temporary locations." This is so broad that it would cover far more than "bona fide" gun shows, perhaps allowing dealers to sell on street corners.

The bill also weakens current law on compliance inspections by prohibiting them unless advance warning is given to dealers. It should be possible to prevent harassment of legitimate dealers without giving up all surprise inspections, which are at the heart of so many other federal inspection laws. Why the exception on gun dealers?

This bill also amends the definition of "dealer" to provide an exemption from the Act for sales of firearms from "private collections." Again, if there are abuses in enforcement procedures in this area, a narrower remedy is appropriate that does not invite unscrupulous dealers to evade the law.

In short, we believe we can both strengthen the law and close some of the new loopholes created in this bill without infringing in the slightest upon the rights of any other citizen who wishes to purchase a handgun for sporting purposes or the purpose of self-protection.

We have made a start in the right direction by the amendment adopted in the Committee to preserve current law prohibiting the

interstate sale of concealable handguns. We hope that, when debate begins in the full Senate, we will continue that progress by enacting legislation to close the unacceptable loopholes in existing law.

SUPPLEMENTAL VIEWS OF MR. DOLE

The subject of federal gun control legislation has been one of the most chronically controversial and emotionally charged issues with which the Congress has had to wrestle in recent years. In a time of dramatically increasing crime, including crimes of violence committed with guns, repeated calls have been made for more restrictive gun control. At the same time, private ownership of firearms for lawful purposes, including sport, recreation and self-protection, has also increased dramatically. Since 1968, the last time the Federal Gun Control laws were substantially revised, at least 25 million firearms have been sold through legitimate channels of commerce. These guns have been added to those previously held in private hands. Private ownership of all firearms in this country may be somewhere between 150 to 200 million weapons.

The overwhelming majority of these firearms are lawfully owned and used. This ownership is problely unique in the world and represents a precious constitutional right. This right, however, is not unlimited. It is subject to reasonable restraint by law and regulation by the fedral government, the states and their political subdivisions. There are federal and state prohibitions on transfer, possession and use of firearms by persons such as convicted felons who have a high potential for misuse of guns. Although criminal misuse is almost statistically insignificant in contrast to lawful ownership and enjoyment of firearms, this misuse still represents one of this nation's most serious crime control problems.

It is my view that federal gun control legislation should have as its objective the achievement of the proper balance between preservation of a vital constitutional right and a reasonable exercise of police power to deter and punish criminal misuse. The federal law must be carefully crafted so as to regulate effectively lawful interstate commerce in firearms, to proscribe certain criminal misuse of those firearms and to assist state and local enforcement authorites to discharge their public safety functions.

It is with this perspective that the Senator from Kansas has approached the consideration of S. 914.

S. 914

In previous Congresses, the Senator from Kansas has been a cosponsor of Senator McClure's bill and still remains committed to the principles embodied in that bill. Upon detailed analysis of the McClure bill, however, there were some provisions which needed modification and, in some cases, there were gaps in the bill which needed to be filled. A package of amendments offered in full Committee by Senator Hatch were needed improvements which modified the McClure bill to remove unnecessary restrictions on those who were charged with enforcement of the federal gun control leg-

islation. My understanding is that the Hatch amendment resulted from a series of negotiations between the Administration and interested sporting organizations.

Other areas remained where S. 914 needed improvement to make overdue changes in the 1968 Gun Control Act. This Senator circulated amendments for comment but a consensus of those involved in the legislative process on this bill was that these amendments should be held off for consideration on the Senate floor.

With the changes that have been made by the Committee, this Senator has agreed to co-sponsor the legislation.

COLLECTORS AMENDMENT

The Gun Control Act of 1968 placed certain restrictions and prohibitions on the importation of new and used firearms which do not apply to domestic manufacture or sale of these guns. All newly made handguns of foreign origin must meet the requirements of a "factoring" system devised by the Treasury Department pursuant to the 1968 legislation. Generally speaking, easily concealable handguns cannot be imported unless they meet certain length specifications and satisfy other requirements. In addition, there are prohibitions on importation of military surplus rifles, shotguns and handguns, although these same items can be sold in the United States and are importable if they are commercial or police used or surplus guns.

This Senator has successfully offered amendments, that the Senate has passed twice on other legislation, which would allow importation of firearms having "significant value to collectors" whether new or used. The Treasury Department expressed some concern about the amendment in its original form, so recently the Committee on Finance approved a revised version which accommodated Treasury's concern. These firearms would be importable if they are on the Secretary's list of curios or relics. In the case of handguns, they must be particularly suitable for sporting purposes. This amendment is not a part of S. 914 nor has it been offered by this Senator to legislation pending in the Judiciary Committee.

AMENDMENTS TO THE NATIONAL FIREARMS ACT

A second area of concern involves Title 2 of the Gun Control Act of 1968. This legislation contained a comprehensive revision of the National Firearms Act of 1934, the so-called Machine Gun Act. This Act strictly regulates manufacture, distribution, sale, possession and ownership of automatic weapons, machine guns, sawed-off rifles and shotguns, and other destructive devices. Although a title of the Gun Control Act, the National Firearms Act is a part of the Internal Revenue Code since it provides for heavy transfer taxes on these weapons and a system of national registration on them. The 1968 amendments to the National Act were processed by the Senate Judiciary Committee with the concurrence of the Committee on Finance, which, of course, has jurisdiction over the Internal Revenue Code.

S. 914 only contains amendments to the Federal Firearms Act of 1938 (Title 1 of the Gun Control Act of 1968). It is my view that certain amendments, mostly of a technical nature, are necessary to

deal with certain problems and the administration of the National Act since it was last revised in 1968. An amendment was prepared for consideration which has the following major provisions:

(1) The 1968 Act provided for a grace period in which any person in possession of an unregistered firearm at the time of the effective date of the law, would have six months to come into compliance by registration and payment of appropriate taxes. The amendment provides for a permanent "grace" period allowing any individual to come forward so long as there was no pending federal or state criminal investigation or action at the time of registration. This is to encourage individuals who possess these dangerous weapons to come into full compliance with the law.

(2) A companion provision would be added to authorize individuals who acquire National Act weapons by reason of inheritance to register them without civil or criminal liability and without payment of further transfer taxes.

(3) The definition of destructive devices would be amended to include recent advances in the state of military weaponry including several kinds of high energy devices which are under intensive research and development by the military and others at the present time.

(4) Section 6103 of the Internal Revenue Code would be amended to exclude from the definition of "tax return information" any information required to be submitted to the Bureau of Alcohol, Tobacco, and Firearms or a successor agency under provisions of the National Firearms Act.

(5) Several changes would be made to cover weapons which can be readily converted to an automatic mode by the simple modification of or addition of a single part in addition to current requirements which include a "combination of parts" for the conversion. The change would also cover "kits" or parts to be used in the conversion as well as parts or major parts to be used in assembling silencers or mufflers for any firearm.

These changes retain the current regulatory structure of the National Firearms Act. It does not deal with sporting firearms.

The Treasury Department was asked to comment on this amendment. Its views appear on pages 62 and 63 of the October 4, 1983 Judiciary Committee hearing record. The Treasury views express a concern about the permanent amnesty provision of the amendment which would allow persons in possession of unregistered National Act weapons to register them so long as they were not under criminal investigations or indictment for violation of the National Act.

It is difficult to understand the Treasury objection to this provision. There was a six month amnesty provision as a feature of the 1968 update (not 30 days as indicated in the Treasury views). During that time, with little publicity, more than 60 thousand National Act weapons were registered. This meant that federal enforcement authorities became aware of the existence of these potentially dangerous weapons as well as the identity of their possessors. There were other provisions which dealt with the defects of the entire system on National Act registration—not just those weapons registered during the amnesty period. Subsequently, the Supreme Court upheld the validity of the 1968 amendments, including the amnesty. It seems to me that the arguments which

Treasury pose against my current amendment would also apply equally to the provisions of the existing law. The only difficulty is that the Supreme Court has already spoken on the subject and upheld the 1968 Act.

If it would remove Treasury's objection, I would be willing to modify my amendment to make a time certain for the amnesty provision—perhaps limit it to one year. It is important for those who have these dangerous weapons and who are otherwise law abiding to come forward and make their existence known to the federal authorities.

In any event, I am willing to discuss the matter with Treasury and work an accommodation. In fact, my staff and I attempted to do this last fall, but without significant results.

To facilitate Judiciary Committee consideration of S. 914, this Senator agreed not to pursue the National Act amendment in Committee. However, it may be offered when S. 914 is considered on the Senate floor.

ARMOR-PIERCING AMENDMENT

Recently, I have joined with the Administration, Chairman Thurmond, the National Rifle Association, and other members of the Judiciary Committee to reach this very important agreement on the provisions of the legislation. I have been active on this issue since 1982, when the dangers inherent in the widespread availability of armor-piercing ammunition first came to my attention. In the 97th Congress, I sponsored legislation that would have required ammunition dealers to record every sale of this ammunition. That proposal was eventually incorporated into Treasury regulations.

During Senate Judiciary Committee consideration of S. 914, I successfully offered an amendment which provides for strict minimum mandatory penalties for persons utilizing armor-piercing ammunition in the commission of federal offenses. The language of this amendment is identical to the Administration-sponsored provisions of the omnibus crime legislation (S. 1872) which passed the Senate earlier this year.

Since the Law Enforcement Assistance Administration supported the development of soft body armor for police use in 1973, more than 400 officers' lives have been saved. According to officials at the National Institute of Justice, tests have demonstrated the vulnerability of that soft-body armor to certain kinds of ammunition. Although there has been no widespread use of this ammunition by the criminal element as yet, the potential availability of the ammunition and its unregulated manufacture is an invitation for trouble. This legislation will shut the door of availability of the ammunition to the criminal element by prohibiting its importation and restricting manufacture and sale of the bullets in this country to that which is needed for legitimate law enforcement purposes.

A word of caution is in order. There are problems of definition with this ammunition. We do not want to throw the baby out with the proverbial bath water. Ammunition is in wide-spread use for long-guns that could fit within proposed definitions. We must carefully consider these potential problems and fashion appropriate solutions.

WAITING PERIOD

In the 97th Congress, during consideration of S. 1030, the Judiciary Committee adopted a compromise amendment offered by this Senator which would have required persons attempting to purchase handguns over the counter from federally licensed firearms dealers to wait 14 days after date of initial payment before the handgun can be delivered to the buyer.

The purpose of this amendment was to provide for a "cooling off period" which would act as a deterrent to individuals who, in a fit of passion, might acquire a handgun for the purpose of committing a violent crime. An opportunity would also be afforded for dealer's records to be available during the cooling off period for those enforcement authorities who are authorized by federal or state law, or local published ordinance to inspect the dealer's records to insure compliance.

The amendment was intended to complement the waiting period required in Section 922(c) of Title 18 of the United States Code. Since the enactment of the Gun Control Act of 1968, a 7-day waiting period has been required before a dealer could ship a firearm in intrastate commerce to a purchaser. However, unlike section 922(c) this amendment would not require notification of the purchaser's chief law enforcement officer.

In mail order transactions the dealer's records are not readily available or accessible to the purchaser's enforcement officials. However, in over-the-counter sales, records are available for inspection by the local chief or his representative. It would be unwise and impractical for local police departments, as a matter of Federal law, to amass files of over-the-counter transactions. When valid requirements exist for tracing of guns that have been criminally misused, the records of the retail sale are available for inspection at the dealer's place of business. To require more would mean the establishment of expensive and redundant record keeping systems by local enforcement officials.

The original amendment offered by Senator Kennedy, in addition to imposing a 21 day waiting period, would have required a name search of the criminal history records of the Federal Bureau of Investigation to determine whether the purchaser would be prohibited from purchasing, transporting, receiving or possessing firearms. This approach had substantial difficulties.

The Committee rejected the Kennedy approach and adopted my substitute.

This year, Senator Kennedy reoffered the substitute that the Committee had previously approved. However, because of continuing criticism of interested sporting groups as well as other provisions of the Hatch substitute which improve capabilities of law enforcement officials to trace the ownership chain of guns that have been criminally misused, the Committee rejected the "cooling off" amendment.

While the "cooling off" substitute is preferable to the original waiting period amendment, substantial questions remain as to the advisability of adapting an approach which would impose additional paper work burdens on dealers and purchasers as a matter of federal law. Many states now have waiting period and background

check provisions in their gun control laws. It may well be that this is sufficient.

OTHER AMENDMENTS

Several other amendments were informally circulated by my staff for possible consideration by the Judiciary Committee. This package included proposals to reinstate interstate mail-order sales subject to a cooling-off period and an affidavit, decriminalization of technical or bookkeeping offenses (rather than the downgrading from felonies to misdemeanors in S. 914) and the National Firearms Act amendment which has been described separately. In order to expedite committee consideration of S. 914, I agreed to withhold this package until the matter comes up for consideration on the Senate floor.

CONCLUSION

S. 914 is the first major revision of the Federal gun control laws since 1968. It will go a long way towards correcting defects and shortcomings of this controversial legislation. With additional amendments such as those suggested in these views, further improvements can be made in the existing law from the standpoint of law abiding gun owners, dealers and manufacturers as well as law enforcement authorities.

The Congress has a sworn duty to protect and defend the Constitution and the precious rights bestowed by it on our citizens. It also must face serious problems of violent crime and provide workable tools to enforcement authorities to deal with those who criminally misuse guns or who recklessly make it possible for others to do so. Gun control legislation is not a panacea for eliminating violent crime from our society. But it can be a significant factor to assist in prevention and control of gun crimes. The Congress must strive to achieve a balance of these vital interests.