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SUMMARY OF STATE AND FEDERAL MACHINE GUN LAWS

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You want to know how machine guns are regulated under federal and state law.

SUMMARY

Federal law strictly regulates machine guns (firearms that fire many rounds of ammunition, without manual reloading, with a single pull of the trigger).

Among other things, federal law:

1. requires all machine guns, except antique firearms, not in the U. S. government's possession to be registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF);
2. bars private individuals from transferring or acquiring machine guns except those lawfully possessed and registered before May 19, 1986;
3. requires anyone transferring or manufacturing machine guns to get prior ATF approval and register the firearms;
4. with very limited exceptions, imposes a \$ 200 excise tax whenever a machine gun is transferred;
5. bars interstate transport of machine guns without ATF approval; and
6. imposes harsh penalties for machine gun violations, including imprisonment of up to 10 years, a fine of up to \$ 250,000, or both for possessing an unregistered machine gun.

The lawful transfer of a machine gun generally requires (1) filing a transfer application with ATF, (2) paying a transfer tax, (3) getting ATF approval, and (4) registering the firearm in the transferee's name. Transferees must pass an extensive criminal background investigation and meet the criteria for possessing firearms under state and federal law. Among those ineligible are

felons and people (1) addicted to controlled substances, (2) discharged under dishonorable conditions from the U. S. Armed Forces, or (3) adjudicated mentally defective or committed to a mental institution.

Under Connecticut law, private citizens may own machine guns, provided the firearms are registered pursuant to federal law and with the Department of Public Safety (DPS). Failure to register a machine gun with DPS is presumed possession for an offensive or aggressive purpose. Possession of a machine gun for an offensive or aggressive purpose is punishable by a fine of up to \$ 1,000, imprisonment for five to 10 years, or both.

There is no age requirement for “possessing” machine guns as a class of weapons under federal or state law. Age restrictions generally apply to handguns (pistols and revolvers) and long guns (shotguns and rifles) and transfer of these firearms. Federal law prohibits federal firearms licensees from transferring handguns to people under age 21. It generally prohibits nonlicensees from transferring them to people under age 18 and prohibits such minors from possessing them. Under state law, the effective age for possessing handguns appears to be 21. With regard to long guns, minors age 12 to 16 must obtain a Department of Environmental Protection (DEP) junior firearms hunting license, which allows them to hunt with firearms under supervision. People over age 16 can get a DEP license for unsupervised firearm hunting.

FEDERAL LAW AND MACHINE GUNS

Federal law defines a machine gun as “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. ” This definition includes the frame or receiver, any part or combination of parts designed and intended, solely and exclusively, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled (26 USC § 5845(b), 27 CFR §§ 478. 11 & 479. 11). It does not include “antique firearms” (26 USC § 5845(a) & (g)).

Since 1934, Congress has strictly regulated the manufacture, transfer, and possession of machine guns. The firearms are regulated by the 1934 National Firearms Act (NFA) (26 USC § 5801 *et seq.*) and the 1968 Gun Control Act as amended by the 1986 Firearms Owners' Protection Act (18 USC § 921 *et seq.*).

The agency responsible for administering and enforcing federal firearm laws, including machine gun laws, is the Bureau of Alcohol Tobacco, Firearms and Explosives. (Until January 24, 2003, Bureau of Alcohol, Tobacco and Firearms was within the Treasury Department. The 2002 Homeland Security Act transferred it to the Justice Department and changed its name to the Bureau of Alcohol, Tobacco, Firearms and Explosives.)

National Firearms Act

With limited exceptions, the NFA imposed (1) a \$ 200 excise tax (making tax) on the manufacture of machine guns (other than by qualified manufacturers that pay a special occupational tax and on the manufacture of machine guns by or on behalf of a state or federal agency) and (2) a \$ 200 excise tax on each transfer of a machine gun (transfer tax). It also imposed a special occupational tax on people and entities engaged in the business of importing, manufacturing, and dealing machine guns (26 USC §§ 5821, 5852(b), 5853(b), 5852(c), and 5811(a), and 5801).

The NFA also required all machine guns not in the possession, or under the control, of the U. S. government to be registered with the Treasury, including those possessed by states and political subdivisions (e. g. , police departments) (28 USC § 5841).

For transfer tax purposes, a “transfer” involves “selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of” the firearm (26 USC § 5845(j)). It does not apply to (1) transfers of registered firearms between licensees (importers, manufacturers, and dealers) who have paid the special occupational tax; (2) transfers to state or federal agencies; (3) exportation of firearms (provided appropriate proof of the export is provided to ATF and documentation completed); or (4) transfer of unserviceable firearms as defined in law (26 USC §§ 5851-5854 & 27 CFR §§ 479. 88-91). ATF also does not consider any of the following activities as a transfer for tax purposes (1) possession of machine guns by employees who take custody of the firearms within the scope of their employment and for the licensee's business purposes, (2) distribution of registered firearms to lawful heirs, and (3) temporary transfers to federal firearm licensees for repair.

The registration requirement applies to manufacturers, importers, and anyone or entity transferring a machine gun. It applies when a firearm is made, transferred, or imported, and to functional and unserviceable firearms as well as curios and relics. The registration information required includes the (1) identification of the firearm, (2) registration date, and (3) identification and address of the person to whom the firearm is registered (26 USC § 5841). A registered owner who moves to a different in-state address must notify ATF of the new address.

The Firearm Owners' Protection Act

The Firearm Owners' Protection Act banned civilian transfer and possession of machine guns not in circulation before May 19, 1986. Specifically, it restricts the transfer and possession of machine guns except for:

1. “transfers to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

2. any lawful transfer or lawful possession of a machinegun that was lawfully possessed before [May 19, 1986]” (18 USC § 922(o) & 27 CFR § 478. 36).

Under ATF regulations, qualified manufacturers may make machine guns for sale to federal agencies or qualified licensees and special occupational taxpayers as “sales samples” for demonstration to prospective government customers (27 CFR § 479. 105). They may also make them for export in compliance with the Arms Export Control Act and Department of State regulations (27 CFR § 479. 105).

Procedure for Acquiring Machine Guns

An unlicensed individual may acquire machine guns, with ATF approval, from its lawful owner residing in the same state as the individual (27 CFR §§ 479. 84 & 479. 105). The transferor must file an ATF application, which must be completed by both parties to the transfer

and executed under penalties of perjury, and pay a \$ 200 transfer tax to ATF. The application must include detailed information on the firearm and the parties to the transfer (26 USC § 5812 & 27 CFR § 479. 84).

The transferee must certify on the application that he or she is not disqualified from possessing firearms on grounds specified in law. He or she must submit with the application (1) two photographs taken within the past year; (2) fingerprints; and (3) a copy of any state or local permit or license required to buy, possess, or acquire machine guns (27 CFR § 479. 85).

An appropriate law enforcement official must also certify whether he or she has any information indicating that the firearm will be used for other than lawful purposes or that possession would violate state or federal law (27 CFR § 479. 85).

Approvals and Denials. Anyone acquiring a machine gun must, as part of the registration process, pass an extensive Federal Bureau of Investigation criminal background investigation. If ATF denies an application, it must refund the tax. Gun owners must keep approved applications as evidence of registration of the firearms and make them available for inspection by ATF officers.

Eligibility Criteria for Acquiring Machine Guns

ATF cannot approve an application if the transfer, receipt, or possession of the firearm would place the transferee in violation of law. . . (27 CFR § 479. 65).

Federal Law. It is a violation of the NFA for any of the following to acquire or possess firearms, including machine guns:

1. anyone under indictment for or convicted of a felony,
2. fugitives from justice,
3. illegal aliens,
4. anyone unlawfully using or addicted to controlled substances,
5. anyone subject to a domestic violence restraining order (issued in accordance with specified terms),
6. veterans discharged under dishonorable conditions,
7. anyone who has been adjudicated mentally defective or committed to a mental institution,
8. people who have renounced their U. S. citizenship, or
9. anyone who has been convicted of misdemeanor crime of domestic violence (18 USC § 922g).

An applicant wanting to register a machine gun must certify, under penalty of perjury, on the required ATF form that he or she is not disqualified from acquiring or possessing firearms on any of these grounds.

(The NFA also contains age requirements as they pertain to firearm transfers. These and state requirements are discussed at the end of the report.)

State Law. It is a violation of state law for convicted felons and the following people to possess any firearms, including machine guns—anyone:

1. convicted of a serious juvenile offense;
2. who knows he or she is under a protective or restraining order in a case involving the use or threatened use of physical force;
3. subject to a firearm seizure order issued after notice and a hearing opportunity; or
4. prohibited under federal law from possessing or shipping firearms because he or she was adjudicated as a mental defective or committed to a mental institution, unless granted relief from this disability (CGS § 53a-217).

Machine Guns in Interstate Commerce

It is generally unlawful for anyone, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector transporting relics or curios, to transport a machine gun in interstate or foreign commerce (18 USC § 922(a)(4) and 27 CFR § 478. 28(c)). But ATF may

authorize a registered owner to transport a machine gun in interstate or foreign commerce where reasonably necessary and consistent with public safety and applicable state and local law (27 CFR § 478. 28(a)).

Violations

Under federal law, it is illegal to do any of the following with regard to machine guns:

1. engage in business as a manufacturer, importer, or dealer without registering or paying a special occupational tax;
2. make, receive, possess, transport, deliver, or transfer the firearm in violation of the NFA;
3. receive a firearm not identified by a serial number as required;
4. obliterate, remove, change, or alter the firearm's serial number; or
5. make or cause to be made any false entry on any application, return, or required record (26 USC § 5861).

The criminal penalties in the Gun Control Act include both felonies and misdemeanors. Fines and penalties for felonies are at least \$ 250,000 for individuals and \$ 500,000 for organizations. For misdemeanors, the fines are up to \$ 100,000 for individuals and \$ 200,000 for organizations (18 USC § 924). The law also provides for forfeiture of firearms and ammunition involved in NFA violations (26 USC § 5872).

A willful attempt to evade or defeat the tax is a felony punishable by up to five years in prison and a \$ 100,000 fine (\$ 500,000 for corporations) under the general tax evasion statute (26 USC § 7201). For an individual, the \$ 100,000 for tax evasion fine could be increased to \$ 250,000 (18 USC 3571(b)(3)).

STATE LAW

State law defines a machine gun as any weapon, loaded or unloaded, that shoots, is designed to shoot or can be readily restored to shoot automatically more than one projectile by a single function of the trigger without manual

reloading. This definition includes any part or combination of parts designed to assemble, or convert a weapon into, a machine gun (CGS § 53-202(a)).

With limited exceptions, the law requires anyone who owns a machine gun to register it with DPS within 24 hours of acquiring it and annually thereafter on July 1 (CGS § 53-202(g)). The registration requirement does not apply to machine guns (1) manufactured for sale or transfer to the U. S. government, states, territories, or political subdivisions or (2) rendered inoperable by welding.

Manufacturers must maintain a register of machine guns they manufacture or handle. For each firearm, the register must show the (1) model and serial number; (2) date of manufacture, sale, loan, gift, delivery, or receipt; (3) name, address, and occupation of the transferor and transferee; and (4) purpose for which it was acquired. Manufacturers must make their registers and gun stock available for inspection by law enforcement officials. Violations are punishable by a fine of up to \$ 2,000 (CGS § 53-202(f)).

There is a presumption that a machine gun is possessed for an offensive purpose if it is:

1. located on premises not owned or rented as a business or residence by the person possessing it,
2. in the possession of an unnaturalized foreign born person,
3. possessed by anyone convicted of a violent crime,
4. not registered as required, or
5. when empty or loaded projectiles are found in the immediate vicinity of the firearm (CGS § 53-202(d)).

The presence of a machine gun in a room, boat, or vehicle is presumptive evidence of possession or use of the firearm by each occupant (CGS § 53-202(e)). Using or possessing a machine gun for an offensive or aggressive purpose is punishable by a maximum \$ 1,000 fine, imprisonment for five and 10 years, or both (CGS § 53-202(c)).

The restrictions on machine guns do not apply to machine guns (1) manufactured for sale or transfer to the U. S. government, states, territories, or political subdivisions; (2) rendered inoperable by welding; or (3) acquired, transferred, possessed, and registered under the NFA (CGS § 53-202(h)).

AGE RESTRICTIONS AND FIREARM POSSESSION

There is no age requirement for “possessing” machine guns as a class of weapons under federal or state law. Age restrictions generally apply to handguns (pistols and revolvers) and long guns (shotguns and rifles) and transfer of these firearms, rather than possession.

Federal law prohibits dealers from transferring handguns to anyone under age 21. It generally prohibits nondealers from transferring them to anyone under age 18 and prohibits such minors from possessing them. Minors under age 18 may receive and possess handguns only with a parent or guardian's written permission for limited purposes (e. g. employment, ranching, farming, target practice, or hunting). Also, minors under age 18 who are members of the U. S. Armed Forces or National Guard can possess them on duty (18 USC 922x and 922b). Federal law prohibits FFLs from selling or transferring long guns to minors under age 18. But it does not address sales or transfers by nondealers or possession by minors (18 USC § 922(b) and 27 CFR § 178. 99(b)(1)).

State law does not explicitly set a minimum age for possessing firearms. But the practical effect of three laws appears to make the minimum age 21. One law (with one minor exception) prohibits transferring a handgun to anyone under age 21 (CGS § 29-34). Another prohibits anyone from acquiring a handgun without an eligibility certificate or permit (CGS § 29-36f). A third prohibits carrying a handgun without a permit (CGS § 29-35). People under age 21 cannot get the permit or certificate.

The only age related provision in state law pertaining to long guns (shotgun and rifles) allows minors age 12 to 16 to obtain a DEP junior firearms hunting license, which allows them to hunt with firearms under supervision. People over age 16 can get a DEP license for unsupervised firearm hunting (CGS § 26-27(a) and 26-38).

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