



D.C. Gun Laws and Proposed Amendments: A Comparative Analysis of S.Amdt. 575 and the District's Gun Proposals

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Summary

In the wake of the Supreme Court's decision in *District of Columbia v. Heller*, which declared three firearms provisions of the D.C. Code unconstitutional, a flurry of legislation has been introduced in Congress and the District Council. In the 110th Congress, the House of Representatives passed H.R. 6842, the Second Amendment Enforcement Act. The provisions of this particular bill have now been introduced in the 111th Congress as S.Amdt. 575 to the District of Columbia Voting Rights Act of 2009 (S. 160). The District Council has also passed its own legislation that would make permanent amendments to D.C.'s firearms control regulations. These two bills are the Firearms Control Amendment Act of 2008 (FCAA) and the Inoperable Pistol Amendment Act of 2008 (IPAA). Whereas the Senate amendment seeks to overturn or loosen many of the District's gun provisions, the District's acts would amend the D.C. Code to comply with the ruling in *Heller* as well as provide a different range of restrictions on firearms and firearm ownership. This report provides a comparative analysis of the various proposals to amend D.C. gun laws.

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Introduction

This report compares the various bills that would amend the District of Columbia's gun laws. The bills from both the Congress and the District Council seek to amend similar provisions of the D.C. Code. However, some legislation, specifically the most recent D.C. legislation, is more extensive and seeks to amend provisions of D.C. gun laws not addressed in the congressional legislation.

The four main statutes or bills at issue are: (1) federal provisions under the National Firearms Act of 1934¹ and the Gun Control Act of 1968;² (2) the D.C. Firearms Control Regulation Act of 1976, as in effect prior to the Supreme Court's decision in *District of Columbia v. Heller*; (3) S.Amdt. 575, the Second Amendment Enforcement Act, to S. 160 (the District of Columbia Voting Rights Act of 2009, and (4) the District's current legislative proposals to permanently amend its gun laws, the Firearms Control Amendment Act of 2008 (FCAA) and the Inoperable Pistol Amendment Act of 2008 (IPAA).

This report includes a comparative analysis of current D.C. law and the amendments proposed in the wake of the *Heller* decision.³ It begins with an overview of when these bills were introduced and where they stand today. It then goes into a comparison of how these bills would amend certain provisions of the D.C. Code. Lastly, there is a discussion of other amendments contained in the District's current legislation that are important to note, in addition to a brief discussion of some provisions of the D.C. Code that would remain unaffected by all of these legislative proposals.

Overview of Congressional and D.C. Legislation

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

¹ 26 U.S.C. §§ 5801 *et seq.*

² 18 U.S.C. §§ 921 *et seq.*

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

⁴ 128 S. Ct. 2783 (2008).

⁵ 478 F.3d 370 (D.C. Cir. 2007).

District's licensing requirement, making note of Heller's concession that such a requirement *would be permissible* if enforced in a manner that is not arbitrary and capricious.⁶

After the Supreme Court issued its decision in *District of Columbia v. Heller*, the D.C. Council enacted emergency legislation to temporarily amend the city's gun laws to comply with the ruling in *Heller* while considering permanent legislation. The process of enacting laws in the District of Columbia is distinctive in that bills introduced to the D.C. Council that are temporary (i.e., expire after 225 days) or permanent must be transmitted to Congress for its consideration once they gain the mayor's approval (or the Council overrides the mayor's veto). Congress then has a certain number of days to enact legislation that rejects or approves the D.C. bill; or, if the period for review passes with no action by Congress, the bill becomes D.C. law.⁷ Emergency legislation must be approved by the mayor but does not need to be submitted for congressional review to be enacted; it is effective only for 90 days unless re-enacted for another 90-day period.⁸ Thus, more often than not, the D.C. Council will enact emergency legislation while it is considering the permanent form of the legislation.⁹

Immediately after the *Heller* decision, the D.C. Council enacted the Firearms Control Emergency Amendment Act of 2008, the first of several emergency enactments. This first attempt to amend the D.C. gun provisions was met with criticism, as some felt that the changes did not comply with the decision in *Heller*.¹⁰ At the same time, perhaps in reaction to the Court's decision or the District's first attempt to temporarily amend its gun laws, H.R. 6691, the Second Amendment Enforcement Act,¹¹ was introduced in the 110th Congress by Representative Childers. This bill did not specifically address or limit itself to changes made in the Firearms Emergency Amendment Act of 2008. Instead, the proposed amendments appeared to overturn or loosen provisions of the District's existing gun laws (i.e., the D.C. Code as it was prior to any of the city's emergency regulations). The content of H.R. 6691 was subsequently adopted in the nature of a substitute into H.R. 6842, which was passed in the House of Representatives by a vote of 266-152. In the 111th Congress, Senator John Ensign introduced an amendment to S. 160, the District of Columbia Voting Rights Act of 2009, S.Amdt. 575, which also uses the language of H.R. 6842.¹²

As H.R. 6842 was being passed in September 2008, the D.C. Council then enacted its second emergency amendment act, the provisions of which differ from the first emergency act. These provisions were subsequently renewed in a third emergency act in December 2008. The language

⁶ 128 S. Ct. at 2819.

⁷ See D.C. Code § 1-206.02(c) (2009). Generally, congressional review is for 30 days unless the bill contains criminal penalties for which Congress has 60 days to review. The passage of 30 or 60 days is a lengthy process as the days counted are only when either House is in session but excluding weekends, holidays, a recess of more than 3 days or an adjournment of more than 3 days. Therefore, it can take up to 3 or 4 months after a bill gains the council or the mayor's approval for it to become a permanent law.

⁸ *Id.*

⁹ As the process for enacting temporary legislation involves congressional approval and thus takes longer to become temporary law, emergency legislation is often used as a faster method to temporarily amend laws.

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

¹¹ H.R. 6691, 110th Cong., 2d Sess. (2008).

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

contained in these second and third acts is encompassed in the District's current legislative efforts to amend its gun laws.¹³ The two bills that are currently before Congress waiting for the period of congressional review to pass are: (1) B17-0843, the Firearms Control Amendment Act of 2008 (FCAA), and (2) B17-0593, the Inoperable Pistol Amendment Act (IPAA). If enacted into law, these amendments would make permanent changes to the D.C. Code. During this interim period, the provisions in the FCAA and IPAA were enacted into law on an emergency basis on January 6, 2009, and are thus current law.¹⁴

Comparison of Proposed Amendments to D.C. Gun Laws

Overall, while the two D.C. bills would amend the District's gun laws that were at issue in the *Heller* decision, the proposed amendments made in the Firearms Control Amendment Act of 2008 (FCAA) and the Inoperable Pistol Amendment Act of 2008 (IPAA) would provide a different range of restrictions in their regulation of firearms and firearm ownership than S.Amdt. 575 (the Ensign Amendment). The Ensign Amendment would put limits on the District's ability to promulgate rules regulating firearm possession, repeal the District's registration scheme, repeal criminal provisions for carrying a pistol without a license, and loosen restrictions on the possession of ammunition. The FCAA and the IPAA, on the other hand, while ending the virtual prohibition on the registration of semiautomatic handguns, would add more requirements such as safety training classes that an applicant would have to complete in order to be eligible to register, and would require a renewal of registration every six years along with a background check. However, the bills are all similar in that they each would restore the right of self-defense in the home, amend the definition of "machine gun" so that it no longer includes semiautomatic handguns, and amend the District's trigger lock requirements so that a firearm no longer needs to be kept bound by trigger lock within the home.

Authority of D.C. to Promulgate Rules

In general, federal firearms laws establish the minimum standards in the United States with regard to firearm regulations. The states, territories and the District of Columbia may choose to supplement the federal statutes—the National Firearms Act of 1934 (NFA) and the Gun Control Act of 1968 (GCA)—with their own more restrictive firearms laws in a manner that does not run contra to the Supreme Court's decision in *District of Columbia v. Heller*.¹⁵

Under the District of Columbia Self-Government and Governmental Reorganization Act (the "Home Rule Act"),¹⁶ the District generally has authority to promulgate its own laws pursuant to

¹³ First, on July 15, 2008, the D.C. Council passed and Mayor Fenty signed into law the Firearms Control Emergency Amendment Act of 2008. Subsequently, on September 16, 2008, the D.C. Council passed and Mayor Fenty signed into law the Second Firearms Control Emergency Amendment Act of 2008. It is this second act that was subsequently renewed in December 2008 as the Second Firearms Control Congressional Review Emergency Amendment Act of 2008.

¹⁴ The emergency legislation is: (1) B17-1073, the Firearms Registration Emergency Amendment Act, and (2) B17-1074, the Inoperable Pistol Emergency Amendment Act of 2008, both of which are set to expire on April 6, 2009.

¹⁵ 18 U.S.C. § 927.

¹⁶ See *McIntosh v. Washington*, 395 A.2d 744, 746-47 (D.C. Cir. 1978).

the act's procedure. Specifically, it authorizes the council "to make ... all such usual and reasonable police regulations ... as the council may deem necessary for the regulation of firearms."¹⁷ Congress nonetheless retains the ability to legislate for the District of Columbia as it is constitutionally vested with exclusive jurisdiction over the District.¹⁸ In the Home Rule Act, Congress specifically reserved for itself "the right, at any time, to exercise its constitutional authority as legislature for the District by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council ... including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the Council."¹⁹

S.Amdt. 575 (the Ensign Amendment) would limit this general grant of authority by providing:

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

This proposed language emphasizes that the Council would not be empowered to promulgate laws relating to firearm regulation either by virtue of the authority granted under D.C. Code or any other provision of law that could otherwise be interpreted as granting similar police power.²⁰ It is unclear, however, what would constitute "a constructive prohibition or undue burden" on the ability of individuals to acquire firearms. The language would also appear to prevent the District from barring firearm possession by any persons not prohibited from possessing a firearm under current federal law and, moreover, appears to prevent the District from prohibiting the possession of any firearm that was not already prohibited or regulated under federal law. Furthermore, the language does not make clear what elements would render a law or regulation in violation of the proscription against discouraging or eliminating the private ownership or use of firearms. Despite these unknowns, it appears, at a minimum, that the D.C. Council under the Ensign Amendment would not have the authority to reestablish such requirements and limitations on firearm ownership. In addition, while the proposed amendment would not directly revoke the District's general authority to enact and enforce sanctions for the criminal misuse of firearms, it appears that the scope of this authority would be limited as well.

However, the Ensign Amendment *would not* "prohibit the District of Columbia from regulating or prohibiting the carrying of firearms by a person, either concealed or openly, other than at the person's dwelling place, place of business, or on other land possessed by the person." This language would ensure that the District would still retain the power to regulate or prohibit the

¹⁷ D.C. Code § 1-303.43.

¹⁸ U.S. Const., Art. I, § 8, cl. 17. For an analysis of Congress' authority over the District of Columbia, see Note "Democracy or Distrust? Restoring Home Rule for the District of Columbia," 111 Harv. L. Rev. 2045 (May, 1998).

¹⁹ D.C. Code § 1-206.01.

²⁰ It is worth noting that Congress could, in the future, exercise its constitutional authority as legislature for the District and repeal this proposed limitation, giving back to the Council its ability to promulgate firearms regulations should the Ensign Amendment become law.

carrying of open or concealed firearms *except* for in a person's dwelling, place of business, or other land possessed by the person.

Registration

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

The District's FCAA would allow the registration of pistols for self-defense, and because "machine gun" would conform to the federal definition, semiautomatic handguns would be registerable so long as the applicant met other requirements. (See "*Harmonizing Definitions*" below). Furthermore, the FCAA creates an exemption from the registration requirement for a person who temporarily possesses a firearm registered to another while in the home of the registrant, provided the temporary possessor is not barred from possessing a firearm and the person reasonably believes that possession is necessary for self-defense in that home. The FCAA would make several amendments to the provisions that set forth the qualification and information requirements for the registration of a firearm. For example, a person who had been convicted, five years prior to the application of a registration certificate, of an intrafamily offense, or two or more violations of the District's or any other jurisdictions' law that restrict driving under the influence of alcohol or drugs, would be prohibited from registering. Similarly, applicants who, within five years of applying, (1) have a history of violent behavior, (2) have been a respondent in either an intrafamily proceeding in which a civil protection order was issued against him or her, or (3) have been a respondent in a proceeding in which a foreign protection order was issued against him or her, would be prohibited from registering a firearm.²¹ The FCAA would also require applicants to complete a firearms training or safety course and provide an affidavit signed by the certified firearms instructor, in addition to expanding the firearm competency test.²² Additionally, the Chief of Police (Chief) would be required to have any registered pistol submitted for a ballistics identification procedure; further, the Chief would not be able to register more than one pistol per registrant during any 30-day period, except for new residents who would be able to register more than one pistol if such pistols were lawfully owned in another jurisdiction for 6 months prior to the application.

The District's existing registration scheme is all encompassing as it covers registration of the firearm, licensing of firearm owners, and permits to purchase.²³ The Ensign Amendment, however, would repeal all sections pertaining to the registration requirement.²⁴ Thus, D.C.

²¹ Post-*Heller*, courts have continued to uphold charges and convictions against persons who have been found to be in illegal possession of a firearm, generally holding that the decision in *Heller* did not make firearms restrictions on possession constitutionally suspect. See e.g., *United States v. Yancey*, No. 08-cr-103-bbc, 2008 U.S. Dist. LEXIS 77878 (W.D. Wis. October 3, 2008); *United States v. Brunson*, No. 07-4962, U.S. App. LEXIS 19456 (4th Cir. Sept. 11, 2008).

²² With respect to the firearms training/ safety course, the FCAA would require that it be for at least one hour on a firing range and at least four hours in classroom instruction. The applicant would also need to provide an affidavit signed by the certified firearms instructor attesting to the completion of the course. Additionally, the FCAA would expand the current firearm competency test to include or focus on "in particular, the safe and responsible use, handling and storage." See FCAA, Section 3(d).

²³ D.C. Code §§ 7-2502.01, 7-2502.037-2505.02(d).

²⁴ The Ensign Amendment would repeal D.C. Code §§ 7-2502.02 to 7-2502.11.

residents would no longer be required to have a registration certificate for the firearm, or as a prerequisite to purchasing a firearm, and there would be no provision for licensing of gun owners. The Ensign Amendment would also make other conforming amendments to eliminate all registration language.²⁵

Harmonizing Definitions

Prior to *Heller*, the D.C. Code's definition of "machine gun" included "any firearm, which shoots, is designed to shoot or can be readily converted to shoot ... semiautomatically, more than 12 shots without manual reloading."²⁶ By virtue of this broad definition, any semiautomatic weapon that could shoot more than 12 shots without manual reloading, whether pistol, rifle, or shotgun, was deemed a "machine gun," and thus prohibited from being registered. It appears that under the District's definition, registration of a pistol was limited to revolvers.²⁷

Under the NFA, "machine gun" is defined as:

any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled into such parts are in the possession of or under the control of a person.²⁸

The Ensign Amendment and the District's current legislation (the FCAA and IPAA) would change the District's existing definition of "machine gun" to conform to the federal definition. The FCAA would also amend its definition of "sawed-off shotgun" (also known as short barreled shotguns) to match the federal definition to mean "a shotgun having a barrel of less than 18 inches in length."

It is important to note that if both the FCAA and IPAA are enacted into law at the same time, then it is presumed that the definitions amended in the IPAA would use the amended definitions from the FCAA.²⁹ However, the Ensign Amendment provides that it would repeal the provisions of the District's FCAA and its emergency counterpart, but makes no reference to repeal of the IPAA. If such is the case that one act is repealed and not the other, then a problem may arise as to what definitions are actually amended in Title 22.

²⁵ One example of a provision that would be affected by the removal of the registration scheme is the requirement to obtain a dealer's license. Under the D.C. Code, one must be eligible to register a firearm to be eligible for a dealer's license. The Ensign Amendment would remove the "register a firearm" language and would make those who are not otherwise prohibited by federal law or district law eligible to apply for a dealer's license.

²⁶ D.C. Code § 7-2501.01(10)(B).

²⁷ Revolver is generally considered to be a pistol having a revolving cylinder with several cartridges (usually six) that may be fired in succession. In other words, a semi-automatic firearm that shot less than 12 shots without reloading would be permissible.

²⁸ 26 U.S.C. § 5845(b).

²⁹ The IPAA would make amendments to definitions included in Title 22 of the D.C. Code so that they would conform in Title 7.

Dealers of Firearms

The D.C. Code's provisions that govern who may qualify to apply for a dealer's license, who is eligible to sell and transfer firearms to a dealer, and to whom a dealer can sell are dependent upon one's ability to obtain a registration certificate.³⁰ Under the amendments proposed by the FCAA, anyone who wishes to obtain a dealer's license, or engage in purchasing or transferring a firearm would have to meet the new requirements to obtain a registration certificate in order to be eligible to engage in these activities. The FCAA would also make amendments with respect to (1) the duties of licensed dealers of firearms and (2) the revocation of a dealer's license. For example, regarding the duties of a licensed dealers, the FCAA would add on the requirement that a licensed dealer report "the loss, theft, or destruction of any firearms or ammunition in the dealer's inventory" in addition to the loss or theft of his license.³¹

Because the Ensign Amendment would repeal the District's registration scheme, it would allow any person who is not prohibited from possessing or receiving a firearm under federal or District law to qualify in applying for a dealer's license, selling or transferring ammunition or any firearm to a licensed dealer, or making such purchase from a licensed dealer of firearms.³² The federal prohibitions are discussed below.

Transfer or Sale by non-Dealers and by Licensed Dealers

The federal GCA lists nine categories of persons who are prohibited from possessing, shipping, or receiving firearms. They are: (1) persons who have been convicted of a crime punishable by imprisonment exceeding one year; (2) persons who are fugitives; (3) persons who are users of or addicted to any controlled substances; (4) persons who have been adjudicated as a mental defective or who have been committed to a mental institution; (5) persons who are unlawfully in the United States or have a nonimmigrant visa; (6) persons who have been dishonorably discharged from the Armed Forces; (7) persons who have renounced U.S. citizenship; (8) persons who are on notice of or are subject to a court order restraining them from harassing, stalking or threatening an intimate partner; and (9) persons who have been convicted in any court of a misdemeanor crime of domestic violence.³³ Among other federal regulations, it is unlawful for both licensed dealers and non-licensed persons to sell or transfer a firearm to another if he knows or has reasonable cause to believe that the purchaser falls within one of the nine categories above.³⁴

Although the Ensign Amendment would prohibit licensed dealers and non-licensed persons from making transfers to those not prohibited from receiving or possessing a firearm under federal *or D.C. law*, it would essentially prohibit transferors from selling or transferring only to those listed under federal law because the amendment removes the registration requirement and qualifications for registration that are required by the D.C. Code.³⁵

³⁰ See D.C. Code §§ 7-2504.02 (qualifications for dealer's license); 7-2505.02 (permissible sales and transfers).

³¹ See FCAA, Section 3(i)-(k).

³² See Ensign Amendment Sec3(b)(4) and (b)(9).

³³ 18 U.S.C. § 922(g).

³⁴ 18 U.S.C. § 922(a)(3), (5); § 922(d).

³⁵ Sec. 5(b)(1) would repeal D.C. Code §§ 7-2502.02 through 7-2502.11.

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

Waiting Period

Under the Brady Handgun Violence Prevention Act, which amended the GCA to establish the National Instant Criminal Background Check System (NICS), a licensed dealer is generally prohibited from transferring a firearm to any other non-licensed person without running a background check by contacting NICS.³⁶ The licensee may transfer the firearm if the system provides the licensee with a unique identification number, or if three business days have elapsed with no response from the system and the licensee has verified the identity of the transferee by examining valid identification documents that contain a photo of the transferee.³⁷ Generally, once the background check has been completed and the transferee approved, the licensee may transfer the firearm unless a state imposes a waiting period. Non-licensed persons are not required to perform a background check under federal law.

The D.C. Code imposes a waiting period of 48 hours before a seller within the District can deliver a pistol or handgun. The IPAA, however, would lengthen the waiting period for the transfer of a “firearm” from two to ten days. Firearm, as amended by the IPAA, would mean “any weapon *regardless of operability*, which will, or is designed or redesigned, made or remade, readily converted, restored or repaired or is intended to expel a projectile or projectiles by the action of an explosive” (emphasis added). Thus, the IPAA would make the new waiting period apply to all firearms, not just pistols. The Ensign Amendment would not change the waiting period.

Trigger Lock Requirement

The GCA only requires that licensed dealers sell or deliver handguns with a secure gun storage or a safety device, however there is no federal requirement on how firearms should be stored or whether trigger locks must be used at all times.

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

However, as reflected in the FCAA, the District would amend the provisions of the trigger lock requirement so that it would be the *policy* of the District that any firearm in one’s lawful possession be unloaded and either disassembled or secured by trigger lock. The FCAA, however, would prohibit a person from storing or keeping any loaded firearm on any premises under his control if “he knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the parent or guardian of the minor” unless he or she “keeps the

³⁶ 18 U.S.C. § 922(t).

³⁷ *Id.*

firearms in a securely locked box ... container ... or in a location which a reasonable person would believe to be secure” or “carries the firearm on his person or within such close proximity that he can readily retrieve and use it as if he carried it on his person.” It appears that the District wishes to maintain and encourage the practice of keeping firearms disassembled or secured by trigger lock in the home. However, as the amendment would make it policy, and not law, such a practice would be difficult to enforce. Consequently, a person would be able to maintain an assembled firearm in the home so long as a minor could not gain access to it. This section would further provide that a person in violation of these firearm storage responsibilities would be guilty of criminally negligent storage of a firearm or other criminal penalties. By contrast, the Ensign Amendment would repeal the trigger lock requirement.

Criminal Penalties for Carrying Without a License

Neither the Alcohol, Tobacco, Firearms and Explosives Bureau nor any other federal agency regulates the carrying of concealed weapons. With the exception of qualified current and retired law enforcement officers,³⁸ states may impose their own laws on carrying firearms.

Prior to *Heller*, the D.C. Code gave the Chief the discretion to issue to qualified persons a license to carry a pistol within the District for not more than one year from the date of issue.³⁹ However, because the criminal penalties imposed for carrying a pistol or other concealable weapon either openly or concealed did not make an exemption for carrying within the home, place of business, or on other land possessed by the owner, it was thus punishable by criminal penalties to carry a firearm without a license in such places.⁴⁰ The Court declared this kind of restriction unconstitutional. The D.C. Code also provided more stringent penalties for carrying a pistol without a license outside of these three locations. A “pistol” is defined as “any firearm with a barrel less than 12 inches in length.”

The *Heller* decision did not address the District’s licensing requirement to carry firearms, noting the plaintiff’s concession that such regulation would be permissible if not enforced in a manner that is not arbitrary and capricious. Accordingly, the Ensign Amendment states that “nothing in the amendment would be construed to prohibit the District from regulating or prohibiting the carrying of firearms by a person, either openly or concealed, *other than* at a person’s dwelling, place of business, or on other land possessed by the person” (emphasis added). In carving out this exception, the Ensign Amendment would amend the language so that it would remove the criminal penalties for carrying a firearm without a license in these three locations, and it would repeal the more stringent criminal penalties the District imposes for carrying without a license outside the dwelling place, place of business, or on other land possessed by the individual. However, the Ensign Amendment would retain the strict criminal penalties imposed if the person had been previously convicted of a felony in D.C. or in another jurisdiction.⁴¹ Moreover, the Ensign Amendment would expand such penalties by making them applicable to those who carry

³⁸ 18 U.S.C. § 926B; 926C.

³⁹ D.C. Code § 22-4506. Although the statutory language is unclear, annotations indicate that the Chief of Police had the discretion to issue licenses for concealed carry.

⁴⁰ D.C. Code § 22-4504.

⁴¹ D.C. Code § 22-4504(a)(2).

“firearms” and not just “pistols,” as defined above. The definition of firearms appears to encompass rifles, shotguns, and pistols.⁴²

Similar to the Ensign Amendment, the IPAA would allow a person holding a valid registration for a firearm to carry the firearm, without having to obtain a license to carry, within the individual’s home; while it is being used for lawful recreational purposes; while being kept at the registrant’s place of business; or while it is being transported for a lawful purpose as expressly authorized by statute and in accordance with the requirements of that statute. Also, like the Ensign Amendment’s extension of making the criminal penalties applicable to all “firearms,” the IPAA would prohibit a person from carrying a rifle or a shotgun within the District of Columbia except as otherwise permitted by law. Thus, unless otherwise permitted, one could face criminal penalties for carrying a pistol, shotgun, or rifle. Furthermore, the IPAA would repeal the provision that gives the Chief discretionary authority to issue licenses to carry, thus no one would be permitted to carry a pistol outside the listed exceptions. There would still be criminal penalties imposed on those who carry, either openly or concealed.

Under the IPAA, the District would also make unlawful the discharge of a firearm without a special written permit from the Chief except as permitted by law, including legitimate self-defense. It would further allow the District to prohibit or restrict the possession of firearms on its property and any property under its control, and would similarly allow private persons owning property in the District to prohibit or restrict the possession of firearms on their property, except where law enforcement personnel is concerned.

Interstate Gun Purchases by District Residents

The GCA currently establishes that it is unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any handgun or pistol to any person the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the state in which the licensee’s place of business is located. This restriction applies to in-person transactions. A licensed dealer can sell to an out-of-state purchaser by delivering the firearm to another licensee located within the purchaser’s state, thereby allowing the purchaser to pick up the firearm in his or her state of residence.⁴³

The Ensign Amendment would carve out an exception to federal law to allow federal licensees whose places of business are located in Maryland or Virginia to sell and deliver handguns to residents of the District of Columbia.

⁴² D.C. Code § 7-501.01(9).

⁴³ 18 U.S.C. § 922(b)(3). This prohibition *does not apply* “to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee’s place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States ... ,” and, further, does not “apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes.” *Id.*

Additional Amendments from the FCAA and IPAA

The District's FCAA would make other amendments to D.C.'s gun laws that are worth noting as they go beyond the provisions addressed by the Ensign Amendment. First, the FCAA would create a new definition of "assault weapon" that includes a list of specific rifles, shotguns, and pistols and their variations regardless of the manufacturer. It would also include semiautomatic rifles, pistols, and shotguns based on the presence of a single military-type characteristic.⁴⁴ The definition of "assault weapon" would also include any shotgun with a revolving cylinder, except that it would not apply to "a weapon with an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition." The Chief would also have the power to designate as an assault weapon any firearm that he or she believes would reasonably pose the same threat as those weapons enumerated in the definition. The definition of assault weapon would not include antique firearms or certain pistols sanctioned for Olympic target shooting. The FCAA would also make this new definition of "assault weapon" applicable in the Assault Weapon Manufacturing Strict Liability Act of 1990.⁴⁵ Thus, any manufacturer, importer, or dealer of a weapon deemed an "assault weapon" pursuant to the new definition could be held strictly liable in tort for all direct and consequential damage arising from bodily injury or death if either proximately results from the discharge of the assault weapon in the District of Columbia.⁴⁶

Secondly, the FCAA would add new provisions with regard to microstamping. The D.C. Code already prohibits the sale of a firearm which does not have imbedded in it an identification or serial number unique to the manufacturer or dealer of the firearm. The FCAA would add a new provision requiring that beginning January 1, 2011, "no licensee shall sell or offer for sale any semiautomatic pistol manufactured on or after January 1, 2011, that is not microstamp-ready as required by and in accordance with sec. 503."⁴⁷ The FCAA would create two new sections, 503 and 504. New section 503 sets forth requirements that would determine if a semiautomatic pistol is microstamp-ready, and it also contains provisions that would require manufacturers to provide the Chief with the make, model, and serial number of the semiautomatic pistol when presented with a code from a cartridge that was recovered as part of a legitimate law enforcement investigation. New section 504 would prohibit a pistol that is not on the California Roster of Handguns Certified for Sale (California Roster) from being manufactured, sold, given, loaned, exposed for sale, transferred, or imported into the District of Columbia as of January 1, 2009. Such a pistol would be prohibited from being owned or possessed unless it was lawfully owned and registered prior to January 1, 2009. Furthermore, if a resident of D.C. lawfully owned a pistol not on the California Roster, that individual could sell or transfer ownership only through a licensed firearms dealer; or a licensed dealer who has such a pistol in its inventory prior to January 1, 2009 would only be able to transfer it to another licensed firearms dealer. Lastly, the FCAA would require the Chief to review the California Roster at least annually for any additions or deletions, and the Chief would be authorized to revise, by rule, the roster of handguns determined not to be unsafe.

⁴⁴ E.g. Section 3(a)(1): "(IV) A semiautomatic, rifle that has the capacity to accept a detachable magazine *and any one of the following*: (aa) a pistol grip that protrudes conspicuously beneath the action of the weapon; (bb) a thumbhole stock; (cc) a folding or telescoping stock; (dd) a grenade launcher; (ee) a flash suppressor; or (ff) a forward pistol grip."

⁴⁵ D.C. Code § 72551.01 *et seq.*

⁴⁶ The provision is also applicable to "machine guns."

⁴⁷ Microstamp-ready means a semiautomatic pistol that is manufactured to produce a unique alpha-numeric or geometric code on at least 2 locations on each expended cartridge that identifies the make, model, and serial number of the pistol.

Lastly, the FCAA would also prohibit any person in the District from possessing, selling, or transferring any large capacity ammunition feeding device. The meaning of “large capacity ammunition feeding device” would include a “magazine, belt, drum, feed strip or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.” However, the term would not include “an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.” Thus, even though the District has indicated in its current legislation that it would allow people to register and possess a semiautomatic firearm, it prevents them from possessing large capacity ammunition feeding devices, which some semiautomatic firearms are capable of holding.

Unchanged Provisions of D.C. Gun Laws

No proposal would amend the District’s general prohibition of guns in any area within 1,000 feet of a public or private day care center, elementary school, vocational school, secondary school, college, junior college, or university, or any public swimming pool, playground, video arcade, or youth center.⁴⁸

No proposal would amend the District’s general prohibition on the manufacturing of firearms, destructive devices, parts thereof, or ammunition within D.C.⁴⁹ Under the D.C. Code, there is a general ban on possessing ammunition except that one may possess ammunition that matches the same gauge or caliber of his validly registered firearm.⁵⁰ Persons are permitted to use such ammunition to engage in hand loading, reloading or custom loading of his or her registered firearms. However, D.C. law prohibits persons from engaging in such kind of loading for others. While the Ensign Amendment would amend this last part to allow a person to engage in hand loading, reloading, or custom loading of lawfully possessed firearms, it is unclear whether one would still be restricted from loading ammunition for others.

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⁴⁸ D.C. Code § 22-4502.01.

⁴⁹ D.C. Code § 7-2504.01.

⁵⁰ Except that no one is permitted to possess “restricted pistol bullets,” defined in the D.C. Code as bullets “designed for use in a pistol which, when fired from a pistol with a barrel of 5 inches or less in length, is capable of penetrating commercially available body armor with a penetration resistance equal to or greater than that of 18 layers of kelvar.”