



GUN OWNERS OF MAINE

DEFENDING GUN RIGHTS

Regarding LD 677: An Act to Update the Statutory Definition of “Machine Gun” and Prohibit Possession of a Rapid-fire Device

In short, the redefinition of “machine gun” in this proposal is out of step with Federal law. This proposal would also *potentially* make many legal modifications to firearms, including but not limited to, bump stocks, binary triggers, competition triggers, and any attachment that can “materially alter” the rate of fire of a semi-automatic firearm- illegal, though the actual definition in this proposal is ill defined, stating only a ban on “rapid-fire devices”, so it is difficult to know what will actually be prohibited.

- If passed, LD 677 would redefine “Machine Gun” in Maine law in contradiction to Federal Law. “Machine Guns” are a prohibited item both in federal and state law unless an individual receives an NFA tax stamp for each “machine gun” they own. This requires additional paperwork, fees, extensive background checks, and long waiting periods for approval.
- Many of the devices outlined are used to make a firearm operate more smoothly or efficiently for both competitive and disabled shooters.
- The lack of clear definitions leaves the door wide open to banning nearly all firearm attachments. While this bill bans bump stocks, it also bans any attachment that could increase fire rate. This means something as common aftermarket hunting triggers, designed to decrease the pull needed to fire the weapon, could create a “machine gun classification.”
- Last year when this same proposal was before this same committee, SCOTUS was hearing *Cargill v. Garland* which decided the federal validity of a 2018 Federal regulation banning the “bump stock” rifle attachment. We then stated it would be wise for Maine lawmakers to wait until this case is decided before making changes to Maine law. We would now state that considering the outcome of this case, which resulted in a decision that struck down the “bump stock” ban, ruling that the ATF overstepped their bounds in trying to assert that a “bump stock” turns a semi-automatic firearm into a machine gun.

Passing this legislation would be in direct contradiction to a settled Supreme Court Ruling, and would unnecessarily change the definition of “Machine Gun” in contradiction to current Federal law. If the State would like to go down the same path it did with 72-Hour Waiting Periods and cost the taxpayers of Maine millions of dollars in litigation expenses, then by all means, proceed.

On behalf of our membership and the Gun Owners of Maine Board of Directors,

Laura Whitcomb, President
Gun Owners of Maine
laura@gunownersofmaine.org
(207) 649-2677



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Regarding LD 953: An Act to Change the Definition of "Machine Gun" in the Maine Criminal Code

This proposed legislation would put Maine's definition of what a "Machine Gun" is in line with Federal law.

APPENDIX A

NFA, 26 U.S.C. Chapter 53 § 479.11 Subpart B-Definitions, Meaning of terms (p.108)

THE NATIONAL FIREARMS ACT

TITLE 26, UNITED STATES CODE, CHAPTER 53 INTERNAL REVENUE CODE

Machine gun: 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 machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Not only does passing this bill promote uniformity, it also addresses any ambiguity with regard to what "discharging multiple projectiles" is intended to mean. Concerns around Maine's current definition came to light last session when legislation was introduced in an attempt to completely redefine firearms in the State of Maine. During that hearing, it was realized that Maine's current definition is poorly worded, could be misconstrued to ban shotguns, as they fire multiple projectiles through common shotgun loads, including birdshot.

This is an important step that this committee can take to alleviate the above mentioned concerns. Please vote Ought to Pass.

Should you have any questions, concerns, or wish to take advantage of the training that Gun Owners of Maine offers to all sitting legislators, free of charge and provided by licensed instructors, please don't hesitate to contact me.

On behalf of our membership and the Gun Owners of Maine Board of Directors,

Laura Whitcomb, President

Gun Owners of Maine

laura@gunownersofmaine.org

(207) 649-2677



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Regarding LD 1109: An Act to Reduce Gun Violence Casualties in Maine by Prohibiting the Possession of Large-capacity Ammunition Feeding Devices

On behalf of our membership and the Gun Owners of Maine Board of Directors, I am testifying in opposition to this proposed piece of legislation.

I would like to provide you with the following statistics regarding the prolific use of magazines that have a capacity greater than 10 in our country.

- The national standard capacity in the United States is greater than 10 (The Detachable Magazine Report 1990-2021).
- Magazines greater than 10 are commonly owned and used lawfully, with more than 700 million in circulation. About 46% percent of those are magazines that have a capacity of 30 or more (more than 413,000,000).
- Detachable magazines in general, of all capacities are numbered at nearly 1,000,000,000. One Billion.

It would seem that any attempt to remove magazines of any capacity from wide circulation would be impossible.

This bill also offers no “grandfathering” of ammunition feeding devices purchased prior to its potential passage.

Furthermore, the suggestion of this proposed legislation to achieve compliance is troublesome. Only those willing to comply will submit to it, and certainly, criminals won’t care.

The choices of the public, should this pass, for disposing of their standard capacity magazines is as follows:

16 A. A person who, on the effective date of this section, lawfully possesses a large capacity ammunition feeding device as long as within 180 days of the effective date of this section the person:

(1) Permanently modifies the large-capacity ammunition feeding device so that it cannot hold more than 10 rounds of ammunition;

(2) Surrenders the large-capacity ammunition feeding device to the appropriate law enforcement agency designated by the Department of Public Safety to be destroyed in accordance with the department's procedures; or



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(3) Transfers or sells the large-capacity ammunition feeding device to a federally licensed firearm dealer outside the State that is lawfully entitled to own or possess such a device;

Choice One: Modify the device, potentially rendering it inoperable. This suggestion clearly demonstrates a lack of firearms knowledge by the bill sponsors and its supporters-or they just don't care, making it no choice at all.

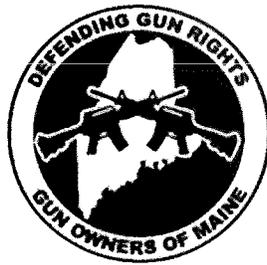
Choice Two: Surrender to Law Enforcement for destruction. Is the State going to reimburse Maine Residents for the destruction of property purchased legally (Fifth Amendment)?

Choice Three: Transfer to an FFL outside the State of Maine where it is legal to own. This begs the question, if a device is too lethal and dangerous to be owned in the State of Maine, isn't it just a little morally ambiguous to then pawn them off on a State that allows them? Do we care only about the citizens of Maine and share no concern with the lives of those beyond our borders?

This proposal is unenforceable and suggests arbitrary limitations on the rights of responsible gun owners while doing nothing to curb crime or address those who care nothing of the law. It is also our opinion that it leaves the State open for lawsuits in the realm of what is considered to be in common use (District of Columbia v. Heller).

Should you have any questions, concerns, or wish to take advantage of the training that Gun Owners of Maine offers to all sitting legislators, free of charge and provided by licensed instructors, please don't hesitate to contact me.

Laura Whitcomb, President
Gun Owners of Maine
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Regarding LD 1126: An Act Requiring Serial Numbers on Firearms and Prohibiting Undetectable Firearms

On behalf of our membership and the Gun Owners of Maine Board of Directors, I am testifying in opposition to this proposed piece of legislation.

This is a very nuanced topic and one that requires careful interpretation in both existing Federal Statute as well as consideration of Supreme Court Rulings such as New York State Rifle & Pistol Association Inc. v. Bruen and District of Columbia v. Heller.

In an effort to attach an emotional tie to inanimate objects, those who do not understand firearms often call firearms without serial numbers or "undetectable" firearms "Ghost Guns".

When people talk about so-called "ghost guns," they are often conflating several distinct firearms-related issues, such as:

- (1) Americans' right to make firearms for personal use without government interference;
- (2) The commercial availability of unfinished frames and receivers that facilitate the right of Americans to manufacture their own firearms for personal use; and
- (3) The manufacture of supposedly undetectable firearms (those that can allegedly thwart common screening technology) - with such concerns often tied to 3D-printing technology.

1- Americans Have the Right to Make Firearms for Personal Use

Since before the Founding, Americans have enjoyed the right to make their own firearms without government interference.

18 U.S.C. § 922(a) provides:

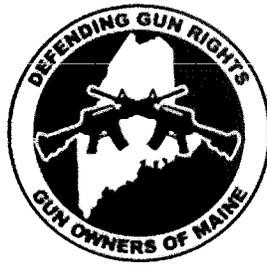
(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, **licensed manufacturer**, or licensed dealer, **to engage in the business** of importing, **manufacturing**, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce;

The term "engaged in the business," as applied to a manufacturer is defined at 18 U.S.C. § 921(a)(21): a person who devotes time, attention, and labor **to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;**

Therefore, those who manufacture firearms for sale or distribution with the principal objective of doing so for their livelihood or profit must be licensed with the federal government as a manufacturer. Further, such licensed manufacturers are subject to federal requirements that include marking a firearm with a serial number.



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Those who make firearms for their personal use are not subject to the requirements placed on commercial actors. Barring state law to the contrary, those who make firearms for personal use are not required to serialize their creations. This has led some to label these personal firearms “ghost guns” – lamenting the fact that they may not have manufacture markings that would enable law enforcement to trace the firearm back to a manufacturer and then forward into the stream of commerce.

Firearms created for personal use still meet the definition of “firearm” under federal law. Therefore, the 18 U.S.C. § 922(g) prohibition on the possession of firearms by convicted felons, convicted domestic abusers, and those with severe mental illness apply to these items in the same manner they would to the possession of a commercially manufactured firearm.

Americans’ right to make their own firearms absent government intrusion is protected by the Second Amendment. The U.S. Supreme Court decision in *District of Columbia v. Heller*, which recognized that the Second Amendment protects an individual right to keep and bear arms, demands that gun control measures be examined for their constitutionality based on the amendment’s text, history, and tradition.

This test was reiterated in *New York State Rifle & Pistol Association v. Bruen* (2022). Justice Clarence Thomas’s opinion made clear that in order for a firearm regulation to pass constitutional muster it must fit within the text, history, and tradition of the Second Amendment right. Specifically, the opinion noted,

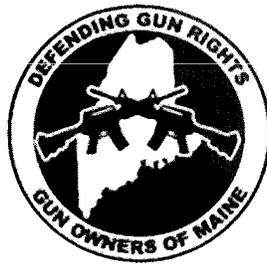
[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

As there is no history or tradition of the federal government in restricting the rights of Americans to make their own firearms for personal use, attempts to restrict this right do not pass constitutional muster.

2- Unfinished Frames and Receivers

Federal law defines a “firearm” to include “any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive” and “the frame or receiver of any such weapon.”

In order to facilitate Americans’ right to manufacture their own firearms for personal use, some companies sold unfinished frames and receivers - sometimes referred to as “80 percent” frames and receivers. **These items require significant expertise, time, effort, and specialized tools in order to be finished and used to assemble a working firearm, therefore they do not meet the definition of a “firearm” under federal statute.** As such, these unfinished frames and receivers were not subject to the same federal gun controls attendant completed frames or receivers, which were treated as “firearms” under federal law. Further, these items were not required to be serialized by a person using one to create a firearm for personal use.



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On April 11, 2022 The Biden Administration issued ATF final rule 2021R-05F. The regulation misreads federal statute in an attempt sweep unfinished frames or receivers under federal law's definition of "firearm" to subject these items to further regulation. The ATF's proposed rule has been contested by the NRA in the regulatory comment process. **There is ongoing litigation as to the scope and validity of ATF's rulemaking and reason to believe the Trump administration may reexamine the Biden administration's incorrect interpretation of the law.**

Attempts to prohibit or further regulate these items are fraught with problems. First, regulating unfinished frames and receivers infringes on Americans' Second Amendment right to make their own firearms without government interference.

Second, regulation poses a metaphysical problem. If a piece of metal or polymer cannot at present be assembled into a working firearm, just how long before it can be assembled into a working firearm does it in fact become a frame or receiver? Is it when an unfinished piece is forged or cast? Is a steel ingot on its way to a gun manufacturer a firearm? Any definitional shift away from an actual frame or receiver that can immediately be used to assemble a functioning firearm creates confusion for law-abiding Americans and further burdens the gun industry.

3- Undetectable Firearms Act and 3D-Printed Firearms

We can appreciate the safety concerns posed by firearms that may be difficult to detect by commonly used security screening devices.

There is already existing law, The Undetectable Firearms Act (UFA), codified at 18 U.S.C. § 922(p) in 2013.

This prohibited, with limited exceptions, any person from manufacturing, importing, shipping, selling, delivering, possessing, transferring, or receiving any firearm:

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component.

Non-metallic materials such as polymers and ceramics are already being used in the manufacture of firearms and other lawful consumer products. Advancements in these materials and the manufacturing processes that use them could (and almost certainly will) expand this use and yield more reliable, user-friendly, and affordable firearms. Future firearm designs may well use non-metallic major components that are stronger, lighter, and more versatile than the metal components that are currently available. Manufacturing a firearm out of non-metallic materials and then adding supplementary ferrous metal specifically to comply with the UFA may one day produce a better firearm. **Technology Changes, our Rights Do Not.** Both firearm technology and security screening technology are sure to evolve and should be given leeway to do so.



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Foreclosing this option, merely because someone could theoretically remove the detectable metal and still have operational major components, creates an ominous precedent in firearm manufacturing. Under current law, perfectly legal firearms exist that could be rendered illegal by certain types of modifications (for example, a shotgun could be cut-down to make an unregistered NFA firearm). Yet this potentiality does not render the unmodified firearm itself illegal, nor should it.

The actual manufacture, possession, and transfer of a firearm that could thwart commonly used metal detection or x-ray imaging technologies, is already illegal under the current UFA and subject to up to 5 years in prison. Violations of these restrictions, unfortunately, are also already within the realm of possibility with the use of fairly commonplace materials. Yet, further restrictions would change very little for those inclined to make and use a non-detectable 3D printed firearm to commit a crime.

In Summation:

1 – The Supreme Court has already determined that the manufacturing of one’s own firearms is protected under the Constitution. Passing legislation to deter this leaves the State open for legal challenges, utilizing millions of dollars in taxpayer money not unlike the 72-Hour Waiting Period that was passed in the 131st Legislature, which, thus far, has not fared well under scrutiny of the courts.

2- There is ongoing litigation at the Federal level regarding the requirements surrounding serialization of unfinished frames and receivers. Again, it would behoove this legislative body to allow the already initiated court process to play out.

3- It is already illegal to intentionally manufacture a firearm out of any material that is intended to bypass screening measures with criminal behavior in mind.

In closing, please consider this: trying to place a permanent serial number on polymer (plastic, nylon, etc) is akin to the young boy in the children’s movie “Toy Story”. He can write “ANDY” on the bottom of Woody the Cowboy’s boot in marker all he wants, it will never be truly permanent.

Not unlike the other gun control measures being presented to this committee, this proposal is out of step with Federal law, does nothing to deter criminal behavior, and only further infringes on the rights of responsible gun owners. We would urge you vote OUGHT NOT TO PASS on this unenforceable piece of legislation that is fraught with the potential for litigation in the future.

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