

Leahy's Anti-trafficking Bill (S. 54) Could End Gifts and Raffles of Firearms and even "necessitate" gun licensure across the country

At its core, **Section 3** would send a person to prison for 20 years if you ATTEMPTED or PLANNED ("conspired") to buy a firearm as a gift for another person or to conduct a raffle of a firearm, and negligently failed to note that the gift recipient or the winner of the raffle was, for instance, a veteran with PTSD who had been placed by the Department of Veteran Affairs onto the NICS list.

Note that you don't have to actually transfer the firearm to go to prison for 20 years, nor do you have to know that the proposed recipient is a prohibited person. It is enough that you acted negligently, that you planned to gift or raffle the firearm, and that you engaged in one "overt act" necessary for conspiracy to take effect (e.g., getting in your car to drive to the gun shop).

In fact, the veteran or "prohibited person" doesn't even have to be on the NICS list and doesn't have to know they are a prohibited person. A marijuana smoker is a "user of ... [a] controlled substance." If you buy a gun with the intention of gifting or raffling to one of those, you can go to prison for 20 years, be subject to draconian forfeiture provisions (933(a)), be prosecuted and sued under RICO (933(c)), and be prosecuted for money laundering (933(d)). In other words, unless you're "feeling lucky," the bill would effectively outlaw gifting and raffling firearms.

Finally, buying a gun for any other person -- even though it's perfectly legal for him to own a gun -- is illegal under all circumstances except for a gift or a raffle. Hence, if a person buys an AR-15 in another state where he has a vacation home (under 18 U.S.C. 922(b)(3)) and leaves it with a friend in that state for safekeeping -- 20 years.

Section 5 could allow New York to prohibit virtually anyone in the country from owning a gun without a license. Under that section, you are a prohibited person if you are "prohibited by State or local law from possessing" a firearm. So, if New York bans firearms possession by anyone who has not received a permit, federal law now bans that person from owning a firearm -- and presumably mandates that they be placed in the NICS system.

Let's throw into the mix a New York City requirement that a person have a "justification" for possessing a firearm and the City's finding that he doesn't have one. New Yorkers need a permit to have a gun, and most lack the justification needed to get one.

So, to start out with, this section turns federal law into a gun licensure requirement in some parts of the country. But this opens a couple of questions: Virtually every 18 U.S.C. 922(d) and (g) prohibited person specification is a lifetime gun ban, and there is no clear indication that this is any different. Do you become “non-prohibited” when you move to New Hampshire? And, if so, is New York going to keep track of everyone who moves out of the state and notify NICS when they are no longer prohibited persons?

GOA just talked with a New Yorker who had been subject to a restraining order years ago, and New York had still not taken his name out of the system. But there’s yet a more nightmarish possibility: Most similar gun laws specify WHOSE state or local law is applicable. For instance, 18 U.S.C. 922(b)(3) specifies compliance with the law of the state where the transaction takes place and the state where there purchaser resides. But, in an intentional or unintentional drafting error, S. 54 doesn’t specify WHAT state law applies.

Hence, this section does NOT say a prohibited person is a person “prohibited by State or local law IN THE STATE OR LOCALITY WHERE SUCH PERSON RESIDES from possessing a firearm.” Presumably, that’s implied. But how much are you willing to trust the people who tried to bankrupt the gun industry by bringing nuisance suits? So, presumably a few years from now, one can expect a new 23-point Executive Action memo from an anti-gun President attempting to use this language to impose a national licensure requirement.

Section 7 penalizes gun smuggling. But, given that the biggest facilitator of gun smuggling in the U.S. is Attorney General Eric Holder and his Fast & Furious program, we’ll believe Democrats are serious about ending gun smuggling when Holder and his subordinates are in prison cells.