

Vermont Federation of Sportsmen's Clubs

Testimony on S.209

Chris Bradley - VTFSC President

The intersection of un-serialized firearms and felony crime only occurs when un-serialized firearms are used in felony crime. Reducing this bill to just that offense accomplishes what we believe is the central goal of this bill: To reduce and hopefully eliminate the use of un-serialized firearms in felony crime by creating stiffer guidelines for punishment; doing so in a manner that does not create unenforceable laws that would significantly impact and hurt law-abiding citizens through loss of time and money.

I begin by making clear that the VTFSC can tacitly support the creation of a statute that would make it an offense to use an un-serialized firearm in the commission of a felony crime, and we additionally feel that this should be an offense with a required minimum sentence in addition to a possible maximum.

The VTFSC has significant concerns regarding the attempts to regulate the making of a firearm by a private citizen for their own lawful use, as well as penalizing the possession of un-serialized unfinished or finished receivers / frames legally owned by private citizens.

Under Federal law, and re-iterated in ATF Final Rule 2021R-05F (which clarified several issues surrounding the Gun Control Act (GCA) of 1968):

- An individual can legally make their own firearm (Privately Made Firearm – PMF), and
- A PMF does not require a serial number while possessed by its owner.

Per the ATF, a PMF is defined as:

“a firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced. The term shall not include a firearm identified and registered in the National Firearms Registration and Transfer Record pursuant to chapter 53, title 26, United States Code, or any firearm manufactured or made before October 22, 1968 (unless remanufactured after that date).”

A historic problematic issue for the ATF has been to precisely define what part of a firearm is the part that should be serialized for commercial sales; with that part being referred to as the firearm's frame or receiver.

Since the GCA of 1968 – federal law requires that all commercially manufactured firearms have a serial number, with this serial number stamped into the frame or receiver. Prior to 1968 however, this was optional, there are older firearms in civilian hands which do not have any serial number, and all are legal to own.

Both previously and still today, the ATF has an “80%” rule, a rule which gives some guidance on when a piece of metal that is in the process of being machined into becoming a fully operational frame / receiver can be considered as an actual firearm.

For example, in the case of an AR-15, it is the lower receiver that is the designated part that makes it a firearm. Buying a serialized frame / receiver is just like buying a functional firearm, you go through an FFL who does a background check to eventually possess it.

Setting aside 3-D printing (which we believe can print a 100% receiver), and whether an aluminum metal receiver is forged or milled (methods of manufacture), a raw block of aluminum is not an AR-15 receiver. As that block of aluminum is machined into an actual receiver and progressively gets more and more completed through a series of machining steps, arguments can be made as to its percentage of completion. If it is 80% or less complete, it is NOT a firearm according to the ATF.

In years past and even today, there are companies that sell “firearm kits”, with these kits including all the pieces and parts required to build a functional firearm. Most of these companies sold these kits WITH a serialized receiver / frame, and they therefore followed Federal Law, selling them through the same process that firearms are sold today: Through an FFL and only after a background check.

However: Other companies sold “firearm kits” that included an un-serialized receiver / frame, claiming the 80% rule because it was quite literally a pile of parts requiring assembly. These kits were sometimes referred to as “buy-build-shoot” kits.

The new Final Rule 2021R-05F addresses the tactics of those other companies by now requiring that these “buy-build-shoot” kits be sold as a firearm, requiring a transfer through an FFL and a background check.

Just as an aside, the new ATF rule allows for a person legally owning an un-serialized PMF to go to a gunsmith for repair or work - and as long as the work is done in one day’s time - there is no ATF requirement for the FFL to serialize. By allowing such, the ATF is in fact fully supporting the concept of law-abiding citizens having un-serialized firearms.

However: Neither this new rule, nor any other existing rule, prohibits a PMF. We are certain that there are hundreds if not thousands of Vermonters who own firearms they built themselves that are unserialized. We are certain that there are hundreds if not thousands of Vermonters who have purchased 80% receivers (about \$50), with that non-firearm sitting on a shelf or in a box with the thought that it may be some future project. We are certain that there are perhaps hundreds if not thousands of Vermonters who had an 80% receiver/frame in some state of completion.

All of these Vermonters will be legally and monetarily negatively affected when this law goes into effect on January 1st, 2025 – a little over 11 months away – assuming they even become aware of it or realize that it affects them. On this note: This bill shows an effective date of January 1, 2024, we assume that this must be a typo as it couldn't be the intent to make this retroactive?

For those people, we see problems with the phrase “temporary possession” because these 80% receivers have been available for years and years without any concern whatsoever over their legal ownership – *because* they are technically NOT a firearm. Further, firearms made from 80% receivers that have been finished or that are in some state of being finished have previously not been a legal concern either.

Stepping back for a moment, it is not a trivial exercise to build a firearm, even from a “buy-build-shoot” kit or 3-D printed 100% receiver and the required parts. To turn either into a finished firearm requires the use of tools, such as a bench vise, a receiver vise, a barrel wrench, other hand tools and some expertise with those tools.

In considering the desire for stamping a receiver / frame with a serial number, it must be recognized that most FFLs in this state are not set up to perform this stamping work as they are set up to only sell firearms. Stamping a firearm is most usually done by a gunsmith, with “good” gunsmiths typically having a significant backlog of firearms to work on. They will also charge money, this will likely be a lengthy turn-around, once they finish their work a background check would be required, and there is the concern in that under the new Final Rule: FFLs can refuse to handle an un-serialized firearm if they so choose.

“Temporary possession” will be hard to prove because there are no serial numbers to trace the date when they were physically created, and all bets are off when we consider that a 100% receiver can be printed with a \$500 3D-printer. How would we ever control something that be printed?

In crafting this law, we do understand that nothing in S.209 prevents a person from building their own firearm – a concept that would be challenged – and is being challenged elsewhere in states such as CA and CO.

In the final analysis, the net that will be cast to force serialization will only impact otherwise law-abiding citizens who have to find the time and money to find a skilled gunsmith to perform the required serial-numbering stamping work, and then forgo having that firearm for what could be a lengthy amount of time for the gunsmith to perform the work required. Some will adhere, but I suggest that many will not, either through conscious resistance or simple ignorance. How would we ever find them – by going door-to-door?

In walking through the bill, we set aside definitions found in § 4801, other than to say that the definition found in (8) (“Unfinished frame or receiver”) uses the phrase “when it may readily be completed, assembled, or converted”, which is exceptionally vague with our Public Safety officials being challenged to make this assessment.

§ 4802

- (a)(1) – page 4, lines 3-6
Given that Federal law allows a citizen to make their own firearm, it should not be illegal in Vermont to possess, transfer or offer to transfer something that is NOT technically a firearm.
- (a)(2)(A) – page 4, lines 8-9
This is not needed, as FFLs virtually always act within the bounds of their license as required by Federal law
- (a)(2)(B) – page 4, lines 10-12
In consideration of the phrase “temporary possession”, as noted above there are potentially tens of thousands of Vermonters who legally purchased unfinished receivers and frames with the thought that someday they may make a firearm. The use of that phrase casts a wide net that will ensnare Vermonters who may engage in a lawful activity per Federal law, and per Federal law, a PMF does not need a serial number.

In summary: We cannot support this section.

- (b)(1) – page 4, line 13-16
Per Federal law, it is legal for a citizen to possess a receiver / frame that is not imprinted with a serial number (PMF), so we feel the term “possess” should be removed.

As far as transferring goes: Per 13 VSA 4019 (Firearm Transfers; background checks), all firearm transfers MUST go through an FFL for a background check. Per Federal Law, an FFL who accepts a PMF into their inventory (and they do not have to) MUST mark it with a Serial Number.

As far as “offer to transfer”, the person offering to transfer will legally have to eventually transfer that firearm through an FFL – which will again result in the firearm becoming serialized.

- (b)(2)(A) – page 4, lines 19-19
This is not needed, as FFLs virtually always act within the bounds of their license as required by Federal law

- (b)(2)(B) – page 5, lines 1-3
Per Federal law, it is legal for a private citizen to manufacture a PMF that is un-serialized. If made with a 3D-printer, the ATF does not recognize serial numbers engraved into polymers; a non-removable metal plate must be used – which could only occur after creation through a subsequent process – so there could be a significant amount of time between the creation and when the plate is fixed.

In summary: We cannot support this section.

- (c)(1) page 5, lines 7-10
In considering this offense, we must reiterate that per Federal law, it is completely legal for a law-abiding citizen to build or manufacture a firearm that is not serialized.

While there is a concern that an un-serialized firearm cannot be returned to the law-abiding citizen that owned and made it unless it is serialized: By and large gun owners take care of their firearms, and we just passed a Safe Storage law to help remind gun owners to take care of how they are stored.

Should an owner of an un-serialized firearm ever decide to transfer it, then while that can be done in some cases without a background check (a transfer between immediate family members for example), per 13 VSA 4019 – that transfer has to go through an FFL, who will then have to serialize.

- (c)(2) page 5, lines 11-12
This would not be needed, FFLs are already tightly regulated by Federal Law.

In Summary: We cannot support this section.

- (d)(1)(A)-(C)
As we cannot support the above sections, we cannot support any of these penalties, and should a person be in the illegal business of manufacturing un-serialized firearms for the purpose of illegal proliferation, the ATF has far stricter penalties.
- (d)(2)
This is something that a majority of the VTFSC can support. Our only suggestion is that we change this language to provide for a mandatory minimum of imprisonment in as well as a possible maximum, in addition to providing for a mandatory minimum and possible maximum fine.

§ 4083

Per existing ATF rules and Federal Law, FFLs already have this authority to serialize; they will serialize according to strict ATF rules, they must record the PMF which has been serialized;

returning a now-serialized PMF to the owner requires a background check per ATF rules, and any infraction made by an FFL regarding these things will be punishable in a far stricter fashion than what this proposed law allows.

In Summary: We do not believe this is needed.

§ 5204

This section is a bit out of our wheelhouse, however we support this.

Overall Summary

To better comport to Bruen and not infringe on the 2nd Amendment, we strongly suggest that the language of this bill be changed to only address the creation of a new felony crime that would punish anyone who uses an un-serialized firearm in the commission of a felony crime, with language that states that there SHALL be a both a minimum sentence as well as a maximum sentence, in addition to a required minimum fine and possible maximum fine amount, and on top of any charges for the felony crime committed itself.

The intersection of un-serialized firearms and felony crime only occurs when un-serialized firearms are used in felony crime. Reducing this bill to just that offense accomplishes what we believe is the central goal of this bill: To reduce and hopefully eliminate the use of un-serialized firearms in felony crime by creating stiffer guidelines for punishment; doing so in a manner that does not create unenforceable laws that would significantly impact and hurt law-abiding citizens through loss of time and money.