

# A SEMI-AUTOMATIC MACHINE GUN? - OHIO HB 234 FIX

By Derek A. DeBrosse, Esq.

Governor John Kasich signed House Bill 234 into law on December 19, 2014 dramatically changing the existing gun laws in the State of Ohio. While the newly passed bill implements over twenty new laws or modifications in laws the purpose of this article is to analyze a little known part of the Revised Code with regards to machine guns.

Generally speaking an automatic firearm can exist in two different forms, either semi-automatic or full-automatic (otherwise commonly known as a machine gun). Semi-automatic firearms require the actor to actually pull the trigger to fire each individual round while a full-automatic firearm requires a single function of the trigger for multiple rounds to be fired. Federal law under 26 USC §5845(b) defines a "Machinegun" as any weapon, which "shoots...automatically more than one shot...by a single function of the trigger." Problems have always arisen because Ohio law has expanded upon that definition which has created conflicts in the law with regards to possession and ownership of machineguns as permitted under Ohio law as well as the National Firearms Act of 1934.

Ohio separates the definition of Semi-Automatic and simply Automatic firearms establishing that Automatic, generally speaking, is to refer to machineguns. Ohio's definition of Automatic firearm pursuant to R.C. §2923.11(E) includes the federal "single function" of the trigger definition as well as "any semi-automatic firearm designed or specially adapted to fire more than thirty-one cartridges without reloading, other than [.22 caliber firearms]." In sum, Federal law clearly differentiated between truly full-automatic firearms and semi-automatic firearms while Ohio law defined a full-automatic firearm to include certain semi-automatic firearms.

When read literally R.C. §2923.11(E) and R.C. §2923.17 (the law criminalizing unregistered possession) appeared unconstitutional on their face for being overly broad and vague. The issue arises with the literal reading of the law. Realistically all semi-automatic firearms are "designed" to fire more than thirty-one rounds without reloading, as semi-automatic firearms are magazine or belt fed firearms. As long as the manufacturer or an after market manufacturer designs a magazine in excess of thirty-one rounds for the firearm, under Ohio law, even though mechanically semi-automatic, the firearm can be classified as a full-automatic firearm because it was capable (therefore designed) to fire more than thirty-one cartridges. This has created much confusion both in prosecuting criminals under Ohio law as well as the proper legality of possession of thirty-one round magazines by firearms enthusiasts. To the layman the magazines are illegal, however, the law is very clear that it is the firearm itself and not the magazines. This has caused great confusion on when and how to enforce the law and if in actuality it was even constitutional.

Because of this confusing statute the ownership of so-called "high capacity magazines" has been called into question. It was clear upon reading the law that it was the firearm and not the magazine that was subject to this restriction, however, prosecutors began to prosecute defendants if they had both the firearm and an associated thirty-one plus round magazine in their possession. In order to legally possess the Automatic firearms as defined under Ohio law a citizen has to look to R.C. §2923.17. Under that statute the person would have to register the firearm under the National Firearms Transaction Registry ("NFTR") or obtain a permit from the Sheriff pursuant to R.C. §2923.18. The problem is only certain type of firearms can be

registered under the NFTR (federally defined machineguns, suppressors, short-barreled rifles and short-barreled shotguns) and the Sheriff does not have to issue a permit under R.C. §2923.18 (if the Sheriff even knew this law existed. It took this author two years to track down the actual application forms that are subject to R.C. §2923.18). Even if a person is able to convince the Sheriff to grant the permit the question remains, which item should be registered? Is it the firearm, the magazine or both? If the law is strictly construed any semi-automatic firearm in existence, mechanically speaking, other than .22 calibers, needs to either be registered with the NFTR or the local Sheriff. The whole law is simply a mess.

The fix was in for this confusing and conflicting area of Ohio law with the introduction of House Bill 234, which takes effect on March 23, 2015. As passed R.C. §2923.11(E) simply redacted the "semi-automatic-machinegun" language. The law now merely defines Automatic firearm with the simple and federally consistent single function of the trigger definition. Whether or not the reader agrees with the policy of this new law one thing is for certain, from a practitioner's standpoint it is a much easier law to construe and implement.



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