

**DESCRIPTION OF H.R. 3269, THE
“LAW ENFORCEMENT INNOVATE TO DE-ESCALATE ACT”**

Scheduled for Markup
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HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for September 11, 2024, of H.R. 3269, the “Law Enforcement Innovate to De-Escalate Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3269, the “Law Enforcement Innovate to De-Escalate Act”* (JCX-38-24), September 9, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. Exemption of Certain Less-than-Lethal Projectile Devices from Title 18 of the U.S. Code, the Firearms and Ammunition Excise Tax, and the National Firearms Act

Present Law

Generally, the Code imposes an excise tax on the sales by the manufacturer, producer, or importer of certain firearms and ammunition.² Pistols and revolvers are generally taxable at 10 percent of sales price. Firearms other than pistols and revolvers, shells, and cartridges are generally taxable at 11 percent of sales price.³ For this purpose, a firearm is a portable weapon, such as a rifle, carbine, machine gun, shotgun, or fowling piece, from which a shot, bullet, or other projectile may be discharged by an explosive.⁴

However, the excise tax does not apply to machine guns and short barreled firearms.⁵ In addition, firearms, pistols, and revolvers manufactured, produced, or imported by a person who in aggregate manufactures, produces, or imports less than 50 firearms, pistols, and revolvers during the calendar year are exempt from the excise tax.⁶ Sales of firearms, pistols, revolvers, shells, and cartridges to the Department of Defense, the Coast Guard, State and local governments, nonprofit educational organizations, and for use in vessels and aircraft are also exempt from the excise tax.⁷

The National Firearms Act (the “NFA”),⁸ which is codified as chapter 53 of the Code, requires importers, manufacturers, and dealers in firearms to pay a special occupational tax and register with the Treasury, and also imposes excise taxes on the transfer and making of firearms.⁹ Generally, in order to engage in business, an importer or manufacturer of firearms is required to pay a special occupational tax of \$1,000 for each year and for each place of business; a dealer of firearms is required to pay an special occupational tax of \$500 for each year and for each place of business.¹⁰ However, persons who conduct businesses exclusively with, or on behalf of, the United States or any department or agency of the United States are generally exempt from the special occupational tax.¹¹ Generally, importers, manufacturers, and dealers in firearms are

² Sec. 4181.

³ *Ibid.*

⁴ See 27 C.F.R. sec. 53.11 (2006).

⁵ Sec. 4182(a).

⁶ Sec. 4182(c).

⁷ Secs. 4182(b) and 4221(a).

⁸ Pub. L. No. 73-474.

⁹ Secs. 5801 *et seq.*

¹⁰ Sec. 5801(a).

¹¹ Sec. 5851.

required to register with the Secretary of the Treasury (the “Secretary”) in each internal revenue district in which the business is carried on.¹²

An excise tax of \$200 is generally imposed on each firearm that is transferred (“transfer tax”) or made (“making tax”).¹³ However, a firearm may be transferred to the United States, or a department, independent establishment, or agency of the United States, without payment of the transfer tax.¹⁴ A firearm may also be transferred or made without payment of the transfer tax or making tax, respectively, if the firearm is transferred or made by or on behalf of a State, possession of the United States, any political subdivision, or any official police organization of a government entity engaged in criminal investigations.¹⁵ Further, a firearm registered to a person that is qualified under the NFA to engage in business as an importer, manufacturer, or dealer may be transferred without payment of transfer tax to any other person qualified to manufacture, import, or deal in that type of firearm.¹⁶ A manufacturer qualified under the NFA may also make the type of firearm which the manufacturer is qualified to manufacture without payment of the making tax.¹⁷

Under the NFA, a “firearm” means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon;¹⁸ (6) a machine gun; (7) a silencer; and (8) a destructive device. The term “firearm” does not include an antique firearm or any device (other than a machine gun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector’s item and is not likely to be used as a weapon.¹⁹

¹² Sec. 5802.

¹³ Secs. 5811 and 5821.

¹⁴ Sec. 5852(a).

¹⁵ Sec. 5853.

¹⁶ Sec. 5852(d).

¹⁷ Sec. 5852(c).

¹⁸ As defined in sec. 5845(e). The term “any other weapon” includes, for example, a weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell. The term does not include a pistol or a revolver having a rifled bore.

¹⁹ Sec. 5845(a).

In contrast, the Gun Control Act of 1968²⁰ (the “GCA”) contains the primary Federal restrictions on domestic commerce in firearms and ammunition that are not regulated under the NFA. The GCA requires persons manufacturing, importing, or selling firearms as a business to be Federally licensed. In addition, the GCA prohibits interstate firearms transfers between unlicensed persons; prohibits interstate sale of handguns generally; sets forth categories of persons to whom firearms or ammunition may not be sold; authorizes the Attorney General to prohibit the importation of nonsporting firearms; and requires that dealers maintain records of all commercial gun sales.²¹ Under the GCA, a “firearm” is (1) a 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; (2) the frame or receiver of such a weapon; (3) a firearm muffler or firearm silencer; or (4) a destructive device. However, the term “firearm” does not include an antique firearm.²²

Description of Proposal

Exemption of certain less-than-lethal projectile devices from restrictions under title 18 of the United States Code

The proposal amends section 921 of title 18 of the United States Code to provide that a less-than-lethal projectile device is not a firearm for purposes of the GCA. A “less-than-lethal projectile device” is a device with a bore or multiple bores that is not designed or intended to expel a projectile at a velocity exceeding 500 feet per second by any means, and is designed or intended to be used in a manner that is not likely to cause death of serious bodily injury.

Exemption of certain less-than-lethal projectile devices from the firearms and ammunition excise tax

The proposal amends the Code to provide that the firearms and ammunition excise tax does not apply to a less-than-lethal projectile device or any less-than-lethal shells or cartridges designed for use in a less-than-lethal projectile device. The term “less-than-lethal projectile device” has the same meaning given that term for purposes of the GCA, as amended under the proposal.

Exemption of certain less-than-lethal projectile devices from the National Firearms Act

The proposal modifies the definition of “firearm” for purposes of the NFA. The proposal provides that less-than-lethal projectile devices are not firearms for purposes of the NFA and thus are not subject to the occupational, transfer, or making taxes. The term “less-than-lethal projectile devices” has the same meaning given that term for purposes of the GCA, as amended under the proposal.

²⁰ Pub. L. No. 90-618, codified as 18 U.S.C. secs. 921 *et seq.*

²¹ R. Eliot Crafton, Jordan B. Cohen, and Jane G. Gravelle, Congressional Research Service, *Guns, Excise Taxes, Wildlife Restoration, and the National Firearms Act* (Report R45123), March 5, 2018, available at <https://crsreports.congress.gov/product/pdf/R/R45123>.

²² 18 U.S.C. sec. 921(a)(3).

Effective Date

The proposal is generally effective on the date of enactment. The part of the proposal relating to the exemption of certain devices from the firearms and ammunition excise tax applies to articles sold by the manufacturer, producer, or importer after the date of enactment.

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to reduce Federal receipts by less than \$500,000 over the budget window.