



March 15, 2023

ENGROSSED HOUSE BILL No. 1365

DIGEST OF HB 1365 (Updated March 14, 2023 11:02 am - DI 106)

Citations Affected: IC 35-31.5; IC 35-47.

Synopsis: Machine guns. Revises, for purposes of an enhancement and certain criminal offenses, a definition of "machine gun". Provides that particular criminal offenses concerning machine guns do not apply to certain persons, including persons possessing machine guns or other items not required to be registered in the National Firearms Registration and Transfer Record maintained by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives. Makes a conforming amendment.

Effective: Upon passage.

**Gore, Garcia Wilburn, Torr,
Steuerwald**

(SENATE SPONSORS — FREEMAN, POL JR., HUNLEY)

January 17, 2023, read first time and referred to Committee on Judiciary.
February 16, 2023, amended, reported — Do Pass.
February 20, 2023, read second time, ordered engrossed.
February 21, 2023, engrossed. Read third time, passed. Yeas 68, nays 24.

SENATE ACTION

March 6, 2023, read first time and referred to Committee on Corrections and Criminal Law.
March 14, 2023, amended, reported favorably — Do Pass.

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First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1365

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-31.5-2-190, AS ADDED BY P.L.114-2012,
2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 190. **(a)** "Machine gun" means a weapon that:
4 (1) shoots; ~~or~~
5 **(2) is designed to shoot; or**
6 ~~(2) (3)~~ **(3)** can be readily restored to shoot;
7 automatically more than one (1) shot, without manual reloading, by a
8 single function of the trigger.
9 **(b) The term includes:**
10 **(1) the frame or receiver of a weapon described in subsection**
11 **(a);**
12 **(2) a:**
13 **(A) part designed and intended solely and exclusively; or**
14 **(B) combination of parts designed and intended;**
15 **for use in converting a weapon into a machine gun; and**
16 **(3) any combination of parts from which a machine gun can**
17 **be assembled if such parts are in the possession or under the**

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- 1 **control of a person.**
- 2 SECTION 2. IC 35-47-2-7, AS AMENDED BY P.L.183-2019,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: Sec. 7. (a) As used in this section, "machine gun"
- 5 means any weapon that shoots; is designed to shoot; or can be readily
- 6 restored to shoot automatically more than one (1) shot, without manual
- 7 reloading; by a single function of the trigger. The term includes the
- 8 frame or receiver of any such weapon; any part designed and intended
- 9 solely and exclusively; or a combination of parts designed and
- 10 intended; for use in converting a weapon into a machine gun; and any
- 11 combination of parts from which a machine gun can be assembled if
- 12 such parts are in the possession or under the control of a person: **has**
- 13 **the meaning set forth in IC 35-31.5-2-190.**
- 14 (b) Except an individual acting within a parent-minor child or
- 15 guardian-minor protected person relationship or any other individual
- 16 who is also acting in compliance with IC 35-47-10 (governing children
- 17 and firearms) and federal law, a person may not sell, give, or in any
- 18 other manner transfer the ownership or possession of a handgun or
- 19 machine gun to any person under eighteen (18) years of age.
- 20 (c) A person who knowingly or intentionally sells, gives, or in any
- 21 other manner transfers ownership or possession of a machine gun to a
- 22 person under eighteen (18) years of age commits a Level 5 felony.
- 23 However, the offense is a Level 4 felony if the person who sells, gives,
- 24 or transfers ownership of the machine gun has a prior conviction under
- 25 this section, and a Level 3 felony if a person under eighteen (18) years
- 26 of age uses the machine gun to commit murder (IC 35-42-1-1).
- 27 (d) A person who knowingly or intentionally sells, gives, or in any
- 28 other manner transfers the ownership or possession of a handgun to
- 29 another person who the person knows:
- 30 (1) is ineligible for any reason other than the person's age to
- 31 purchase or otherwise receive from a dealer a handgun; or
- 32 (2) intends to use the handgun to commit a crime;
- 33 commits criminal transfer of a handgun, a Level 5 felony. However, the
- 34 offense is a Level 3 felony if the other person uses the handgun to
- 35 commit murder (IC 35-42-1-1).
- 36 (e) A person who purchases a handgun with the intent to:
- 37 (1) resell or otherwise provide the handgun to another person who
- 38 the person knows is ineligible for any reason to purchase or
- 39 otherwise receive from a dealer a handgun;
- 40 (2) resell or otherwise provide the handgun to another person who
- 41 the person knows intends to use the handgun to commit a crime;
- 42 or



1 (3) transport the handgun outside Indiana to be resold or
 2 otherwise provided to another person who the transferor knows:
 3 (A) is ineligible to purchase or otherwise receive a handgun;
 4 or
 5 (B) intends to use the handgun to commit a crime;
 6 commits the straw purchase of a handgun, a Level 5 felony. However,
 7 the offense is a Level 3 felony if the other person uses the handgun to
 8 commit murder (IC 35-42-1-1).

9 (f) As used in this subsection, "NICS" has the meaning set forth in
 10 IC 35-47-2.5-2.5. It is a defense to a prosecution under subsection
 11 (d)(1) that:

12 (1) the accused person contacted NICS (or had a dealer contact
 13 NICS on the person's behalf) to request a background check on
 14 the other person before the accused person sold, gave, or in any
 15 other manner transferred the ownership or possession of the
 16 handgun to the other person; and

17 (2) the accused person (or dealer acting on the person's behalf)
 18 received authorization from NICS to sell, give, or in any other
 19 manner transfer ownership or possession of the handgun to the
 20 other person.

21 SECTION 3. IC 35-47-5-10 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. The provisions
 23 of section 8 or 9 of this chapter ~~shall do not be construed to~~ apply to
 24 any of the following:

25 (1) **The ownership, possession, or operation of a machine gun**
 26 **by** members of the military or naval forces of the United States,
 27 National Guard of Indiana, or Indiana State Guard, when on duty
 28 or practicing.

29 (2) **The ownership or possession of** machine guns kept for
 30 display as relics and which are rendered harmless and not usable.

31 (3) **The ownership, possession, or operation of a machine gun**
 32 **by** any of the law enforcement officers of this state or the United
 33 States while acting in the furtherance of their duties.

34 (4) ~~Persons lawfully engaged in~~ The **lawful** display, testing, or
 35 use of fireworks.

36 (5) ~~Agencies~~ **The ownership, possession, or operation of a**
 37 **machine gun by an agency** of state government.

38 (6) **The ownership, possession, or operation of a machine gun**
 39 **by** persons permitted by law to engage in the business of
 40 manufacturing, assembling, conducting research on, or testing
 41 machine guns, airplanes, tanks, armored vehicles, or ordnance
 42 equipment or supplies while **the person is** acting within the scope



1 of such business.
2 **(7) The ownership, possession, or operation of a machine gun**
3 **by** persons possessing, or having applied to possess, machine
4 guns under applicable United States statutes. Such machine guns
5 must be transferred as provided in this article.
6 **(8) The ownership, possession, or operation of a machine gun**
7 **by** persons lawfully engaged in the manufacture, transportation,
8 distribution, use or possession of any material, substance, or
9 device for the sole purpose of industrial, agricultural, mining,
10 construction, educational, or any other lawful use.
11 **(9) The ownership, possession, or operation of:**
12 **(A) a machine gun; or**
13 **(B) another item;**
14 **not required to be registered in the National Firearms**
15 **Registration and Transfer Record maintained by the federal**
16 **Bureau of Alcohol, Tobacco, Firearms and Explosives.**
17 **SECTION 4. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, after "190." insert "(a)".

Page 1, line 3, delete "the following:" and insert "a weapon that:

(1) shoots; ~~or~~

(2) is designed to shoot; or

~~(2) (3)~~ can be readily restored to shoot;

automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

(b) The term includes:

(1) the frame or receiver of a weapon described in subsection (a);

(2) a:

(A) part designed and intended solely and exclusively; or

(B) combination of parts designed and intended;

for use in converting a weapon into a machine gun; and

(3) 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.

SECTION 2. IC 35-47-2-7, AS AMENDED BY P.L.183-2019, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. (a) As used in this section, "machine gun" means ~~any weapon that shoots; is designed to shoot; or can be readily restored to shoot automatically more than one (1) shot, without manual reloading, by a single function of the trigger. The term includes the frame or receiver of any such weapon; any part designed and intended solely and exclusively; or a 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.~~ **has the meaning set forth in IC 35-31.5-2-190.**

(b) Except an individual acting within a parent-minor child or guardian-minor protected person relationship or any other individual who is also acting in compliance with IC 35-47-10 (governing children and firearms) and federal law, a person may not sell, give, or in any other manner transfer the ownership or possession of a handgun or machine gun to any person under eighteen (18) years of age.

(c) A person who knowingly or intentionally sells, gives, or in any other manner transfers ownership or possession of a machine gun to a

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person under eighteen (18) years of age commits a Level 5 felony. However, the offense is a Level 4 felony if the person who sells, gives, or transfers ownership of the machine gun has a prior conviction under this section, and a Level 3 felony if a person under eighteen (18) years of age uses the machine gun to commit murder (IC 35-42-1-1).

(d) A person who knowingly or intentionally sells, gives, or in any other manner transfers the ownership or possession of a handgun to another person who the person knows:

(1) is ineligible for any reason other than the person's age to purchase or otherwise receive from a dealer a handgun; or

(2) intends to use the handgun to commit a crime;

commits criminal transfer of a handgun, a Level 5 felony. However, the offense is a Level 3 felony if the other person uses the handgun to commit murder (IC 35-42-1-1).

(e) A person who purchases a handgun with the intent to:

(1) resell or otherwise provide the handgun to another person who the person knows is ineligible for any reason to purchase or otherwise receive from a dealer a handgun;

(2) resell or otherwise provide the handgun to another person who the person knows intends to use the handgun to commit a crime; or

(3) transport the handgun outside Indiana to be resold or otherwise provided to another person who the transferor knows:

(A) is ineligible to purchase or otherwise receive a handgun;

or

(B) intends to use the handgun to commit a crime;

commits the straw purchase of a handgun, a Level 5 felony. However, the offense is a Level 3 felony if the other person uses the handgun to commit murder (IC 35-42-1-1).

(f) As used in this subsection, "NICS" has the meaning set forth in IC 35-47-2.5-2.5. It is a defense to a prosecution under subsection (d)(1) that:

(1) the accused person contacted NICS (or had a dealer contact NICS on the person's behalf) to request a background check on the other person before the accused person sold, gave, or in any other manner transferred the ownership or possession of the handgun to the other person; and

(2) the accused person (or dealer acting on the person's behalf) received authorization from NICS to sell, give, or in any other manner transfer ownership or possession of the handgun to the other person.

SECTION 3. IC 35-47-5-10 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. The provisions of section 8 or 9 of this chapter shall not be construed to apply to any of the following:

- (1) Members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing.
- (2) Machine guns kept for display as relics and which are rendered harmless and not usable.
- (3) Any of the law enforcement officers of this state or the United States while acting in the furtherance of their duties.
- (4) Persons lawfully engaged in the display, testing, or use of fireworks.
- (5) Agencies of state government.
- (6) Persons permitted by law to engage in the business of manufacturing, assembling, conducting research on, or testing machine guns, airplanes, tanks, armored vehicles, or ordnance equipment or supplies while acting within the scope of such business.
- (7) Persons possessing, or having applied to possess, machine guns under applicable United States statutes. Such machine guns must be transferred as provided in this article.
- (8) Persons lawfully engaged in the manufacture, transportation, distribution, use or possession of any material, substance, or device for the sole purpose of industrial, agricultural, mining, construction, educational, or any other lawful use.
- (9) Persons possessing machine guns or other items not required to be registered in the National Firearms Registration and Transfer Record maintained by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives."**

Page 1, delete lines 4 through 17.

Delete pages 2 through 3.

and when so amended that said bill do pass.

(Reference is to HB 1365 as introduced.)

TORR

Committee Vote: yeas 9, nays 2.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1365, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE UPON PASSAGE]".

Page 3, delete lines 21 through 42, begin a new paragraph and insert:

"SECTION 3. IC 35-47-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. The provisions of section 8 or 9 of this chapter ~~shall do not be construed to~~ apply to any of the following:

- (1) **The ownership, possession, or operation of a machine gun** by members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing.
- (2) **The ownership or possession of** machine guns kept for display as relics and which are rendered harmless and not usable.
- (3) **The ownership, possession, or operation of a machine gun** by any of the law enforcement officers of this state or the United States while acting in the furtherance of their duties.
- (4) ~~Persons lawfully engaged in~~ The lawful display, testing, or use of fireworks.
- (5) ~~Agencies~~ **The ownership, possession, or operation of a machine gun by an agency** of state government.
- (6) **The ownership, possession, or operation of a machine gun** by persons permitted by law to engage in the business of manufacturing, assembling, conducting research on, or testing machine guns, airplanes, tanks, armored vehicles, or ordnance equipment or supplies while **the person is** acting within the scope of such business.
- (7) **The ownership, possession, or operation of a machine gun** by persons possessing, or having applied to possess, machine guns under applicable United States statutes. Such machine guns must be transferred as provided in this article.
- (8) **The ownership, possession, or operation of a machine gun** by persons lawfully engaged in the manufacture, transportation, distribution, use or possession of any material, substance, or device for the sole purpose of industrial, agricultural, mining,



construction, educational, or any other lawful use.

(9) The ownership, possession, or operation of:

(A) a machine gun; or

(B) another item;

**not required to be registered in the National Firearms
Registration and Transfer Record maintained by the federal
Bureau of Alcohol, Tobacco, Firearms and Explosives.**

SECTION 4. An emergency is declared for this act."

Delete page 4.

and when so amended that said bill do pass.

(Reference is to HB 1365 as printed February 16, 2023.)

FREEMAN, Chairperson

Committee Vote: Yeas 8, Nays 0.

