

# THE "COLLECTOR" LICENSE: A HELP OR HINDRANCE

by David H. Fink

Joe Gun Collector, a resident of state "A", takes some of his prize guns and travels to a gun show in state "B". There he meets another collector who has come to this show from state "C". Neither one has a gun collector's or dealer's license. They discover each has a gun the other wants. Before the show is over, they work out a deal involving the swap of three guns. These three guns happen to fall under three different categories of the Gun Control Act of 1968. One gun is a "firearm", the second is an "antique" and the third is a "Curio or Relic".

There is a good chance that by the time our two collectors have returned to the states of their respective residences with their new acquisitions, one or both will have violated the law. There is also a good chance they don't recognize their actions as possible criminal violations or that they think that since they are legitimate collectors they will not be subject to any enforcement action.

The thinking of our collector friends may be correct — they are not criminals, and up to now, little enforcement effort has been directed at the legitimate collector. But what about tomorrow?

Each day you pick up your daily paper, there is an article, editorial or letter to the editor demanding more gun control. Hardly a day goes by that some gung-ho representative doesn't introduce a new gun control measure in the legislative hopper. There appears to be an ever increasing pressure for the restriction on gun ownership.

In this climate of existing legislation, and threatened legislation, I would like to look at the advantages and disadvantages of becoming a federally licensed "Collector" under the Gun Control Act of 1968. (Public Law — 90-618; 18 USC 44 et seq.)

## SURVEY RESULTS

The Gun Control Act of 1968 has a provision in it for granting a license to Collectors. This law has been in effect for over six years, but very few collectors have made the decision to apply for a Collector's License.

I wanted to discover how many members of the American Society were licensed collectors and how they felt about the Collector's License.

When I first proposed sending out a questionnaire, a certain influential member of this organization speculated that I would find six or less licensed collectors out of the whole membership of 167. He was right!

Of the 20 questionnaires that were returned to me, only 6 admitted to having a Collector's License.



The most interesting portions of the questionnaires were the general comments on how the individuals felt about the Collector's License. The comments ran from "I have one and would recommend it to other collectors," to some rather strong language about what Congress could do with their gun laws — Collector's Licenses included!

One thing was clear from the response or the lack of response to the questionnaires and from the lack of interest shown by the collecting community in the Collector's License. Most collectors have written off the Collector's License as useless!

With this background, let's take a critical look at the creature known as the "Collector's License".

## THE BEGINNING OF THE COLLECTOR'S LICENSE

Prior to 1968, the only significant Federal law on the books regulating firearms was the National Firearms Act (26 USC 5801 et seq.) This law had been around since mid-1930's. It regulated and required the registration of machine guns, sawed-off rifles and shotguns, bombs and the catch-all category of "any other weapon". In 1968, Congress passed what is politely known as the "Gun Control Act of 1968". Title I of this new law regulates interstate commerce in firearms. Title II of the Act was an amendment and update of the old National Firearms Act.

Title I made it unlawful for an unlicensed person to transport into his home state a firearm that he acquired from outside his home state. (18 USC 922).

The Act also required licensing of dealers, importers, and manufacturers. It *permitted* the licensing of collectors.

By 1974, there were 156,400 licenses issued under this Act. The vast majority of these were dealers. There are 3,244 licensed collectors at the present time.

## THE GUN CONTROL ACT OF 1968

It is essential to have an understanding of the working of the Gun Control Act of 1968 before the individual can judge what benefit there may be to having a Collector's License. This law is detailed and complex, but not impossible.

One of the most important steps in understanding the Act is to recognize, as I have noted before, that the Act is divided into two basic parts known as Title I and Title II.

Title I regulates "Firearms" as defined in that Title. Title II regulates machine guns, short rifles and shotguns, silencers, destructive devices and "any other weapon" firearms (trick or gadget-type guns).

The main reason for emphasizing the separate parts of the Act is that each contains its own definition of the items covered. There are separate definitions in each title of the firearms, antique, shotgun, etc., etc.

### WHAT GUNS ARE REGULATED

Title I of the Act covers all "firearms" unless they are excluded by an exception. Firearms are defined as

"(A) Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by action of an explosive;

(B) The frame or receiver of any such weapon;

(C) Any firearm muffler or firearm silencer;

(D) Any destructive device. Such term does not include an antique firearm."

The Title II definition of a firearm is as follows:

#### "Sec. 5845. Definitions

"For the purpose of this chapter -

"(a) **FIREARM.**—The term '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 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machine gun; (7) a muffler or a silencer for any firearm whether or not such firearm is included within this definition; and (8) a destructive device. The term 'firearm' shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary or his delegate 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."

These two definitions show the different subject matter controlled by each Title. Unfortunately, it starts to get more complicated each step we take as we go deeper into the law.

Each of the two Titles of the Act regulates a different group of firearms and each exempts "antiques". Unfortunately the definition of "antiques" differs slightly in each Title. Title I defines "antiques":

#### "Sec. 921 (a) (16).

"The term antique firearm means -

"(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and "(B) any replica, or any firearm described in subparagraph (A) if such replica - "(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or "(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade."

Title II defines antiques:

#### "Sec. 5845. -

"(g) **ANTIQUÉ FIREARMS.**—The term 'antique firearm' means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufacturing in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade."

The collector must recognize the differences in these two definitions. Here is an example of how a mistake can be made. A collector sees a .22 rim fire cane gun at a gun show. He is positive it was manufactured before 1899. Is this an antique exempt from the Act?

The cane gun would be exempt under Title I of the Act because the definition of antiques under this Title includes all guns manufactured in or before 1898. The problem is that most cane guns fall under the description of the "any other weapon" category of Title II of the Act. Therefore, the cane gun must be measured against the definition of an antique in Title II. The Title II definition requires not only that the firearm be manufactured in or before 1898, but also, if it is a cartridge firearm, that it be one "for which ammunition is no longer manufactured in the U.S. and is not readily available in the channels of commercial trade." You can see that the cane gun I have described, being chambered for the .22 rim fire cartridge, would not be exempt from Title II of the Act as an "antique".

The above example demonstrates the fact that the collector must know which Title of the Act the particular firearm falls under before deciding whether or not it is an antique exempt from the regulations of the Act.

The collector who recognizes the difference between a regulated firearm and an antique as defined under each Title of the Act is now ready for the next step. A firearm under the Act, not exempted as an antique, may be designated as a "Curio or Relic."

### CURIOS OR RELICS

Both Titles of the Act contain provisions for a separate designation of firearms for those guns that have particular interest to collectors.

Title I designates this separate category of firearms as "Curios or Relics". The definition of a curio or relic is found not in Title I itself, but in the regulations issued by the Secretary of Treasury under the authority given in the Act. The definition is found at 26 CFR 178.11 and reads:

**"CURIOS OR RELICS.**

"Firearms or ammunition which are of special interest to collectors by reason of some quality other than is ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms and ammunition must fall within one of the following categories: (a) Firearms and ammunition which were manufactured at least 50 years prior to the current date, but not including replicas thereof; (b) Firearms and ammunitions which are certified by the curator of a municipal, State or Federal museum which exhibits firearms to be curios or relics of museum interest; and (c) Any other firearms or ammunition which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm or item of ammunition under this category may be established by evidence of present value and evidence that like firearms or ammunition are not available except as collector's items, or that the value of like firearms or ammunition available in ordinary commercial channels is substantially less."

Title II calls these collectors firearms not curios or relics, but "Collector's Items". Again, the definition is not found in Title II itself, but in the regulations issued by the Secretary of the Treasury. The definition is found at 26 CFR 179.25 and reads:

**"Collector's items—**

"The Director shall determine in accordance with section 5845 (a), I.R.C., whether a firearm or device, which although originally designed as a weapon, is by reason of the date of its manufacture, value, design, and other characteristics primarily a collector's item and is not likely to be used as a weapon. A person who desires to obtain a determination under the provision of law shall follow the procedures prescribed in s179.24 relating to destructive device determinations, and shall include information as to date of manufacture, value, design and other characteristics which would sustain a finding that the firearm or device is primarily a collector's item and is not likely to be used as a weapon.

There is even a third category of "curio" guns. In Title II, certain weapons may be designated as "curios or ornaments". This is found in 26 CFR 179.91 where "Unserviceable Firearms" are defined. This allows the ATF (Secretary of the Treasury) to determine that a particular machine gun, or other such weapon controlled under Title II is unserviceable and can be therefore transferred as a "Curio or Ornament."

*The individual collector should keep in mind the determination by Bureau of Alcohol, Tobacco and Firearms that a gun is a "Curio or Relic" under Title I or a "Collector's Item" under Title II of the Act does not mean that the particular firearm is exempt from the provisions of the Act.*

The designation by the ATF that a specified

firearm is a curio or relic, collector's item, or curio and ornament has a different effect in each case.

**EFFECT OF A DETERMINATION THAT A FIREARM IS A CURIO OR RELIC, COLLECTOR'S ITEM OR CURIO AND ORNAMENT.**

**A. CURIO OR RELIC - Title I**

The designation of a particular firearm as a curio or relic under Title I means that once the particular gun has been given the curio or relic status by the ATF, it can be transferred directly between licensed collectors without having to go through a dealer. A licensed collector can acquire a curio or relic while he is in a state other than his home state and carry it home with him. The licensed collector can also acquire a curio or relic from an unlicensed person and have it shipped directly to him from out of state. He can sell a curio or relic to another licensed collector and may do so at a place away from the residence shown on his license.

**B. COLLECTOR'S ITEMS - Title II.**

When a firearm covered by Title II is given the designation as a "collector's item", the gun is then removed from the restrictions of Title II. That is to say, it no longer has to be registered or subject to transfer tax upon its transfer. When a particular gun is designated as a "Collector's Item" under Title II., it may also be classified as a "Curio or Relic" under Title I. This item is then transferable among licensed collectors according to the liberalized rules applicable to them. It is transferable among unlicensed persons as other firearms controlled and defined under Title I.

The main advantage of having a Title II firearm designated as a "collector's item" is that it removes that firearm from the requirement that it be registered and subject to tax upon transfer.

**C. CURIO OR ORNAMENT - TITLE II.**

A curio or ornament designation applies to those firearms that would normally require registration and payment of a \$200.00 tax or transfer, e.g. machine guns. When the particular gun is certified as unserviceable by the ATF, this eases the restrictions on its transfer. It still has to be registered but no transfer tax is required. Also licensed collectors may acquire and transfer to other licensed collectors registered Title II firearms which have the curio and ornament classification, but the transfer must first be approved by the Alcohol, Tobacco and Firearms division of the IRS.

As you can see, the licensed collector gets special rights to acquire and transfer particular firearms whenever they are designated as curios or relics, collector's items, or curios and ornaments.

## OBTAINING THE "CURIO AND RELIC" DESIGNATION FOR A FIREARM

The Gun Control Act of 1968 did not start out with a list of guns which were designated as curios or relics or collector's items. It was left up to the Secretary of the Treasury, acting through the Bureau of Alcohol, Tobacco and Firearms, to make the determinations. The ATF did not publish any determinations until 1970. This is very significant because *the only practical reason for having a collector's license is that the license allows the holder to engage in interstate transactions in curio or relic firearms without going through a licensed dealer.*

*The value of the collector's license rises in direct ratio to the number of firearms the ATF places in the curio or relic categories.*

The regulations of the Secretary of Treasury provide for the procedure to be used in requesting a determination that a particular firearm qualifies for curio or relic status. See 26 CFR 178.11 for curio or relics; 179.25 and 179.11 for collector's items; and 179.11, 179.24 and 179.91 for curios and ornaments.

Generally speaking, the standards for curios and relics under Title I are that the gun is one of the following:

1. Over fifty years old
2. Recognized by museums to be a collector's item
3. Derives a substantial part of its monetary value from being novel, rare, bizarre or historical.

To qualify as a collector's item under Title II, the gun must be primarily of collector interest by reason of:

1. Date of manufacture
2. Value
3. Design
4. Other characteristics showing it is primarily of collector's interest and not likely to be used as a weapon.

The administrative steps to get determination for a particular firearm are set out in detail in the regulations I have noted above. I strongly suggest that each collector write to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 and order a copy of *Published Firearms Ordinances, Publication 603, 1975 Edition*. The cost is \$2.70. This publication not only gives the full text of the Gun Control Act of 1968, it also includes the regulations issued by the Secretary of the Treasury, a summary of all the firearms laws of the states and municipalities in the U.S., and a listing of all those firearms which have been determined to be curios or relics by the Bureau of Alcohol, Tobacco and Firearms.

## BECOMING A LICENSED COLLECTOR

It costs \$10.00 per year to be a licensed collector. (26 CFR 178.44 (b) ) You also have to be:

1. Over 21 years of age
2. Not be a person prohibited from transporting a firearm in interstate commerce
3. Not willfully having violated any of the laws or regulations of the Act
4. Not having willfully concealed or falsified material facts on the application for license
5. You must have a residence (premises) in a particular state where the collecting activities are to take place.

Once the license is granted to the applicant, the new licensed collector has certain duties.

He has to keep records of his transactions in curios or relics. This means he has to fill out a form for each curio or relic he acquires or transfers (Form 4473) and also must keep a bound volume called "Firearms Acquisitions and Disposition Records". (26 CFR 178.125 (e)) The licensed collector has to inventory all his curio and relic firearms at the time he becomes licensed and enter these in his bound records. He has to record all subsequent transfers and acquisitions in these records. He is required to make the entry in the record of each transfer no later than seven days after the transaction. The entry must contain a detailed description of the gun, the name and address of the party involved in the transfer, (Collector's or Dealer's license number where appropriate) and the date of the transaction.

The ATF agent has the right to enter the collector's premises during business hours to inspect and examine the records and the curio and relic firearms and ammunition kept at the premises. (26 CFR 178.23) The collector designates what he wants his "business hours" to be in his application for the license.

I have spoken to some of the persons who hold collector's licenses and most say that they have received little or no attention from the ATF. One collector who has had a license since 1968, said he saw an agent only once, told the agent he was too busy to see him, the agent left and never came back. The ATF confirms that licensed collectors have the lowest priority of any group for the monitoring of their activities.

## FINAL ASSESSMENT

The unlicensed collector is specifically prohibited from certain activities. It is unlawful for him to acquire a firearm outside his state of residence and bring it home with him. (26 CFR 178.29) The unlicensed collector is also prohibited from transferring a firearm to another unlicensed person who does not reside in the same state as the transferor. (26 CFR 178.30) Neither may an unlicensed person ship a firearm from one state to another. (26 CFR 178.31) A violation of Title I of the Act subjects the violator to a maximum punishment of five years in prison and a \$5,000.00 fine. A violation of Title II of the Act subjects the violator to a maximum of ten years in prison



and \$10,000.00 fine.

The licensed collector, on the other hand, is given very wide latitude with respect to transactions in the "Curio and Relic" type firearms. He can take a curio or relic firearm with him and travel with it anywhere in the U.S. (be sure to check local laws first). He can sell the curio or relic to a licensee anywhere in the U.S. He can acquire a curio or relic from anyone, not just a licensee, anywhere in the U.S. and take delivery of the gun on the spot or have it shipped directly to him. (26 CFR 178.41) Even a dealer does not have the right to transfer possession of a firearm, including a curio or relic, from a location other than that shown on his license. But, a licensed collector can transfer curio or relic firearms from any place the licensed collector happens to be. He is not restricted to his own state of residence or his own premises.

*By this point, you ought to realize that although the licensed collector has many liberalized rights, these rights relate primarily to those firearms which have been given the status of a "Curio or Relic".*

From 1968 to 1970, when no guns had been given this status, there was not much advantage to being a licensed collector.

Today there are almost 400 firearms which have been placed in the category of curios and relics. The trend is towards a greatly increased number of firearms entering this category. The Bureau of Alcohol, Tobacco and Firearms, which makes these determinations for the Secretary of the Treasury, says that more and more collectors are submitting weapons for consideration. It should be kept in mind that the ATF does not act on its own initiative in this matter. They only respond to requests from collectors. They advise me that nine out of every ten guns which collectors submit for designation as a curio or relic under Title I of the Act is granted this designation.

The ATF also advised me that there is a steady increase in the number of collectors who are applying for and being granted collector's licenses.

Many of the collectors of this country took a brief look at the collector's license when the Gun Control Act of 1968 first went into effect. They decided that the license was either valueless or more trouble than it was worth. We are in a different ball game today! Having the status of a federally licensed collector may become more and more important as we are forced to operate in a climate of expanded state and local arms restrictions. The benefits of being a licensed collector also increase each time another gun or group of guns is added to the curio or relic category. Most commemorative firearms are already in this category and the ATF says that there are entire categories of firearms which are presently under consideration for grant of curio or relic status. The area of qualification for "Curio or Relic" status expands each year, for each year, another group of guns becomes fifty or more years old. If all the collectors would look at the Act and then submit properly documented requests for curio or relic designation for those collector's firearms which qualify but which have not as yet been designated curios or relics, then the curio and relic list would expand even more rapidly.

It may be time to take another look at the collector's license. It now has something to offer that was not there six years ago.

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