

118TH CONGRESS
1ST SESSION

S. 401

To amend the Internal Revenue Code of 1986 to remove silencers from the definition of firearms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2023

Mr. CRAPO (for himself, Mr. RISCH, Mr. HAGERTY, Mrs. HYDE-SMITH, Mr. CRAMER, Mr. CASSIDY, Mr. LANKFORD, Mr. TILLIS, Mr. MARSHALL, Mr. KENNEDY, Ms. LUMMIS, Mr. WICKER, Mr. SCOTT of Florida, Mrs. CAPITO, Mr. BOOZMAN, Mr. VANCE, Mr. BUDD, Mr. BRAUN, Mrs. BRITT, Mr. DAINES, Mr. CRUZ, Mr. COTTON, Mrs. FISCHER, Mrs. BLACKBURN, Mr. HAWLEY, and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to remove silencers from the definition of firearms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hearing Protection
5 Act”.

1 **SEC. 2. EQUAL TREATMENT OF SILENCERS AND FIREARMS.**

2 (a) IN GENERAL.—Section 5845(a) of the Internal
3 Revenue Code of 1986 is amended by striking “(7) any
4 silencer” and all that follows through “; and (8)” and in-
5 serting “and (7)”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to calendar quarters beginning
8 more than 90 days after the date of the enactment of this
9 Act.

10 **SEC. 3. TREATMENT OF CERTAIN SILENCERS.**

11 Section 5841 of the Internal Revenue Code of 1986
12 is amended by adding at the end the following:

13 “(f) FIREARM SILENCERS.—A person acquiring or
14 possessing a firearm silencer in accordance with chapter
15 44 of title 18, United States Code, shall be treated as
16 meeting any registration and licensing requirements of the
17 National Firearms Act with respect to such silencer.”.

18 **SEC. 4. PREEMPTION OF CERTAIN STATE LAWS IN RELA-**
19 **TION TO FIREARM SILENCERS.**

20 Section 927 of title 18, United States Code, is
21 amended by adding at the end the following: “Notwith-
22 standing the preceding sentence, a law of a State or a
23 political subdivision of a State that imposes a tax, other
24 than a generally applicable sales or use tax, on making,
25 transferring, using, possessing, or transporting a firearm
26 silencer in or affecting interstate or foreign commerce, or

1 imposes a marking, recordkeeping, or registration require-
2 ment with respect to such a firearm silencer, shall have
3 no force or effect.”.

4 **SEC. 5. DESTRUCTION OF RECORDS.**

5 Not later than 365 days after the date of the enact-
6 ment of this Act, the Attorney General shall destroy any
7 registration of a silencer maintained in the National Fire-
8 arms Registration and Transfer Record pursuant to sec-
9 tion 5841 of the Internal Revenue Code of 1986, any ap-
10 plication to transfer filed under section 5812 of the Inter-
11 nal Revenue Code of 1986 that identifies the transferee
12 of a silencer, and any application to make filed under sec-
13 tion 5822 of the Internal Revenue Code of 1986 that iden-
14 tifies the maker of a silencer.

15 **SEC. 6. AMENDMENTS TO TITLE 18, UNITED STATES CODE.**

16 Chapter 44 of title 18, United States Code, is amend-
17 ed—

18 (1) in section 921(a), by striking paragraph
19 (25) and inserting the following:

20 “(25)(A) The terms ‘firearm silencer’ and ‘firearm
21 muffler’ mean any device for silencing, muffling, or dimin-
22 ishing the report of a portable firearm, including the key-
23 stone part of such a device.

24 “(B) The term ‘keystone part’—

1 “(i) means, with respect to a firearm silencer or
2 firearm muffler, an externally visible part of a fire-
3 arm silencer or firearm muffler, without which a de-
4 vice capable of silencing, muffling, or diminishing
5 the report of a portable firearm cannot be assem-
6 bled; and

7 “(ii) does not include any interchangeable parts
8 designed to mount a firearm silencer or firearm
9 muffler to a portable firearm.”;

10 (2) in section 922(b)—

11 (A) in paragraph (1), by striking “shotgun
12 or rifle” the first place it appears and inserting
13 “shotgun, rifle, firearm silencer, or firearm
14 muffler”; and

15 (B) in paragraph (3), by striking “rifle or
16 shotgun” and inserting “shotgun, rifle, firearm
17 silencer, or firearm muffler”; and

18 (3) in section 923(i)—

19 (A) by striking “Licensed” and inserting
20 the following: “(1) In the case of a firearm
21 other than a firearm silencer or firearm muf-
22 fler, licensed”; and

23 (B) by adding at the end the following:

24 “(2) In the case of a firearm silencer or firearm muf-
25 fler, licensed importers and licensed manufacturers shall

1 identify by means of a serial number engraved or cast on
 2 the keystone part of the firearm silencer or firearm muf-
 3 fler, in such manner as the Attorney General shall by reg-
 4 ulations prescribe, each firearm silencer or firearm muffler
 5 imported or manufactured by such importer or manufac-
 6 turer, except that, if a firearm silencer or firearm muffler
 7 does not have a clearly identifiable keystone part or has
 8 multiple keystone parts, licensed importers or licensed
 9 manufacturers shall submit a request for a marking vari-
 10 ance to the Attorney General. The Attorney General shall
 11 grant such a request except on showing good cause that
 12 marking the firearm silencer or firearm muffler as re-
 13 quested would not further the purposes of this chapter.”.

14 **SEC. 7. IMPOSITION OF TAX ON FIREARM SILENCERS OR**
 15 **FIREARM MUFFLERS.**

16 (a) IN GENERAL.—Section 4181 of the Internal Rev-
 17 enue Code of 1986 is amended by adding at the end of
 18 the list relating to “Articles taxable at 10 percent” the
 19 following:

20 “Firearm silencers or firearm mufflers.”.

21 (b) FIREARM SILENCERS; FIREARM MUFFLERS.—
 22 Section 4181 of such Code is amended by adding at the
 23 end the following:

24 “For purposes of this part, the terms ‘firearm si-
 25 lencer’ and ‘firearm muffler’ mean any device for silenc-

1 ing, muffling, or diminishing the report of a portable fire-
2 arm.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 4181 of such Code is amended by
5 striking “other than pistols and revolvers” and in-
6 serting “other than articles taxable at 10 percent
7 under this section”.

8 (2) Section 4182(b) of such Code is amended
9 by striking “firearms, pistols, revolvers, shells, and
10 cartridges” and inserting “articles described in sec-
11 tion 4181 and”.

12 (3) Section 4182(c)(1) of such Code is amended
13 by striking “or firearm” and inserting “firearm,
14 firearm silencer, or firearm muffler,”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to articles sold by the manufac-
17 turer, producer, or importer in any calendar quarter be-
18 ginning more than 90 days after the date of the enactment
19 of this Act.

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