



ANJRPC

GUIDE TO COMPLYING WITH NEW JERSEY'S 2018 MAGAZINE BAN

By Scott L. Bach, Esq. & Evan F. Nappen, Esq.

THIS GUIDE AND THE MAG BAN LAWSUIT

If you are reading this, it is either because the U.S. Court of Appeals for the Third Circuit has upheld and refused to halt Governor Murphy's ban on magazines over ten (10) rounds, or because there is *still* no decision from the Third Circuit and the time left to comply with the new law, should the Third Circuit uphold it, is extremely short. The final decision on this issue will ultimately rest with the U.S. Supreme Court in the future. While we believe that gun owners will eventually prevail, that process will take time and leaves those of us currently lawfully in possession of magazines over 10 rounds with several options to comply with the new law by the deadline, December 10, 2018. The purpose of this guide is to summarize the available legal compliance options by December 10, 2018 – **and there are some non-obvious options that gun owners should be aware of which may be suitable solutions.**

This guide is not intended to be a complete explanation of the new mag ban law. It is focused on imminent compliance issues related to the ban. For a broader explanation of the mag ban law, see <http://www.evannappen.com/book-update--large-capacity-magazines.html>

Please support the lawsuit as it moves toward the U.S. Supreme Court. You can donate to the case at <https://www.anjrpc.org/donations/donate.asp?id=4356> or mail your donation to: ANJRPC Donations, c/o Scott Bach, P.O. Box 651, Newfoundland, NJ 07435.

WHAT THE MAG BAN DOES

DEADLINE: Gun owners are legally required to comply with the new law no later than December 10, 2018. There is no “grandfather clause.” There are no extensions, delays, or excuses under the new law. If compliance actions are not taken by December 10, 2018, those who continue to possess magazines over 10 rounds will be in violation of the new law, and subject to fine, imprisonment, and loss of all gun rights. Failure to follow the new law is a 4th degree crime, and those convicted will have the same status as “convicted felons” and will lose their gun rights for the entire United States.

THE BAN ITSELF: On or after December 11, 2018, it is unlawful for NJ gun owners to possess “large capacity magazines” which are boxes, tubes, containers, or drums that feed continuously and directly into a semi-automatic firearm capable of holding, or capable of being modified to hold, over ten (10) rounds of ammunition. It does not matter that the magazines were legal when they were acquired. If it is prohibited under the definition of the new law, it is contraband and unlawful to possess unless you are active law enforcement or military, or retired law enforcement who meets specific qualifications, or it is an attached tubular device which is capable of holding only .22 caliber rimfire ammunition.

Also, a pre-existing NJ law that was overlooked when the new mag ban was passed says it is unlawful to *transport* or *dispose of* (among other things) a large capacity ammunition magazine. This directly conflicts with a provision of the new law allowing possession/carry of magazines in order to comply with the new law by the December 10 deadline. This is yet another example of our legislature not understanding the law or understanding what they are doing. To resolve this conflict, the conventional wisdom is that if the compliance option being used (see below) involves transporting magazines, the safest option is to use a common carrier to do so (like U.S. mail, Fedex, UPS, etc.).

EXCEPTED PERSONS: Active law enforcement and active military are excepted but only while actually on duty or traveling to or from an authorized place of duty. Magazines must be duly authorized under regulation or orders as well. Retired law enforcement who have a NJ Retired Police Officer card (“R.P.O. Cards”) are excepted, but only up to 15 rounds. A retired law enforcement officer authorized to possess and carry a handgun may also possess and carry a large capacity ammunition magazine if that specific handgun is registered for this purpose with the NJ State Police. But retired or decommissioned military are not excepted.

Also, possession of large capacity ammunition magazines remains prohibited by civilians unless the possessor has a registered “assault firearm” (the registration period expired in 1991) and “the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the DCM.”

EXCEPTED MAGAZINES: There is an exception in the new law for an attached tubular device which is capable of holding up to 15 rounds of only .22 caliber rimfire ammunition. This exception only applies to tubular magazines that hold .22 caliber rimfire ammunition and does not apply to tubular magazines holding similar rounds like the 17 hmr. Note: this .22 rimfire exception is subject to nullification if the new law is overturned, which would revive the previous law banning these magazines / firearms.

There are also theoretical exceptions for possession of registered firearms (i) with a fixed magazine capacity of between 11-15 rounds that are incapable of being modified to accommodate 10 or fewer rounds; or (ii) a firearm which only accepts a detachable magazine with a capacity of up to 15 rounds which is incapable of being modified to accommodate 10 or less rounds. However, neither NJ nor ANJRPC attorneys have identified a single firearm in existence that meets either of these requirements. This appears to be a theoretical exception that does not exist in the real world. Beware of mistakenly completing the registration form that the State Police were required to develop for this theoretical exception, as it could constitute filing a false form, and may not protect magazine possession if the magazine doesn’t meet the theoretical exception. Also, beware mistakenly completing a registration form after December 10 (this part of the new law allows up to a year from the law’s passage to file a form), which is a potential legal trap of admitting possession of non-compliant firearms after the December 10 deadline.

There is also an exception for magazines used for motion picture, television, or video production, provided the magazine has been reconfigured to fire blank ammunition and the magazine is under the control of an FFL holder.

BEWARE – MAGAZINES PAIRED WITH NON-SEMI-AUTO’S: Magazines holding over ten rounds that are paired with non-semi-auto firearms but which also function in semi-auto firearms are not excepted from the new law. Example: Ruger 10/22 magazines holding over 10 rounds that also function in Ruger bolt action .22’s.

THE PENALTY FOR VIOLATING THE NEW LAW: It is a NJ 4th degree crime to be in possession of magazines in excess of 10 rounds, unless the magazine is excepted (see “Excepted Magazines” above) or the person is excepted (see “Excepted Persons” above). The maximum prison sentence is 18 months in prison and the maximum fine is \$10,000, per magazine. A conviction also results in the loss of gun rights nationwide. This is a felony-equivalent offense.

COMPLIANCE OPTIONS UNDER THE MAG BAN LAW

The following compliance options exist under the new law for dealing with banned magazines:

1. VOLUNTARY SURRENDER: By December 10, 2018, voluntarily surrender to law enforcement the non-compliant magazines, or firearms that cannot be made compliant, according to a detailed set of procedures articulated

at 2C:39-12 which need to be followed to the letter. They involve advance notification of the proposed date and time of surrender to either the Superintendent of State Police or the person's local police chief. But the procedure is not available if there are previously pending charges, complaints, or investigations concerning magazine possession, or if such charges, complaints or investigations begin prior to the actual time surrender is made. This option is not generally recommended. For more detail, see <http://www.evannappen.com/book-update---large-capacity-magazines.html>.

2. RENDER INOPERABLE. By December 10, 2018, render the non-compliant items permanently inoperable. Magazines are only rendered inoperable if they cannot be restored to function as a firearms magazine. Removal of all parts from a magazine and destroying them by crushing the magazine body in a vise and cutting up the spring should suffice for those who choose this option. Be sure the magazine is unloaded and wear safety glasses.

3. PERMANENTLY MODIFY TO 10 ROUNDS MAX CAPACITY. By December 10, 2018, permanently modify the non-compliant magazines so that they can accept no more than the legal maximum of ten (10) rounds. The modifications must be "permanent," meaning they cannot be undone and the magazine is permanently limited to a maximum of ten (10) rounds (e.g., riveted, welded, epoxied, etc., and not restorable). If the magazines can be restored to a capacity above ten (10) rounds, then the magazines will NOT qualify as having been permanently modified, the exemption will not apply, and the owner will be subject to prosecution under the new law. An ammunition magazine which has been only temporarily blocked or modified from holding more than 10 rounds, as by a piece of wood or a pin or screw, is still unlawful.

4. LAWFUL SALE OR TRANSFER. By December 10, 2018, sell or transfer non-compliant magazines to someone legally entitled to possess them. That means, among others, licensed NJ firearms dealers in good standing, active members of the military, active and qualified retired members of New Jersey law enforcement (meaning the retired member has an R.P.O. Card and a specific handgun registered with the NJ State Police that accepts the magazines being purchased), and residents of other states where it is lawful to possess magazines with a capacity over 10 rounds. See Section 7 below for more details on how to properly get your magazines to someone legally entitled to possess them. *Firearms* should only be transferred through an FFL (licensed NJ and federal firearms dealer).

5. STORAGE OF NON-COMPLIANT MAGAZINES INSIDE NJ!!! This is one of the lesser-known, non-obvious options under the new law. Unmodified magazines that hold between 11 and 15 rounds can be stored intact for their owners by willing FFLs in New Jersey under the new law without modifying the magazines! For those wanting either to await the outcome of a potential U.S. Supreme Court challenge, or who just need more time to decide what to do with their magazines, this is an available option. It does require a willing, trustworthy, and organized FFL with appropriate storage facilities, **and the magazines must be properly transferred (see item 7 below for details) so they are *received* by the dealer no later than December 10, 2018.** Note: this storage option does NOT apply to magazines *over* 15 rounds, which have been unlawful for civilians to possess since May of 1990.

One company, Gunsitters, LLC (www.gunsitters.com), has received pre-approval from the New Jersey State Police for storage of magazines between 11 and 15 rounds under the new law through its affiliated FFLs. The rate is \$1.25 per month per magazine, and **Gunsitters has pledged to donate .25 from each magazine storage payment to ANJRPC's lawsuit to overturn the magazine ban!** ANJRPC is proud to support the Gunsitters magazine storage program. Gunsitters exists for the purpose of firearms and accessory storage, and its program not only allows for NJ-approved storage of intact newly banned magazines at an affordable rate, but also helps fund the lawsuit to overturn the ban. **Magazines must be *shipped* to Gunsitters, and Gunsitters has other specific requirements for those desiring magazine storage in NJ.** Please check out their program at www.njmagban.com, or contact Gunsitters directly at storage@gunsitters.com or 973-610-8600.

Important Note: See section 7 below for details on how to properly get your magazines to an FFL facility inside of New Jersey by December 10, 2018. Note: Gunsitters has its own additional requirements for magazine transfer.

6. STORAGE OF NON-COMPLIANT MAGAZINES OUTSIDE OF NJ. Gun owners are also free to store their magazines over 10 rounds *outside* of NJ, but only where it is lawful to do so.

NJ gun owners who own property outside of NJ should check state and local laws where their property is located, and if it is lawful and appropriate to do so, they can consider securely storing magazines over 10 rounds on that property. Alarming the property is highly recommended if it is not already alarmed.

Where it is lawful and appropriate to do so, NJ gun owners can also consider securely storing magazines over 10 rounds with trusted family or friends outside of NJ. A decision to do so should only follow after making certain that it is legal to do so in the jurisdiction at issue and carefully considering the risks of storing magazines with even trusted family or friends.

Gun owners who don't own property outside of NJ and who don't or can't store with family or friends outside of NJ can still store magazines outside of NJ. Gunsitters LLC (www.gunsitters.com) (see paragraph 5 above) has facilities in a number of other states in addition to NJ and is extending its magazine storage option for NJ gun owners (see above) at select locations outside of NJ on the same terms as its in-state option (\$1.25 per magazine per month, with .25 of each magazine payment going to support ANJRPC's lawsuit to overturn the magazine ban!). Magazines must be shipped to Gunsitters, and Gunsitters has other specific requirements for NJ residents desiring magazine storage outside NJ. Please check out their program at www.njmagban.com, or contact Gunsitters directly at storage@gunsitters.com or 973-610-8600. Note: you can store your magazines outside the state by agreement with any willing, trustworthy, organized FFL with appropriate storage facilities.

Important Note: See section 7 below for details on how to properly get your firearms to an FFL facility outside of New Jersey by December 10, 2018. Note: Gunsitters has its own additional requirements for magazine transfer.

7. DISPOSITION OF NON-COMPLIANT MAGAZINES. Please follow these guidelines if shipping, transporting, or transferring magazines or firearms for purposes of compliance with the new mag ban law by the December 10 deadline (note: shipping, transport, or transfer of non-compliant items for purposes other than compliance with the new law is not permitted, and after December 10 these options are not lawful):

Ship magazines if possible (see below if dealing with *firearms* that do not comply with the mag ban). Because NJ failed to update pre-existing conflicting provisions of law when it passed the mag ban, shipping by common carrier is the option least likely to be legally challenged. Package securely before leaving the location where the items are presently stored, and avoid contents rattling. Consider putting a couple of paperback novels into the package so you can truthfully declare the contents as "books and magazines" if required. Do not bring others with you. Go directly to the shipping location without stopping. Follow speed limit laws and avoid drawing attention to yourself. Be polite but do not answer questions and do not consent to a search if you are stopped by law enforcement on the way to ship the items. Do not resist if you or your vehicle are searched even though you have politely made it clear you do not consent to a search. **Note:** Gunsitters has its own unique requirements for magazine transfer and should be contacted directly for particulars if you are using them at storage@gunsitters.com or 973-610-8600.

If you are transporting items to comply with the new law rather than shipping them: Know that there is some risk associated with even direct transportation of items and consider shipping them instead (see above). If you have made the decision to transport nevertheless (but only for purposes of compliance with the new law): Make sure items are in a closed and securely fastened box, case, bag or container, or in a locked case if travelling out of state. Do not leave items in plain view. If you have a trunk or other secure storage area that cannot be accessed from the driver's seat, put them in it. Do not bring others with you. Go directly to your destination without stopping. Follow speed limit laws and avoid drawing attention to yourself. Be polite but do not answer questions and do not consent to a search if you are stopped by law enforcement on the way to ship the items. Do not resist if you or your vehicle are searched even though you have politely made it clear you do not consent to a search.

If transferring magazines directly to persons authorized to possess them in NJ, try to have them pick the items up from your location rather than shipping or transporting them yourself.

If *firearms* are being sold or transferred to a third party who can lawfully receive them, that should only occur through a NJ FFL. If the firearm sale is to someone out of state, the NJ FFL can ship it to another FFL in the state where the purchaser is located, for transfer to the purchaser.