



Straw Purchases

Background

A “straw purchase” occurs when the actual buyer of a firearm uses another person, a “straw purchaser,” to execute the paperwork necessary to purchase a firearm from a federally licensed firearms dealer (FFL).¹ A straw purchaser is a person with a clean background who purchases firearms specifically on behalf of a person prohibited from purchasing a firearm because he or she is a convicted felon, domestic violence misdemeanant, juvenile, mentally ill individual or other federally or state-defined prohibited person.² The straw purchaser violates federal law by making a false statement to the FFL about a material fact by lying on ATF Form 4473 (the firearm transaction record) or presenting false identification in connection with the purchase.³

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), straw purchasers “represent a significant overall crime and public safety problem.”⁴ When a person with a clean background intentionally buys firearms for prohibited persons, she or he thwarts the background check requirement and allows firearms to be funneled to criminals, domestic abusers and gangs.⁵

In June of 2000, ATF published a study of 1,530 firearms trafficking investigations conducted during the period July 1996 – December 1998. That study, *Following the Gun: Enforcing Federal Laws Against Firearm Traffickers*,⁶ found that straw purchasing was the most common channel of illegal gun trafficking, accounting for almost one-half (46%) of all investigations, and associated with nearly 26,000 illegally trafficked firearms.⁷

¹ The actual gun buyer uses the straw purchaser to execute the firearms transaction record ([Bureau of Alcohol, Tobacco, Firearms and Explosives \(ATF\) Form 4473](#)), purporting to show that the straw purchaser is the actual purchaser of the firearm. U.S. Dep’t of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 7 n.20 (Jan. 1999), at <http://www.atf.gov/publications/download/treas/treas-gun-shows-brady-checks-and-crime-gun-traces.pdf>; and Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *Following the Gun: Enforcing Federal Laws Against Firearm Traffickers* 1 (June 2000), at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

² The U.S. Department of Justice has described a straw purchase as the “acquisition of a firearm from a federally licensed firearms dealer by an individual (the “straw”) for the purpose of concealing the true identity of the intended receiver of the firearm(s).” Bureau of Justice Assistance, U.S. Dep’t of Justice, *Reducing Illegal Firearms Trafficking: Promising Practices and Lessons Learned* 24 (July 2000), at <http://www.ncjrs.org/pdffiles1/bja/180752.pdf>.

³ For detailed information about federal law prohibiting straw purchases, see the Federal Law subsection, *infra*.

⁴ Bureau of Alcohol, Tobacco, Firearms, U.S. Dep’t of Treasury, *supra* note 1, at 18.

⁵ For information on the ease by which straw purchases of guns can be made, see Mayors Against Illegal Guns, *Inside Straw Purchasing: How Criminals Get Guns Illegally*, at <http://www.mayorsagainstillegalguns.org/downloads/pdf/inside-straw-purchases.pdf>.

⁶ Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *supra* note 1, at ix, xi.

⁷ *Id.* at xi, 18. ATF’s trafficking investigations during this period that specifically involved youth and juveniles found that the source of 50.9% of the trafficked guns were via straw purchasers or straw purchasing rings. Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *Commerce in Firearms in the United States* 22 (Feb. 2000), at <http://permanent.access.gpo.gov/lps4006/020400report.pdf>.

Gun shows and flea markets are a “major venue for illegal trafficking”⁸ and thus have been the target of law enforcement trafficking and straw purchasing investigations. During ATF’s investigations of gun shows, the agency found that FFLs committed numerous federal crimes at shows, including facilitating straw purchases.⁹ Subsequent ATF investigations at gun shows from 2004 – 2006 uncovered “widespread” straw purchasing at shows, where guns were diverted to “convicted felons and local and international gangs.”¹⁰

New York City officials recently conducted their own investigation at gun shows across the U.S. to test whether, among other things, FFLs would sell to someone who appeared to be a straw purchaser.¹¹ New York’s investigation found that 16 out of 17 (or 94% of) FFLs approached by investigators willingly sold to an apparent straw purchaser.¹²

The results of these investigations demonstrate that ATF must vigorously enforce existing federal regulation of FFLs, and of all gun sellers at gun shows. For this to work effectively, ATF will need increased funding from Congress, as the agency currently lacks the resources and organizational structure to succeed in combatting illegal gun trafficking and ensuring that FFLs comply with federal law.¹³

Federal Law

Federal law prohibits straw purchases by criminalizing the making of false statements to an FFL about a material fact on ATF Form 4473, or presenting false identification in connection with the firearm purchase. Two federal statutes – [18 U.S.C. § 922\(a\)\(6\)](#) and [18 U.S.C. § 924\(a\)\(1\)\(A\)](#) – are the primary laws under which straw purchases are prosecuted.

First, [18 U.S.C. § 922\(a\)\(6\)](#) prohibits any person:

⁸ Bureau of Alcohol, Tobacco, Firearms, U.S. Dep’t of Treasury, *supra* note 1, at 41.

⁹ U.S. Dep’t of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *supra* note 1, at 7; Appendix, Table 7.

¹⁰ Office of the Inspector General, U.S. Dep’t of Justice, *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ Investigative Operations at Gun Shows* v-vi (June 2007), at <http://www.justice.gov/oig/reports/ATF/e0707/final.pdf>. From 2004-2006, ATF conducted 202 investigative operations at 195 gun shows, or roughly 3% of the gun shows held nationwide during this period. The investigations resulted in 121 arrests and the seizure of 5,345 firearms. *Id.* at iv-v.

¹¹ The City of New York, *Gun Show Undercover: Report on Illegal Sales at Gun Shows* 6, 20-23 (Oct. 2009), at http://www.gunshowundercover.org/images/FE/chain266siteType8/site226/client/Gun_Show_Undercover_report.pdf. The City’s investigations took place at seven gun shows in Nevada, Ohio and Tennessee from May through August 2009. *Id.* at 13.

¹² *Id.* at 20. Recent research shows that regulation of gun shows, including requiring background checks on all transfers at such shows, helps deter straw purchases. A recent study compared gun shows in California, which regulates gun shows and requires background checks for all firearm transfers, with gun shows in states with little regulation (Arizona, Florida, Nevada and Texas). The study found that straw purchases were more common at gun shows in the states with less regulation. See Garen J. Wintemute, *Gun Shows Across a Multistate American Gun Market: Observational Evidence of the Effects of Regulatory Policies*, 13 *Inj. Prevention* 150, 153-54 (2007), at <http://injuryprevention.bmj.com/content/13/3/150.full.pdf>.

¹³ For further information on this issue, see *Mayors Against Illegal Guns, A Blueprint for Federal Action on Illegal Guns: Regulation, Enforcement, and Best Practices to Combat Illegal Gun Trafficking, Section III. ATF Resources & Structure* (Aug. 2009), at http://www.mayorsagainstillegalguns.org/downloads/pdf/blueprint_federal_action.pdf.

[I]n connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition.

Subject to limited exceptions, [18 U.S.C. § 924\(a\)\(1\)\(A\)](#) imposes criminal penalties, such as fines and imprisonment, upon any person who:

[K]nowingly makes any false statement or representation with respect to the information required by [federal firearms law] to be kept in the records of a person licensed under [federal firearms law] or in applying for any license or exemption or relief from disability under the provisions of [federal firearms law].

These false statements or representations are punishable by a fine of up to \$250,000 and up to 10 years in prison.¹⁴

In a successful straw purchase, the actual buyer is never specifically linked to the gun, but both the prohibited purchaser and the straw purchaser have committed a federal felony. The straw purchaser violates [18 U.S.C. § 922\(a\)\(6\)](#)¹⁵ or [18 U.S.C. § 924\(a\)\(1\)\(A\)](#)¹⁶ by falsely stating or falsely providing evidence that he or she is the actual gun buyer, while the prohibited purchaser – usually the actual buyer – is criminally liable for aiding and abetting the straw purchaser in such violations or in causing the making of the false statements.¹⁷

Furthermore, if an FFL knew that the statements on Form 4473 were false and that a straw purchase was taking place, the FFL has also violated federal law. [18 U.S.C. § 922\(d\)](#) prohibits any individual from selling a firearm to a person whom they know or have reason to know is a criminal or other prohibited buyer.¹⁸

¹⁴ Office of the Inspector General, U.S. Dep't of Justice, *supra* note 10, at 8.

¹⁵ *See, e.g., United States v Blake*, 394 F.3d 1089 (8th Cir. 2005) (affirming defendant's conviction under 18 U.S.C. § 922(a)(6) for purchasing guns from five FFLs on behalf of others who provided money for guns, as defendant knew the guns would be resold on black market yet signed several copies of ATF Form 4473 representing that he was actual buyer of firearms).

¹⁶ *See, e.g., United States v Nelson*, 221 F.3d 1206 (11th Cir. 2000), *cert. denied*, 531 U.S. 951 (2000) (upholding conviction of actual purchaser who hired "straw purchaser" to purchase a firearm for him under theory of aiding and abetting violation of 18 U.S.C. § 924(a)(1)(A), since statute includes identities of "actual buyers" in information required to be kept by licensed gun dealers); and *United States v Howell*, 37 F.3d 1197 (7th Cir. 1994) (upholding conviction under 18 U.S.C. § 924(a)(1)(A) as evidence was sufficient that defendant made false statements on ATF form where she was not involved in selection of revolver, could not have held weapon in her hand because it was too large, was present to complete paperwork after decision to purchase had been made, and did not take possession of gun after purchase).

¹⁷ *See* Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of Treasury, *supra* note 1, at 5; and Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dep't. of Justice, *Federal Firearms Regulations Reference Guide 2005* 165, at <http://www.atf.gov/publications/download/p/atf-p-5300-4.pdf>.

¹⁸ *Id.* *See also* Americans for Gun Safety Foundation, *The Enforcement Gap: Federal Gun Laws Ignored* 10-12 (May 2003), at http://content.thirdway.org/publications/10/AGS_Report_-_The_Enforcement_Gap_-_Federal_Gun_Laws_Ignored.pdf.

To aid FFLs in better identifying and deterring potential straw purchases, as well as educate the public on the consequences of purchasing a firearm for someone who cannot legally purchase or possess one, ATF, the U.S. Department of Justice Office of Justice Programs, and the National Shooting Sports Foundation have partnered to promote the “Don’t Lie for the Other Guy” campaign.¹⁹ ATF’s role is to identify key cities in which to launch the campaign, and provide FFLs in those metropolitan areas with enhanced training to identify straw purchasers. The NSSF’s role is to lead a public awareness campaign using print, radio and television media to educate the community on the definition of a straw purchase and the severe penalties associated with attempting such a purchase.²⁰

State Laws

Several states have adopted their own prohibitions on straw purchasing. For example, California prohibits any person, corporation or dealer from selling, loaning, or transferring a firearm to: 1) any person he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm; or 2) any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either: a) knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid gun transfer requirements under California law; or b) knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to gun transfer requirements under California law.²¹

Illinois prohibits any person:

- From knowingly purchasing or attempting to purchase a firearm with the intent to deliver that firearm to another person who is prohibited by federal or state law from possessing a firearm; and²²
- In purchasing or attempting to purchase a firearm, from intentionally providing false or misleading information on an ATF firearms transaction record form.²³

Other states that specifically prohibit straw purchasing include Colorado,²⁴ Delaware,²⁵ Maryland,²⁶ Nebraska,²⁷ Ohio²⁸ and Oregon.²⁹

¹⁹ See National Shooting Sports Foundation, Inc., “Don’t Lie for the Other Guy”: A National Campaign to Prevent the Illegal Purchases of Firearms, at <http://www.dontlie.org/> (last visited Oct. 26, 2010). See also Office of the Inspector General, U.S. Dep’t of Justice, *supra* note 10, at 8.

²⁰ National Shooting Sports Foundation, Inc. “Don’t Lie for the Other Guy”: A National Campaign to Prevent the Illegal Purchases of Firearms, FAQ, at <http://www.dontlie.org/FAQ.cfm> (last visited Oct. 26, 2010).

²¹ [Cal. Penal Code § 12072\(a\)\(4\)](#).

²² 720 Ill. Comp. Stat. 5/24-3.5(b).

²³ 720 Ill. Comp. Stat. 5/24-3.5(c).

²⁴ Colo. Rev. Stat. § 18-12-111(1).

²⁵ Del. Code Ann. tit. 11, § 1455.

²⁶ Md. Code Ann., Pub. Safety §§ 5-101(t), 5-114(b)(viii), 5-134(b)(13), 5-136(b), 5-141(a).

²⁷ Neb. Rev. Stat. § 69-2422.

²⁸ Ohio Rev. Code Ann. § 2923.21(A)(4)-(7).

²⁹ Or. Rev. Stat. § 166.416.

In 2008, Pennsylvania established a “Straw Purchase Prevention Education Program,” within the state Attorney General’s office to provide resources and direct grant money to the “Don't Lie for the Other Guy Program” and similar programs that offer straw purchase prevention education.³⁰

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³⁰ 18 Pa. Cons. Stat. Ann. §§ 6181 – 6187.