

## **GUN DEALERS AND OTHER SELLERS**

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## Dealer Regulations

### Background

A firearms dealer is a person licensed by the federal government to engage in the business of purchasing and reselling firearms. Once licensed, a dealer may purchase unlimited quantities of firearms through the mail, at wholesale prices, without being subject to background checks or state waiting periods, if any.

As discussed below, federally licensed firearms dealers (FFLs) must comply with several federal statutes, including those requiring dealers to initiate background checks on unlicensed purchasers, document gun sales and report the loss or theft of a firearm. Federal law does not require all firearm sellers to obtain a license, however. A person who “makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms” is exempt from federal licensing laws.<sup>1</sup>

### Summary of Federal Law

*Licensing Requirements:* Federal law makes it unlawful for any person except a licensed dealer to engage in the business of dealing in firearms.<sup>2</sup> As applied to a firearms dealer, the term “engaged in the business” is defined as:

[A] person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.<sup>3</sup>

The Gun Control Act of 1968<sup>4</sup> established the federal licensing system for firearms dealers. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), however, that system was “overly simple” from 1968 until 1993.<sup>5</sup> During that time, any person who was over 21, paid a \$10 annual fee, had premises from which to operate, and was not prohibited from possessing firearms was issued a license.<sup>6</sup> As a result, the number of FFLs soared, reaching a peak of more than 284,000 in 1992.<sup>7</sup> In 1993, ATF estimated that 46% of all FFLs conducted no business at all, but used their licenses to buy and sell firearms in violation of state and local zoning or tax laws.<sup>8</sup>

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<sup>1</sup> 18 U.S.C. § 921(a)(21)(C). Additional information about unlicensed sellers is contained in the section on Private Sales.

<sup>2</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>3</sup> 18 U.S.C. § 921(a)(21)(C).

<sup>4</sup> 18 U.S.C. § 922.

<sup>5</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 11 (Feb. 2000).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 13.

In 1993 and 1994, Congress adopted laws to strengthen the licensing system. The 1993 Brady Handgun Violence Prevention Act increased the license fee to \$200 for the first three years and \$90 for each additional three-year period.<sup>9</sup> That law also required applicants to certify that they had informed local law enforcement of their intent to apply for a license.<sup>10</sup> The Violent Crime Control and Law Enforcement Act of 1994 required applicants to submit photographs and fingerprints, and to certify that their business was not prohibited by state or local laws, and would, within 30 days, comply with such laws.<sup>11</sup>

The FFL population decreased substantially as a result of these reforms. By 1997, after the first three-year cycle of relicensing under the new laws had been complete, the number of FFLs had dropped by 49% nationwide, to 107,554.<sup>12</sup> As of December 1, 1999, that number had fallen to 103,845, the lowest number since 1969.<sup>13</sup> The total number of FFLs has remained significantly below pre-reform levels. As of 2007, there were 108,842 FFLs nationwide.<sup>14</sup> The number of “Type 1” FFLs<sup>15</sup> saw an even more dramatic decline since the reforms of the early 1990’s. The number of Type 1 FFLs dropped 79 percent between 1994 and 2007 (from 245,628 to 50,630).<sup>16</sup>

According to ATF, the reduction in the number of FFLs has been beneficial because it has enabled ATF to inspect a higher proportion of licensees.<sup>17</sup> ATF’s inspection of FFLs remains inadequate, however. The U.S. Department of Justice Office of the Inspector General issued a report in July 2004 assessing the effectiveness of ATF’s program for inspecting FFLs. That report stated:

We found that the ATF’s inspection program is not fully effective for ensuring that FFLs comply with federal firearms laws because inspections are infrequent and of inconsistent quality, and follow-up inspections and adverse actions have been sporadic. Specifically, the ATF does not conduct in-person inspections on all applicants before licensing them to sell guns, and ATF compliance inspections of active dealers, including large-scale retailers, are infrequent and vary in quality. Even when numerous or serious violations were found, the ATF did not uniformly take adverse actions, refer FFLs for investigation, or conduct timely follow-up inspections.<sup>18</sup>

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<sup>9</sup> 18 U.S.C. § 923(a)(3)(B).

<sup>10</sup> 18 U.S.C. § 923(d)(1)(F)(iii).

<sup>11</sup> 27 C.F.R. § 478.44(a)(1)(ii); 18 U.S.C. § 923(d)(1)(F)(i), (ii).

<sup>12</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 14 (Feb. 2000).

<sup>13</sup> *Id.* at 15.

<sup>14</sup> Federal firearms licensee totals as of November 8, 2007 were provided by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.

<sup>15</sup> A “Type 1” license is the basic license required for selling firearms (as opposed to manufacturing firearms or selling ammunition or curios).

<sup>16</sup> Violence Policy Center, *An Analysis of the Decline in Gun Dealers: 1994 to 2007* 3 (Aug. 2007). The Violence Policy Center report is based on data compiled as of February 13, 2007.

<sup>17</sup> *Commerce in Firearms in the United States*, *supra* note 12, at 17.

<sup>18</sup> Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004).

Another study found that between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year.<sup>19</sup> Furthermore, ATF prosecuted only 88 corrupt gun dealers between 2000 and 2002.<sup>20</sup> ATF faces numerous obstacles that limit its ability to enforce the law. For example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for prosecution and revocation are extremely high, serious violations of firearms law have been classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed.<sup>21</sup>

The ability to conduct effective inspections and enforcement against corrupt FFLs is crucial. According to ATF, one percent of FFLs are responsible for selling almost sixty percent of the guns that are found at crime scenes and traced to dealers.<sup>22</sup> Therefore, identifying and stopping even one corrupt dealer could lead to a significant reduction in the number of crime guns.

*FFL Duties and Prohibitions:* Once licensed, federal law requires dealers to:

- Initiate background checks on unlicensed firearm purchasers;<sup>23</sup>
- Maintain records of the acquisition and sale of firearms;<sup>24</sup>
- Report multiple sales of handguns (i.e., the sale of two or more pistols or revolvers to an unlicensed person within any five consecutive business days);<sup>25</sup> and
- Report the theft or loss of a firearm within 48 hours after the theft or loss is discovered.<sup>26</sup>

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<sup>19</sup> Brady Center to Prevent Gun Violence, *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers* 23 (January 2007). The report notes that in 2006, ATF increased its total revocations to 131. *Id.* at 23.

<sup>20</sup> Americans for Gun Safety Foundation, *The Enforcement Gap: Federal Gun Laws Ignored* 4 (May 2003).

<sup>21</sup> *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers*, *supra* note 19, at 24-25.

<sup>22</sup> *Commerce in Firearms in the United States*, *supra* note 12, at 9.

<sup>23</sup> The FFL must: (a) receive from the transferee a completed and signed Firearms Transaction Record (ATF Form 4473), providing detailed information about the transferee; (b) verify the identity of the transferee through a government-issued photo identification; and (c) contact the National Instant Criminal Background Check System (NICS), through either the FBI or a state point of contact, for a determination of whether the transfer may proceed. 27 C.F.R. §§ 478.11, 478.102, 478.124; 18 U.S.C. § 922(t)(1). The dealer may transfer the firearm if NICS provides the dealer with a unique identification number for the transfer or if three business days have elapsed since the dealer contacted NICS and the system has not notified the dealer that the transfer would be unlawful. 18 U.S.C. § 922(t)(1). Detailed information on these requirements is contained in the section on Background Checks.

<sup>24</sup> 18 U.S.C. § 923(g)(1)(A). The dealer must record, “in bound form,” the purchase or other acquisition of a firearm not later than the close of the next business day following the purchase or acquisition. 27 C.F.R. § 478.125(e). The dealer must similarly record the sale or other disposition of a firearm not later than seven days following the date of such transaction and retain the Firearms Transaction Record (ATF Form 4473) obtained in the course of transferring custody of each firearm. *Id.*; § 478.124(b). When a firearms business is discontinued, these records must be delivered to the successor or, if none exists, to the Attorney General. 18 U.S.C. § 923(g)(4).

<sup>25</sup> 18 U.S.C. § 923(g)(3)(A).

<sup>26</sup> The report must be made to the Attorney General and to the “appropriate local authorities.” 18 U.S.C. § 923(g)(6).

FFLs must also submit to a maximum of one ATF inspection per year to ensure compliance with federal recordkeeping requirements.<sup>27</sup> More frequent inspections are permitted if a federal magistrate has issued a search warrant or if the search is incidental to a criminal investigation.<sup>28</sup> In addition, FFLs must respond to requests for information from ATF regarding the disposition of a firearm if such request is made during the course of a bona fide criminal investigation.<sup>29</sup>

A FFL may not sell or deliver: (1) a handgun to a resident of another state; (2) a shotgun or rifle or ammunition for that firearm to a person the dealer knows or has reasonable cause to believe is under the age of 18; or (3) a handgun or handgun ammunition to a person the dealer knows or has reasonable cause to believe is under the age of 21.<sup>30</sup>

FFLs may temporarily conduct business at a location other than that specified on the FFL's license if the temporary location is a gun show in the state specified on the license.<sup>31</sup>

ATF has found that FFLs who violate federal laws are a major source of trafficked firearms. In June of 2000, ATF issued a comprehensive report of firearms trafficking in this country. That report analyzed 1,530 trafficking investigations during the period July 1996 through December 1998, involving more than 84,000 diverted firearms.<sup>32</sup> ATF found that FFLs were associated with the largest number of trafficked guns – over 40,000 – and concluded that “FFLs’ access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.”<sup>33</sup> Random inspections by ATF have uncovered that a large percentage of FFLs do violate federal law and that this percentage is growing.<sup>34</sup>

Finally, according to a 1998 ATF random sample of FFLs nationwide, 56% of all dealers operated out of their homes.<sup>35</sup> Of the remaining 44%, 25% operated out of commercial premises that were gun shops or sporting goods or hardware stores.<sup>36</sup> The remainder were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores.<sup>37</sup>

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<sup>27</sup> 18 U.S.C. § 923(g)(1)(B).

<sup>28</sup> 18 U.S.C. § 923(g)(1)(A), (B).

<sup>29</sup> 18 U.S.C. § 923(g)(7).

<sup>30</sup> 18 U.S.C. § 922(b)(1), (3).

<sup>31</sup> 18 U.S.C. § 923(j).

<sup>32</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000).

<sup>33</sup> *Id.* at x.

<sup>34</sup> Brady Center to Prevent Gun Violence, “‘Trivial Violations’? The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers” 1 (September 2006).

<sup>35</sup> *Commerce in Firearms in the United States*, *supra* note 12, at 16.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

## SUMMARY OF STATE LAWS REGULATING FIREARMS DEALERS

Twenty-nine states and the District of Columbia have adopted laws regulating firearms dealers. In states that do not license firearms dealers, regulations cited below apply to FFLs. The most significant areas of regulation are described below.

### States that Require Dealer Licensing

Alabama	Ala. Code §§ 13A-11-78, 13A-11-79
California	Cal. Penal Code §§ 12070(a), 12071(a)
Connecticut	Conn. Gen. Stat. § 29-28
Delaware	Del. Code Ann. tit. 24, § 901
District of Columbia	D.C. Code Ann. § 7-2504.01(b)
Georgia	Ga. Code Ann. § 43-16-2
Hawaii	Haw. Rev. Stat. Ann. § 134-31
Indiana	Ind. Code Ann. §§ 35-47-2-14 – 35-47-2-16
Maryland	Md. Code Ann., Pub. Safety §§ 5-101, 5-106
Massachusetts	Mass. Gen. Laws ch. 140, § 128
New Hampshire	N.H. Rev. Stat. Ann. §§ 159:8, 159:10
New Jersey	N.J. Stat. Ann. § 2C:58-2(a)
New York	N.Y. Penal Law §§ 265.00(9), 400.00(2)
Pennsylvania	18 Pa. Cons. Stat. § 6112
Rhode Island	R.I. Gen. Laws § 11-47-38
South Carolina	S.C. Code Ann. § 23-31-130
Washington	Wash. Rev. Code Ann. § 9.41.110
Wisconsin	Wis. Admin. Code Jus § 10.04

### States that Ban Residential Dealers

Massachusetts	Mass. Gen. Laws ch. 140, § 123
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### States that Require Employee Background Checks

Connecticut	Conn. Gen. Stat. § 29-37f
Delaware	Del. Code Ann. tit. 24, § 904(b)
New Jersey	N.J. Stat. Ann. § 2C:58-2(a)
Virginia	Va. Code Ann. § 18.2-308.2:3
Washington	Wash. Rev. Code Ann. § 9.41.110(5)(b)

### States that Require Security Measures

Alabama	Ala. Code § 13A-11-79
California	Cal. Penal Code § 12071(b)(4), (14)
Connecticut	Conn. Gen. Stat. § 29-37d
District of Columbia	D.C. Code Ann. § 7-2504.07
Massachusetts	Mass. Gen. Laws ch. 140, § 123
Minnesota	Minn. Stat. § 624.7161
New Jersey	N.J. Stat. Ann. § 2C:58-2(a), N.J. Admin. Code §§ 13:54-3.11, 13:54-6.2-13:54-6.5

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**States that Require Security Measures** *(continued from previous page)*

Pennsylvania	18 Pa. Cons. Stat. Ann. § 6113
Rhode Island	R.I. Gen. Laws § 11-47-40(b)
West Virginia	W. Va. Code § 61-7-10(a)(1)

**States that Require Reporting of Sales to State and/or Local Law Enforcement**

Alabama	Ala. Code § 13A-11-79
California	Cal. Penal Code § 12076(b)(3)
Connecticut	Conn. Gen. Stat. §§ 29-33(e), 29-37a(b)
Maryland	Md. Code Ann., Pub. Safety §§ 5-101(p), 5-123(d)
Massachusetts	Mass. Gen. Laws ch. 140, §§ 123, 128B
Michigan	Mich. Comp. Laws § 28.422a(2)
New Jersey	N.J. Stat. Ann. § 2C:58-2(e)
New York	N.Y. Penal Law § 400.00(12)
Oregon	Or. Rev. Stat. § 166.427(2)
Pennsylvania	18 Pa. Cons. Stat. § 6111(b)(1)
Washington	Wash. Rev. Code Ann. § 9A.110(9)

**States that Require Warnings to Purchasers**

California	Cal. Penal Code §§ 12071(b)(7)(A)-(F), 12088.1(b), 12088.3
Connecticut	Conn. Gen. Stat. § 29-37b
Florida	Fla. Stat. Ann. § 790.175
Maine	Me. Rev. Stat. Ann tit. 15, § 455-A(1)
Massachusetts	Mass. Gen. Laws ch. 140, § 123
Michigan	Mich. Comp. Laws § 28.435(6)
Minnesota	Minn. Stat. § 624.7162
Nebraska	Neb. Rev. Stat. Ann. § 69-2426
New Hampshire	N.H. Rev. Stat. Ann. § 650-C:1(VII)
New Jersey	N.J. Stat. Ann. §§ 2C:58-16(b), 2C:58-17
New York	N.Y. Gen. Bus. Law § 396ee
North Carolina	N.C. Gen. Stat. § 14-315.2
Ohio	Ohio Rev. Code Ann. §§ 2923.25, 5502.63
Texas	Tex. Penal Code Ann. § 46.13(g)
Wisconsin	Wis. Stat. § 175.37

**States that Require Theft or Loss Reporting**

California	Cal. Penal Code § 12071(b)(13)
Massachusetts	Mass. Gen. Laws ch. 140 §§ 123, 129c
New Jersey	N.J. Admin. Code § 13:54-6.6

**States that Impose Strict Liability**

Connecticut	Conn. Gen. Stat. §§ 52-571f, 53a-8(b)
District of Columbia	D.C. Code Ann. §§ 7-2531.02(a), 7-2531.03, 7-2551.02, 7-2551.03
Pennsylvania	18 Pa. Cons. Stat. §§ 6111(g)(5), 6111(g)(6)

## Description of State Laws Regulating Gun Dealers

1. *Dealer Licensing:* Seventeen states and the District of Columbia require firearms dealers to obtain a license. The following states require licensing for the sale of all firearms: California, Hawaii, Massachusetts, New Jersey (dealer employees must also be licensed), Pennsylvania, Rhode Island,<sup>38</sup> and Washington. The District of Columbia also requires licensing for the sale of all firearms.

California appears to have the most comprehensive dealer licensing requirements in the nation. Under California law, a firearms “dealer” or “licensee” must have all of the following:

- A valid federal firearms license;
- Any regulatory or business license, or licenses, required by local government, or a letter from the duly constituted local licensing authority stating that the jurisdiction does not require any form of regulatory or business license and does not otherwise restrict or regulate the sale of firearms;
- A valid seller’s permit issued by the State Board of Equalization; and
- A certificate of eligibility issued by the Department of Justice (showing that the person is not prohibited from possessing firearms).

The dealer also must be included in the centralized list of licensees maintained by the California Department of Justice.

The following states require licensing for the sale of handguns or other specified firearms only: Alabama, Connecticut (any person who sells ten or more handguns per year or is an FFL), Delaware (dealer sales of pistols, revolvers or “other deadly weapons made especially for the defense of one’s person”), Georgia, Indiana, Maryland (dealer sales of “regulated firearms,” defined as handguns and assault weapons), New Hampshire, New York (dealer sales of handguns, assault weapons and large capacity ammunition feeding devices) and South Carolina.

In Wisconsin, before a dealer may offer a handgun for sale, the dealer must register each handgun store he or she owns or operates with the Wisconsin Department of Justice. The Department of Justice will provide the dealer with a unique identification number for each store.

2. *Banning Residential Dealers:* Massachusetts is the only state that prohibits dealers from operating in a residence or dwelling.

3. *Employee Background Checks:* Five states – Connecticut, Delaware, New Jersey, Virginia and Washington – require background checks on firearms dealer employees. In Connecticut, however, employee background checks are only required where “the principal part of such trade or business is the retail sale of goods other than firearms.”

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<sup>38</sup> Note that R.I. Gen. Laws § 11-47-38 requires all firearms dealers to be licensed. However, state law provides a mechanism for the licensing of dealers in handguns only.

In Delaware, employee background checks must be conducted annually.

In California, firearms dealers may require employees who handle, sell or deliver firearms at the dealers' place of business to undergo background checks, but such background checks are not mandatory.<sup>39</sup> California law explicitly permits local governments to require background checks of firearms dealer employees.<sup>40</sup>

4. *Security Measures:* Nine states -- Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, and West Virginia require firearms dealers to utilize security measures to reduce the risk of theft from their premises. Dealers in the following states may not display firearms, ammunition and/or advertising so that they can readily be seen from the outside by the public – Alabama, California and Rhode Island (handguns, imitation handguns and handgun advertising), Massachusetts (firearms), New Jersey (firearms and imitation firearms), Pennsylvania (handguns or short-barreled rifles or shotguns), West Virginia (firearms and ammunition). In California and Minnesota, dealers must store firearms in a specified manner after business hours. In Connecticut, businesses that sell firearms at retail must have burglar alarms that are connected directly to the local police department. New Jersey dealers also must install a state-approved theft detection and prevention system and implement security and safe storage measures.<sup>41</sup>

In Washington, D.C., firearms dealers must keep all firearms and ammunition “in a securely locked place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on.”

5. *Sales Reporting:* Twelve states require dealers to report firearm sales to state and/or local law enforcement. Three of those states – California, Connecticut and Massachusetts – require reporting of all firearm sales. Connecticut requires reporting to state and local law enforcement, while California and Massachusetts require reporting only to state law enforcement.

Nine states require the reporting of sales of handguns or other specified firearms only: Alabama, Maryland (handguns and assault weapons), Michigan (sales to concealed weapons licensees only), New Jersey, New York (handguns, short-barreled rifles and shotguns, and assault weapons), Pennsylvania (handguns, rifles and shotguns with specified dimensions) and Washington. In Oregon, dealers buying or accepting in trade used firearms are required to record the name of the person selling or trading the firearm, and the make, model and manufacturer's identification number of the firearm, and submit a copy of the record to local law enforcement.<sup>42</sup>

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<sup>39</sup> Cal. Penal Code § 12071(b)(20)(A), (B).

<sup>40</sup> Cal. Penal Code § 12071(b)(20)(C), (D).

<sup>41</sup> Note that South Carolina requires applicants for a dealers license to post a bond, a cash deposit, or deposit of other sureties, worth ten thousand dollars. S.C. Code Ann. § 23-31-150.

<sup>42</sup> In Virginia, the governing body of any county may require sellers of handguns to furnish to the clerk of the circuit court of the county, within ten days of the sale, information regarding the handgun and purchaser. Va. Code Ann. § 15.2-1207.

6. *Warnings to Purchasers:* Fifteen states require dealers to post and/or deliver written warnings to purchasers regarding the risks of storing firearms in a manner accessible to children. Those states are: California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York (applies to all retail firearms sellers), North Carolina, Ohio, Texas, and Wisconsin.

In California, dealers must post additional warnings, including those regarding the risk of lead exposure from firearms and the state's one-handgun-a-month law.<sup>43</sup>

7. *Theft or Loss Reporting:* Three states require dealers to report to state and/or local authorities the theft or loss of any firearm. California requires dealers to report theft or loss of any firearm to the local law enforcement agency where the dealer is located within 48 hours. Massachusetts requires dealers to report any theft or loss to the local licensing authority and to the state Criminal History Systems Board. New Jersey requires dealers to report the loss or theft of firearms or ammunition to the state police within 48 hours.

8. *Strict Liability:*<sup>44</sup> Two states – Connecticut and Pennsylvania – as well as the

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<sup>43</sup> In addition, Colorado requires FFLs to post a sign describing the state's prohibition on straw purchasers. Colo. Rev. Stat. § 18-12-111.

<sup>44</sup> In 2005, Congress passed and the President signed into law the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. The Act includes, *inter alia*, the following exceptions:

- (ii) an action brought against a seller for negligent entrustment or negligence per se;
- (iii) an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought, including –

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the firearm or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a [firearm]; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code[.]

15 U.S.C. § 7903(5)(A)(ii), (iii).

The scope of the PLCAA and its exceptions is being tested in the courts in several pending cases. In 2005, a federal district court denied a motion to dismiss a suit brought by the City of New York against gun manufacturers and distributors alleging a public nuisance, finding that the case was not precluded by the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244, 298 (E.D.N.Y. 2005), *appeal docketed*, No. 05-6942 (2d Cir. argued Sept. 21, 2007). In 2007, the Court of Appeals of Indiana upheld the denial of a motion to dismiss a similar suit brought by the City of Gary Indiana. The court found that the PLCAA did not apply to the City's case. *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007). *But see District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008); *and Iletto v. Glock, Inc.*, 421 F. Supp.2d 1274 (C.D. Cal. 2006), *appeal docketed* Nos. 06-56872, 07-15403, 07-15404 (9th Cir. Jan. 4, 2007) (both granting defendants' motion for judgment on the pleadings under PLCAA).

District of Columbia, impose strict liability on firearms dealers under certain circumstances. In Connecticut, any person who sells, delivers or otherwise transfers a firearm to a person knowing that person is prohibited from possessing such firearm “shall be strictly liable for damages for the injury or death of another person resulting from the use of such firearm by any person.” Connecticut also provides that any person who sells, delivers or provides any firearm to another person to “engage in conduct which constitutes an offense knowing or under circumstances in which he should know that such other person intends to use such firearm in such conduct shall be criminally liable for such conduct and shall be prosecuted and punished as if he were the principal offender.”

Pennsylvania’s law is similar to Connecticut’s.

The District of Columbia provides that any firearms dealer who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale of a firearm will be strictly liable in tort for all damages caused by the discharge of the firearm in the District, regardless of whether the person operating the firearm is the original, illegal purchaser. A strict liability action may not be brought, however:

- When the basis of the strict liability is a firearm originally distributed to a law enforcement agency or a law enforcement officer;
- By a person who can be shown by a preponderance of the evidence to have committed a self-inflicted injury or who was injured by a firearm while committing a crime, attempting to commit a crime, engaged in criminal activity, or engaged in a delinquent act;
- By a person who can be shown by a preponderance of the evidence to be engaged in the sale or distribution of illegal narcotics; or
- By a person who either assumed the risk of the injury that occurred or negligently contributed to the injury that occurred.

Dealers of assault weapons or machine guns in the District will also, with certain exceptions, be held strictly liable in tort for all direct and consequential damages arising from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District.<sup>45</sup>

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<sup>45</sup> In *District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008), the court affirmed judgment on the pleadings in favor of defendants (various manufacturers, importers and distributors of firearms), concluding that the District’s claims under the Assault Weapon Manufacturing Strict Liability Act were barred by the PLCAA. *See also supra* note 44.

## SUMMARY OF SELECTED<sup>46</sup> LOCAL LAWS REGULATING FIREARMS DEALERS

### Local Laws Regulating Firearms Dealers

<b>Chicago</b>	<b>Chicago, Ill., Code §§ 4-144-010, 4-144-040, 4-144-061, 4-144-080, 4-380-070, 17-9-0202-C</b>
<b>Cleveland</b>	<b>Cleveland, Ohio, Code §§ 674.07, 674.09, 627.16, 627A.03</b>
<b>Columbus</b>	<b>Columbus, Ohio, Code §§ 545.02, 545.04(c), 2323.20</b>
<b>Hartford</b>	<b>Hartford, Conn., Code §§ 21-51, 21-58, 21-60</b>
<b>Los Angeles</b>	<b>Los Angeles, Cal., Code ch. X, art. 3, div. 9, § 103.314, Los Angeles, Cal. Code ch. V, art. 5, §§ 55.11, 55.15, 55.16</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code §§ 10-302, as amended by Local Law 30 (July 27, 2006), 10-303.2(b), 10-306(c), 10-131(i), New York, N.Y., Rules tit. 38, §§ 1-04 – 1-06, 4-04</b>
<b>Omaha</b>	<b>Omaha, Neb., Code §§ 19-51, 19-363, 19-371, 19-373, 19-376, 20-199, 20-202</b>
<b>San Francisco</b>	<b>San Francisco, Cal., Police Code art. 9, §§ 613, 613.2, 613.3, 613.9, 613.10-2, 613.10-3, 613.13, 615, San Francisco, Cal., Police Code art. 35, § 3502</b>

*Chicago:* Chicago requires a local dealer license for all firearm sales, and daily sales reporting by dealers to the Superintendent of Police. Chicago prohibits any person from exhibiting handguns (including specified ammunition) in show cases, in show windows, on counters, or in any other public manner, or displaying signs, posters, cartoons or display cards suggesting the sale of such weapons. A firearms dealer may not operate out of his or her residence.

*Cleveland:* Handgun dealers are required to obtain a local license. Dealers engaged in such business at more than one location must obtain a separate license for each location. Dealer businesses are restricted to locations within general retail districts or semi-industrial districts, and dealer licenses will not be issued for business locations within 1,000 feet of a school, church, day care center, liquor establishment or another handgun dealer. Dealers must provide records of handgun sales to local law enforcement within twenty-four hours of sale.

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<sup>46</sup> This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

Cleveland prohibits dealers from exhibiting for sale in show cases or show windows any revolvers, and from displaying any signs, posters, cartoons or display cards suggesting the sale of revolvers.

When selling any firearm, a licensed dealer must offer to sell or give the purchaser a trigger lock or similar device which prevents the firearm from discharging. Licensed dealers also must conspicuously post a warning at every purchase counter, as follows: “IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM WHERE CHILDREN CAN OBTAIN ACCESS.” This warning also must be distributed to each firearm purchaser at the time of sale.

*Columbus:* Columbus requires a license to engage in the business of dealing in weapons (including firearms). Dealers are required to report transactions to law enforcement within 24 hours. Dealers are prohibited from knowingly exhibiting firearms in show windows, and must report to law enforcement “forthwith” the loss or theft of any firearm in the dealer’s possession or control.

*Hartford:* Hartford requires that any person who (1) advertises, sells, delivers, offers or exposes for sale or delivery; (2) has in his or her possession with intent to sell or deliver; (3) loans; (4) exchanges; (5) gives away or (6) otherwise transfers the ownership or possession of any pistol or revolver at retail must obtain a permit. Sellers of handguns must keep a record of all handguns transferred and provide such records to law enforcement each month.

*Los Angeles:* Firearms dealers in Los Angeles are required to: (1) obtain a permit; (2) locate in an area that is not in a residential neighborhood; (3) obtain the right thumbprint of each firearms purchaser;<sup>47</sup> (4) obtain a policy of insurance with limits of liability of at least \$1 million; (5) conduct employee background checks; (6) sell trigger locks with all firearms;<sup>48</sup> (7) post warnings regarding the dangers of guns in the home; and (8) comply with security requirements to deter theft.

Firearms dealers (and other ammunition vendors) must maintain records of ammunition purchases and obtain the right thumbprint of each ammunition purchaser.

No firearms dealer or other person may sell, lend, give, transfer ownership of, or otherwise transfer any “ultracompact firearm.”<sup>49</sup>

*New York City:* No person or business may engage in the business of transferring firearms in New York City without a license. The city issues separate licenses for two

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<sup>47</sup> In 2003, California passed Penal Code § 12077(b)(2),(c)(2), which requires dealers to obtain the right thumbprint of all firearm purchasers.

<sup>48</sup> In 1999, California enacted a law requiring that firearm safety devices be sold with all firearms. Cal. Penal Code §§ 12087.6, 12088 – 12088.9, 12126.

<sup>49</sup> Los Angeles also prohibits dealers from selling junk guns. In 1999, California passed Penal Code § 12125, which prohibits the sale of junk guns in the state. Additional information on laws banning junk guns is contained in the section on Design Safety Standards for Handguns: Regulating Junk Guns/Saturday Night Specials.

principal types of firearms dealers: (1) dealers in rifles and shotguns; and (2) dealers in handguns and short-barreled rifles and shotguns. To obtain either license, the city police commissioner must determine that the applicant is of good moral character; has not been convicted of a felony, serious offense, or violation of the city assault weapon ban; has no mental defects that would impair his or her ability to safely possess a firearm; and that there is no good cause for denial of the license. In addition, applicants must be U.S. citizens, more than 21 years of age, and maintain a business in the city.

*Transfer Restrictions:* No dealer in rifles and shotguns may transfer a rifle or shotgun unless the purchaser exhibits a valid rifle and shotgun permit or proof that he or she is exempt from the permitting requirement. Rifle or shotgun ammunition and rifle and shotgun ammunition feeding devices capable of holding five rounds or less may be transferred only to persons with a rifle and shotgun permit and registration certificate, both of which must be displayed at the time of transfer.

Similarly, handgun ammunition or ammunition feeding devices designed for use in a handgun may not be transferred to any person who does not exhibit a handgun license or proof that he or she is exempt from the licensing requirement. Furthermore, no firearms dealer may transfer handgun ammunition of any caliber to a person not authorized to possess a handgun of the same caliber within the city.

*Employee Restrictions:* New York City requires all employees of a licensed rifle and shotgun dealer to personally possess a valid rifle and shotgun permit or handgun license. Licensees must submit a list of employees to law enforcement and must report any change in personnel or change in an employee's address within 48 hours of the change. No person who has been convicted of a felony, misdemeanor, serious offense or who is the subject of certain court orders may be employed by a firearms dealer. In addition, the fitness of an employee is subject to review by the Police Commissioner who may direct the licensee to terminate an employee based on various factors, including his or her "character or reputation."

*Safety and Security Requirements:* New York City requires dealers in rifles and shotguns to take safety precautions such as installing alarms and using high-security cylinder locks to make the premises secure. In addition, licensees must allow law enforcement to conduct a survey of the premises after which recommendations for increased security measures will be made.

Dealers in handguns and short-barreled rifles and shotguns may not display weapons in the store windows or doors but may display them enclosed in a glass case within the premises so long as they are removed and safeguarded when the business is closed. When not displayed, weapons must be locked in an enclosed security room or safe. Ammunition may not be displayed in any area. Dealers in handguns and short-barreled rifles and shotguns are required to conduct a physical inventory of their premises twice a year, and report the results as directed by the Police Commissioner.<sup>50</sup>

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<sup>50</sup> On July 27, 2006, New York City Mayor Michael Bloomberg signed into law Local Law 30, which requires dealers in handguns and short-barreled rifles and shotguns to perform a physical inventory twice a

Any dealer who sells a handgun or short-barreled rifle or shotgun must provide a warning printed on a label attached to the firearm and on a separate sheet of paper which reads, “THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS.”

*Theft or Loss Reporting:* Rifle and shotgun dealers must report to the local police precinct and to the Rifle/Shotgun Section of the License Division of the New York City Police Department the loss or theft of any rifle or shotgun, ammunition, dealer’s license, or record by telephone on the next business day after discovery of the loss or theft and in writing within 10 calendar days of the discovery. Dealers in handguns and short-barreled rifles and shotguns must also take an inventory twice a year of all firearms and forward a copy to local law enforcement.

*Civil Liability:* New York City imposes civil liability, including punitive damages, for any injury or death caused by a firearm that a manufacturer or dealer has transferred if the injury or death results from the use of a firearm by a person not authorized to possess the firearm in the city. Liability may be imposed only if the manufacturer or dealer “or any other individual or entity acting subsequent to such manufacturer or dealer” unlawfully transferred the firearm at any time prior to the injury or death. Any manufacturer or dealer that has complied with a list of standards during the year immediately preceding the transfer of the firearm is exempt. The standards address transfers at gun shows, recordkeeping and access to records, limiting handgun transfers to one a month, and compliance with all applicable laws governing firearms transfers. In addition, a manufacturer or dealer is exempt if during the year preceding the transfer of the firearm at issue, he or she has not transferred a firearm to any other manufacturer or dealer “in circumstances in which the manufacturer or dealer transferring such firearm knew or should have known that such manufacturer or dealer had not complied” with the standards listed above. However, if the manufacturer or dealer can prove that the injury or death was not directly or indirectly related to any act or omission by him or her, liability will not attach.<sup>51</sup>

*Omaha:* Omaha prohibits any person from engaging in the business of firearms dealer without obtaining a permit. The permit requirement applies to anyone engaged in the business of buying, selling, renting, pawning, pledging or trading firearms. A dealer must obtain a separate permit for each location at which he or she does business.

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year and report to the Police Department. Local Law 30 was one of four bills signed into law by Mayor Bloomberg on July 27, 2006. The other laws are: (1) Local Law 29, establishing a Gun Offender Registry requiring certain individuals convicted of criminal possession of a weapon to register with the Police Department; (2) Local Law 31, limiting handgun sales and purchases to one every 90 days; and (3) Local Law 32, banning deceptively colored firearms and the use and sale of gun coloration kits used to paint guns to look like toy guns.

<sup>51</sup> Note that the New York City civil liability ordinance was enacted prior to the passage of the Protection of Lawful Commerce in Arms Act (PLCAA). See *supra* note 44.

Any person engaged in the sale, pawning, exchange, loan, rental or delivery of firearms must complete and furnish to law enforcement a daily report of all such transactions.

Firearm dealers are required, as part of their application for a permit, to execute a bond to the city in the sum of \$2,000.

*San Francisco:* San Francisco has adopted comprehensive dealer regulations. Those regulations require dealers to: (1) obtain a license from the Police Department; (2) undergo a background check and identify all employees who will have access to or control of workplace firearms so that those individuals can undergo a background check; (3) comply with security measures as required by the Chief of Police to discourage firearm theft; and (4) obtain liability insurance with minimum limits of liability of \$1 million.

San Francisco also prohibits dealers from: (1) operating in residential neighborhoods and near other “sensitive” areas (e.g., schools, churches and other firearms dealers); (2) selling certain types of ammunition (e.g., Black Talon and other bullets that are designed to increase damage to the human body or other target) (3) selling “ultracompact” firearms; (4) allowing minors or other prohibited purchasers to enter the dealer’s premises unless firearms and related accessories are kept or displayed within a separate room; and (5) displaying firearms, imitation firearms, ammunition or firearm or ammunition advertising where it can be readily seen from outside the premises..

Dealers must twice annually provide law enforcement with a detailed inventory of all firearms, including those that have been lost or stolen. San Francisco also requires dealers (and other ammunition vendors) to maintain records of ammunition sales.

San Francisco imposes strict tort liability on dealers, manufacturers and importers of firearms for direct and consequential damages arising from bodily injury or death that result from the discharge of a firearm within the City and County of San Francisco, for firearms manufactured, imported, distributed, sold, leased or otherwise transferred by the manufacturer, importer and/or dealer. This provision does not apply to shotguns or rifles without a magazine, or with a fixed magazine of four or fewer rounds. Other exemptions include: (1) actions based on discharge of a firearm during the commission of a crime; (2) actions based on discharge of a firearm by a law enforcement official; (3) actions based on discharge of a firearm that was equipped with an internal personalized safety feature at the time of its first retail sale; and (4) actions seeking to recover damages for self-inflicted injuries.<sup>52</sup>

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<sup>52</sup> Note that this ordinance was enacted prior to the passage of the Protection of Lawful Commerce in Arms Act (PLCAA), which grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. See *supra* note 44.

## FEATURES OF COMPREHENSIVE DEALER LICENSING AND REGULATION LAW

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- All firearms dealers selling any class of firearm are required to obtain a state and/or local license and undergo a background check (*California, Hawaii, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Washington, District of Columbia, Chicago, Columbus, Los Angeles, New York City, Omaha, San Francisco*)<sup>53</sup>
- Dealers in residential and other sensitive neighborhoods are prohibited (*Massachusetts, Chicago, Cleveland, Los Angeles, San Francisco*)
- Dealer employees are required to undergo background checks (*Connecticut, Delaware, New Jersey, Virginia, Washington, Los Angeles, New York City, San Francisco*)
- Dealers are required to take security precautions to reduce the risk of theft (security measures may include safe storage requirements, alarm systems, and limitations on the display of firearms) (*Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, West Virginia, District of Columbia, Chicago, Cleveland, Columbus, Los Angeles, New York City, San Francisco,*)
- Dealers are required to report all firearm sales to state and local law enforcement (*Connecticut*)
- Dealers are required to maintain records of ammunition sales (*Los Angeles, San Francisco*)
- Dealers are required to provide law enforcement with a physical inventory of all firearms at least annually (*New York City, San Francisco*)
- Dealers are required to obtain liability insurance to ensure that persons harmed by the dealers' actions will be adequately compensated (*Los Angeles, San Francisco*)
- Dealers are required to post warnings to consumers (*California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas, Wisconsin, Cleveland, Los Angeles, New York City*)
- Dealers are required to report the theft or loss of any firearm to state and local authorities (*Massachusetts*)

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<sup>53</sup> A 2007 report by the International Association of Chiefs of Police (IACP) recommended that state and/or local governments license all gun dealers. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007). IACP noted that state and local requirements can respond to specific community concerns and bring additional resources to identify and stop corrupt gun dealers.

- Dealers are prohibited from selling any firearm unless the firearm includes a locking device (*California, Massachusetts, Michigan, New York, Pennsylvania*)<sup>54</sup>
- Dealers are subject to civil liability for negligent entrustment, negligence per se, and knowing violations of federal or state statutes applicable to the sale or marketing of the firearms<sup>55</sup>

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<sup>54</sup> Additional information on laws governing locking devices is contained in the section on Locking Devices.

<sup>55</sup> New York City and San Francisco impose civil liability on dealers and others for some gun injuries and deaths. Civil liability laws require careful drafting in light of the new Protection of Lawful Commerce in Arms Act (PLCAA). *See supra* note 44.

## Private Sales

### Background

Private sales are firearm sales by persons other than federally licensed firearms dealers. Private sellers are not subject to federal laws governing licensed dealers.

Although the “private sale” loophole is frequently referred to as the “gun show” loophole (because of the particular problems associated with gun shows), it applies to all firearm sales, regardless of where they occur.<sup>1</sup>

### Summary of Federal Law

Federal law imposes various duties on federally licensed firearms dealers. Firearms dealers must, among other things: (1) perform background checks on prospective firearm purchasers; (2) maintain records of all gun sales; (3) make those records available to law enforcement for inspection; (4) report multiple sales; and (5) report the theft or loss of a firearm from the licensee’s inventory.<sup>2</sup> Federal law imposes none of these requirements on *unlicensed* sellers, however.

The Gun Control Act of 1968 provides that persons “engaged in the business” of dealing in firearms must be licensed.<sup>3</sup> Although Congress did not originally define the term “engaged in the business,” it did so in 1986 as part of the McClure-Volkmer Act (also known as the “Firearms Owners’ Protection Act”). That Act defined the term “engaged in the business,” as applied to a firearms dealer, as “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.”<sup>4</sup>

Significantly, however, the term was defined to *exclude* a person who “makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”<sup>5</sup>

Consequently, unlicensed sellers may sell firearms without conducting background checks or documenting the transaction in any way. In addition, because federal law does not require private sellers to inspect a buyer’s driver’s license or any other identification, there is no obligation for such sellers to confirm that a buyer is of legal age to purchase a firearm. As a result, convicted felons, minors and other prohibited purchasers can easily buy guns from unlicensed sellers.

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<sup>1</sup> Issues specific to gun shows are discussed in the section on Gun Shows.

<sup>2</sup> 18 U.S.C. §§ 922(t), 923(g).

<sup>3</sup> 18 U.S.C § 921(a)(21)(C).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

According to a 1999 report issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the current definition of “engaged in the business” often frustrates the prosecution of “unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons.”<sup>6</sup> A June 2000 ATF report found that unlicensed sellers were involved in about a fifth of the trafficking investigations and associated with nearly 23,000 diverted guns.<sup>7</sup> A national survey of firearm ownership conducted in 1994 determined that 60 percent of all firearm sales in the U.S. involved federally licensed dealers, while the remaining 40 percent of firearms were acquired from unlicensed sellers.<sup>8</sup>

## **SUMMARY OF STATE REGULATION OF PRIVATE SALES<sup>9</sup>**

Five states (California, Connecticut, Maryland, Pennsylvania and Rhode Island) and the District of Columbia require universal background checks on firearm purchasers, including purchases from unlicensed sellers. In California, Rhode Island and the District of Columbia, universal background checks are required for transfers of all classes of weapons; Maryland’s law applies only to handguns and assault weapons; the Connecticut and Pennsylvania laws are limited to handguns. Delaware, Nevada and Oregon have laws allowing voluntary background checks by unlicensed sellers.

Alaska, Illinois, Massachusetts and Washington have a variety of recordkeeping requirements that apply to private transactions.

### **Universal Background Check States**

<b>California</b>	<b>Cal. Penal Code §§ 12072(d), 12082</b>
<b>Connecticut (handguns only)</b>	<b>Conn. Gen. Stat. § 29-33(c)</b>
<b>District of Columbia</b>	<b>D.C. Code Ann. §§ 7-2502.01, 7-2502.03, 7-2505.01, 7-2505.02</b>
<b>Maryland (“regulated firearms” only)<sup>10</sup></b>	<b>Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124, 5-130(j)</b>
<b>Pennsylvania (handguns only)</b>	<b>18 Pa. Cons. Stat. §§ 6111(b), 6111(c), 6111(f)(1), (2)</b>
<b>Rhode Island</b>	<b>R.I. Gen. Laws §§ 11-47-35 – 11-47-35.2</b>

### **Voluntary Background Check States**

<b>Delaware</b>	<b>Del. Code Ann. tit. 24, § 904A</b>
<b>Nevada</b>	<b>Nev. Rev. Stat. Ann. § 202.254</b>
<b>Oregon</b>	<b>Or. Rev. Stat. § 166.436</b>

<sup>6</sup> U.S. Department of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 13-14 (Jan. 1999).

<sup>7</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* xi (June 2000).

<sup>8</sup> Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Department of Justice, National Institute of Justice Research in Brief 6-7 (May 1997), at <http://www.ncjrs.org/pdffiles/165476.pdf>.

<sup>9</sup> Colorado, Connecticut, Illinois, New York and Oregon have partially addressed the private sale loophole by requiring background checks on all purchasers at gun shows. Additional information about background checks and other requirements at gun shows is contained in the section on Gun Shows.

<sup>10</sup> In Maryland, “regulated firearms” are defined to include handguns and assault weapons.

## States Imposing Recordkeeping or Reporting Requirements on Private Sellers

<b>Alaska</b>	<b>Alaska Stat. § 08.76.010</b>
<b>California</b>	<b>Cal. Penal Code §§ 12071(b)(17), (b)(18), 12076(b)</b>
<b>Connecticut (handguns only)</b>	<b>Conn. Gen. Stat. § 29-33(e)</b>
<b>Illinois</b>	<b>430 Ill. Comp. Stat. 65/3(b)</b>
<b>Maryland (regulated firearms only)</b>	<b>Md. Code Ann., Pub. Safety §§ 5-101(p), 5-123(d), 5-124(e)</b>
<b>Massachusetts</b>	<b>Mass. Gen. Laws ch. 140, §§ 128A, 128B</b>
<b>Pennsylvania</b>	<b>18 Pa. Cons. Stat. § 6111(b)(1)</b>
<b>Rhode Island</b>	<b>R.I. Gen. Laws § 11-47-35(a)(2)</b>
<b>Washington</b>	<b>Wash. Rev. Code Ann. § 19.60.020</b>

## Description of State Laws Regulating Private Sales

1. *Universal Background Checks for All Firearm Transfers:* The most comprehensive approach to ensuring that sales are only made to eligible purchasers is through a requirement for universal background checks prior to all firearm transfers. California, Rhode Island<sup>11</sup> and the District of Columbia require that, prior to any firearm transfer, a licensed dealer or law enforcement agency conduct a background check on the prospective firearm transferee.

In California, all transfers must be processed through licensed dealers. Processing transfers by private sellers through licensed dealers helps to ensure that a background check will be conducted prior to any transfer. Rhode Island requires all sellers to obtain a completed application form from the prospective purchaser, and to submit the form to law enforcement for purposes of conducting a background check. In the District of Columbia, no person may take possession of a firearm until he or she applies for and obtains a registration certificate. To obtain a registration certificate, an applicant must pass a background check conducted by the Chief of Police.<sup>12</sup> Registered firearms may be transferred only to a licensed dealer.

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<sup>11</sup> In Rhode Island, the background check requirement does not apply to persons licensed to carry a concealed handgun. R.I. Gen. Laws §§ 11-47-35.1, 11-47-35.2.

<sup>12</sup> The District of Columbia's registration law serves as a ban on most classes of firearms within the District. Sawed-off shotguns, machine guns (including certain semiautomatic assault weapons), short-barreled rifles, and handguns not registered to the current owner before September 24, 1976, may not be registered. D.C. Code Ann. § 7-2502.02. Note that in 2007, the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008. Additional information on the District of Columbia's registration law is contained in the section on Registration of Firearms.

Maryland requires a background check on every prospective transferee of “regulated firearms” (defined as handguns and assault weapons), which may be conducted by a licensed dealer or a designated law enforcement agency. Connecticut requires a background check prior to any handgun transfer. Pennsylvania requires that all handgun sales be completed by licensed dealers (thereby necessitating a background check).

2. *Voluntary Background Checks by Private Sellers:* In Delaware, Nevada and Oregon, private sellers are not required to conduct background checks on purchasers (except, in Oregon, at gun shows), but they may request a background check of the purchaser. In Delaware, the seller makes the request to a licensed dealer, who must facilitate the transfer. In Oregon and Nevada, the seller makes the request to the relevant state agency, which must process the request. In Oregon, subject to certain exceptions, a transferor who receives notification that the transferee is eligible to complete the transfer is immune from civil liability for any use of the firearm after the time of transfer.

3. *Recordkeeping and Reporting Requirements for Private Sellers:* In California (all firearms) and Pennsylvania (handguns), because all transfers must be processed through a licensed dealer, private transfers are subject to the recordkeeping and sales reporting requirements for licensed dealers. Licensed dealers are required to maintain records of all transfers (including transfers by private sellers).<sup>13</sup> California and Pennsylvania also require dealers to report handgun sales to law enforcement.<sup>14</sup>

Connecticut requires all sellers of handguns to maintain records of all handgun transfers for at least five years, and to send copies of the transfer receipt to the Commissioner of Public Safety and the Chief of Police. Illinois requires any person who transfers a firearm to keep records of all such transfers for 10 years. Maryland requires all sellers of regulated firearms to report the completed transaction to the Secretary of the Maryland State Police.<sup>15</sup> Massachusetts requires all private sellers to submit a written report documenting each firearm transfer to the executive director of the state’s Criminal History Systems Board. Purchasers of firearms from private sellers are also required to submit the same information. In Rhode Island, all sellers of handguns must maintain records of transfers for six years. Alaska and Washington require pawnbrokers and second-hand dealers to maintain written records of all firearms transactions.

4. *Other State Regulation of Private Transactions:* A number of states prohibit private transferors from selling firearms to purchasers who do not have the requisite state license or permit, or who are ineligible under state law. State permits to purchase firearms that have a short duration require purchasers to undergo background checks

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<sup>13</sup> Federally licensed firearms dealers are required to maintain sales records indefinitely. 27 C.F.R. §§ 478.124(b), 478.125(e). State laws in California and Pennsylvania also require dealers to retain sales records. Additional information about recordkeeping requirements on licensed dealers is contained in the section on Dealer Regulations.

<sup>14</sup> Pennsylvania’s requirement applies to transfers of handguns, and rifles and shotguns of specified dimensions. Additional information about sales reporting requirements is contained in the sections on Dealer Regulations and Retention of Firearm Sales and Background Check Records.

<sup>15</sup> Maryland also requires sellers to submit copies of any firearm application to the Secretary of State Police. Md. Code Ann., Pub. Safety § 5-120.

within a short time prior to taking possession of the firearm. These permits are required for purchases from dealers and private sellers. Hawaii, for example, requires all handgun purchasers to obtain a handgun permit prior to transfer.<sup>16</sup> Handgun permits in Hawaii are valid for 10 days and may be used for purchase of only one handgun. Massachusetts and Michigan also issue 10-day handgun purchase licenses to some, but not all, handgun purchasers.<sup>17</sup> These and other state licensing requirements are discussed in detail in the section on Licensing of Gun Owners or Purchasers.

## **SUMMARY OF SELECTED<sup>18</sup> LOCAL LAWS REGULATING PRIVATE SALES**

### **Local Laws Regulating Private Sales<sup>19</sup>**

<b>Chicago</b>	<b>Chicago, Ill., Code § 8-20-170</b>
<b>Columbus</b>	<b>Columbus, Ohio, Code §§ 2323.20, 2323.21</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code §§ 10-131(i)(1), 10-303, 10-304; New York, N.Y., Rules tit. 38, § 5-26</b>
<b>Omaha</b>	<b>Omaha, Neb., Code §§ 20-198(a) – 20-202</b>

*Chicago:* Chicago requires that all firearm transfers, including those by private sellers, be conducted through licensed dealers, and that ammunition transfers go through a licensed shooting gallery, licensed gun club, or licensed dealer.<sup>20</sup>

*Columbus:* Columbus prohibits any person from: (1) knowingly exhibiting for sale a firearm in a show window; (2) selling a firearm to another person unless the transferee has obtained a valid weapon transaction permit; and (3) knowingly failing to report to law enforcement “forthwith” the loss or theft of any firearm in the person’s possession or control. Columbus also prohibits any person from: (1) selling any firearm to a person under age 18; (2) selling any handgun to a person under age 21; and (3) furnishing any firearm to a person under age 18 (narrow exceptions to this prohibition exist).

*New York City:* New York City prohibits any non-firearms dealer from transferring ammunition to any person other than a firearms dealer.

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<sup>16</sup> Haw. Rev. Stat. Ann. § 134-2.

<sup>17</sup> Mass. Gen. Laws ch. 140, §§ 131A, 131E; Mich. Comp. Laws §§ 28.422, 28.422a. In both states, certain license holders need not obtain a handgun purchase permit, and would not be subject to a background check within 10 days of purchase from a private seller.

<sup>18</sup> This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

<sup>19</sup> Local requirements regarding licensing and permitting of firearm purchasers are detailed in the section on Licensing of Gun Owners or Purchasers.

<sup>20</sup> Note that Chicago prohibits the transfer of handguns, assault weapons and assault ammunition. See Chicago, Ill., Code §§ 8-20-030(h), (i), 8-20-040, 8-20-050, 8-24-025.

With limited exceptions, no person other than a licensed dealer may transfer a rifle or shotgun unless he or she has a certificate of registration for the firearm. An individual may transfer a rifle or shotgun only to a licensed firearms dealer, the holder of a permit to possess and purchase a rifle or shotgun, a person who is exempt from the permitting requirement, or a non-resident of the city. Any person who transfers a rifle or shotgun must report information about the firearm, the seller and the purchaser to the police commissioner within 72 hours of the transfer.

Any person lawfully in possession of a handgun may transfer it only after providing written notice to law enforcement.

*Omaha:* Omaha prohibits any person from selling or otherwise transferring any firearm, component parts or ammunition to any person under age 18, or any concealable firearm, or component parts or ammunition for that type of firearm, to any person under age 21. No person may sell or rent a concealable firearm to any person who has not obtained a written permit. Omaha prohibits any person from pawning, pledging or storing a concealable firearm, or accepting such a firearm in pawn or as a pledge or for storage from any person who has not registered the firearm. Any person engaged in the sale, pawning, exchange, loan, rental or delivery of firearms is required to preserve and provide a record of such transactions daily to the Chief of Police. Omaha prohibits any person from “purposely or knowingly” exhibiting for sale or transfer in a display window or any other place which can be seen from a public thoroughfare any firearm or ammunition for a firearm.

## **FEATURES OF COMPREHENSIVE LAW REGULATING PRIVATE SALES**

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- For all firearm transfers, private sellers are subject to similar requirements as licensed dealers, including background checks and recordkeeping requirements:
  - The most comprehensive option requires all firearm transfers to be conducted through licensed dealers, so that background checks will be completed on all purchasers (including purchases from unlicensed sellers), and sales records will be maintained (*California, District of Columbia, Chicago*)<sup>21</sup>

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<sup>21</sup> A 2007 report by the International Association of Chiefs of Police (IACP) recommended that all gun sales be proceed through an FFL, thereby ensuring that a mandatory background check will be conducted on the transferee. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (Sept. 2007). IACP also noted that the requirement that FFLs keep a record of gun sales would allow law enforcement to trace the gun to the last point of sale should it be criminally misused, lost or stolen.

- If the jurisdiction does not require that all firearm transfers be conducted through licensed dealers, private sellers are required to:
  - conduct background checks through a central law enforcement agency that has access to federal and state databases of prohibited purchasers (*Rhode Island requires private sellers to conduct background checks through licensed dealers or law enforcement*);
  - maintain records of all firearm transfers for a lengthy period (*Illinois requires all sellers to retain sales records for 10 years*); and
  - report all transfers to state and local law enforcement (*Massachusetts and New York City require reporting of firearm transfers to law enforcement*)

## Gun Shows

### Background

Gun shows are events dedicated to the display and sale of firearms and firearm-related accessories. Often held at public venues such as fairgrounds or civic centers, gun shows operate as temporary markets for the transfer of firearms. A 2007 report by the Office of the Inspector General of the U.S. Department of Justice found that the number of gun shows in the U.S. each year ranges from 2,000 to 5,200.<sup>1</sup> Gun shows typically attract several thousand people and a single gun show can have sales of over 1,000 firearms over the course of one weekend.<sup>2</sup>

A recent study compared gun shows in California, which has extensive regulation of gun shows and private firearm transfers, with gun shows in states with little regulation. The study found that, at gun shows in states with less regulation: straw purchases were more common, armed attendees selling guns were more common, and vendors were more likely to sell assault weapons and 50 caliber rifles.<sup>3</sup>

### Summary of Federal Law

Federal law defines “gun show” as a “function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.”<sup>4</sup> A federally licensed firearms dealer (FFL) may conduct business at a gun show or event located in the same state specified on the license.<sup>5</sup> FFLs must conduct background checks on prospective purchasers and maintain sales records of transactions at gun shows.<sup>6</sup>

Persons who are not federally licensed firearms dealers are also permitted to transfer firearms at gun shows, however. Because unlicensed, private sellers are exempt from the federal background check requirement, this creates a loophole (the “private sale” loophole) that enables certain categories of persons prohibited from purchasing or possessing firearms – such as felons, domestic violence perpetrators and mentally ill individuals – to obtain them. Likewise, private sellers at gun shows (and elsewhere) are not required to maintain records of sales.<sup>7</sup>

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<sup>1</sup> Office of the Inspector General, U.S. Department of Justice, *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ Investigative Operations at Gun Shows* i (June 2007).

<sup>2</sup> *Id.* at 6; U.S. Department of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 4-7 (Jan. 1999).

<sup>3</sup> Garen J. Wintemute, *Gun Shows Across a Multistate American Gun Market: Observational Evidence of the Effects of Regulatory Policies*, 13 *Inj. Prevention* 150, 154-55 (2007).

<sup>4</sup> 27 C.F.R. § 478.100(b).

<sup>5</sup> 27 C.F.R. § 478.100(a)(1).

<sup>6</sup> 27 C.F.R. § 478.100(c).

<sup>7</sup> Additional information on the “private sale” loophole is contained in the section on Private Sales.

Gun shows are a popular venue for private sales. A 1999 ATF study found that 25 to 50% of gun show vendors are unlicensed.<sup>8</sup> Another ATF study<sup>9</sup> reviewed over 1,500 ATF investigations and concluded that gun shows are a “major trafficking channel,” associated with approximately 26,000 firearms diverted from legal to illegal commerce. According to the study, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms.<sup>10</sup>

ATF does not have a formal gun show enforcement program, and conducts investigations of gun shows only when it has law enforcement intelligence that illegal firearms activity is likely to occur.<sup>11</sup> From 2004 – 2006, ATF conducted 202 investigative operations at 195 gun shows, or roughly 3% of the gun shows held nationwide during this period. These operations resulted in 121 arrests and the seizure of 5,345 firearms.<sup>12</sup> Offenses included convicted felons buying guns, straw purchases, unlicensed individuals selling firearms as a business, FFLs failing to document transfers or conducting background checks on purchasers, and persons possessing prohibited firearms, including machine guns and sawed-off shotguns.<sup>13</sup>

### SUMMARY OF STATE GUN SHOW REGULATION

Two states and the District of Columbia require universal background checks on all firearm purchases, including purchases at gun shows. Three other states require universal background checks on purchases of some firearms. Five states specifically require background checks on purchases of all firearms at gun shows. Eight states impose other regulations on gun shows.

#### Universal Background Check States

**California**

**Cal. Penal Code §§ 12072(d), 12082**

**Connecticut (handguns only)**

**Conn. Gen. Stat. § 29-33c**

**District of Columbia**

**D.C. Code Ann. §§ 7-2502.01, 7-2502.03,  
7-2505.01, 7-2505.02**

**Maryland (“regulated firearms” only)<sup>14</sup>**

**Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124,  
5-130(j)**

**Pennsylvania (handguns only)**

**18 Pa. Cons. Stat. §§ 6111(b), 6111(c), 6111(f)(1), (2)**

**Rhode Island**

**R.I. Gen. Laws §§ 11-47-35 – 11-47-35.2**

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<sup>8</sup> *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 2, at 4.

<sup>9</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* xi, 1, 12 (June 2000).

<sup>10</sup> *Id.* at 12.

<sup>11</sup> *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ Investigative Operations at Gun Shows*, *supra* note 1, at iii.

<sup>12</sup> *Id.* at iv-v.

<sup>13</sup> *Id.* at v.

<sup>14</sup> In Maryland, “regulated firearms” are defined to include handguns and assault weapons.

### Gun Show Background Check States

Colorado	Colo. Rev. Stat. §§ 12-26.1-101 – 12-26.1-108
Connecticut	Conn. Gen. Stat. §§ 29-37g, 29-36l
Illinois	430 Ill. Comp. Stat. 65/3, 65/3.1
New York	N.Y. Gen. Bus. Law §§ 895 – 897; N.Y. Penal Law § 400.00
Oregon	Or. Rev. Stat. §§ 166.432 – 166.441

### Other State Regulation of Gun Shows

California	Cal. Penal Code §§ 12071(b)(1), 12071.1, 12071.4
Colorado	Colo. Rev. Stat. § 12-26.1-102
Connecticut	Conn. Gen. Stat. §§ 29-33, 29-37g
Illinois	430 Ill. Comp. Stat. 65/3
Maryland	Md. Code Ann., Pub. Safety §§ 5-106, 5-130(c), (i)
New York	N.Y. Gen. Bus. Law §§ 895 – 897
Oregon	Or. Rev. Stat. §§ 166.432 – 166.441
Virginia	Va. Code Ann. §§ 54.1-4200, 54.1-4201.1

### Description of State Laws Regulating Gun Shows

1. *Universal Background Checks for All Firearm Transfers:* The most comprehensive approach to ensuring that sales are only made to eligible purchasers is through a requirement for universal background checks prior to all firearm transfers. California, Rhode Island<sup>15</sup> and the District of Columbia require that, prior to any firearm transfer, a licensed dealer or law enforcement agency conduct a background check on every prospective firearm transferee. Maryland requires a background check on every prospective transferee of certain “regulated firearms” (defined as handguns and assault weapons). Connecticut requires a background check prior to any handgun transfer, and Pennsylvania requires that all handgun sales be completed by licensed dealers (thereby necessitating a background check).

2. *Background Checks at Gun Shows:* Colorado, Connecticut, New York and Oregon require unlicensed sellers to request a licensed dealer or law enforcement agency to perform a background check prior to any firearm transfer at a gun show. Illinois requires unlicensed sellers at gun shows to request the Department of State Police to conduct a background check on the prospective recipient of a firearm.

3. *Additional State Gun Show Regulations:* Several states impose additional requirements on gun shows.

a. *Safety and security requirements:* In 1999, California enacted the nation’s broadest legislation to increase oversight at gun shows. California’s statute specifies that

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<sup>15</sup> In Rhode Island, the background check requirement does not apply to persons licensed to carry a concealed handgun. R.I. Gen. Laws §§ 11-47-35.1, 11-47-35.2.

gun show promoters must obtain a certificate of eligibility from the state Department of Justice following a background check. Promoters are also required to: (1) prepare security plans for gun shows and notify state and local law enforcement of those plans; (2) certify that they will comply with all applicable federal, state and local laws; (3) obtain liability insurance in an amount not less than \$1 million; (4) ensure that all firearms brought into the shows are cleared of ammunition and tagged for identification purposes; and (5) prohibit anyone under age 18 from entering unless accompanied by a parent, grandparent or legal guardian.

b. *Licensing of gun show vendors:* Maryland requires all vendors of handguns and assault weapons to possess a valid state dealer license or, alternatively, a temporary transfer permit (requiring a background check on the permittee) for persons displaying a handgun or assault weapon at five or fewer shows per year.

c. *Recordkeeping requirements:* Several states impose various types of recordkeeping requirements on gun show promoters and/or sellers.<sup>16</sup> Colorado, Illinois, New York and Oregon require that records be maintained of all firearm transactions at gun shows. New York requires that dealers retain records for 10 years; Oregon calls for records to be kept by the transferor for 5 years. In Illinois, the record of a firearm transfer at a gun show must include the unique identification number assigned to the transfer by the State Police. The record of the gun show transfer, like all firearm transfer records in Illinois, must be kept by the transferor for 10 years.

Virginia requires “firearms show” promoters to give notice of each show to state and local police at least 30 days prior to the show. Promoters must maintain a list of all exhibitors for the duration of the show and transmit a copy of that list to law enforcement within five days of the show’s completion.

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<sup>16</sup> Federal law requires licensed dealers to maintain firearm sales records indefinitely. 18 U.S.C. § 923(g)(1)(A).

## SUMMARY OF SELECTED<sup>17</sup> LOCAL LAWS REGULATING GUN SHOWS<sup>18</sup>

### Local Laws Regulating Gun Shows<sup>19</sup>

#### Omaha

Omaha, Neb., Code §§ 19-383, 19-384, 19-386, 19-387, 19-391, 19-392, 19-392.1, 19-392.2

Omaha requires that any person promoting or sponsoring a “firearms exhibition” first obtain a permit. Applicants for such a permit must have a federal firearms dealer license.

The fee for firearms exhibition permits is \$10. Firearms exhibitions may not last more than three consecutive days.

A firearms exhibition promoter or sponsor must provide: (1) security personnel at all exhibition entrances, who must ensure that firearms brought into the exhibition are not loaded; (2) 24 hour security at the exhibition site; (3) written notice to all exhibitors stating that all laws and ordinances must be observed; and (4) the names and addresses of all exhibitors to the chief of police. Exhibitors also must record all firearms transferred or acquired, and make this information available to law enforcement. Exhibitors are required to retain these records for two years.

Omaha prohibits the exhibition or sale of ammunition “in an assembled state” at firearms exhibitions.

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<sup>17</sup> This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

<sup>18</sup> Several California counties prohibit the sale or possession of firearms and ammunition on county-owned property, effectively prohibiting gun shows on such property. Los Angeles County prohibits the sale of firearms and ammunition on county-owned property. L.A. County, Cal., Code §§ 13.67.010 – 13.67.070. Alameda County prohibits the possession of firearms and ammunition on county-owned property. Alameda County, Cal., General Ordinance Code § 9.12.120. The local bans include county fairgrounds, where gun shows were typically held. The Los Angeles County ordinance was upheld by the California Supreme Court in *Great Western Shows, Inc. v. County of Los Angeles*, 44 P.3d 120 (Cal. 2002). Litigation challenging the Alameda County ordinance is pending in the trial court, following the Ninth Circuit’s decision rejecting the plaintiffs’ motion for preliminary injunction raising First and Second Amendment claims. See *Nordyke v. King*, 319 F.3d 1185 (9<sup>th</sup> Cir. 2003). The California Supreme Court also rejected a preemption challenge to the Alameda County ordinance in *Nordyke v. King*, 44 P.3d 133 (Cal. 2002). Marin, San Mateo and Sonoma Counties have ordinances similar to the Alameda County ordinance. Marin County, Cal., Code § 6.50.040; San Mateo County, Cal., Code § 3.53.010; Sonoma County, Cal., Code § 19-14.

<sup>19</sup> Chicago, Columbus and New York have other regulations that affect gun shows indirectly. These ordinances are detailed in the section on Private Sales.

Nonresidents who attend firearms exhibitions may legally possess concealable firearms at the exhibition site, and while in direct route to or from the exhibition, without registering them with local law enforcement.

## FEATURES OF COMPREHENSIVE LAW REGULATING GUN SHOWS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- For all firearm transfers, private sellers at gun shows are subject to similar requirements as licensed dealers, including background checks and recordkeeping requirements:
  - The most comprehensive option requires all firearm transfers to be conducted through licensed dealers, so that background checks will be completed on all purchasers (including purchases from unlicensed sellers), and sales records will be maintained (*California, District of Columbia, Chicago*)
  - If the jurisdiction does not require that all firearm transfers be conducted through licensed dealers, private sellers at gun shows are required to:
    - conduct background checks through a central law enforcement agency (or licensed dealer) that has access to federal and state databases of prohibited purchasers (*Colorado, Connecticut, Illinois, New York, Oregon*);
    - retain records of all firearm transfers for a lengthy period (*Illinois and New York require records to be retained for 10 years*); and
    - report all such transfers to state and local law enforcement
- If gun show vendors are not licensed dealers, they are required to obtain a permit, including a background check, to sell any weapons (*Maryland requires a permit but only for vendors of handguns and assault weapons*)
- Gun show promoters are required to obtain a permit (*California, Omaha*) after undergoing a background check (*California*), and/or be a licensed dealer (*Omaha*)
- Safety and security requirements are imposed on the promoter, requiring, for example, that:
  - A list of exhibitors is maintained and provided to law enforcement (*Virginia, Omaha*)
  - There is a security plan and state and local law enforcement are notified of the plan (*California*)
  - All firearms brought into the shows are cleared of ammunition (*California, Omaha*) and tagged for identification purposes (*California*)
  - Entry into gun shows by minors is restricted (*California*)

- The promoter has a specified minimum level of liability insurance (*California*)
- There are trained law enforcement personnel on site