

Federal Firearms Laws

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Major Sources of Law

- Second Amendment (Case Law)
- National Firearms Act of 1934 (revised 1968)
- Gun Control Act of 1968
- Firearms Protection Act of 1986
- Brady Bill – 1993 (National Instant Criminal Background Check)
- Assault Weapons Ban – expired

Second Amendment

- *A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*
- *In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. (Miller, 1939)*
- *We . . . read Miller to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns. (Heller, 2008 – found right to keep unlocked handgun in home for self defense – 2d amendment protects weapons in common use at the time.)*
- *McDonald v. Chicago – applies Second Amendment to state and local governments and strikes down Chicago hand gun prohibition.*

NFA 1934 – Gangster Weapons

- Regulates short shotguns, machine guns, explosives, silencers (excludes pistols and full-sized rifles).
- Creates licensing framework for importers, manufacturers and dealers and taxes transfers (stiff tax in 1934).
- Creates registry of subject weapons (limited 1968 and 1986?).
- Transfers subject to ATF approval (form 5320) and local law enforcement approval – enforces state law and prohibited persons (see GCA).
- Possession and transfer of machine guns prohibited by FOPA (except pre-1986 weapons grandfathered).
- Self-incrimination issues as applied to original language which required registration of all subject weapons possessed.

GCA 1968: Support State Laws

The Congress hereby declares that the purpose of this title is **to provide support to Federal, State, and local law enforcement** officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.
(Section 101)

GCA 1968: Regulate Dealers

- Requires federal licenses for importers, dealers and manufacturers -- 18 U.S.C. 44, s. 922(a).
- Regulates Federal Firearm Licensee (FFL) sales of firearms:
 - In violation of law of state where sold (enforce state licensing and waiting period rules where present).
 - To an out-of-state resident if unless sold in person and lawful in both states (ATF publishes state law reference, ATF P 5300.5; loosened by FOIA). For handguns, must transfer to local licensed dealer to do local verification.
 - Allows sales not in person upon affidavit of buyer and notification of local law enforcement.
- Does not prohibit in-state personal sales, purchases – so, creates “gun show loophole” – as long as seller does not have reason to believe buyer is a prohibited person.

GCA 1968: Prohibited Persons

- Under 18 for rifles; under 21 for other guns.
- Convicted of or under indictment for a crime with punishable by imprisonment for over 1 year.
- Domestic violence restraining order or conviction (1996 Lautenberg amendment).
- Adjudicated as mental defective or committed.
- Aliens, if illegal or on a nonimmigrant visa.
- Users of and persons addicted to illegal drugs.

18 U.S.C. 44, s. 922(b).

GCA 1968: *Dealer Records*

- Requires record of each transaction by a dealer:
 - Form 4473 for each sale (firearm manufacturer and serial number and purchaser name, address).
 - Special records for multiple handgun sales, Form 3310.4 (copy to state and local police).
 - Ledger of transactions – record of receipt and disposition (bound book or computer).
- Supports ATF Traces – ***NO NATIONAL DATABASE*** - rather dealers must respond orally within 24 hours to requests for records for tracing.

FOPA 1986: Need to Know

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's 1 authority to inquire into the disposition of any firearm in the course of a criminal investigation.”

18 U.S.C. 926

FOPA 1986: Loosen Rules

- Protect interstate transportation of firearms.
- Permit shipping of ammunition by mail.
- Eliminate record-keeping for ammunition sales (non armor-piercing).
- Ease interstate sales of long guns.
- Allows FFL's to sell at gun shows.
- Givebacks:
 - Prohibit new machine gun sales (making pre-1986 weapons very expensive in the market).
 - Require reporting of multiple handgun sales.

Brady 1993: Verify Background

- Requires dealers to verify buyer identity with government issued photo ID.
- Requires verified background checks for sales by dealers (ends “lie and buy”):
 - Phase I (ended 1998) – 5 day wait for background check.
 - Phase II – National Instant Criminal Background Check (NICS – over 100,000,000 checks and 700,000 denials).
- Does not extend to personal sales (gun show loophole, Columbine).
- Ammunition available based only on age-eligibility check.

Summary Elements of Federal Law

- Post-1986 machine guns prohibited; pre-1986 machine guns controlled.
- Licensing of firearms dealers “in the business”.
- Record-keeping by dealers; no national database, rather oral trace system; limited auditing.
- Criminal background check and limited mental health check through NICS for FFL sales.
- Minimal regulation of secondary inter-personal market.

President's Proposals

- Expand background checks to most private sales (40% of current sales are private sales outside the FFL system).
- Reinstate and expand assault weapons ban; limit magazine capacity to 10 rounds.

President's Proposals

- Miscellaneous additional measures:
 - Improve mental health reporting to background check system (17 states have minimal participation -- HIPPA)
 - Consider tightening standards for gun purchasing.
 - Ban possession of armor piercing ammunition
 - Strengthen research – video games, media images, use of firearms in violence
 - Strengthen penalties for straw purchasing
 - School safety measures, including more counselors and police resource officers in schools (\$230 million)
 - More mental health screening, training, etc. (\$155 million)
- Executive orders:
 - Trace all weapons recovered by federal agencies (January 16 order)
 - Greater federal agency participation in NICS data contribution (January 16 order)
 - Background checks when return firearms after investigation

Sources

- Supreme Court Case Law
 - <http://supreme.justia.com/cases/federal/us/307/174/case.html> (Miller)
 - <http://www.supremecourt.gov/opinions/07pdf/07-290.pdf> (Heller)
 - <http://www.supremecourt.gov/opinions/09pdf/08-1521.pdf> (McDonald)
- Bureau of Alcohol, Tobacco, Firearms and Explosives –
 - Federal Firearms Regulations Reference Guide (2005, Chapter 44 last amended 2004), www.atf.gov/publications/firearms
 - <http://www.atf.gov/firearms/nfa/>
 - <http://www.atf.gov/training/firearms/ffl-learning-theater/>
 - <http://www.atf.gov/publications/download/p/atf-p-3312-13.pdf> (trace system)
 - <http://www.atf.gov/press/releases/2013/01/011613-presidential-memorandum.pdf> (trace order)
 - <http://www.atf.gov/publications/download/p/atf-p-5320-8/atf-p-5320-8-chapter-13.pdf> (required reports for FFL's)
 - <http://www.atf.gov/publications/firearms/050412-firearms-commerce-in-the-us-annual-statistical-update-2012.pdf> (commerce statistics 2012)
- White House
 - <http://www.whitehouse.gov/issues/preventing-gun-violence> (President's proposals overview)
 - http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf (President's proposals)
- United States Code online – uscodebeta.house.gov (current through 12/30/2012)
- Other sources
 - <http://bjs.ojp.usdoj.gov/content/pub/html/bcft/2009/bcft09st.pdf> (Background check statistics)
 - <http://www.enotes.com/gun-control-act-1968-reference/gun-control-act-1968> (good on history of GCA enactment)
 - <http://www.bradycampaign.com/legislation> (re gun show loophole)
 - <http://www.fbi.gov/about-us/cjis/nics/nics> (re background check process)
 - http://en.wikipedia.org/wiki/National_Firearms_Act (NFA history)
 - <http://www.law.cornell.edu/uscode/text/18/926>
 - http://en.wikipedia.org/wiki/Firearm_Owners_Protection_Act (FOPA history)
 - <http://www.law.cornell.edu/uscode/text/18/926A>
 - <http://thomas.loc.gov/cgi-bin/bdquery/z?d099:SN00049:@@@D&summ2=2&> (FOPA summary)