

COMMON-SENSE PROPOSAL: REQUIRING GUN DEALERS TO PERFORM CRIMINAL BACKGROUND CHECKS ON ALL GUN-HANDLING EMPLOYEES

- ❑ **WHAT IS THE GUN STORE EMPLOYEE BACKGROUND CHECK LOOPHOLE?** Federal law clearly prohibits felons, domestic violence misdemeanants, and other persons from possessing a firearm. However, there is no requirement that gun dealers perform criminal background checks on employees to determine whether they are prohibited from possessing guns.
 - Prohibited purchasers are already prohibited from possessing firearms.¹
 - Likewise, federally licensed dealers must comply with the Gun Control Act and the licensee may not be a prohibited person.²
 - The gun industry association recommends employee background checks:
 - In 2000, the National Shooting Sports Federation (NSSF) announced a program for FFLs to help conduct background checks on employees, according to its publication “Shooting Industry.”³
 - In fact, employees of firms that get explosives licenses from ATF already must undergo ATF-administered background checks.
 - Federal law prohibits classes of persons (including felons, drug users, persons with mental illness) from possessing explosives – similar to the classes prohibited from possessing firearms. ATF accesses the same National Instant Criminal Background Check System (NICS) to implement the explosives employee background check.⁴
 - Nonetheless, at present there is no requirement that federal firearms licensees (FFLs) undertake criminal background checks of their employees who sell or handle firearms.
- ❑ **EXAMPLE OF THE EMPLOYEE BACKGROUND CHECK LOOPHOLE:**
 - **Felon working at gun store and making illegal sale:** One Georgia dealer that recently settled a case involving potential criminal activity admitted to knowingly employing a felon, who then sold a gun to undercover operatives posing as straw purchasers. Although the owner said he had told the employee not to touch the guns, video taken by undercover operatives indicated that the felon displayed guns to customers and handed them over.⁵
- ❑ **SOLUTION:** Require all dealers to supply employee information so that DOJ can run background checks on them using the NICS system.
 - **H.R. 6676**, which was introduced by Rep. Carolyn McCarthy in the 110th Congress, requires background checks for all gun store employees.

¹ 18 U.S.C. § 922(g).

² 18 U.S.C. §§ 922(d), 923(d)(1)(B, C), 923(e).

³ Shooting Industry, “NSSF provides employee background checks,” December 2000, available at http://findarticles.com/p/articles/mi_m3197/is_12_45/ai_69241772.

⁴ 18 U.S.C. §§ 842(i), 843(a), (b)(6), (h); a 2005 report from the Justice Department’s Inspector General, and 27 C.F.R. §§ 555.33(a), 555.45(c), and 555.57(b)-(c).

⁵ Report by Special Master Andrew Weismann in New York City’s litigation against this dealer, October 19, 2007.