

THE GUN SHOW LOOPHOLE

- ❑ **WHAT IS THE GUN SHOW LOOPHOLE?** Federal law allows people who sell guns to avoid running background checks or keeping records by calling themselves occasional sellers, and these sellers often congregate at gun shows. The loophole provides criminals with easy access to firearms without having to worry about any background checks.
 - Current law requires licensed gun dealers to conduct background checks, because that is the only way to determine whether a person is eligible to buy a gun. Licensed dealers must also keep records about the buyer so ATF can trace the gun if it is recovered at a crime scene.¹
 - The law does not, however, require so-called occasional sellers to do these checks – and there’s no clear definition of what qualifies as an occasional seller.²
 - Many sellers at gun shows abuse that loophole by calling themselves occasional sellers. Because they concentrate at gun shows, it is easy for felons and other prohibited possessors to find someone who will sell to them without a background check.

- ❑ **FACTS ABOUT THE GUN SHOW LOOPHOLE:**
 - **30% of trafficking:** One ATF study found gun shows involved with over 10,000 trafficked guns a year – about 30% of all criminal trafficking.
 - ATF concluded that “gun shows and flea markets are a major venue for illegal trafficking.”³
 - **Gun shows linked to the Pentagon Shooting:** In March 2010, John Bedell – who was prohibited by law from possessing guns – shot two Pentagon police officers with a gun purchased from a private seller at a Las Vegas gun show.
 - **New York City Investigation of Gun Shows:** 35 out of 47 sellers approached by investigators completed sales to people who appeared to be criminals or straw purchasers.
 - **Gun Shows linked to Columbine:** All four guns used in the Columbine school massacre were bought at gun shows without background checks.
 - **Gun Shows Linked to Terrorists:** In 2001 in Michigan, Ali Boumelhem was caught attempting to ship to Hezbollah a shipment containing ammunition, shotguns, parts of AR-15 assault rifles, flash suppressors, and speed loaders.⁴ He and his brother Mohamed had purchased the arsenal of weapons from Michigan gun shows.⁵ Other investigations have linked gun shows to potential terrorists in Florida and Texas.⁶
 - **Gun shows linked to Mexican drug-trafficking cartels:** ATF reported that between 2004 and 2006, the Phoenix field division conducted surveillance operations at eight gun shows in Phoenix, Yuma, and Tucson, Arizona, and Albuquerque, New Mexico. Suspected traffickers were later stopped at the border. ATF reported “those operations alone resulted in 13 arrests, 3 convictions, and 193 seizures of illegally purchased firearms.”⁷ ATF Assistant Director for Field Operations William Hoover said in Congressional testimony on February 7, 2008 that “the increased incidence of firearms trafficking to Mexico (from the U.S.) is influenced by,” in part, “a readily accessible source of firearms and ammunition originating in mostly the secondary market such as gun shows, flea markets and private sales.”⁸
 - **Numerous violations:** The Treasury and Justice Departments issued a report in 1999 finding “a wide variety of violations occurring at gun shows and substantial numbers of firearms associated with gun shows being used in drug crimes and crimes of violence, as well as being passed illegally to juveniles.”⁹

- Gun shows were tied to a broad range of violations, including straw purchases and the sale of kits to convert legal guns into illegal machine guns.
- Their report reviewed 314 of those departments' own investigations related to gun shows, involving over 54,000 guns, between 1991 and 1998.

❑ **SOLUTION:** Require occasional sellers to run instant background checks.

- Legislation now pending in the Senate (**S. 843**, sponsored by Sen. Frank Lautenberg) would accomplish these goals.
 - It also toughens federal laws that apply to straw sales and other crimes by dealers.
- Similar legislation is pending in the House (**H.R. 2324**, sponsored by Rep. Mike Castle).
- **These legislative proposals have bi-partisan support:**
 - President Obama and Senator John McCain have both supported closing the gun show loophole.¹⁰
 - In 2004, Senators voted 53 to 46 in favor of an amendment introduced by Senator McCain to close the gun show loophole. However, the legislation to which the amendment was attached was never passed by Congress.¹¹
 - In a poll by Republican pollster Frank Luntz and commissioned by Mayors Against Illegal Guns, 69% of NRA members and 85% of non-NRA gun owners support requiring criminal background checks on all purchasers at gun shows.¹²

¹ 18 U.S.C. § 922(a)(1), (t), 923(g).

² 18 U.S.C. § 921(a)(21)(D), (22). These provisions exempt people who are not “engaged in the business” of dealing guns from the licensure requirement.

³ Dep’t of the Treasury, Bureau of Alcohol, Tobacco & Firearms, “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers” (June 2000), available at http://www.atf.gov/pub/fire-explo_pub/pdf/followingthegun_internet.pdf (documents criminal investigations started July 1996 through December 1998).

⁴ See United States v. Boumelhem, 339 F.3d 414, 418 (6th Cir. 2003).

⁵ See Page, Susan. “McCain: Terrorists bypass laws by using gun shows,” USA TODAY, Nov. 27, 2001 (available at <http://www.usatoday.com/news/sept11/2001/11/27/guns.htm>).

⁶ See id.; Eric Holder Jr., “Keeping Guns Away from Terrorists,” The Washington Post, October 21, 2001; Jeremy Schwartz, “Sentencing in Weapons Case is Delayed, Alice Storeowner Asrar Faces Additional Accusations of Weapons Possession,” The Corpus Christi Caller-Times, January 29, 2002.

⁷ Investigative Operations at Gun Shows, supra note 14 at 30.

⁸ William Hoover, Statement Before the United States House of Representatives Committee on Foreign Affairs Subcommittee on the Western Hemisphere, February 7, 2008 (available at <http://foreignaffairs.house.gov/110/hoo020708.htm>).

⁹ Joint report of DOJ, the Treasury Department, and ATF, “Gun Shows: Brady Checks and Crime Gun Traces,” (January 1999), available at http://www.atf.gov/pub/treas_pub/gun_show.pdf.

¹⁰ PBS NewsHour, “McCain Urges Closing Gun Show Loophole But Touts Gun Rights in NRA Address,” May 16, 2008 (available at http://www.pbs.org/newshour/vote2008/blog/2008/05/mccain_urges_closing_gun_show.html).

¹¹ S.1805. The McCain Amendment was No. 2636

¹² Available at http://www.mayorsagainstillegalguns.org/html/federal/nra_member_poll.shtml.