

Virginia State Crime Commission

**Private Sales of Firearms at
Firearms Shows in Virginia**

September 9, 2008

Overview



- Federal Law
- State Laws
- Virginia Law
- Virginia Private Gun Sales
- Review of Studies
- Pending Federal Legislation
- District of Columbia v. Heller

Mission Statement



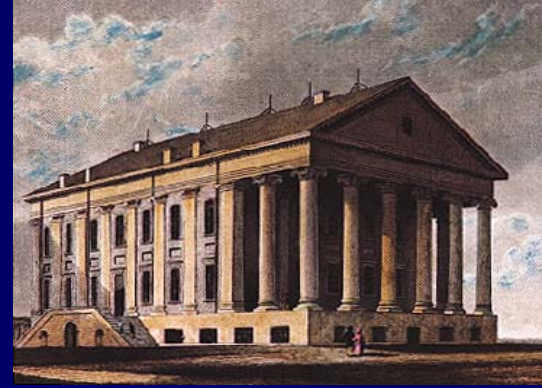
- Commission staff is directed to conduct a legal analysis of federal and state law relating to the private sales of firearms at gun shows (the gun show “loophole”) and to review any applicable studies and data.
- The purpose of this study is limited to promoting a better understanding of the complicated legal issues and statistical limitations involved so that legislators will be better equipped as they consider and devise policy.

Federal Law



- The Gun Control Act, 18 U.S.C. § 922, prohibits any person from engaging “in the business of...dealing in firearms,” unless they have a federal firearms license (FFL).
- “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. 18 U.S.C. § 921 (21)(C).

Federal Law



- **“With the principal objective of livelihood and profit” is defined as:**
 - that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, that proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. 18 U.S.C. § 921 (22).

Federal Law



- One of the requirements of having a FFL is that the dealer must request a criminal background check on a potential purchaser before the sale is completed.
 - This is to ensure the transfer of the firearm will not violate a federal or state law.
 - An exception is made if the purchaser has a state permit, such as a concealed weapons permit, that is expressly recognized by ATF. The permit must have required a criminal background check and cannot be more than five years old.

Federal Law



- This requirement only exists for dealers who have an FFL.
- If a person does not have a FFL, there is no requirement under federal law that they request a background check before selling a firearm.
- In short, as long as a person is not “engaged in the business of selling firearms,” and is only making a private sale from his personal collection, federal law does not require a background check.

State Laws



- States can pass their own laws governing firearms sales. Some currently require background checks on all firearms sales, including private sales.
- Seventeen states require background checks on at least some private sales, e.g., private sale of a handgun.
 - Two of these states only require a background check if the private sale is occurring at a gun show.
- Thirty-three states do not have any requirements for a background check on private sales.
 - Virginia is one of these thirty-three states.

Source: Dep. of Justice Bureau of Justice Statistics Report, "Survey of State Procedures Related to Firearm Sales, 2005," issued November of 2006.

Virginia Law



- Virginia does not require a background check to be performed if a person, not required to have an FFL, makes a private sale to another resident of Virginia.
- These sales can legally take place at firearms shows, or in other settings.

VA Private Gun Sales



- Examples of sales offers from the Craigslist website:

trade my firearm(s) for older truck -\$1 (Chester)
Date: 2008-08-30

“Looking for a hunting truck. Nothing fancy. Maybe a small sized 4x4 pickup or a small Blazer. Willing to trade some unused firearms of equal value. Please contact me for a list and what you’ve got. Pics are most helpful.”

VA Private Gun Sales



■ Examples continued:

Trade for hunting supplies (amelia) Date: 2008-08-14

"i have several items i want to sell or trade for some hunting items. first i have a power programmer 2 for 01 dodge trucks or suvs that have a 5.2 or 5.9 liter trucks cash I'd take 200obo....a bersa 380 7 shot mag flat black finsh [sic] only 4 months old and only shot 14 times...now i will trade one of these item for: a newer style black powder.. A nice 12 guage [sic] shot gun.. a nice rifle.. or a nice ladder stand or climbing stand of equal value....i have pics of the bersa just e-mail me for them."

VA Private Gun Sales



■ Examples continued:

Will trade labor for..? (Roanoke) 2008-07-24

"I can do roof repair, all types of carpentry, painting, landscaping, cutting down trees, refinishing (repainting or restaining) furniture, automotive work (I can fix/diagnose/install just about anything), pressure washing, moving/hauling. I own all necessary tools/truck/equipment. I'd be interested in working for exchange for cash, running or not vehicles, tools (ladders, hand tools, lawnmowers, anything), old or new video game systems, nice jewelry for the wife, a shotgun or handgun, computers, computer equipment, or any combination thereof. I'd be interested in just about anything that has value."

VA Private Gun Sales



■ Example from Virginia Trading Post:

FOR SALE: 22 Charger TALO Special Edition Semi-Automatic Pistol

Category: Firearms

Date Posted: 08/26/2008

PRICE: \$500.00 BRAND: Ruger

MODEL: 22 Charger TALO Special Edition

SAFETY: Cross Bolt Safety

TYPE: Semi-Automatic Pistol

SIGHTS: No Sights

CALIBER: 22LR BARREL LENGTH: 10"

FINISH: Black Matte

OVERALL LENGTH: 19 1/4"

ACTION: Double Action WEIGHT: 3 lbs 5 oz

STOCK: Red, White and Blue Laminate PACKAGING: Gun Rug With Ruger Logo

CAPACITY: 10+1

FEATURES: BiPod Included (Optics Not Included)

FEATURES: Weaver Style & Tip Off Scope Base



Review of Studies



- A number of studies have been published in the past ten years, examining the connection between gun shows, gun trafficking, and crime.
- Individual studies have reached differing conclusions as to what extent gun shows are a source for criminals to obtain firearms.

Review of Studies



- It should be noted that all of the studies reviewed had some inherent methodological issues, limiting the usefulness of the findings:
 - sample size;
 - selection bias;
 - potentially non-representative sample due to geographical focus;
 - generalizability.
- Example: “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,” issued by ATF in June of 2000, specifically notes near the end of the report:
 - “Most importantly, [this data does] not necessarily reflect typical criminal diversions of firearms or the typical acquisition of firearms by youth, juveniles, and adults.”

Review of Studies



- There is no doubt that some criminals do obtain firearms at gun shows.
- It is also clear that corrupt FFL dealers and the use of straw purchasers are also responsible for many criminals obtaining firearms.
- What is not known is the percentage of guns obtained by criminals from private sales at gun shows versus the percentage obtained by other means (e.g., private sales outside of gun shows, use of straw purchasers, theft, sales from corrupt FFL dealers, etc.).
- Obtaining an answer to that question will always be difficult, as there are no means to track or record private sales that take place at gun shows in those states that allow unregulated private sales at those venues.

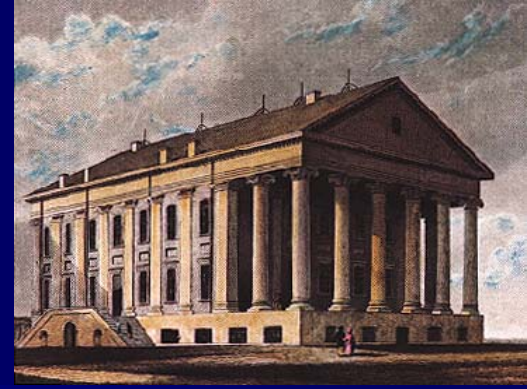
Review of Studies



- Brian R. Swann, resident agent in charge of the Richmond field office for ATF, has been quoted as saying that he "is convinced that firearms sold at gun shows are still regularly showing up on the streets of Richmond even though he doesn't 'have any statistical data presently to support it.'"

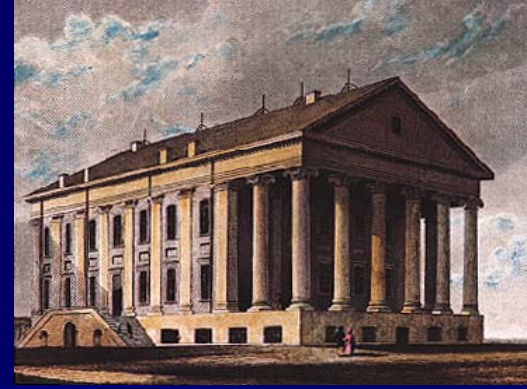
Source: Style Weekly, March 5, 2008

Pending Federal Legislation



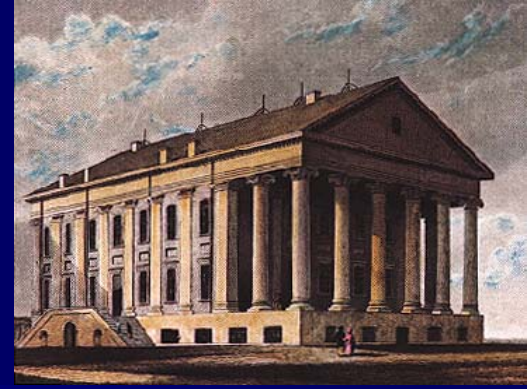
- Last year, two bills were introduced in Congress that would mandate background checks for all firearms sales at gun shows:
 - S. 2237, the “Crime Control and Prevention Act of 2007,” introduced by Senator Joseph Biden (D-DE), is currently in the Senate Judiciary Committee.
 - H.R. 96, the “Gun Show Loophole Closing Act of 2007,” introduced by Representative Michael Castle (R-DE), is currently in the House Judiciary Committee’s Subcommittee on Crime, Terrorism and Homeland Security.

Pending Federal Legislation



- If Virginia were required by Congress to mandate background checks for private sales at firearms shows, two states offer models as to how this could be accomplished – Colorado and Oregon.
- These states do not require background checks for any private sales, except for sales that take place at gun shows.

Pending Federal Legislation



- In Colorado, a gun show promoter must “arrange for the services of one or more licensed gun dealers on the premises of the gun show to obtain the background checks required by this article.” Colo. Rev. Stat. § 12-26.1-101.
- Oregon specifies that an unlicensed transferor at a gun show must request a background check prior to completing the transfer, or must complete the transfer through a gun dealer. Or. Rev. Stat. § 166.438.

District of Columbia v. Heller



- Recently, the United States Supreme Court brought a constitutional dimension into this policy issue.
- The Court struck down a D.C. law that imposed very strict limitations on the ownership of firearms:
 - A de facto ban on handguns; and,
 - Rifles and shotguns had to be disassembled or have a trigger lock installed at all times.

District of Columbia v. Heller



- For the first time, the Supreme Court stated that the Second Amendment creates not just a collective right, but an individual right, to gun ownership.
 - The right is not dependent on a person being a formal member of a state militia.
- The Court indicated very strongly that this right is incorporated, by the Fourteenth Amendment, so that it applies to the states as well as the federal government.

District of Columbia v. Heller



- The Court does state that some limitations on firearms are acceptable:
 - “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”

District of Columbia v. Heller



- In the future, what level of scrutiny will the United States Supreme Court apply to gun laws?
- The Court does not directly answer the question, but specifically notes that it will not be a “rational basis” test:
 - “If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.”

District of Columbia v. Heller



- If the level of review is not a “rational basis” test, then it must be either strict scrutiny, or some type of intermediate scrutiny.
- These levels of scrutiny typically place the burden on the government to establish that the law in question is necessary to achieve a compelling or overriding government purpose (strict scrutiny) or is substantially related to an important government purpose (intermediate scrutiny).
 - With strict scrutiny, the law will be struck down if it impacts either more people, or fewer people, than the government purpose requires. It will also be struck down if there is a less burdensome way to achieve that purpose.

District of Columbia v. Heller



- It is unclear to what extent the decision in Heller will impact firearms legislation around the country.
- Future federal court decisions will provide guidance on the full extent of what the Second Amendment guarantees.

Discussion