

= Gun show loophole =

Gun show loophole , gun law loophole , Brady law loophole ( or Brady bill loophole ) , private sale loophole , and private sale exemption are political terms in the United States referring to sales of firearms by private sellers , including those done at gun shows , dubbed the " secondary market " . The term refers to the concept that a loophole in federal law exists , under which " [ a ] ny person may sell a firearm to an unlicensed resident of the State where he resides as long as he does not know or have reasonable cause to believe the person is prohibited from receiving or possessing firearms " .

Under federal law , private @-@ party sellers are not required to perform background checks on buyers , whether at a gun show or other venue . They also are not required to record the sale , or ask for identification . This requirement is in contrast to sales by gun stores and other Federal Firearms License ( FFL ) holders who are required to record all sales and perform background checks on almost all buyers , regardless of whether the venue is their business location or a gun show . Access to the NICS background check system is limited to FFL holders and FFLs are not issued to persons that only sell firearms at gun shows .

Since the mid @-@ 1990s , gun control advocates have voiced concern over the perceived loophole in legislation , and campaigned to require background checks and record @-@ keeping for all gun sales . Contrarily , gun rights advocates have stated that there is no loophole , that current laws provide a single , uniform set of rules for commercial gun sellers regardless of the place of sale , and that no part of the United States Constitution empowers the federal government to regulate non @-@ commercial , intrastate transfers of legal firearms types between private citizens . In this latter view , regulating private sales at one type of location ( gun shows ) but not at other locations would create an exception in the law rather than eliminate one , while forcing any ( or all ) private firearm sales to go through dealers having access to the NICS background check system would be unacceptably intrusive and border on universal firearm registration .

= = Provenance = =

Sometimes referred to as the Brady bill loophole , the Brady law loophole , the gun law loophole , or the private sale loophole , the term refers to laws allowing for legal sales and transfers of firearms , that are not regulated by the National Firearms Act , without background checks between unlicensed private parties . Private @-@ party sellers are not legally required by federal law to : ask for identification , complete any forms , or keep any sales records . In addition to federal legislation , firearm laws vary by state .

Federal " Gun show loophole " bills were introduced in seven consecutive Congresses : two in 2001 , two in 2004 , one in 2005 , one in 2007 , two in 2009 , two in 2011 , and one in 2013 . Specifically , seven gun show loophole bills were introduced in the U.S. House and four in the Senate between 2001 and 2013 . None passed . In May 2015 Carolyn Maloney introduced H.R.2380 , also referred to as the Gun Show Loophole Closing Act of 2015 . As of June 26 it has been referred to the Subcommittee on Crime , Terrorism , Homeland Security , and Investigations .

= = States requiring background checks for private sales = =

As of September 2015 , 18 states and Washington D.C. have background check requirements beyond federal law . Eight states require universal background checks at the point of sale for all transfers , including purchases from unlicensed sellers . Maryland and Pennsylvania laws in this regard are limited to handguns . Hawaii , Illinois , Massachusetts and New Jersey require any firearm purchaser to obtain a permit . Four more states ( Iowa , Michigan , Nebraska , and North Carolina ) do the same , but only for handguns . Illinois requires background checks at gun shows . Nevada allows but does not require unlicensed sellers to do background checks on buyers . A majority of these jurisdictions require unlicensed sellers to keep records of firearm sales . The following table summarizes these state laws .

= = History = =

In 1968 , Congress passed the Gun Control Act ( GCA ) , under which modern firearm commerce operates . The GCA mandated Federal Firearms Licenses ( FFLs ) for those " engaged in the business " of selling firearms , but not for private individuals who sold firearms infrequently . Under the Gun Control Act , firearm dealers were prohibited from doing business anywhere except the address listed on their Federal Firearms License . It also mandated that licensed firearm dealers maintain records of firearms sales . An unlicensed person is prohibited by federal law from transferring , selling , trading , giving , transporting , or delivering a firearm to any other unlicensed person only if they know or have reasonable cause to believe the buyer does not reside in the same State or is prohibited by law from purchasing or possessing firearms .

In 1986 , Congress passed the Firearm Owners Protection Act ( FOPA ) , which relaxed certain controls in the Gun Control Act and permitted licensed firearm dealers to conduct business at gun shows . Specifically , FOPA made it legal for FFL holders to make private sales , provided the firearm was transferred to the licensee 's personal collection at least one year prior to the sale . Hence , when a personal firearm is sold by an FFL holder , no background check or Form 4473 is required by federal law . According to the ATF , FFL holders are required to keep a record of such sales in a bound book . The United States Department of Justice ( USDOJ ) said the stated purpose of FOPA was to ensure the GCA did not " place any undue or unnecessary federal restrictions or burdens on law @-@ abiding citizens , but it opened many loopholes through which illegal gun traffickers can slip . " Efforts to reverse a key feature of FOPA by requiring criminal background checks and purchase records on private sales at gun shows were unsuccessful .

In 1993 , Congress enacted the Brady Handgun Violence Prevention Act , amending the Gun Control Act of 1968 . " The Brady Law " instituted federal background checks on all firearm purchasers who buy from federally licensed dealers ( FFL ) . This law had no provisions for private firearms transactions or sales . The Brady Law originally imposed an interim measure , requiring a waiting period of 5 days before a licensed importer , manufacturer , or dealer may sell , deliver , or transfer a handgun to an unlicensed individual . The waiting period applied only in states without an alternate system that was deemed acceptable of conducting background checks on handgun purchasers . Personal transfers and sales between unlicensed Americans could also still be subject to other federal , state , and local restrictions . These interim provisions ceased to apply on November 30 , 1998 .

= = Government studies and positions = =

Firearm tracing starts at the manufacturer or importer and typically ends at the first private sale regardless if the private seller later sell to an FFL or uses an FFL for background checks . Analyzing data from a report released in 1997 by the National Institute of Justice , fewer than 2 % of convicted criminals bought their firearm at a flea market or gun show . About 12 % purchased their firearm from a retail store or pawnshop , and 80 % bought from family , friends , or an illegal source .

According to a 1999 report by the ATF , legal private party transactions contribute to illegal activities , such as arms trafficking , purchases of firearms by prohibited buyers , and straw purchases . Anyone selling a firearm is legally prohibited from selling it to anyone the seller knows or has reasonable cause to believe is prohibited from owning a firearm . Only an FFL holder may transfer a firearm to another licensed FFL that does not reside in the state in which the seller resides . FFL holders , in general , can only transfer firearms to non @-@ licensed persons that reside in the state they are licensed to do business in and only at that place of business or a gun show .

The January 1999 report said that more than 4 @,@ 000 gun shows are held in the U.S. annually . Also , between 50 and 75 percent of gun show vendors hold a Federal Firearms License , and the " majority of vendors who attend shows sell firearms , associated accessories , and other paraphernalia . " The report concluded that although most sellers at gun shows are upstanding people , a few corrupt sellers could move a large quantity of firearms into high @-@ risk hands .

They stated that there were gaps in current law and recommended " extending the Brady Law to ' close the gun show loophole . ' "

In 2009 the U.S. Government Accountability Office published a report citing that many firearms trafficked to Mexico may be purchased through these types of private transactions , by individuals who may want to avoid background checks and records of their firearms purchases . Proposals put forth by United States Attorneys , which were never enacted , include :

Allowing only FFL holders to sell guns at gun shows , so a background check and a firearms transaction record accompany every transaction

Strengthening the definition of " engaged in the business " by defining the terms with more precision , narrowing the exception for " hobbyists , " and lowering the intent requirement

Limiting the number of individual private sales to a specified number per year

Requiring persons who sell guns in the secondary market to comply with the record @-@ keeping requirements applicable to Federal Firearms License holders

Requiring all transfers in the secondary market to go through a Federal Firearms License holder

Establishing procedures for the orderly liquidation of inventory belonging to FFL holders who surrender their license

Requiring registration of non @-@ licensed persons who sell guns

Increasing the punishment for transferring a firearm without a background check , as required by the Brady Act

Requiring gun show promoters to be licensed , maintaining an inventory of all the firearms that are sold by FFL holders and non @-@ licensed sellers at gun shows

Requiring one or more ATF agents be present at every gun show

Insulating unlicensed vendors from criminal liability if they agree to have purchasers complete a firearms transaction form

= = = Executive branch = = =

On November 6 , 1998 , U.S. President Bill Clinton issued a memorandum for the Secretary of the Treasury and the Attorney General expressing concern about sellers at gun shows not being required to run background checks on potential buyers . He called this absence a " loophole " and said that it made gun shows prime targets for criminals and gun traffickers . He requested recommendations on what actions the administration should take , including legislation .

During his campaign and presidency , President George W. Bush endorsed the idea of background checks at gun shows . Bush 's position was that the gun show loophole should be closed by federal legislation since the gun show loophole was created by previous federal legislation . President Bush ordered an investigation by the U.S. Departments of Health , Education , and Justice in the wake of the Virginia Tech shootings in order to make recommendations on ways the federal government can prevent such tragedies . On January 8 , 2008 he signed the NICS Improvement Amendments Act of 2007 ( NIAA ) into law . Goals and objectives that the NIAA sought to address included :

The gap in information available to NICS about such prohibiting mental health adjudications and commitments . Filling these information gaps will better enable the system to operate as intended , to keep guns out of the hands of persons prohibited by federal or state law from receiving or possessing firearms .

At the beginning of 2013 , President Barack Obama outlined proposals regarding new gun control legislation asking congress to close the gun show loophole by requiring background checks for all firearm sales . Closing the gun show loophole became part of a larger push for universal background checks to close " federal loopholes on such checks at gun shows and other private sales . "

= = Notable opinions = =

In 1996 the Violence Policy Center ( VPC ) released Gun Shows in America : Tupperware ® Parties for Criminals , a study that identified problems associated with gun shows . The VPC study

documented the effect of the 1986 Firearms Owners ' Protection Act in regard to proliferation of gun shows , which resulted in " a readily available source of weapons and ammunition for a wide variety of criminals , as well as Timothy McVeigh and David Koresh " . According to the VPC , the utility of gun shows to dangerous individuals stems primarily from the exemption enjoyed by private sellers from the sales criteria of the Brady law as well as the absence of a background check . The director of the program which is located at the UC Davis , Garen J. Wintemute , wrote , " There is no such loophole in federal law , in the limited sense that the law does not exempt private @-@ party sales at gun shows from regulation that is required elsewhere . " Wintemute said ,

The fundamental flaw in the gun show loophole proposal is its failure to address the great majority of private @-@ party sales , which occur at other locations and increasingly over the Internet at sites where any non @-@ prohibited person can list firearms for sale and buyers can search for private @-@ party sellers .

On May 27 , 1999 Wayne LaPierre , executive vice president of the National Rifle Association ( NRA ) , testified before the House Judiciary Subcommittee on Crime , saying : " We think it is reasonable to provide mandatory , instant criminal background checks for every sale at every gun show . No loopholes anywhere for anyone . " LaPierre has since said that he is opposed to universal background checks .

In 1999 , Dave Kopel , attorney and gun rights advocate for the NRA , said : " gun shows are no ' loophole ' in the federal laws , " and that singling out guns shows was " the first step toward abolishing all privacy regarding firearms and implementing universal gun registration . " In January 2000 , Kopel said that no proposed federal law would have made any difference at Columbine since the adults who supplied the weapons were legal purchasers .

In 2003 , Alexander DeConde asserted that requiring background checks for all gun show sales was the prelude to registration and their Second Amendment rights would be jeopardized .

In 2009 , Nicholas J. Johnson of the Fordham University School of Law , wrote :

Criticisms of the " gun show loophole " imply that federal regulations allow otherwise prohibited retail purchases ( " primary market sales " ) of firearms at gun shows . This implication is false . The real criticism is leveled at secondary market sales by private citizens .

In 2010 , the Brady Campaign to Prevent Gun Violence said : " Because of the gun show loophole , in most states prohibited buyers can walk into any gun show and buy weapons from unlicensed sellers with no background check . Many of these gun sellers operate week @-@ to @-@ week with no established place of business , traveling from gun show to gun show . "

In 2013 , the NRA said that a universal background check system for gun buyers is both impracticable and unnecessary , but an effective instant check system that includes records of persons adjudicated mentally ill would prevent potentially dangerous people from getting their hands on firearms . The group argues that only 10 percent of firearms are purchased via private sellers . They also dispute the idea that the current law amounts to a gun @-@ show loophole , pointing out that many of the people selling at gun shows are federally licensed dealers . The group has stated in that past that : gun control supporters ' objectives are to reduce gun sales and register guns , and that there is no " loophole , " but legal commerce under the status quo ( like book fairs or car shows ) .

= = Contributing events = =

After the Columbine High School massacre on April 20 , 1999 , gun shows and background checks became a focus of national debate in the United States . Weeks after the Columbine shooting , Frank Lautenberg introduced a proposal to close the gun show loophole in federal law . It was passed in the Senate , but did not pass in the House .

The Virginia Tech shooting on April 16 , 2007 again brought discussion of the gun show loophole to the forefront of U.S. politics , even though the shooter passed a background check and purchased his weapons legally at a Virginia gun shop via a Wisconsin @-@ based Internet dealer . Previously , in December 2005 , a Virginia judge had directed the Virginia Tech gunman to undergo outpatient treatment , but because he was treated as an outpatient , Virginia did not send his name to the

National Instant Criminal Background Check System ( NICS ) . On April 30 , 2007 , Tim Kaine , the Governor of Virginia , issued an executive order intended to prohibit the sale of guns to anyone found to be dangerous and forced to undergo involuntary mental health treatment . He called on lawmakers to close the gun show loophole . A bill to close the gun show loophole in Virginia was submitted , but eventually failed . Since then , Virginia lawmakers efforts to close the gun show loophole were continuously blocked by gun rights advocates . The Governor wrote :

I was disappointed to see the Virginia legislature balk , largely under pressure from the NRA , at efforts to close the gun @-@ show loophole that allows anyone to buy weapons without any background check . That loophole still exists .

After the July 2012 Aurora shooting in Colorado , the October 2012 Azana Spa shootings in Wisconsin , and the December 2012 Sandy Hook Elementary School shooting in Connecticut , state and local debates regarding the gun show loophole resumed . After the Aurora shooting , then president of the NRA , David Keene , said that such tragedies are often exploited by the media and politicians . He said , " Colorado has already closed the so @-@ called ' loophole ' and the killer didn 't buy his guns at a gun show . " The handgun in the Azana Spa shooting was purchased legally in a private transaction , not at a gun show . The Sandy Hook shooter used weapons legally purchased by his mother .