



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Senator Richard Sears
From: Erik FitzPatrick, Legislative Counsel; Luke Martland, Director and Chief Counsel
Date: February 22, 2018
Subject: Background checks for firearms sold at gun shows

A question has been raised as to whether background checks need to be conducted for firearms sold at a gun show.

Pursuant to federal law, any individual who is “engaged in the business” of selling firearms must possess a Federal Firearms License (FFL). 18 U.S.C. § 921(a)(11). Any individual who possesses a FFL must conduct a background check when selling a firearm. 18 U.S.C. § 922(t). This requirement applies regardless of where a firearm is sold and therefore applies when a firearm is sold at a gun show, at a store, or at any other location.

However, the definition of a person “engaged in the business” of selling firearms excludes a person who only “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(a)(21)(C). As a result, in private sales involving occasional sellers or persons who are not engaged in the business of selling firearms, the seller is not required to conduct a background check.

In sum, a person with a FFL who is selling a firearm at a gun show must conduct a background check. Therefore, the key distinction is not between where a firearm is sold (for example, at a store or at a gun show), but between whether the seller is a federal firearms licensee engaged in the business of selling firearms, and therefore must conduct a background check, or is only an occasional seller, and therefore need not conduct a background check.