

**ATTORNEY/CLIENT PRIVILEGED  
M E M O R A N D U M**

Pima County Attorney's Office  
Civil Division  
32 North Stone Ave, Suite 2100  
Phone 520.724.5700 Fax 520.620.6556

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To: **Jan Leshner, County Administrator**

From: Jonathan Pinkney, Supervisor, Health Law Unit

Date: June 19, 2024

Subject: ***Expansion of Background Checks for Firearm Purchases***

As noted in your memorandum of May 7, 2024, the Department of Justice recently amended Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations to implement provisions of the Bipartisan Safer Communities Act (BSCA). *Final Rule 2022R-17F* (Final Rule) implementing these changes became effective May 20, 2024.

The Final Rule broadens the definition of persons considered to be "engaged in the business" as firearms dealers who are required to be licensed and to conduct background checks. Although it has been somewhat misleadingly characterized as addressing the "gun show loophole," the Final Rule applies equally to "any domestic or international public or private marketplace or premises." §478.11. This includes both a traditional brick and mortar store and "a gun show or event, flea market, auction house, or gun range or club; at one's home; by mail order; over the internet; through the use of other electronic means (e.g., an online broker, online auction, text messaging service, social media raffle, or website)." *Id.*

The new definition includes persons who devote "time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms." §478.13. However, someone 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 their personal collection of firearms," will continue to be outside the scope of the licensing requirements, regardless of where sales take place. *Id.* Unlicensed persons may buy and sell firearms from their "personal collection" even if intended to increase in value, as long as the "predominant intent" is to resale for profit." §478.11.

The scope of the Final Rule is therefore not as broad as your memorandum suggests. It will not require all sellers of firearms at a gun show (or online, or at a swap meet) to conduct background checks on potential customers. Nor will it require everyone who sells a firearm “for profit” to obtain a license.

The gun shows previously held at the Pima County Fairgrounds presumably involved sales both by sellers who were required to be licensed and those who were not. The Final Rule may increase the proportion of sellers who are required to be licensed, but it does not impose a blanket requirement on all firearm dealers at gun shows and according to the website of one of the gun show organizers, vendors can rent table space for as little as \$100, an amount which would be within the reasonable reach of an occasional seller not “engaged in the business” of dealing in firearms under the Final Rule.

The Final Rule makes no change to the Department of Justice and the ATF’s responsibility for enforcing Federal gun control statutes in general or the BSCA in particular.<sup>1</sup> Neither our office nor Pima County currently has any role in enforcing such statutes. It is therefore not anticipated that Pima County will have any role in its enforcement or that the ATF will issue guidance to local governments in this regard.

The County’s current contract with the Southwestern Fair Commission prohibits them from “permit[ting] anything to be done in, on, or about the Fairgrounds, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.” (CTN 16\*136, Section 13.4, Unlawful Activities.) The County might want to also consider inserting a clause prohibiting them from allowing third parties who have permitted or failed to prevent unlawful activity at Special Events they have conducted to utilize the Fairgrounds in future.

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<sup>1</sup> Criminal, civil, and administrative enforcement actions and proceedings brought by the Department of Justice include: (1) ATF inspections of prospective and existing wholesale and retail dealers of firearms who are, or intend to be, engaged in the business; (2) criminal investigations and the resulting prosecutions of persons who engaged in the business of dealing in firearms without a license; (3) civil and administrative actions under 18 U.S.C. 924(d) to seize and forfeit firearms intended to be sold by persons engaged in the business without a license; (4) ATF cease and desist letters issued to prevent section 922(a)(1)(A) violations; and (5) ATF administrative proceedings under 18 U.S.C. 923 to deny licenses to persons who willfully engaged in the business of dealing in firearms without a license, or to revoke or deny renewal of existing licenses held by licensees who aided and abetted that misconduct.