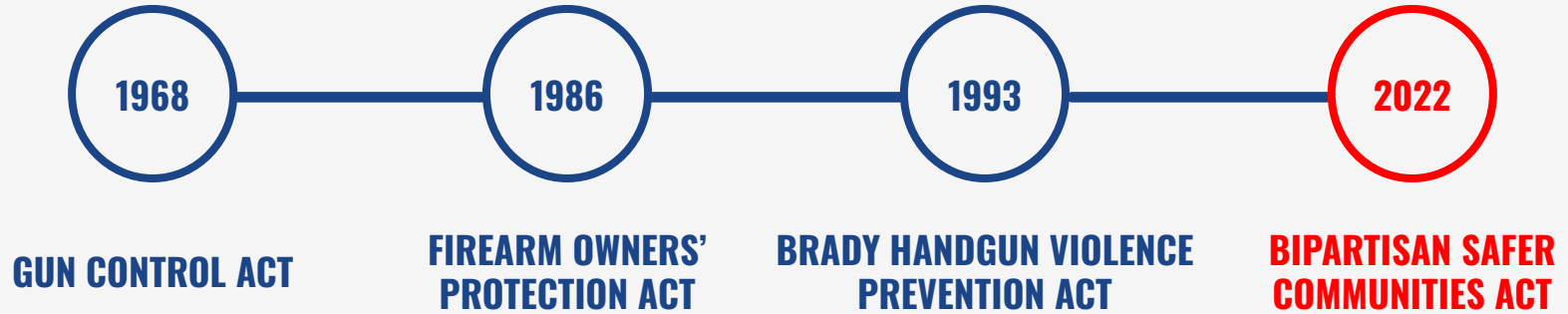


BACKGROUND CHECKS

ATF'S PROPOSED "ENGAGED IN THE BUSINESS" RULE

December 5, 2023

A LITTLE HISTORY



One Hundred Seventeenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the third day of January, two thousand and twenty two*

An Act

To make our communities safer.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SEC. 3. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Bipartisan Safer Communities Act”.

SEC. 12002. DEFINING “ENGAGED IN THE BUSINESS”.

Section 921(a) of title 18, United States Code, is amended—

(1) in paragraph (21)(C), by striking “with the principal objective of livelihood and profit” and inserting “to predominantly earn a profit”;

(2) by redesignating paragraphs (22) through (29) as paragraphs (23) through (30), respectively; and

(3) by inserting after paragraph (21) the following:

“(22) The term ‘to predominantly earn a profit’ means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining 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. For purposes of this paragraph, the term ‘terrorism’ means activity, directed against United States persons, which—

“(A) is committed by an individual who is not a national or permanent resident alien of the United States;

“(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

“(C) is intended—

“(i) to intimidate or coerce a civilian population;

“(ii) to influence the policy of a government by intimidation or coercion; or

“(iii) to affect the conduct of a government by assassination or kidnapping.”.



DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms,
and Explosives

27 CFR Part 478

[Docket No. ATF 2022R-17; AG Order No.
5781-2023]

RIN 1140-AA58

**Definition of "Engaged in the
Business" as a Dealer in Firearms**

1

If you are "engaged in the business" of dealing in firearms, then...

2

you need to become a licensed firearms dealer (FFL), and...

3

run background checks on your customers.

DEALERS AND DEALING



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forums in which firearms are bought
and sold with the predominant intent of
obtaining pecuniary gain.

Since 1968, advancements in
manufacturing (e.g., 3D printing) and
distribution technology (e.g., internet
sales) and changes in the marketplace
for firearms and related products (e.g.,
large-scale gun shows) have increased
the ways in which individuals shop for
firearms, and therefore have created a
need for further clarity in the regulatory
definition of “dealer.”²⁹ The
proliferation of new communications
technologies and e-commerce has made
it simple for persons to advertise and

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“ENGAGED IN THE BUSINESS”

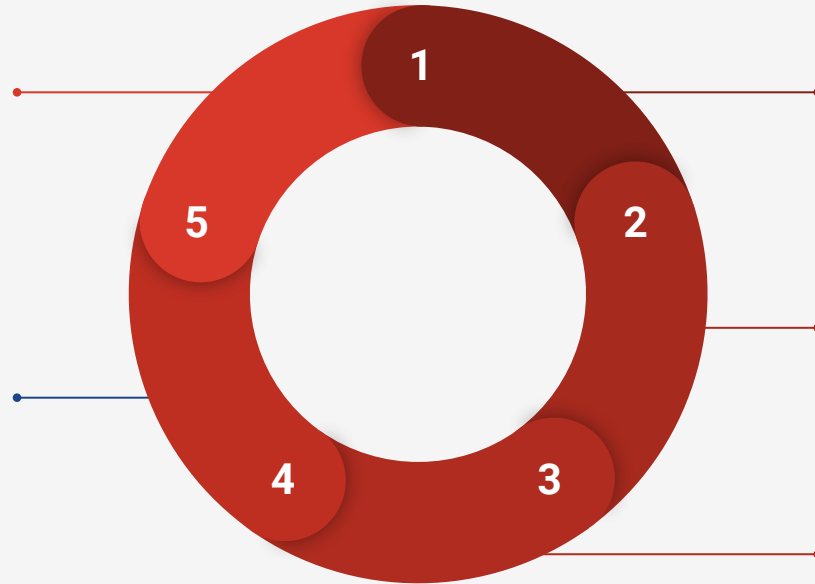
1. Sells or offers for sale firearms, and also represents to potential buyers or otherwise demonstrates a willingness and ability to purchase and sell additional firearms.
2. Spends more money or its equivalent on purchases of firearms for the purpose of resale than the person's reported gross taxable income during the applicable period of time.
3. Repetitively purchases for the purpose of resale, or sells or offers for sale, firearms—
 - A. Through straw or sham businesses, or individual straw purchases or sellers; or
 - B. That cannot lawfully be purchased or possessed, including (i) stolen firearms, (ii) firearms with the licensee's serial number removed, obliterated, or altered, (iii) firearms imported in violation of law, and (iv) machineguns or other enumerated weapons not properly registered under the National Firearms Act.
4. Repetitively sells or offers for sale firearms—
 - A. Within 30 days after the person purchased the firearms;
 - B. That are new, or like new in their original packaging; or
 - C. Of the same or similar kind (i.e., make/manufacture, model, caliber/gauge, and action) and type (i.e., rifle, shotgun, revolver, pistol, frame, receiver, machinegun, silencer, destructive device, or 'other' firearm).
5. Who, as a former FFL or responsible person acting on their behalf, sells or offers for sale firearms that were in the business inventory of such FFL at the time the license was terminated and were not transferred to a personal inventory.
6. Who, as a former FFL or responsible person acting on their behalf, sells or offers for sale firearms that were transferred to the personal inventory of such former FFL or responsible person prior to the time the license was terminated subject to enumerated exceptions.



“ENGAGED IN THE BUSINESS” (cont’d)

through the
repetitive purchase
and resale of
firearms

to predominantly
earn a profit



“PREDOMINANTLY EARN A PROFIT”

1. Advertises, markets, or otherwise promotes a firearms business (e.g. advertises or posts firearms for sale, including on any website, establishes a website for offering their firearms for sale, makes available business cards, or tags firearms with sales prices), regardless of whether the person incurs expenses or only promotes the business informally.
2. Purchases, rents, or otherwise secures or sets aside permanent or temporary physical space to display or store firearms they offer for sale, including part or all of a business premises, table or space at a gun show, or display case.
3. Makes or maintains records, in any form, to document, track, or calculate profits and losses from firearms purchases and sales.
4. Purchases or otherwise secures merchant services as a business (e.g. credit card transaction services, digital wallet for business) through which the person makes or offers to make payment for firearms transactions.
5. Formally or informally purchases, hires, or otherwise secures business security services (e.g. a central station-monitored security system registered to a business or guards for security) to protect business assets or transactions that include firearms.
6. Formally or informally establishes a business entity, trade name, or online business account, including an account using a business name on social media or other website, through which the person makes or offers to make firearms transactions.
7. Secures or applies for a state or local business license to purchase for resale or to sell merchandise that includes firearms.
8. Purchases a business insurance policy, including any riders that cover firearms inventory.

1

If you are "engaged in the business" of dealing in firearms, then...

2

you need to become a licensed firearms dealer (FFL), and...

3

run background checks on your customers.

Loopholes in our background checks system allow guns to be sold every single day by unlicensed sellers without background checks. That could soon change: ATF has proposed a fix to close these loopholes, but they need to hear from us to finish the job.

With one week left to submit a comment in support of ATF's life-saving rule, submit yours today with just a few clicks: etwn.us/3RhUbiH

Take action today
to close loopholes
in our background
checks system.

Text **CHECKS**
to **644-33**

EVERYTOWN.ORG

By texting, you agree to receive communications to your phone number from Everytown organizations. Msg freq varies. STOP to quit. Msg & data rates may apply. everytown.org/terms



Moms Demand Action @MomsDemand · Nov 18

.@ATFHQ needs to know the public supports closing dangerous loopholes in our background check system that have been exploited for decades.

Don't wait: Text CHECKS to 644-33 to leave a comment telling ATF to close these loopholes today!

DID YOU KNOW?

**Loopholes in our
background check
system have allowed
gun sellers to sell guns
at gun shows and
online to dangerous
individuals without a
background check.**

MOMSDEMANDACTION.ORG

Text **CHECKS** to **644-33** to leave a comment.

ALT

By texting, you agree to receive communications to your phone number from Everytown organizations. Msg freq varies. STOP to quit. Msg & data rates may apply. everytown.org/terms

Source: everytownresearch.org/unchecked