State and Federal Firearms and Weapons Permit Primer

10:30 a.m. - 11:30 a.m.

Presented by
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Federal & state firearms & weapons permit primer

1. Intro – Federal & state law overview/history
2. Federal & state firearm/permit prohibitors
3. Permit issuance, denial, suspension, and revocation
4. Going armed
5. Firearm transfers

Iowa State Bar Association – Annual Meeting
June 14, 2016
Presenter: Ross Loder
1. Intro – Federal overview/history

- **Minor federal enactments 1919, 1927**

- **Major federal enactments**
  - National Firearms Act – 1934
  - Federal Firearms Act – 1938
    - Not a robust, properly resourced enactment
  - Gun Control Act – 1968
    - Firearms Owners Protection Act – 1986
    - Brady Act – 1993
    - Lautenberg amendments – 1996
    - NICS Improvements Amendments Act (NIAA) – 2007
Intro – National Firearms Act

National Firearms Act of 1934

- Prohibition era enactment – “gangster” crime
- Use of **tax authority** to address certain weapons
- Special taxes on manufacture and transfer of NFA firearms
- Creation of NFA Registry (possession requires registration)
- Covers
  - Fully automatic firearms (machine guns)
  - Short barreled rifles (SBRs)
  - Short barreled shotguns (SBSs)
  - Suppressors (Silencers)
  - Destructive devices (grenades, bombs, explosive missiles)
  - “Any Other Weapons” (AOWs) (pen guns, cane guns, etc…)

- Re-enacted as Title II of the Gun Control Act of 1968
  - Addressed constitutionality issue identified in *Haynes* ruling
Intro – Gun Control Act

Gun Control Act of 1968
- Replaced Federal Firearms Act of 1938
- Title I – Use of *interstate commerce authority* to regulate firearms
- Title II – Re-enactment of NFA of 1934
- Major features of Title I
  - Stricter licensing and regulation of firearms industry
  - New categories of firearms offenses
  - Prohibitions on sale of firearms and ammunition to “prohibited persons”
- Requires licensure of dealers “engaged in the business”
- Private party transfers not regulated/prohibited (in-state)
  - The so-called “gun show loophole”
Intro – Gun Control Act

- 1986 – Firearms Owners Protection Act
  - Relaxation of GCA, particularly interstate sale of long guns
- 1993 – Brady Act amendments
  - Creation of National Instant Criminal Background Check System
  - NICS went live 11/30/98 – previously “interim Brady” waiting period
  - Background checks (or qualifying alternate permit) required for transfer from dealer
  - Additional prohibitors enacted
- 1996 – Lautenberg amendment – “domestics”
  - “Misdemeanor Crime of Domestic Violence” prohibitor
  - Intimate partner protection orders
- 2007 – NICS Improvement Amendments Act (NIAA)
  - Reporting of mental health related prohibitions
  - Creation of “Relief from Disabilities” (restoration of rights) provisions for mental health/competency related loss of rights
Intro – NFA and GCA

- Fully automatic firearms
- Short barreled rifles
- Short barreled shotguns
- Silencers
- AOWs
- Dealer licensing
- Interstate shipment limits
- Felons, fugitives
- All firearms

Title II-GCA of 68

- Fully automatic firearms
- Short barreled rifles
- Short barreled shotguns
- Silencers
- Destructive devices
- AOWs
- Dealer licensing
- Broader interstate transfer limits
- Broader prohibitors

Title II-GCA of 68
Intro – Iowa overview/history

35th General Assembly – 1913
- Restrictions on carrying weapons
- First permit to carry provisions – Discretionary issuance

Ch. 724 – 2016
- Possession prohibitors
- Permit to Carry – “Shall Issue”
- Iowa has no dealer licensing framework
- Firearm transfer provisions

- 2.3 million people
- 70% rural
- 70,000 motor vehicles registered
- Buffalo Bill Cody held final “Wild West Show” in Iowa

- 3.1 million people
- 36% rural
- 3.5 million motor vehicles registered
- 3D movies and LTE/4G networks
2. Prohibitors – Federal possession/receiving prohibitors

- **“Felony”** – conviction for a crime punishable by more than one year (excluding a crime classified as a misdemeanor punishable by up to two years, such as an Iowa AGMS)
- **Fugitive** from justice
- **Unlawful controlled substance user or addict**
- **Adjudicated incompetent or committed to mental institution** by a lawful authority (includes committal for drug use)
- **Aliens** - unlawful aliens and nonimmigrant aliens admitted under a visa
- **Dishonorable discharge** from the Armed Forces
- Person who has **renounced US Citizenship**
- Subject to a qualifying **intimate partner protection order**
- Conviction for a **“Misdemeanor Crime of Domestic Violence”**
- **“Felony” charges** *(prohibits receiving, not possession)*
Prohibitors – State possession prohibitors

- **Felony conviction** (includes aggravated misdemeanor involving a firearm or explosive)
  - This is not well-known/understood

- **Juvenile adjudication for a felony** – if not sealed
  - This is not well-known/understood

- Conviction for a “Misdemeanor Crime of Domestic Violence”
  - Slight differences v. federal MCDV prohibitor

- Subject to a qualifying **intimate partner protection order**
Prohibitors – Permit to Acquire Pistol or Revolver Eligibility

- Prohibited under federal law
- Prohibited under state law
- Under 21
Prohibitors – Permit to Carry Weapons Eligibility

- Prohibited under federal law
- Prohibited under state law
- Addicted to the use of alcohol
- Any serious or aggravated misdemeanor conviction under Iowa Code Chapter 708 (assault, harassment, stalking, etc...) not involving a firearm or explosive within the last three years
- Probable cause exists to believe, based upon documented specific actions of the person, where at least one of the actions occurred within two years immediately preceding the date of the permit application, that the person is likely to use a weapon unlawfully or in such other manner as would endanger the person’s self or others.
- Under 21 for nonprofessional
- Under 18 for professional
## Prohibitors – Firearm possession and permits – Summary table

<table>
<thead>
<tr>
<th>SIMPLIFIED REFERENCE</th>
<th>CATEGORY</th>
<th>Federal Prohibitor - Receiving Firearm</th>
<th>Federal Prohibitor - Possessing Firearm</th>
<th>State Prohibitor - Possessing Firearm</th>
<th>State Prohibitor - Permit to Acquire</th>
<th>State Prohibitor - Permit to Carry</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 USC 922(g)(1)</td>
<td>(felony) Crime punishable by &gt;1 year, excl. misd. punishable by 2 yrs or less</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>IC 724.26</td>
<td>Juvenile adjudication for a felony</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(2)</td>
<td>Fugitive (felony or misdemeanor warrant)</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(3)</td>
<td>Unlawful drug user/addict – 1 year</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(4)</td>
<td>Adjudicated incompetent/committed</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(5)</td>
<td>Unlawful alien/certain nonimmigrant aliens</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(6)</td>
<td>Dishonorable discharge</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(7)</td>
<td>Renounced US citizenship</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(8)</td>
<td>Domestic protection order</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(g)(9)</td>
<td>Misdemeanor crime of domestic violence</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>18 USC 922(n)</td>
<td>Under indictment for a felony</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>IC 724.26 &amp; 724.25</td>
<td>Agg. Misd. involving a firearm/explosive</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>IC 724.8(2)</td>
<td>Alcohol addiction</td>
<td>X</td>
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<td></td>
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<tr>
<td>IC 724.8(3)</td>
<td>Probable cause – likely to use weapon unlawfully/endanger any person</td>
<td>X</td>
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</tr>
<tr>
<td>IC 724.8(5)</td>
<td>Serious or aggravated misdemeanor under Ch. 708 (not involving firearm/explosive) within last 3 years</td>
<td>X</td>
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<tr>
<td>IC 907.1(1) &amp; State v. Tong</td>
<td>Open deferred judgment for prohibiting offense</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>IC 907.1(2)</td>
<td>Completed def. judg. for prohibiting offense</td>
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<tr>
<td>IC 907.1(2)</td>
<td>Deferred sentence for prohibiting offense</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
3. Permit issuance, denial, suspension, and revocation

- **Resident nonprofessional PCW (broad authority)**
  - 5 years, issued by sheriffs
  - Valid statewide, except where prohibited by state or federal law

- **Professional PCW (narrower authority)**
  - **Resident** – issued by sheriffs
    - Except state employees – issued by DPS
  - **Nonresident** – issued by DPS
  - **Both resident and nonresident professional PCW:**
    - 1 year (or less…expires on separation)
    - Valid statewide while working + commuting

- **Peace Officer PCW (brodest authority)**
  - non-expiring (expires upon separation)
  - Valid anywhere in the state at all times (if certified PO)
  - Issued by Sheriff of officer’s county of residence
    - Except state employee peace officers

- **Permit to Acquire a Pistol or Revolver**
  - Only issued by Sheriffs to residents
  - Annual permit – Renewal not needed to continue to own/possess
Permit issuance, denial, suspension, and revocation

- One application for all PCW types
- Issuing officer has 30 days to approve or deny
- Issuing officer may suspend
  - arrest for a disqualifying offense
  - subject of proceedings that could lead to the person’s ineligibility for such permit
- Issuing officer must revoke
  - conviction for a disqualifying offense
  - proceedings result in disqualifying finding
- Suspension/revocation may be served in person or by certified mail
Permit issuance, denial, suspension, and revocation

- **Appeals**
  - Denial, suspension, revocation – person can appeal to ALJ in DIA
  - Filing fee is $10
  - Costs assigned to issuing officer, win or lose
  - 30 days to file, ALJ has 45 days to rule
  - Standard of review – Clear and convincing evidence that there was probable cause to deny, suspend, or revoke – See *Lebeck v. Marion Co. Sheriff*, Iowa Court of Appeals, June 10, 2015

- Denial, suspension, revocation based on determination by NICS – appeal must go to FBI NICS
4. Going armed

- **Dangerous weapons (702.7)**
  - Offensive weapon (full auto, SBR, SBS, silencer, etc…)
  - Firearm – no statutory definition, there is case law definition
  - Dagger, razor, stiletto, switchblade knife
  - Knife w/ blade exceeding 5”
  - Stun gun
    - “any portable device or weapon directing an electric current, impulse, wave, or beam that produces a high-voltage pulse designed to immobilize a person”
  - Other device designed for use in inflicting death/injury upon human/animal…capable of inflicting death
  - Anything actually used to inflict death/serious injury
  - Does NOT include bow/arrow when lawfully used
Going armed

- **Permit is required for:**
  - Going armed with a dangerous weapon concealed
  - Within the limits of any city, going armed with
    - a pistol or revolver, or
    - any loaded firearm of any kind, whether concealed or not
  - A person who knowingly carries or transports in a vehicle a pistol or revolver

- **What about walking along a county road with loaded handgun openly carried in holster?**

- **What about walking along a city sidewalk with an unloaded long gun openly carried with a sling?**

- **What about walking outside city limits with a stun gun carried in a purse?**
Going armed

- **Permit is NOT required for** (partial list):
  - Going armed in own dwelling, place of business, or land
  - While engaged in lawful hunting
  - Carrying a knife while engaged in lawful hunting or fishing
  - Carrying unloaded handgun or other dangerous weapon inside a closed/fastened container or securely wrapped package too large to be concealed
  - Carrying unloaded handgun in a vehicle:
    - inside a closed/fastened container or securely wrapped package too large to be concealed, or
    - inside a cargo or luggage compartment where the pistol or revolver will not be readily accessible to any person
Going armed

- Valid statewide, except...
  - Intoxication – Permit invalid – 321J.2(1) reference
    - A person commits the offense of operating while intoxicated if the person operates a motor vehicle … in any of the following conditions:
      - While under the influence of an alcoholic beverage or other drug or a combination of such substances.
      - While having an alcohol concentration of .08 or more.
      - While any amount of a controlled substance is present in the person, as measured in the person’s blood or urine.
  - K-12 school grounds (public and nonpublic)
    - There are exceptions
  - State universities (UI, ISU, UNI)
  - State licensed casinos
Going armed

(cont’d) Valid statewide, except…

- Members of the public in Capitol complex buildings
- State fairgrounds
- State parks and preserves (use prohibited, not carrying)
- State game refuge
- While riding ATV (changing July 1, 2016)
  - Exceptions – Unloaded and cased, or nonambulatory person
- While riding snowmobile (changing July 1, 2016)
  - Exceptions – Unloaded and cased, or nonambulatory person
Going armed

(cont’d) Valid statewide, except…

- Handguns cannot be possessed while bowhunting
  - Exception – person has valid deer hunting license and an unfilled handgun deer tag
- Any firearm prohibited while spotlighting animals
  - Exception – ok if dogs are being used to tree raccoons and other fur-bearing animals

- “Weapons free zones” (1,000 feet around schools/in parks) – carrying (with permit) legal
Going armed

- Iowa law provides “universal recognition”
  - Only for nonresidents
- No “declaration” requirement
- No law addressing private property owner authority to restrict carrying
- Valid for concealed or open carry
- Valid for all dangerous weapons*
  - * Non-firearm dangerous weapons may be restricted by local ordinance
- Permit to Carry Weapons recognized as Permit to Acquire
## 5. Firearm transfers

<table>
<thead>
<tr>
<th>Type of Transfer</th>
<th>Federal Requirements</th>
<th>State Requirements</th>
</tr>
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<tbody>
<tr>
<td><strong>Long Gun</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer between private parties residing in Iowa</td>
<td>Allowed - No background check required</td>
<td>Allowed - No background check or permit required</td>
</tr>
<tr>
<td>Transfer between private parties residing in different states (regardless of familial relationship)</td>
<td>Prohibited</td>
<td>NA – Federally prohibited</td>
</tr>
<tr>
<td>Transfer from federally licensed gun dealer in Iowa, buyer resides in Iowa</td>
<td>Allowed – Background check required at point of sale (or Iowa acquire or carry permit can be used)</td>
<td>Allowed (background check federally required)</td>
</tr>
<tr>
<td>Transfer from federally licensed gun dealer in another state, buyer resides in Iowa</td>
<td>Allowed – Background check required at point of sale</td>
<td>Allowed (background check federally required)</td>
</tr>
<tr>
<td><strong>Handgun</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer between private parties residing in Iowa</td>
<td>Allowed – No background check required under federal law (but permit required under state law)</td>
<td>Allowed – Permit to Acquire (or Permit to Carry) required</td>
</tr>
<tr>
<td>Transfer between private parties residing in different states (regardless of familial relationship)</td>
<td>Prohibited</td>
<td>NA – Federally prohibited</td>
</tr>
<tr>
<td>Transfer from federally licensed gun dealer in Iowa, buyer resides in Iowa</td>
<td>Allowed – Background check required, but permit required under state law fulfills background check requirement</td>
<td>Allowed – Permit to Acquire (or Permit to Carry) required</td>
</tr>
<tr>
<td>Transfer from federally licensed gun dealer in another state, buyer resides in Iowa</td>
<td>Prohibited</td>
<td>NA – Federally prohibited</td>
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Contact Information

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