

2004

Kerry Farrer v. Carrie Swasey : Brief of Appellant

Utah Court of Appeals

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Carrie Swasey; Plaintiff/Appellee Pro Se.

Cleve Hatch; Attorney for Defendant/Appellant.

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IN THE UTAH COURT OF APPEALS

KERRY FARRER,

Defendant/Appellant,

Vs.

CARRIE SWASEY,

Plaintiff/Appellee.

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BRIEF OF APPELLANT

Appeal from an Order of the Eighth Judicial District Court
Of Duchesne County
State of Utah
Honorable John A. Anderson

Carrie Swasey (pro se)
400 East 600 North
Roosevelt, Utah 84066

Plaintiff/Appellee pro se

Cleve Hatch (5609)
24 West Main Street, Suite 5
P.O. Box 790262
Vernal, Utah 84079
Attorney for Defendant/Appellant

UTAH APPEALS

AUG 20 2004

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STATEMENT OF JURISDICTION

This Court has jurisdiction to hear this matter pursuant to Utah Code Annotated section 78-2-2.

STATEMENT OF ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

May a trial Court issue a permanent protective order based upon the assertion of the Plaintiff that she is afraid of the Defendant. This after the following question by that Court; “You’re afraid of him?” (Transcript of hearing January 22, 2004 page 5 line 11).

May a trial Court issue a permanent protective order where the Defendant nor his witnesses are permitted to testify? Riggins v. District Court of Salt Lake County, 51 P.2d 645 Utah 1935 and Pangea Technologies, Inc. v. Internet Promotions, Inc. 2004 WL 1092239 Utah, 2004 May 18, 2004.

May a trial Court issue a permanent protective order where the Defendant was not served with the ex-parte protective order but came to court voluntarily after learning from another source that a hearing was on the Court docket? Riggins v. District Court of Salt Lake County, 51 P.2d 645 Utah 1935, Article I section 7 Utah Constitution.

May a trial Court deprive a Defendant of the right to keep and bear arms through the issuance of a permanent protective order without due process of law?

The standard of review is for correctness for the standards for issuing a permanent

protective order. The standard of review for a taking without due process of law is correctness.

Whether the trial court selected the correct legal definition to apply to the facts of a case presents a question of law. See C & Y Corp. v. General Biometrics, Inc., 896 P.2d 47, 54 (Utah Ct.App.1995). Legal correctness Morse v. Packer, 973 P.2d 422 Utah,1999. Correctness (of the statute) under article 1 section 11 Wood v. University of Utah Medical Center, 67 P.3d 436 Utah,2002.

APPLICABLE STATUTES AND RULES

Constitution of Utah Article 1 section 7 due process of law, Constitution of Utah Article 1 section 11 requires that the Courts be open to the Defendant. Utah Code Annotated sections 30-6-et seq domestic violence. The Constitution requires due process of law for the taking of life liberty and property. The Court shall consider factors in making a protective order permanent, Utah code Annotated section 30-6-et seq, and USCS 18 Section 922 (for reference).

STATEMENT OF THE CASE

The trial Court herein issued a permanent protective order upon the representation by the Plaintiff that she was afraid of the Defendant. This despite the request by the Defendant to be allowed to call witnesses to testify, that the event that the Plaintiff wrote in her ex-parte request for the issuance of a protective order, did not occur. As a result of the issuance of a permanent protective order, Kerri Farrer is not permitted to possess a firearm or go hunting, something that he has enjoyed.

FACTS

The parties had been married, they have a two year old child together. The parties divorce was final on or about September 5, 2003. The Defendant, Kerry Farrer has remarried. The Plaintiff sought and was granted an ex-parte protective order against the Defendant. The Defendant was never served with the ex-parte protective order. The Defendant learned of the hearing to make the protective order permanent from a third party who routinely reviewed the online court docket.

Kerry Farrer appeared with counsel at the protective order hearing. There he brought two witnesses. Through counsel he asserted that the statements of the Plaintiff, in the Verified Petition for Protective Order, were not true. Defendant requested that the Court allow the testimony the Defendant and his witnesses. The Court listened to a recitation of events by the Plaintiff, asked her if she was afraid of the Defendant, (Transcript of the hearing pages 4 and 5) and the permanent protective order was granted.

LEGAL AUTHORITY AND DISCUSSION

CONSTITUTION OF UTAH ARTICLE I. DECLARATION OF RIGHTS

§ 11 [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Riggins v. District Court of Salt Lake County, 51 P.2d 645 Utah 1935 reads in part:

" Due process of law requires that notice be given to the persons whose rights are to be affected. It "hears before it condemns, proceeds upon inquiry, and renders judgment only after trial." It is difficult to believe that the Legislature intended to empower the court to find "that the material allegations of the petition or complaint are true" without giving the defendant an opportunity to be heard. It is elementary that a court may not make findings binding upon a defendant without a hearing, or an opportunity to be heard. An act which authorized a court to make findings binding upon a defendant without giving him an opportunity to be heard must fail.

Affirmatively cited for this proposition in, Pangea Technologies, Inc. v. Internet Promotions, Inc. 2004 WL 1092239 Utah, 2004 May 18, 2004.

Despite his request to be heard (transcript of hearing page 2 lines 22-25 through page 3 line 6 and page 5 line 25 through page 6 line 3). Mr. Farrer nor his witnesses were permitted to testify, nor present any evidence.

Without any due process Mr. Farrer's opportunity to hunt, to possess any firearm is taken from him, and he becomes subject to state and federal firearms violations if he ever does. 18 USCS section 922 provides that it is unlawful for anyone who is subject to a court order restraining him from "harassing, stalking, or threatening . . ." from possessing a firearm or even ammunition. He is precluded from obtaining a concealed weapons license under Utah Code Annotated section 53-5-704

Further, Mr. Farrer had never been served with the ex-parte order nor notice of hearing. Utah Constitution Article I section 7 provides: "No person shall be deprived of Life, liberty or property without due process of law."

The entire reason for the issuance of the protective order is found on page 5 lines 22-25 where it reads "The Court: Well, I'm going to make this order permanent because she's - she says she's afraid of him and she doesn't want him to come to her house or bother her."

A restraining order would more appropriately address "she doesn't want him to come to her house and bother her".

The protective order statutes are broad by design. Yet they require findings of fact that meet the sufficiency of the Utah Code, those findings are not found in this case.

Mr. Farrer also challenges the constitutionality of the broad sweep of those

statutes. If all that is required for the issuance of a permanent protective order is an affirmative answer by the Plaintiff, to a question by the Court, then the statute is overbroad and should be reviewed for correctness under Article 1 section 11 of the Constitution of the State of Utah. See Wood v. University of Utah Medical Center, 67 P.3d 436 Utah, 2002. The Court asked "You afraid of him?" (Transcript page 5 line 11). She answered "Yeah" (page 5 line 12). Then added "He can't control his temper" (page 5 line 12). No offer of proof, no foundation, no opportunity for the Defendant to be heard. In fact the Court stated the reason for the grant of the permanent protective order was: "The Court: Well, I'm going to make this order permanent because she's - she says she's afraid of him and she doesn't want him to come to her house or bother her." With that statement Mr. Farrer's opportunity to hunt, to possess any firearm is taken from him.

CONCLUSION

The Appellant herein seeks a ruling from this Court setting aside the Permanent Protective Order of the District Court. Direction to the District Courts on the standards required to issue such broad reaching orders. Such other and further relief as is just and appropriate.

Respectfully submitted this 11 day of August, 2004.

A handwritten signature in black ink, appearing to read "Cleve Hatch", with a long horizontal line extending to the right.

Cleve Hatch/Attorney for
the Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Appellant, upon the Plaintiff/Appellee by placing two true and correct copies thereof in an envelope

addressed to Carrie Swasey, 400 East 600 North, Roosevelt, Utah 84066, this 17 day of

August, 2004.



Cleve J. Hatch

Re-sent with new binding 19th of August,
2004



ADDENDUM

Pangea Technologies, Inc., v. Internet Promotions, Inc., 94 P3d 257, 500 Utah Adv.
Rep.3, 2004 UT 40 (2004 Utah). Number A.

18 USCS section 922 subsections a-i (Balance not copied) Number B.

ADDENDUM A

Westlaw.

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94 P.3d 257, 2004 WL 1092239 (Utah), 500 Utah Adv. Rep. 3, 2004 UT 40

(Cite as: 2004 WL 1092239 (Utah))

Supreme Court of Utah.

PANGAEA TECHNOLOGIES, INC., Plaintiff and
Appellee,

V.

INTERNET PROMOTIONS, INC., Defendant.
Zions First National Bank, Garnishee and Appellant.

No. 20020445.

May 18, 2004.

Background: Judgment creditor brought claim against debtor's bank as garnishee, based on bank's allegedly improper release of funds from debtor's accounts that were subject to writ of garnishment. The Third District Court, Salt Lake Department, Leon A. Dever, J., entered judgment without hearing in favor of creditor, and garnishee appealed.

Holding: The Supreme Court, Nehring, J., held that bank was entitled to evidentiary hearing on creditor's claim that bank was liable for release of funds subject to garnishment.

Reversed and remanded.

[1] Appeal and Error  842(1)

30k842(1) Most Cited Cases

The interpretation of a procedural rule is a legal issue which the Supreme Court reviews anew without deference to the district court's interpretation.

[2] Garnishment 🔑 158
189k158 Most Cited Cases

[2] Garnishment 🔑 166.1
189k166.1 Most Cited Cases

Judgment creditor's post-judgment claim that bank, as holder of judgment debtor's funds subject to

garnishment, was liable for improper release of funds to debtor constituted "new matter" for which bank was entitled to evidentiary hearing on merits, under rule requiring that new matters shall be tried in same manner as other issues, since bank was not placed on notice that creditor was seeking judgment against bank during underlying action on debt. Rules Civ.Proc., Rule 64D(i).

[3] Constitutional Law 🔑 312(2)

A garnishee is a stranger to the principal case between a creditor and debtor and is an involuntary participant in the garnishment proceeding, and thus, such structural circumstance imposes unique due process demands on the garnishment procedures, especially in cases where the creditor seeks to obtain a judgment from the garnishee. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 7.

[4] Constitutional Law 🔑 **251.6**
92k251.6 Most Cited Cases

Fundamental features of due process require that notice be given to the person whose rights are to be affected; it hears before it condemns, proceeds upon inquiry, and renders judgment only after trial. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 7. Craig A. Hoggan, Salt Lake City, for plaintiff.

David M. McGrath, Robert A. Goodman, Salt Lake City, for garnishee.

NEHRING, Justice:

***1 ¶ 1** This appeal presents us with the question of whether a garnishee is entitled to a hearing after the plaintiff in the principal case replies to the garnishee's answers to interrogatories and seeks to have the garnishee held liable to the plaintiff for the property sought to be garnished. We reverse the district court's denial of a hearing to garnishee Zions First National Bank and vacate the judgment

against Zions in favor of the plaintiff and judgment creditor in the principal action, Pangea Technologies, Inc.

interpretation. *Dipoma v. McPhie*, 2001 UT 61, ¶ 8, 29 P.3d 1225. [FN1]

FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 Pangea obtained a judgment against Internet Promotions, Inc., for \$65,641. Believing that Zions held money belonging to Internet Promotions, Pangea served Zions with a writ of garnishment. As authorized by rule 64D of the Utah Rules of Civil Procedure, the writ ordered Zions to hold all money in Internet Promotions' accounts up to the amount of the judgment and instructed Zions to answer interrogatories about funds held by the bank which belonged to Internet Promotions. Zions answered the interrogatories the next day, telling Pangea that \$10,089 remained in Internet Promotions' account.

¶ 3 However, before Zions froze the funds, they were transferred to the personal account of Internet Promotions' president. After discovering this, Zions amended its interrogatory answers to disclose the transfer. Pangea responded by filing a reply to Zions' amended answers as permitted by Utah Rule of Civil Procedure 64D(i). Pangea asked the district court to charge Zions with liability for the amount of the transferred funds. Pangea also requested a hearing on the issue of Zions' liability.

¶ 4 The district court granted the judgment against Zions without conducting a hearing, finding that the money had been "improperly releas[ed]." Zions asked the district court to reconsider, citing language in rule 64D(i) which, it contended, mandated a hearing. The court denied Zions' motion and entered judgment against Zions for \$10,089, the amount of the transferred money, and an additional \$2,370.30 in attorney fees and costs. The district court did not disclose its reasons for awarding attorney fees. Zions appealed.

[1] ¶ 5 Zions' appeal is confined to the question of whether the district court erred when it declined to hear the merits of Pangea's claim that Zions was liable for the transferred money. We do not address whether Zions was, in fact, liable. So presented, Zions' appeal concerns an interpretation of a rule of procedure. This is a legal issue which we review anew without deference to the district court's

ANALYSIS

[2][3] ¶ 6 The seizure of property by garnishment is governed by rule 64D of the Utah Rules of Civil Procedure. Utah R. Civ. P. 64D(i). A garnishee is a stranger to the principal case and an involuntary participant in the garnishment proceeding. This structural circumstance imposes unique due process demands on garnishment procedures. The need for heightened sensitivity to due process is particularly evident where, as here, a plaintiff seeks to obtain a judgment from a garnishee. We conclude that rule 64D(i) requires that a garnishee be afforded a hearing before it can be found liable to a plaintiff and have a judgment entered against it.

*2 ¶ 7 Rule 64D(i) reads as follows:

The plaintiff or defendant may, within 10 days after the service of any answers to interrogatories, file and serve upon the garnishee and the other party to the principal action a reply to the whole or any part thereof and may also allege any matters which would charge the garnishee with liability except that all claims for exemptions to garnishment or non-ownership of property garnisheed shall be resolved under the procedures as otherwise provided for in Subdivision (h) herein. Such new matter in reply shall be taken as denied and the matter thus at issue shall be tried in the same manner as other issues of like nature. Judgment shall be entered upon the verdict or finding the same as if the garnishee had answered according to such verdict or finding.

Utah R. Civ. P. 64D(i) (emphasis added).

[4] ¶ 8 Pangea defends the district court's determination that Zions was not entitled to a hearing on the grounds that its reply to Zions' amended interrogatories contained no "new matter" and thus did not trigger the need for a trial. We disagree. The "new matter" raised in Pangea's reply was its assertion that Zions was liable for the money transferred out of Internet Promotions' account. Pangea would have us narrowly read "new matter" to include only new facts. This interpretation would inevitably cause garnishees to be deprived of due process as guaranteed by article I, section 7 of the

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(Cite as: 2004 WL 1092239 (Utah))

Utah Constitution. We long ago succinctly summarized the fundamental features of due process, observing that it **"requires that notice be given to the person whose rights are to be affected. It hears before it condemns, proceeds upon inquiry, and renders judgment only after trial."** *Riggins v. Dist. Court of Salt Lake County*, 89 Utah 183, 51 P.2d 645, 660 (1935) (internal quotation omitted).

Because we reverse the district court on the legal question presented, within which the issue of attorney fees is subsumed, we do not reach this question.

94 P.3d 257, 2004 WL 1092239 (Utah), 500 Utah Adv. Rep. 3, 2004 UT 40

END OF DOCUMENT

¶ 9 Until Pangea claimed in its reply that Zions was liable, Zions was not placed on notice that Pangea was seeking a judgment against Zions. If Pangea's reply is to square with due process, its request to find Zions liable must be construed as a "new matter," thereby entitling Zions to a trial "in the same manner as other issues of like nature." Utah R. Civ. P. 64D(i).

¶ 10 We have previously held that a judgment may not be taken against a garnishee who has not been served with a reply to the garnishee interrogatories. *Remington Rand, Inc. v. O'Neil*, 4 Utah 2d 270, 293 P.2d 416, 417 (1956) (*Remington I*). When the *Remington I* litigants returned to this court a year later, we reiterated our commitment to the right of a garnishee to be heard before being at risk of having a judgment entered against it, stating, "the object of promoting justice requires that both sides to [the] controversy have a fair opportunity to present their claims on their merits. Otherwise, the main purposes of our courts of justice and our judicial system will be defeated." *Remington Rand, Inc. v. O'Neil*, 6 Utah 2d 182, 309 P.2d 368, 370 (1957) (*Remington II*).

*3 ¶ 11 The reasoning of *Remington II* remains sound today. Accordingly, the district court's issuance of a judgment against garnishee Zions, absent a hearing, violated Zions' due process rights. We therefore reverse the district court and remand for further proceedings consistent with this opinion.

¶ 12 Chief Justice DURHAM, Associate Chief Justice DURRANT, Justice WILKINS, and Justice PARRISH concur in Justice NEHRING's opinion.

FN1. Zions also challenges the district court's award of attorney fees to Pangea.

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ADDENDUM B

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed

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18 USCS § 922

CRIMES & CRIMINAL PROCEDURE

dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter [18 USCS §§ 921 et seq.] to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter [effective Dec. 16, 1968];

(4) for any person, other than a licensed importer, licensed manufacturer,

licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954 [26 USCS § 5845]), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity,

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes,

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter [18 USCS §§ 921 et seq].

(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to—

(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department agency, or political subdivision thereof,

(B) the manufacture of such ammunition for the purpose of exportation, and

(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Secretary.

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to—

(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof,

(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation,

(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Secretary, and

- (9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.
- (b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—
- (1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;
 - (2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;
 - (3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;
 - (4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954 [26 USCS § 5845]), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and
 - (5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary.

- (c) In any case not otherwise prohibited by this chapter [18 USCS §§ 921 et seq.], a licensed importer, licensed manufacturer, or licensed dealer may sell

FIREARMS

18 USCS § 922

a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

“Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age, that I am not prohibited by the provisions of chapter 44 of title 18, United States Code [18 USCS §§ 921 et seq], from receiving a firearm in interstate or foreign commerce, and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

.....
Signature..... Date.....”

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department [United States Postal Service] regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.

(2) is a fugitive from justice.

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U S C 802)).

(4) has been adjudicated as a mental defective or has been committed to any mental institution.

- (5) who, being an alien, is illegally or unlawfully in the United States;
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship; or
- (8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
 - (B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter [18 USCS §§ 921 et seq.]. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter [18 USCS §§ 921 et seq.].

FIREARMS

18 USCS § 922

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship; or

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.