

# Selected Tennessee and Federal Statutes on Firearms and Handgun Carry Permits

## Tennessee Laws

### **39-17-1307. Unlawful carrying or possession of a weapon.**

(a)

(1) A person commits an offense who carries with the intent to go armed a firearm, a knife with a blade length exceeding four inches (4"), or a club.

(2)

(A) The first violation of subdivision (a)(1) is a Class C misdemeanor, and, in addition to possible imprisonment as provided by law, may be punished by a fine not to exceed five hundred dollars (\$500).

(B) A second or subsequent violation of subdivision (a)(1) is a Class B misdemeanor.

(C) A violation of subdivision (a)(1) is a Class A misdemeanor if the person's carrying of a handgun occurred at a place open to the public where one (1) or more persons were present.

(b)

(1) A person commits an offense who unlawfully possesses a firearm, as defined in § 39-11-106, and:

(A) Has been convicted of a felony involving the use or attempted use of force, violence, or a deadly weapon; or

(B) Has been convicted of a felony drug offense.

(2) An offense under subdivision (b)(1)(A) is a Class C felony.

(3) An offense under subdivision (b)(1)(B) is a Class D felony.

(c)

(1) A person commits an offense who possesses a handgun and has been convicted of a felony.

(2) An offense under subdivision (c)(1) is a Class E felony.

...

(f)

(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106(a), and:

(A) Has been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921, and is still subject to the disabilities of such a conviction;

(B) Is, at the time of the possession, subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8); or

(C) Is prohibited from possessing a firearm under any other provision of state or federal law.

(2) If the person is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual possesses firearms that constitute the

business inventory under the federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the bureau of alcohol, tobacco, firearms and explosives.

(3) For purposes of this section, a person does not possess a firearm, including, but not limited to, firearms registered under the National Firearms Act, compiled in 26 U.S.C. § 5801 et seq., if the firearm is in a safe or similar container that is securely locked and to which the respondent does not have the combination, keys or other means of normal access.

(4) A violation of subdivision (f)(1) is a Class A misdemeanor and each violation constitutes a separate offense.

(5) If a violation of subdivision (f)(1) also constitutes a violation of § 36-3-625(h) or § 39-13-113(h), the respondent may be charged and convicted under any or all such sections.

**39-17-1308. Defenses to unlawful possession or carrying of a weapon.**

(a) It is a defense to the application of § 39-17-1307 if the possession or carrying was:

...

(2) By a person authorized to possess or carry a firearm pursuant to § 39-17-1315 or § 39-17-1351;

...

(b) The defenses described in this section are not available to persons described in § 39-17-1307(b)(1).

**39-17-1316. Sales of dangerous weapons -- Certification of purchaser -- Exceptions -- Licensing of dealers -- Definitions.**

(a)

(1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring firearms; however, sales to persons who have been convicted of the offense of stalking, as prohibited by § 39-17-315, who are addicted to alcohol, who are ineligible to receive firearms under 18 U.S.C. § 922, or who have been judicially committed to a mental institution pursuant to title 33 or adjudicated as a mental defective are prohibited. For purposes of this subdivision (a)(1), the offense of violation of a protective order as prohibited by § 39-13-113 shall be considered a "misdemeanor crime of domestic violence" for purposes of 18 U.S.C. § 921.

(2) The provisions of this subsection (a) prohibiting the sale of a firearm to a person convicted of a felony shall not apply if:

(A) The person was pardoned for the offense;

(B) The conviction has been expunged or set aside; or

(C) The person's civil rights have been restored pursuant to title 40, chapter 29; and

(D) The person is not prohibited from possessing a firearm by the provisions of § 39-17-1307.

...

### **39-17-1321. Possession of handgun while under influence -- Penalty.**

(a) Notwithstanding whether a person has a permit issued pursuant to § 39-17-1315 or § 39-17-1351, it is an offense for a person to possess a handgun while under the influence of alcohol or any controlled substance or controlled substance analogue.

(b) It is an offense for a person to possess a firearm if the person is both:

(1) Within the confines of an establishment open to the public where liquor, wine or other alcoholic beverages, as defined in § 57-3-101(a)(1)(A), or beer, as defined in § 57-6-102(1), are served for consumption on the premises; and

(2) Consuming any alcoholic beverage listed in subdivision (b)(1).

(c)

(1) A violation of this section is a Class A misdemeanor.

(2) In addition to the punishment authorized by subdivision (c)(1), if the violation is of subsection (a), occurs in an establishment described in subdivision (b)(1), and the person has a handgun permit issued pursuant to § 39-17-1351, such permit shall be suspended in accordance with § 39-17-1352 for a period of three (3) years.

### **39-17-1351. Handgun carry permits.**

(a) The citizens of this state have a right to keep and bear arms for their common defense; but the general assembly has the power, by law, to regulate the wearing of arms with a view to prevent crime.

(b) Except as provided in subsection (r), any resident of Tennessee who is a United States citizen or permanent lawful resident, as defined by § 55-50-102, who has reached twenty-one (21) years of age, may apply to the department of safety for a handgun carry permit. If the applicant is not prohibited from purchasing or possessing a firearm in this state pursuant to § 39-17-1316 or § 39-17-1307(b), 18 U.S.C. § 922(g), or any other state or federal law, and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

(c) The application for a permit shall be on a standard form developed by the department. The application shall clearly state in bold face type directly above the signature line that an applicant who, with intent to deceive, makes any false statement on the application commits the felony offense of perjury pursuant to § 39-16-702. The following are eligibility requirements for obtaining a handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:

(1) Full legal name and any aliases;

(2) Addresses for the last five (5) years;

(3) Date of birth;

(4) Social security number;

(5) Physical description (height, weight, race, sex, hair color and eye color);

(6) That the applicant has not been convicted of a criminal offense that is designated as a felony, or that is one of the disqualifying misdemeanors set out in subdivisions (c)(11), (c)(16), or (c)(18), with the exception of any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices;

(7) That the applicant is not currently under indictment or information for any criminal offense that is designated as a felony, or that is one of the disqualifying misdemeanors set out in subdivisions (c)(11), (c)(16), or (c)(18), with the exception of any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices;

(8) That the applicant is not currently subject to any order of protection and, if so, the applicant shall provide a copy of the order;

(9) That the applicant is not a fugitive from justice;

(10) That the applicant is not an unlawful user of or addicted to alcohol, any controlled substance or controlled substance analogue, and the applicant has not been either:

(A) A patient in a rehabilitation program pursuant to a court order or hospitalized for alcohol, controlled substance or controlled substance analogue abuse or addiction pursuant to a court order within ten (10) years from the date of application; or

(B) A voluntary patient in a rehabilitation program or voluntarily hospitalized for alcohol, controlled substance or controlled substance analogue abuse or addiction within three (3) years from the date of application;

(11) That the applicant has not been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application and that none of the convictions has occurred within five (5) years from the date of application or renewal;

(12) That the applicant has not been adjudicated as a mental defective, has not been judicially committed to or hospitalized in a mental institution pursuant to title 33, has not had a court appoint a conservator for the applicant by reason of a mental defect, has not been judicially determined to be disabled by reason of mental illness, developmental disability or other mental incapacity, and has not, within seven (7) years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in title 33, chapter 6, part 5, because of mental illness;

(13) That the applicant is not an alien and is not illegally or unlawfully in the United States;

(14) That the applicant has not been discharged from the armed forces under dishonorable conditions;

(15) That the applicant has not renounced the applicant's United States citizenship;

(16) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(33);

(17) That the applicant is not receiving social security disability benefits by reason of alcohol dependence, drug dependence or mental disability; and

(18) That the applicant has not been convicted of the offense of stalking.

(d)

(1) In addition to the information required under subsection (c), the applicant shall be required to provide two (2) full sets of classifiable fingerprints at the time the application is filed with the department. The applicant's fingerprints may be taken by the department at the time the application is submitted or the applicant may have the fingerprints taken at any sheriff's office and submit the fingerprints to the

department along with the application and other supporting documents. The sheriff may charge a fee not to exceed five dollars (\$5.00) for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, the applicant shall be required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff shall refuse to take the fingerprints. The department shall also be required to photograph the applicant in a manner that is suitable for use on the permit.

(2) An applicant shall also be required to present a photo identification to the department at the time of filing the application. If the name on the photo identification, name on the application and name on the fingerprint card, if taken by a sheriff, are not the same, the department shall refuse to accept the application. If the person whose picture appears on the photo identification is not the same as the applicant, the department shall refuse to accept the application.

(e) The department shall also require an applicant to submit proof of the successful completion of a department approved handgun safety course. Any form created by the department to show proof of the successful completion of a department approved handgun safety course shall not require the applicant to provide the applicant's social security number. Any instructor of a department approved handgun safety course shall not withhold proof of the successful completion of the course solely on the fact the applicant did not disclose the applicant's social security number. The course shall include both classroom hours and firing range hours. Beginning September 1, 2010, and thereafter, a component of the classroom portion of all department-approved handgun safety courses shall be instruction on alcohol and drugs, the effects of those substances on a person's reflexes, judgment and ability to safely handle a firearm, and the provisions of § 39-17-1321. An applicant shall not be required to comply with the firing range and classroom hours requirements of this subsection (e) if the applicant submits proof to the department that within five (5) years from the date the application for a handgun carry permit is filed the applicant has:

(1) Been certified by the peace officer standards and training commission;

(2) Successfully completed training at the law enforcement training academy;

(3) Successfully completed the firearms training course required for armed security guard/officer registration, pursuant to § 62-35-118(b); or

(4) Successfully completed all handgun training of not less than four (4) hours as required by any branch of the military.

(f) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.

(g)

(1) Upon receipt of a permit application, the department shall:

(A) Forward two (2) full sets of fingerprints of the applicant to the Tennessee bureau of investigation; and

(B) Send a copy of the application to the sheriff of the county in which the applicant resides.

(2) Within thirty (30) days of receiving an application, the sheriff shall provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements of subsection (c) that is within the knowledge of the sheriff.

(h) Upon receipt of the fingerprints from the department, the Tennessee bureau of investigation shall:

(1) Within thirty (30) days from receipt of the fingerprints, conduct computer searches to determine the applicant's eligibility for a permit under subsection (c) as are available to the bureau based solely upon the applicant's name, date of birth and social security number and send the results of the searches to the department;

(2) Conduct a criminal history record check based upon one (1) set of the fingerprints received and send the results to the department; and

(3) Send one (1) set of the fingerprints received from the department to the federal bureau of investigation, request a federal criminal history record check based upon the fingerprints, as long as the service is available, and send the results of the check to the department.

(i) The department shall deny a permit application if it determines from information contained in the criminal history record checks conducted by the Tennessee and federal bureaus of investigation pursuant to subsection (h), from information received from the clerks of court regarding individuals adjudicated as a mental defective or judicially committed to a mental institution pursuant to title 33, or from other information that comes to the attention of the department, that the applicant does not meet the eligibility requirements of this section. The department shall not be required to confirm the applicant's eligibility for a permit beyond the information received from the Tennessee and federal bureaus of investigation, the clerks of court and the sheriffs, if any.

(j) The department shall not deny a permit application if:

(1) The existence of any arrest or other records concerning the applicant for any indictment, charge or warrant have been judicially or administratively expunged; or

(2) An applicant's conviction has been set aside by a court of competent jurisdiction; or

(3) The applicant, who was rendered infamous or deprived of the rights of citizenship by judgment of any state or federal court, has had the applicant's full rights of citizenship duly restored pursuant to procedures set forth within title 40, chapter 29, or other federal or state law; provided, however, that this subdivision (j)(3) shall not apply to any person who has been convicted of burglary, any felony offense involving violence or use of a firearm or any felony drug offense involving a Schedule I, II, III, IV or V controlled substance or a controlled substance analogue. If the applicant has been convicted of a felony drug offense involving a Schedule VI controlled substance, this subdivision (j)(3) shall not apply if the offense occurred within ten (10) years of the date of application or renewal.

(k) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of the denial. The written notice shall state the specific factual basis for the denial. It shall include a copy of any reports, records or inquiries reviewed or relied upon by the department.

(l) The department shall issue a permit to an applicant not prohibited from obtaining a permit under this section no later than ninety (90) days after the date the department receives the application. A permit issued prior to the department's receipt of the Tennessee and federal bureaus of investigation's criminal history record checks based upon the applicant's fingerprints shall be subject to immediate revocation if either record check reveals that the applicant is not eligible for a permit pursuant to the provisions of this section.

(m) A permit holder shall not be required to complete a handgun safety course to maintain or renew a handgun carry permit. No permit holder shall be required to complete any additional handgun safety course after obtaining a handgun carry permit. No person shall be required to complete any additional handgun safety course if the person applies for a renewal of a handgun carry permit within six (6) months from the date of expiration.

(n)

(1) Except as provided in subdivision (n)(2), a permit issued pursuant to this section shall be good for four (4) years and shall entitle the permit holder to carry any handgun or handguns that the permit holder legally owns or possesses. The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.

(2) A Tennessee permit issued pursuant to this section to a person who is in or who enters into the United States armed forces shall continue in effect for so long as the person's service continues and the person is stationed outside this state, notwithstanding the fact that the person may be temporarily in this state on furlough, leave, or delay en route, and for a period not to exceed sixty (60) days following the date on which the person is honorably discharged or separated from service or returns to this state on reassignment to a duty station in this state, unless the permit is sooner suspended, cancelled or revoked for cause as provided by law. The permit is valid only when in the immediate possession of the permit holder and the permit holder has in the holder's immediate possession the holder's discharge or separation papers, if the permit holder has been discharged or separated from the service.

(o) The permit shall be issued on a wallet-sized laminated card of the same approximate size as is used by the state of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

- (1) The permit holder's name, address and date of birth;
- (2) A description of the permit holder by sex, height, weight and eye color;
- (3) A color photograph of the permit holder; and
- (4) The permit number and expiration date.

...

(v) Any permit issued pursuant to this section shall be deemed a "license" within the meaning of title 36, chapter 5, part 7, dealing with the enforcement of child support obligations through license denial and revocation.

### **39-17-1352. Suspension or revocation of license.**

(a) The department shall suspend or revoke a handgun permit upon a showing by its records or other sufficient evidence that the permit holder:

- (1) Is prohibited from purchasing a handgun under applicable state or federal law;
- (2) Has not accurately disclosed any material information required by § 39-17-1351;
- (3) Poses a material likelihood of risk of harm to the public;
- (4) Has been arrested for a felony involving the use or attempted use of force, violence or a deadly weapon or a felony drug offense;
- (5) Has been convicted of a felony;
- (6) Has violated any other provision of §§ 39-17-1351 -- 39-17-1360;

(7) Has at any time committed an act or omission or engaged in a pattern of conduct that would render the permit holder ineligible to apply for or obtain a permit under the eligibility requirements of § 39-17-1351;

(8) Has been convicted of domestic assault as defined in § 39-13-111, or any other misdemeanor crime of domestic violence and is still subject to the disabilities of such a conviction;

(9) Is subject to a current order of protection that fully complies with 18 U.S.C. § 922(g)(8); or

(10) Has been judicially committed to a mental institution pursuant to title 33, chapter 6 or title 33, chapter 7 or has been adjudicated as a mental defective.

(b)

(1) It is an offense for a permit holder to knowingly fail or refuse to surrender to the department a suspended or revoked handgun permit within ten (10) days from the date appearing on the notice of suspension or revocation sent to such permit holder by the department.

(2) A violation of this subsection (b) is a Class A misdemeanor.

(c)

(1) Upon the suspension or revocation of a permit, the department shall send notice of the suspension or revocation to the permit holder and the appropriate local law enforcement officers. The notice shall state the following:

(A) That the permit has been immediately suspended or revoked;

(B) That the permit holder must surrender the permit to the department within ten (10) days of the date appearing on the notice;

(C) That it is a Class A misdemeanor punishable by up to one (1) year in jail for the permit holder to knowingly fail or refuse to surrender the permit to the department within the ten-day period;

(D) That if the permit holder does not surrender the suspended or revoked permit within the ten-day period, a law enforcement officer will be directed to take possession of the permit; and

(E) That the permit holder has thirty (30) days from the date appearing on the notice of suspension or revocation to request a hearing on the suspension or revocation.

(2) If the permit holder fails to surrender the suspended or revoked permit as required by this section, the department shall issue authorization to the appropriate local law enforcement officials to take possession of the suspended or revoked permit and send it to the department.

(d) The applicant shall have a right to petition the general sessions court of the applicant's county of residence for judicial review of departmental denial, suspension or revocation of a permit. At the review by the general sessions court, the department shall be represented by the district attorney general.

(e)

(1) If a permit holder is arrested and charged with burglary, a felony drug offense or a felony offense involving violence or the use of a firearm, then the court first having jurisdiction over the permit holder with respect to the felony charge shall inquire as to whether the person has been issued a Tennessee handgun carry permit, order the permit holder to surrender the permit and send the permit to the department with a copy of the court's order that required the surrender of the permit. The department shall suspend the permit pending a final disposition on the felony charge against the permit holder.



(2) If a permit holder is arrested and charged with any felony offense other than an offense subject to subdivision (e)(1), then the court first having jurisdiction over the permit holder with respect to the felony charge shall inquire as to whether the person has been issued a Tennessee handgun carry permit, order the permit holder to surrender the permit and send the permit to the department with a copy of the court's order that required the surrender of the permit, unless the permit holder petitions the court for a hearing on the surrender. If the permit holder does petition the court, the court shall determine whether the permit holder will present a material risk of physical harm to the public if released and allowed to retain the permit. If the court determines that the permit holder will present a material risk of physical harm to the public, it shall condition any release of the permit holder, whether on bond or otherwise, upon the permit holder's surrender of the permit to the court. Upon surrender of the permit, the court shall send the permit to the department with a copy of the court's order that required the surrender of the permit and the department shall suspend the permit pending a final disposition of the felony charges against the permit holder.

(3) If the permit holder is acquitted on the charge or charges, the permit shall be restored to the holder and the temporary prohibition against the carrying of a handgun shall be lifted.

(4) If the permit holder is convicted of the charge or charges, the permit shall be revoked by the court and the revocation shall be noted in the judgment and minutes of the court. The court shall send the surrendered permit to the department.

(5) If the permit holder is placed on pre-trial diversion or judicial diversion, the permit holder's privilege to lawfully carry a handgun shall be suspended for the length of time the permit holder is subject to the jurisdiction of the court. The court shall send the surrendered permit to the department.

(f)

(1) If a permit holder is convicted of a Class A misdemeanor offense, the permit holder shall surrender the permit to the court having jurisdiction of the case for transmission to the department.

(2) The permit holder shall not be permitted to lawfully carry a handgun or exercise the privileges conferred by the permit for the term of the sentence imposed by the court for the offense or offenses for which the permit holder was convicted.

(g) In order to reinstate a permit suspended pursuant to subsection (e) or (f), the permit holder shall pay a reinstatement fee of twenty-five dollars (\$25.00) with one half (1/2) of the fee payable to the department of safety and one half (1/2) payable to the court that suspended the permit.

(1) Prior to the reinstatement of the permit, the permit holder shall have paid in full all fines, court costs and restitution, if any, required by the sentencing court.

(2) Failure to complete any terms of probation imposed by the court shall be a bar to reinstatement of the permit.

(3) Prior to reissuance of the permit, the department shall verify that the permit holder has complied with all reinstatement requirements of this subsection (g).

## Federal Laws

### 18 U.S.C. § 921(a)(20)

The term “crime punishable by imprisonment for a term exceeding one year” does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

### 18 U.S.C. § 921(a)(33)

(A) Except as provided in subparagraph (C) the term “misdemeanor crime of domestic violence” means an offense that—

(i) is a misdemeanor under Federal, State, or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

## 18 U.S.C. §922 Unlawful acts

(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—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(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;

(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; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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.