

# AGE DISCRIMINATION LAWS: WHAT FFLS NEED TO KNOW

In the wake of the Parkland, Florida tragedy, a few federally licensed firearms retailers (FFLs) have adopted a corporate policy to refuse to sell certain products, e.g. long guns, modern sporting rifles, standard sized magazines and ammunition, to otherwise eligible adult customers aged 18 to 20. This corporate policy of refusing to sell certain legal products to law-abiding young adults exercising their Second Amendment rights is not based on any evidence that such a policy will have an impact on the criminal misuse of firearms or on prohibited individuals' ability to access firearms illegally.<sup>i</sup> NSSF respects the right of individual businesses to make their own decisions about what is appropriate for their business. However, in making the decision to refuse to sell to consumers based solely on their age, FFLs need to be aware that such a policy may violate state or local laws barring age discrimination and potentially subject them to civil lawsuits or civil enforcement actions.

Several states and the District of Columbia have state "public accommodation" statute that bar age-based discrimination. These laws could apply to an FFL's decision to implement a corporate policy to refuse to sell certain legal products to adult customers age 18 to 20, unless a state or federal law already restricts the purchase of that product. For example, there are currently cases pending in Oregon against two FFLs, Dick's Sporting Goods and Wal-Mart, for unlawful age discrimination.<sup>ii</sup>

## STATES WITH A PRIVATE RIGHT OF ACTION

In nine states and the District of Columbia, the law includes a private right of action. This means that a business that refuses to sell a product to an adult customer who is otherwise legally permitted under current law to purchase that product, simply because of their age, may be sued by that adult customer for age discrimination under state law.<sup>iii</sup> In addition, most of these states also require the claimant to exhaust administrative procedures before filing an action (or appealing) to a court. This means the FFL may also be required to defend their age discrimination policy before a

state governmental commission, depending on state law. All states permit some form of attorney general (or other commissioner-type) enforcement or involvement in the proceedings. Additionally, there are at least two local governments that ban discrimination based on age: Madison, Wisconsin and the City of New York, New York.

A lawsuit may come at considerable cost to an FFL who engages in unlawful age discrimination. All of these states may award attorney's fees to the claimant.

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| 1. <b>Delaware</b><br>(Del. Code tit. 6, § 4504)          | 6. <b>Oklahoma</b><br>(Okla. Stat. tit. 25, §1402)   |
| 2. <b>Louisiana</b><br>(La. Rev. Stat. § 51:2247)         | 7. <b>Oregon</b><br>(Or. Rev. Stat. § 659A.403)      |
| 3. <b>Michigan</b><br>(Mich. Comp. Laws §§ 37:1102, 2302) | 8. <b>Rhode Island</b><br>(R.I. Gen. Laws § 11-24-2) |
| 4. <b>Montana</b><br>(Mont. Code § 49-2-304)              | 9. <b>Tennessee</b><br>(Tenn. Code § 4-21-501)       |
| 5. <b>New Hampshire</b><br>(N.H. Rev. Stat. § 354-A:17)   | 10. <b>D.C.</b><br>(D.C. Code § 2-1402.31)           |

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STATE	CODE	POTENTIAL AWARDS
Delaware	(Del. Code tit. 6, § 4508(h)), (Del. Code tit. 6, § 4512)	Panel can award actual damages suffered by the aggrieved person “including damages caused by humiliation and embarrassment,” costs, expenses, reasonable attorneys’ fees and injunctive or other equitable relief. The panel can also assess civil fines. If the Attorney General brings the action, the Attorney General may commence a civil action seeking equitable relief, monetary damages, reasonable attorneys’ fees, costs and expenses.
Louisiana	(§51: 2264)	Any person deeming himself injured by any alleged violation of the provisions of this Chapter shall have a civil cause of action in district court to enjoin further violations and to recover the actual damages sustained by him, together with the costs of court and a reasonable fee for his attorney of record, all of which shall be in addition to any other remedies contained in this Chapter.
Michigan	(§37.2605(i)), (see §37.2603)	Payment to the complainant of damages for an injury or loss caused by a violation of this act, including a reasonable attorney’s fee. Temporary injunctions are available.
Montana	(§49-2-503), (§49-2-505)	Can issue a preliminary injunction, attorneys’ fees may be awarded in contested cases that are appealed.
New Hampshire	(see 354-A:22)	Attorney’s fees are discretionary, in instances where a Commission’s ruling is appealed to the court and the court may provide temporary relief, such as an injunction.
Oklahoma	(§25-1506.8), (§25-1502.1, see also §25-1502.7), (§25-1506.6)	Attorney’s fees are available to the prevailing party. If an Attorney General brings an action, after hearing a verified charge, the Attorney General may petition the court for an injunction. The Attorney General may pursue a cause of action for matters of public importance and may seek injunctive relief, civil fines and attorney’s fees.
Oregon	(659A.885)	The prevailing party in a civil action may be awarded reasonable attorney’s fees.
Rhode Island	(§28-5-24)	Attorney’s fees may be awarded to the prevailing party and injunctive relief is a remedy offered by the commission.
Tennessee	(§4-21-306), (§4-21-311)	Allows for damages and reasonable attorney’s fees awarded by the Commission and the option to appeal the decision to Superior Court where the plaintiff can pursue an injunction and attorney’s fees.
D.C.	(§ 2–1403.0), (§ 2–1403.13), (§ 2–1403.16)	If the Commission believes that irreparable harm may occur, it can seek an injunction. The commission may award attorney’s fees and fines. Under a private cause of action, the plaintiff can pursue injunctive relief, fines and attorney’s fees.

## STATES WHERE A PUBLIC ENTITY MAY SUE

In three other states, while an individual may not file lawsuit against corporate age discrimination, action may nevertheless be taken by the state’s Attorney General or a parallel commission.<sup>iv</sup>

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| <p><b>1. Connecticut</b> <sup>v</sup><br/>(CGS §46a-64(a))</p> | <p><b>2. Maryland</b><br/>(Md. Code, State Gov’t § 20-304)</p> | <p><b>3. Virginia</b><br/>(Va. Code § 2.2-3900)</p> |
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As FFLs formulate corporate policy with regards to whether to discrimination against customers based solely on their age, it is important to take into consideration the existence of these state and local laws prohibiting age discrimination and whether they would be unwittingly opening themselves up to litigation and potential liability.

i For a further explanation of the problems with age-based bans on firearms purchases, see NSSF’s factsheet here: <https://www3.nssf.org/share/factsheets/PDF/AgeBasedGunBans.pdf>

ii Hawkins, AWR, “Oregon: 20-Year-Old Sues Dick’s Sporting Goods for Refusing to Sell Rifle,” March 5, 2018. <http://www.breitbart.com/big-government/2018/03/05/oregon-20-year-oldsues-dicks-sporting-goods-refusing-sell-rifle/>

iii In addition to these states, California and New York also have general laws that do not explicitly list age discrimination, but which may apply.

iv In Connecticut, complaints may be filed with the Connecticut Commission on Human Rights (CHRO): <http://www.ct.gov/chro/site/default.asp>  
In Maryland, complaints may be filed with the Commission on Civil Rights: <http://mccr.maryland.gov/Pages/Intake.aspx>  
In Virginia, complaints may be filed with the Virginia Division on Human Rights: <https://www.oag.state.va.us/programs-initiatives/human-rights>

v Whether a private right of action in Connecticut exists is a question that has not been affirmatively answered by an interpreting court but at least one court cast doubt on whether a private right of action exists.

