



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4561

Introduced 02/03/04, by William Delgado

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-3
720 ILCS 5/24-3.1A new

from Ch. 38, par. 24-3

Amends the Criminal Code of 1961. Changes references in the statute on unlawful sale of firearms from "sell" or "give" to "transfer". Prohibits multiple sales of handguns within a 30-day period. Creates the offense of unlawful acquisition of handguns. Provides exemptions and affirmative defenses. Penalty is a Class A misdemeanor for a first offense and a Class 4 felony for a second or subsequent offense.

LRB093 15340 RLC 40942 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT in relation to criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 24-3 and adding Section 24-3.1A as follows:

6 (720 ILCS 5/24-3) (from Ch. 38, par. 24-3)

7 Sec. 24-3. Unlawful transfer ~~sale~~ of Firearms.

8 (A) A person commits the offense of unlawful transfer ~~sale~~
9 of firearms when he or she knowingly does any of the following:

10 (a) Transfers or possesses with intent to transfer
11 ~~Sells or gives~~ any firearm of a size which may be concealed
12 upon the person to any person he or she has reasonable
13 cause to believe is under 18 years of age.

14 (b) Transfers or possesses with intent to transfer
15 ~~Sells or gives~~ any firearm to a person under 21 years of
16 age who has been convicted of a misdemeanor other than a
17 traffic offense or adjudged delinquent.

18 (b-5) Transfers or possesses with intent to transfer
19 any firearm to a person he or she has reasonable cause to
20 believe is under 18 years of age.

21 (c) Transfers or possesses with intent to transfer
22 ~~Sells or gives~~ any firearm to any person he or she has
23 reasonable cause to believe is a narcotic addict.

24 (d) Transfers or possesses with intent to transfer
25 ~~Sells or gives~~ any firearm to any person he or she has
26 reasonable cause to believe ~~who~~ has been convicted of a
27 felony under the laws of this or any other jurisdiction.

28 (e) Transfers or possesses with intent to transfer
29 ~~Sells or gives~~ any firearm to any person he or she has
30 reasonable cause to believe ~~who~~ has been a patient in a
31 mental hospital within the past 5 years.

32 (f) Transfers or possesses with intent to transfer

1 ~~Sells or gives~~ any firearms to any person he or she knows
2 or has reasonable cause to believe ~~who~~ is mentally
3 retarded.

4 (g) Knowingly transfers ~~Delivers~~ any firearm of a size
5 which may be concealed upon the person, incidental to a
6 sale, without withholding delivery of such firearm for at
7 least 72 hours after application for its purchase has been
8 made, or delivers any rifle, shotgun or other long gun,
9 incidental to a sale, without withholding delivery of such
10 rifle, shotgun or other long gun for at least 24 hours
11 after application for its purchase has been made. However,
12 this paragraph (g) does not apply to: (1) the sale of a
13 firearm to a law enforcement officer or a person who
14 desires to purchase a firearm for use in promoting the
15 public interest incident to his or her employment as a bank
16 guard, armed truck guard, or other similar employment; (2)
17 a mail order sale of a firearm to a nonresident of Illinois
18 under which the firearm is mailed to a point outside the
19 boundaries of Illinois; (3) the sale of a firearm to a
20 nonresident of Illinois while at a firearm showing or
21 display recognized by the Illinois Department of State
22 Police; or (4) the sale of a firearm to a dealer licensed
23 as a federal firearms dealer under Section 923 of the
24 federal Gun Control Act of 1968 (18 U.S.C. 923).

25 (h) While holding any license as a dealer, importer,
26 manufacturer or pawnbroker under the federal Gun Control
27 Act of 1968, knowingly manufactures, sells or delivers to
28 any unlicensed person a handgun having a barrel, slide,
29 frame or receiver which is a die casting of zinc alloy or
30 any other nonhomogeneous metal which will melt or deform at
31 a temperature of less than 800 degrees Fahrenheit. For
32 purposes of this paragraph, (1) "firearm" is defined as in
33 the Firearm Owners Identification Card Act; and (2)
34 "handgun" is defined as a firearm designed to be held and
35 fired by the use of a single hand, and includes a
36 combination of parts from which such a firearm can be

1 assembled.

2 (i) Transfers or possesses with intent to transfer
3 ~~Sells or gives~~ a firearm of any size to any person he or
4 she knows or has reasonable cause to believe is under 18
5 years of age who does not possess a valid Firearm Owner's
6 Identification Card.

7 (i-5) While holding a license under the Federal Gun
8 Control Act of 1968, transfers or possesses with intent to
9 transfer more than one handgun to any person within any
10 30-day period or transfers or possesses with intent to
11 transfer a handgun to any person he or she knows or has
12 reasonable cause to believe has received a handgun within
13 the previous 30 days unless the receipt of multiple
14 handguns is exempted under subsection (c) or (d) of Section
15 24-3.1A. It is an affirmative defense to a violation of
16 this subsection that the transferor in good faith relied on
17 the records of the Department of State Police in concluding
18 that the transferor had not transferred a handgun within
19 the previous 30 days or that multiple purchases were
20 authorized by subsection (b) of Section 24-3.1A, or relied
21 in good faith on the records of a local law enforcement
22 agency that the transfer was authorized by subsection (c)
23 of Section 24-3.1A.

24 (j) Transfers or possesses with intent to transfer
25 ~~Sells or gives~~ a firearm while engaged in the business of
26 selling firearms at wholesale or retail without being
27 licensed as a federal firearms dealer under Section 923 of
28 the federal Gun Control Act of 1968 (18 U.S.C. 923). In
29 this paragraph (j):

30 A person "engaged in the business" means a person who
31 devotes time, attention, and labor to engaging in the
32 activity as a regular course of trade or business with the
33 principal objective of livelihood and profit, but does not
34 include a person who makes occasional repairs of firearms
35 or who occasionally fits special barrels, stocks, or
36 trigger mechanisms to firearms.

1 "With the principal objective of livelihood and
2 profit" means that the intent underlying the sale or
3 disposition of firearms is predominantly one of obtaining
4 livelihood and pecuniary gain, as opposed to other intents,
5 such as improving or liquidating a personal firearms
6 collection; however, proof of profit shall not be required
7 as to a person who engages in the regular and repetitive
8 purchase and disposition of firearms for criminal purposes
9 or terrorism.

10 (B) Paragraph (h) of subsection (A) does not include
11 firearms sold within 6 months after enactment of Public Act
12 78-355 (approved August 21, 1973, effective October 1, 1973),
13 nor is any firearm legally owned or possessed by any citizen or
14 purchased by any citizen within 6 months after the enactment of
15 Public Act 78-355 subject to confiscation or seizure under the
16 provisions of that Public Act. Nothing in Public Act 78-355
17 shall be construed to prohibit the gift or trade of any firearm
18 if that firearm was legally held or acquired within 6 months
19 after the enactment of that Public Act.

20 (B-5) As used in this Section, "transfer" means the actual
21 or attempted transfer of a firearm or firearm ammunition, with
22 or without consideration, but does not include the lease of a
23 firearm, or the provision of ammunition specifically for that
24 firearm, if the firearm and the ammunition are to be used on
25 the lessor's premises, and does not include any transfer of
26 possession when the transferor maintains supervision and
27 control over the firearm or ammunition.

28 (B-10) It is an affirmative defense to a violation of
29 paragraph (i-5) of subsection (A) that the transfer or
30 possession with intent to transfer of a firearm was to a
31 transferee who received the firearm as an heir, legatee, or
32 beneficiary of or in a similar capacity to a deceased person
33 who had owned the firearm. Nothing in this paragraph (B-10)
34 makes lawful any transfer or possession with intent to transfer
35 of a firearm, or any other possession or use of a firearm, in
36 violation of any law, other than paragraph (i-5) of subsection

1 (A), or in violation of any municipal or county ordinance.

2 (C) Sentence.

3 (1) Any person convicted of unlawful transfer sale of
4 firearms in violation ~~of any of~~ paragraph (c), (e), (f),
5 (g), or paragraphs (e) through (h) of subsection (A)
6 commits a Class 4 felony. A person convicted of a violation
7 of subsection (i-5) of subsection (A) of this Section
8 commits a Class A misdemeanor for a first offense and a
9 Class 4 felony for a second or subsequent offense.

10 (2) Any person convicted of unlawful transfer sale of
11 firearms in violation of paragraph (b), (b-5), or (i) of
12 subsection (A) commits a Class 3 felony.

13 (3) Any person convicted of unlawful transfer sale of
14 firearms in violation of paragraph (a) of subsection (A)
15 commits a Class 2 felony.

16 (4) Any person convicted of unlawful transfer sale of
17 firearms in violation of paragraph (a), (b), (b-5), or (i)
18 of subsection (A) in any school, on the real property
19 comprising a school, within 1,000 feet of the real property
20 comprising a school, at a school related activity, or on or
21 within 1,000 feet of any conveyance owned, leased, or
22 contracted by a school or school district to transport
23 students to or from school or a school related activity,
24 regardless of the time of day or time of year at which the
25 offense was committed, commits a Class 1 felony. Any person
26 convicted of a second or subsequent violation of unlawful
27 transfer sale of firearms in violation of paragraph (a),
28 (b), (b-5), or (i) of subsection (A) in any school, on the
29 real property comprising a school, within 1,000 feet of the
30 real property comprising a school, at a school related
31 activity, or on or within 1,000 feet of any conveyance
32 owned, leased, or contracted by a school or school district
33 to transport students to or from school or a school related
34 activity, regardless of the time of day or time of year at
35 which the offense was committed, commits a Class 1 felony
36 for which the sentence shall be a term of imprisonment of

1 no less than 5 years and no more than 15 years.

2 (5) Any person convicted of unlawful transfer ~~sale~~ of
3 firearms in violation of paragraph (a) or (i) of subsection
4 (A) in residential property owned, operated, or managed by
5 a public housing agency or leased by a public housing
6 agency as part of a scattered site or mixed-income
7 development, in a public park, in a courthouse, on
8 residential property owned, operated, or managed by a
9 public housing agency or leased by a public housing agency
10 as part of a scattered site or mixed-income development, on
11 the real property comprising any public park, on the real
12 property comprising any courthouse, or on any public way
13 within 1,000 feet of the real property comprising any
14 public park, courthouse, or residential property owned,
15 operated, or managed by a public housing agency or leased
16 by a public housing agency as part of a scattered site or
17 mixed-income development commits a Class 2 felony.

18 (6) Any person convicted of unlawful transfer ~~sale~~ of
19 firearms in violation of paragraph (j) of subsection (A)
20 commits a Class A misdemeanor. A second or subsequent
21 violation is a Class 4 felony.

22 (7) A person convicted of unlawful transfer of firearms
23 in violation of paragraph (d) of subsection (A) commits a
24 Class 2 felony.

25 (D) For purposes of this Section:

26 "School" means a public or private elementary or secondary
27 school, community college, college, or university.

28 "School related activity" means any sporting, social,
29 academic, or other activity for which students' attendance or
30 participation is sponsored, organized, or funded in whole or in
31 part by a school or school district.

32 (Source: P.A. 93-162, eff. 7-10-03.)

33 (720 ILCS 5/24-3.1A new)

34 Sec. 24-3.1A. Unlawful acquisition of handguns.

35 (a) Except as exempted in subsections (b) and (c), it is

1 unlawful for any person other than a person holding a license
2 under the Federal Gun Control Act of 1968, as amended, to
3 acquire more than one handgun within any 30-day period.

4 (b) Acquisitions in excess of one handgun within a 30-day
5 period may be made upon completion of an enhanced background
6 check, as described in this Section, by special application to
7 the Department of State Police listing the number and type of
8 handguns to be acquired and transferred for lawful business or
9 personal use, in a collector series, for collections, as a bulk
10 purchase from estate sales, and for similar purposes. The
11 application must be signed under oath by the applicant on forms
12 provided by the Department of State Police, must state the
13 purpose for the acquisition above the limit, and must require
14 satisfactory proof of residency and identity. The application
15 is in addition to the firearms transfer report required by the
16 Bureau of Alcohol, Tobacco and Firearms (ATF). The Director of
17 State Police shall adopt rules, under the Illinois
18 Administrative Procedure Act, for the implementation of an
19 application process for acquisitions of handguns above the
20 limit.

21 Upon being satisfied that these requirements have been met,
22 the Department of State Police must forthwith issue to the
23 applicant a nontransferable certificate that is valid for 7
24 days from the date of issue. The certificate must be
25 surrendered to the transferor by the prospective transferee
26 before the consummation of the transfer and must be kept on
27 file at the transferor's place of business for inspection as
28 provided in Section 24-4. Upon request of any local law
29 enforcement agency, and under its rules, the Department of
30 State Police may certify the local law enforcement agency to
31 serve as its agent to receive applications and, upon
32 authorization by the Department of State Police, issue
33 certificates forthwith under this Section. Applications and
34 certificates issued under this Section must be maintained as
35 records by the Department of State Police, and made available
36 to local law enforcement agencies.

1 (c) This Section does not apply to:

2 (1) A law enforcement agency;

3 (2) State and local correctional agencies and
4 departments;

5 (3) The acquisition of antique firearms as defined by
6 paragraph (4) of Section 1.1 of the Firearm Owners
7 Identification Card Act; or

8 (4) A person whose handgun is stolen or irretrievably
9 lost who deems it essential that the handgun be replaced
10 immediately. The person may acquire another handgun, even
11 if the person has previously acquired a handgun within a
12 30-day period, if: (i) the person provides the firearms
13 transferor with a copy of the official police report or a
14 summary of the official police report, on forms provided by
15 the Department of State Police, from the law enforcement
16 agency that took the report of the lost or stolen handgun;
17 (ii) the official police report or summary of the official
18 police report contains the name and address of the handgun
19 owner, the description and serial number of the handgun,
20 the location of the loss or theft, the date of the loss or
21 theft, and the date the loss or theft was reported to the
22 law enforcement agency; and (iii) the date of the loss or
23 theft as reflected on the official police report or summary
24 of the official police report occurred within 30 days of
25 the person's attempt to replace the handgun. The firearms
26 transferor must attach a copy of the official police report
27 or summary of the official police report to the original
28 copy of the form provided by the Department of State Police
29 completed for the transaction, retain it for the period
30 prescribed by the Department of State Police, and forward a
31 copy of the documents to the Department of State Police.
32 The documents must be maintained by the Department of State
33 Police and made available to local law enforcement
34 agencies.

35 (d) For the purposes of this Section, "acquisition" does
36 not include the exchange or replacement of a handgun by a

1 transferor for a handgun transferred from the transferor by the
2 same person seeking the exchange or replacement within the
3 30-day period immediately preceding the date of exchange or
4 replacement.

5 (e) The exemptions set forth in subsections (b) and (c) are
6 affirmative defenses to a violation of subsection (a).

7 (f) A violation of this Section is a Class A misdemeanor
8 for a first offense and a Class 4 felony for a second or
9 subsequent offense.