



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0614

Introduced 1/28/2005, by Rep. William Delgado

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-3

from Ch. 38, par. 24-3

720 ILCS 5/24-3.1A new

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.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 (k) Transfers ~~Sells or transfers~~ ownership of a firearm
11 to a person who does not display to the seller or
12 transferor of the firearm a currently valid Firearm Owner's
13 Identification Card that has previously been issued in the
14 transferee's name by the Department of State Police under
15 the provisions of the Firearm Owners Identification Card
16 Act. This paragraph (k) does not apply to the transfer of a
17 firearm to a person who is exempt from the requirement of
18 possessing a Firearm Owner's Identification Card under
19 Section 2 of the Firearm Owners Identification Card Act.
20 For the purposes of this Section, a currently valid Firearm
21 Owner's Identification Card means (i) a Firearm Owner's
22 Identification Card that has not expired or (ii) if the
23 transferor is licensed as a federal firearms dealer under
24 Section 923 of the federal Gun Control Act of 1968 (18
25 U.S.C. 923), an approval number issued in accordance with
26 Section 3.1 of the Firearm Owners Identification Card Act
27 shall be proof that the Firearm Owner's Identification Card
28 was valid.

29 (B) Paragraph (h) of subsection (A) does not include
30 firearms sold within 6 months after enactment of Public Act
31 78-355 (approved August 21, 1973, effective October 1, 1973),
32 nor is any firearm legally owned or possessed by any citizen or
33 purchased by any citizen within 6 months after the enactment of
34 Public Act 78-355 subject to confiscation or seizure under the
35 provisions of that Public Act. Nothing in Public Act 78-355
36 shall be construed to prohibit the gift or trade of any firearm

1 if that firearm was legally held or acquired within 6 months
2 after the enactment of that Public Act.

3 (B-5) As used in this Section, "transfer" means the actual
4 or attempted transfer of a firearm or firearm ammunition, with
5 or without consideration, but does not include the lease of a
6 firearm, or the provision of ammunition specifically for that
7 firearm, if the firearm and the ammunition are to be used on
8 the lessor's premises, and does not include any transfer of
9 possession when the transferor maintains supervision and
10 control over the firearm or ammunition.

11 (B-10) It is an affirmative defense to a violation of
12 paragraph (i-5) of subsection (A) that the transfer or
13 possession with intent to transfer of a firearm was to a
14 transferee who received the firearm as an heir, legatee, or
15 beneficiary of or in a similar capacity to a deceased person
16 who had owned the firearm. Nothing in this paragraph (B-10)
17 makes lawful any transfer or possession with intent to transfer
18 of a firearm, or any other possession or use of a firearm, in
19 violation of any law, other than paragraph (i-5) of subsection
20 (A), or in violation of any municipal or county ordinance.

21 (C) Sentence.

22 (1) Any person convicted of unlawful transfer ~~sale~~ of
23 firearms in violation ~~of any~~ of paragraph (c), (e), (f),
24 (g), or paragraphs (e) through (h) of subsection (A)
25 commits a Class 4 felony. A person convicted of a violation
26 of subsection (i-5) of subsection (A) of this Section
27 commits a Class A misdemeanor for a first offense and a
28 Class 4 felony for a second or subsequent offense.

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

32 (3) Any person convicted of unlawful transfer ~~sale~~ of
33 firearms in violation of paragraph (a) of subsection (A)
34 commits a Class 2 felony.

35 (4) Any person convicted of unlawful transfer ~~sale~~ of
36 firearms in violation of paragraph (a), (b), (b-5), or (i)

1 of subsection (A) in any school, on the real property
2 comprising a school, within 1,000 feet of the real property
3 comprising a school, at a school related activity, or on or
4 within 1,000 feet of any conveyance owned, leased, or
5 contracted by a school or school district to transport
6 students to or from school or a school related activity,
7 regardless of the time of day or time of year at which the
8 offense was committed, commits a Class 1 felony. Any person
9 convicted of a second or subsequent violation of unlawful
10 transfer ~~sale~~ of firearms in violation of paragraph (a),
11 (b), (b-5), or (i) of subsection (A) in any school, on the
12 real property comprising a school, within 1,000 feet of the
13 real property comprising a school, at a school related
14 activity, or on or within 1,000 feet of any conveyance
15 owned, leased, or contracted by a school or school district
16 to transport students to or from school or a school related
17 activity, regardless of the time of day or time of year at
18 which the offense was committed, commits a Class 1 felony
19 for which the sentence shall be a term of imprisonment of
20 no less than 5 years and no more than 15 years.

21 (5) Any person convicted of unlawful transfer ~~sale~~ of
22 firearms in violation of paragraph (a) or (i) of subsection
23 (A) in residential property owned, operated, or managed by
24 a public housing agency or leased by a public housing
25 agency as part of a scattered site or mixed-income
26 development, in a public park, in a courthouse, on
27 residential property owned, operated, or managed by a
28 public housing agency or leased by a public housing agency
29 as part of a scattered site or mixed-income development, on
30 the real property comprising any public park, on the real
31 property comprising any courthouse, or on any public way
32 within 1,000 feet of the real property comprising any
33 public park, courthouse, or residential property owned,
34 operated, or managed by a public housing agency or leased
35 by a public housing agency as part of a scattered site or
36 mixed-income development commits a Class 2 felony.

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

5 (7) Any person convicted of unlawful transfer ~~sale~~ of
6 firearms in violation of paragraph (k) of subsection (A)
7 commits a Class 4 felony. A third or subsequent conviction
8 for a violation of paragraph (k) of subsection (A) is a
9 Class 1 felony.

10 (8) A person convicted of unlawful transfer of firearms
11 in violation of paragraph (d) of subsection (A) commits a
12 Class 2 felony.

13 (D) For purposes of this Section:

14 "School" means a public or private elementary or secondary
15 school, community college, college, or university.

16 "School related activity" means any sporting, social,
17 academic, or other activity for which students' attendance or
18 participation is sponsored, organized, or funded in whole or in
19 part by a school or school district.

20 (E) A prosecution for a violation of paragraph (k) of
21 subsection (A) of this Section may be commenced within 6 years
22 after the commission of the offense. A prosecution for a
23 violation of this Section other than paragraph (g) of
24 subsection (A) of this Section may be commenced within 5 years
25 after the commission of the offense defined in the particular
26 paragraph.

27 (Source: P.A. 93-162, eff. 7-10-03; 93-906, eff. 8-11-04.)

28 (720 ILCS 5/24-3.1A new)

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

30 (a) Except as exempted in subsections (b) and (c), it is
31 unlawful for any person other than a person holding a license
32 under the Federal Gun Control Act of 1968, as amended, to
33 acquire more than one handgun within any 30-day period.

34 (b) Acquisitions in excess of one handgun within a 30-day
35 period may be made upon completion of an enhanced background

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

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

32 (c) This Section does not apply to:

33 (1) A law enforcement agency;

34 (2) State and local correctional agencies and
35 departments;

36 (3) The acquisition of antique firearms as defined by

1 paragraph (4) of Section 1.1 of the Firearm Owners
2 Identification Card Act; or

3 (4) A person whose handgun is stolen or irretrievably
4 lost who deems it essential that the handgun be replaced
5 immediately. The person may acquire another handgun, even
6 if the person has previously acquired a handgun within a
7 30-day period, if: (i) the person provides the firearms
8 transferor with a copy of the official police report or a
9 summary of the official police report, on forms provided by
10 the Department of State Police, from the law enforcement
11 agency that took the report of the lost or stolen handgun;
12 (ii) the official police report or summary of the official
13 police report contains the name and address of the handgun
14 owner, the description and serial number of the handgun,
15 the location of the loss or theft, the date of the loss or
16 theft, and the date the loss or theft was reported to the
17 law enforcement agency; and (iii) the date of the loss or
18 theft as reflected on the official police report or summary
19 of the official police report occurred within 30 days of
20 the person's attempt to replace the handgun. The firearms
21 transferor must attach a copy of the official police report
22 or summary of the official police report to the original
23 copy of the form provided by the Department of State Police
24 completed for the transaction, retain it for the period
25 prescribed by the Department of State Police, and forward a
26 copy of the documents to the Department of State Police.
27 The documents must be maintained by the Department of State
28 Police and made available to local law enforcement
29 agencies.

30 (d) For the purposes of this Section, "acquisition" does
31 not include the exchange or replacement of a handgun by a
32 transferor for a handgun transferred from the transferor by the
33 same person seeking the exchange or replacement within the
34 30-day period immediately preceding the date of exchange or
35 replacement.

36 (e) The exemptions set forth in subsections (b) and (c) are

1 affirmative defenses to a violation of subsection (a).

2 (f) A violation of this Section is a Class A misdemeanor

3 for a first offense and a Class 4 felony for a second or

4 subsequent offense.