

HB0012



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0012

Introduced 1/14/2009, by Rep. Luis Arroyo

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

A BILL FOR

1 AN ACT concerning 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 ~~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.

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

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

9 (f) Transfers or possesses with intent to transfer
10 ~~Sells or gives~~ any firearms to any person he or she knows
11 or has reasonable cause to believe ~~who~~ is mentally
12 retarded.

13 (g) Knowingly transfers ~~Delivers~~ any firearm of a size
14 which may be concealed upon the person, incidental to a
15 sale, without withholding delivery of such firearm for at
16 least 72 hours after application for its purchase has been
17 made, or delivers any rifle, shotgun or other long gun, or
18 a stun gun or taser, incidental to a sale, without
19 withholding delivery of such rifle, shotgun or other long
20 gun, or a stun gun or taser for at least 24 hours after
21 application for its purchase has been made. However, this
22 paragraph (g) does not apply to: (1) the sale of a firearm
23 to a law enforcement officer if the seller of the firearm
24 knows that the person to whom he or she is selling the
25 firearm is a law enforcement officer or the sale of a
26 firearm to a person who desires to purchase a firearm for

1 use in promoting the public interest incident to his or her
2 employment as a bank guard, armed truck guard, or other
3 similar employment; (2) a mail order sale of a firearm to a
4 nonresident of Illinois under which the firearm is mailed
5 to a point outside the boundaries of Illinois; (3) the sale
6 of a firearm to a nonresident of Illinois while at a
7 firearm showing or display recognized by the Illinois
8 Department of State Police; or (4) the sale of a firearm to
9 a dealer licensed as a federal firearms dealer under
10 Section 923 of the federal Gun Control Act of 1968 (18
11 U.S.C. 923). For purposes of this paragraph (g),
12 "application" means when the buyer and seller reach an
13 agreement to purchase a firearm.

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

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

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

23 (j) Transfers or possesses with intent to transfer
24 ~~Sells or gives~~ a firearm while engaged in the business of
25 selling firearms at wholesale or retail without being
26 licensed as a federal firearms dealer under Section 923 of

1 the federal Gun Control Act of 1968 (18 U.S.C. 923). In
2 this paragraph (j):

3 A person "engaged in the business" means a person who
4 devotes time, attention, and labor to engaging in the
5 activity as a regular course of trade or business with the
6 principal objective of livelihood and profit, but does not
7 include a person who makes occasional repairs of firearms
8 or who occasionally fits special barrels, stocks, or
9 trigger mechanisms to firearms.

10 "With the principal objective of livelihood and
11 profit" means that the intent underlying the sale or
12 disposition of firearms is predominantly one of obtaining
13 livelihood and pecuniary gain, as opposed to other intents,
14 such as improving or liquidating a personal firearms
15 collection; however, proof of profit shall not be required
16 as to a person who engages in the regular and repetitive
17 purchase and disposition of firearms for criminal purposes
18 or terrorism.

19 (k) Transfers ~~Sells or transfers~~ ownership of a firearm
20 to a person who does not display to the seller or
21 transferor of the firearm a currently valid Firearm Owner's
22 Identification Card that has previously been issued in the
23 transferee's name by the Department of State Police under
24 the provisions of the Firearm Owners Identification Card
25 Act. This paragraph (k) does not apply to the transfer of a
26 firearm to a person who is exempt from the requirement of

1 possessing a Firearm Owner's Identification Card under
2 Section 2 of the Firearm Owners Identification Card Act.
3 For the purposes of this Section, a currently valid Firearm
4 Owner's Identification Card means (i) a Firearm Owner's
5 Identification Card that has not expired or (ii) if the
6 transferor is licensed as a federal firearms dealer under
7 Section 923 of the federal Gun Control Act of 1968 (18
8 U.S.C. 923), an approval number issued in accordance with
9 Section 3.1 of the Firearm Owners Identification Card Act
10 shall be proof that the Firearm Owner's Identification Card
11 was valid.

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

22 (B-5) As used in this Section, "transfer" means the actual
23 or attempted transfer of a firearm or firearm ammunition, with
24 or without consideration, but does not include the lease of a
25 firearm, or the provision of ammunition specifically for that
26 firearm, if the firearm and the ammunition are to be used on

1 the lessor's premises, and does not include any transfer of
2 possession when the transferor maintains supervision and
3 control over the firearm or ammunition.

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

14 (C) Sentence.

15 (1) Any person convicted of unlawful transfer ~~sale~~ of
16 firearms in violation of paragraph (c), (e), (f), (g), or
17 ~~any of paragraphs (c) through~~ (h) of subsection (A) commits
18 a Class 4 felony. A person convicted of a violation of
19 subsection (i-5) of subsection (A) of this Section commits
20 a Class A misdemeanor for a first offense and a Class 4
21 felony for a second or subsequent offense.

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

25 (3) Any person convicted of unlawful transfer ~~sale~~ of
26 firearms in violation of paragraph (a) of subsection (A)

1 commits a Class 2 felony.

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

24 (5) Any person convicted of unlawful transfer ~~sale~~ of
25 firearms in violation of paragraph (a) or (i) of subsection
26 (A) in residential property owned, operated, or managed by

1 a public housing agency or leased by a public housing
2 agency as part of a scattered site or mixed-income
3 development, in a public park, in a courthouse, on
4 residential property owned, operated, or managed by a
5 public housing agency or leased by a public housing agency
6 as part of a scattered site or mixed-income development, on
7 the real property comprising any public park, on the real
8 property comprising any courthouse, or on any public way
9 within 1,000 feet of the real property comprising any
10 public park, courthouse, or residential property owned,
11 operated, or managed by a public housing agency or leased
12 by a public housing agency as part of a scattered site or
13 mixed-income development commits a Class 2 felony.

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

18 (7) Any person convicted of unlawful transfer ~~sale~~ of
19 firearms in violation of paragraph (k) of subsection (A)
20 commits a Class 4 felony. A third or subsequent conviction
21 for a violation of paragraph (k) of subsection (A) is a
22 Class 1 felony.

23 (8) A person 18 years of age or older convicted of
24 unlawful transfer ~~sale~~ of firearms in violation of
25 paragraph (a) or (i) of subsection (A), when the firearm
26 that was sold or given to another person under 18 years of

1 age was used in the commission of or attempt to commit a
2 forcible felony, shall be fined or imprisoned, or both, not
3 to exceed the maximum provided for the most serious
4 forcible felony so committed or attempted by the person
5 under 18 years of age who was sold or given the firearm.

6 (9) A person convicted of unlawful transfer of firearms
7 in violation of paragraph (d) of subsection (A) commits a
8 Class 2 felony.

9 (D) For purposes of this Section:

10 "School" means a public or private elementary or secondary
11 school, community college, college, or university.

12 "School related activity" means any sporting, social,
13 academic, or other activity for which students' attendance or
14 participation is sponsored, organized, or funded in whole or in
15 part by a school or school district.

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

23 (Source: P.A. 94-6, eff. 1-1-06; 94-284, eff. 7-21-05; 95-331,
24 eff. 8-21-07; 95-735, eff. 7-16-08.)

25 (720 ILCS 5/24-3.1A new)

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

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

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

23 Upon being satisfied that these requirements have been met,
24 the Department of State Police must forthwith issue to the
25 applicant a nontransferable certificate that is valid for 7
26 days from the date of issue. The certificate must be

1 surrendered to the transferor by the prospective transferee
2 before the consummation of the transfer and must be kept on
3 file at the transferor's place of business for inspection as
4 provided in Section 24-4. Upon request of any local law
5 enforcement agency, and under its rules, the Department of
6 State Police may certify the local law enforcement agency to
7 serve as its agent to receive applications and, upon
8 authorization by the Department of State Police, issue
9 certificates forthwith under this Section. Applications and
10 certificates issued under this Section must be maintained as
11 records by the Department of State Police, and made available
12 to local law enforcement agencies.

13 (c) This Section does not apply to:

14 (1) A law enforcement agency;

15 (2) State and local correctional agencies and
16 departments;

17 (3) The acquisition of antique firearms as defined by
18 paragraph (4) of Section 1.1 of the Firearm Owners
19 Identification Card Act; or

20 (4) A person whose handgun is stolen or irretrievably
21 lost who deems it essential that the handgun be replaced
22 immediately. The person may acquire another handgun, even
23 if the person has previously acquired a handgun within a
24 30-day period, if: (i) the person provides the firearms
25 transferor with a copy of the official police report or a
26 summary of the official police report, on forms provided by

1 the Department of State Police, from the law enforcement
2 agency that took the report of the lost or stolen handgun;
3 (ii) the official police report or summary of the official
4 police report contains the name and address of the handgun
5 owner, the description and serial number of the handgun,
6 the location of the loss or theft, the date of the loss or
7 theft, and the date the loss or theft was reported to the
8 law enforcement agency; and (iii) the date of the loss or
9 theft as reflected on the official police report or summary
10 of the official police report occurred within 30 days of
11 the person's attempt to replace the handgun. The firearms
12 transferor must attach a copy of the official police report
13 or summary of the official police report to the original
14 copy of the form provided by the Department of State Police
15 completed for the transaction, retain it for the period
16 prescribed by the Department of State Police, and forward a
17 copy of the documents to the Department of State Police.
18 The documents must be maintained by the Department of State
19 Police and made available to local law enforcement
20 agencies.

21 (d) For the purposes of this Section, "acquisition" does
22 not include the exchange or replacement of a handgun by a
23 transferor for a handgun transferred from the transferor by the
24 same person seeking the exchange or replacement within the
25 30-day period immediately preceding the date of exchange or
26 replacement.

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

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