

HB3809



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3809

Introduced 10/5/2011, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-3

from Ch. 38, par. 24-3

Amends the Criminal Code of 1961. Provides that it is a Class 1 felony to sell or give a firearm to a person whom the seller or giver knows is a street gang member. Effective immediately.

LRB097 13489 RLC 58009 b

CORRECTIONAL
BUDGET AND
IMPACT 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 as follows:

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

7 Sec. 24-3. Unlawful Sale of Firearms.

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

10 (a) Sells or gives any firearm of a size which may be
11 concealed upon the person to any person under 18 years of
12 age.

13 (b) Sells or gives any firearm to a person under 21
14 years of age who has been convicted of a misdemeanor other
15 than a traffic offense or adjudged delinquent.

16 (c) Sells or gives any firearm to any narcotic addict.

17 (d) Sells or gives any firearm to any person who has
18 been convicted of a felony under the laws of this or any
19 other jurisdiction.

20 (e) Sells or gives any firearm to any person who has
21 been a patient in a mental hospital within the past 5
22 years.

23 (f) Sells or gives any firearms to any person who is

1 mentally retarded.

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

1 "application" means when the buyer and seller reach an
2 agreement to purchase a firearm.

3 (h) While holding any license as a dealer, importer,
4 manufacturer or pawnbroker under the federal Gun Control
5 Act of 1968, manufactures, sells or delivers to any
6 unlicensed person a handgun having a barrel, slide, frame
7 or receiver which is a die casting of zinc alloy or any
8 other nonhomogeneous metal which will melt or deform at a
9 temperature of less than 800 degrees Fahrenheit. For
10 purposes of this paragraph, (1) "firearm" is defined as in
11 the Firearm Owners Identification Card Act; and (2)
12 "handgun" is defined as a firearm designed to be held and
13 fired by the use of a single hand, and includes a
14 combination of parts from which such a firearm can be
15 assembled.

16 (i) Sells or gives a firearm of any size to any person
17 under 18 years of age who does not possess a valid Firearm
18 Owner's Identification Card.

19 (j) Sells or gives a firearm while engaged in the
20 business of selling firearms at wholesale or retail without
21 being licensed as a federal firearms dealer under Section
22 923 of the federal Gun Control Act of 1968 (18 U.S.C. 923).
23 In this paragraph (j):

24 A person "engaged in the business" means a person who
25 devotes time, attention, and labor to engaging in the
26 activity as a regular course of trade or business with the

1 principal objective of livelihood and profit, but does not
2 include a person who makes occasional repairs of firearms
3 or who occasionally fits special barrels, stocks, or
4 trigger mechanisms to firearms.

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

14 (k) Sells or transfers ownership of a firearm to a
15 person who does not display to the seller or transferor of
16 the firearm a currently valid Firearm Owner's
17 Identification Card that has previously been issued in the
18 transferee's name by the Department of State Police under
19 the provisions of the Firearm Owners Identification Card
20 Act. This paragraph (k) does not apply to the transfer of a
21 firearm to a person who is exempt from the requirement of
22 possessing a Firearm Owner's Identification Card under
23 Section 2 of the Firearm Owners Identification Card Act.
24 For the purposes of this Section, a currently valid Firearm
25 Owner's Identification Card means (i) a Firearm Owner's
26 Identification Card that has not expired or (ii) if the

1 transferor is licensed as a federal firearms dealer under
2 Section 923 of the federal Gun Control Act of 1968 (18
3 U.S.C. 923), an approval number issued in accordance with
4 Section 3.1 of the Firearm Owners Identification Card Act
5 shall be proof that the Firearm Owner's Identification Card
6 was valid.

7 (1) Sells or gives any firearm to any person whom the
8 seller or giver knows is a street gang member. For purposes
9 to this paragraph (1), "street gang member" has the meaning
10 ascribed to the term "street gang member" in Section 10 of
11 the Illinois Streetgang Terrorism Omnibus Prevention Act.

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 (C) Sentence.

23 (1) Any person convicted of unlawful sale of firearms
24 in violation of paragraph (c), (e), (f), (g), or (h) of
25 subsection (A) commits a Class 4 felony.

26 (2) Any person convicted of unlawful sale of firearms

1 in violation of paragraph (b) or (i) of subsection (A)
2 commits a Class 3 felony.

3 (3) Any person convicted of unlawful sale of firearms
4 in violation of paragraph (a) of subsection (A) commits a
5 Class 2 felony.

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

1 years.

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

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

22 (7) Any person convicted of unlawful sale of firearms
23 in violation of paragraph (k) of subsection (A) commits a
24 Class 4 felony. A third or subsequent conviction for a
25 violation of paragraph (k) of subsection (A) is a Class 1
26 felony.

1 (8) A person 18 years of age or older convicted of
2 unlawful sale of firearms in violation of paragraph (a) or
3 (i) of subsection (A), when the firearm that was sold or
4 given to another person under 18 years of age was used in
5 the commission of or attempt to commit a forcible felony,
6 shall be fined or imprisoned, or both, not to exceed the
7 maximum provided for the most serious forcible felony so
8 committed or attempted by the person under 18 years of age
9 who was sold or given the firearm.

10 (9) Any person convicted of unlawful sale of firearms
11 in violation of paragraph (d) of subsection (A) commits a
12 Class 3 felony.

13 (10) Any person convicted of unlawful sale of firearms
14 in violation of paragraph (l) of subsection (A) commits a
15 Class 1 felony.

16 (D) For purposes of this Section:

17 "School" means a public or private elementary or secondary
18 school, community college, college, or university.

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

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

1 subsection (A) of this Section may be commenced within 5 years
2 after the commission of the offense defined in the particular
3 paragraph.

4 (Source: P.A. 95-331, eff. 8-21-07; 95-735, eff. 7-16-08;
5 96-190, eff. 1-1-10.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.