

HB3044



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3044

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 2012. 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.

LRB098 04219 RLC 41259 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 2012 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 or delivery~~ of firearms.

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

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

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

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

22 (c) Transfers or possesses with intent to transfer
23 ~~Sells or gives~~ any firearm to any person he or she has

1 reasonable cause to believe is a narcotic addict.

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

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

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

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

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

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

1 licensed as a federal firearms dealer under Section 923 of
2 the federal Gun Control Act of 1968 (18 U.S.C. 923). In
3 this paragraph (j):

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

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

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

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

13 (1) Not being entitled to the possession of a firearm,
14 delivers the firearm, knowing it to have been stolen or
15 converted. It may be inferred that a person who possesses a
16 firearm with knowledge that its serial number has been
17 removed or altered has knowledge that the firearm is stolen
18 or converted.

19 (B) Paragraph (h) of subsection (A) does not include
20 firearms sold within 6 months after enactment of Public Act
21 78-355 (approved August 21, 1973, effective October 1, 1973),
22 nor is any firearm legally owned or possessed by any citizen or
23 purchased by any citizen within 6 months after the enactment of
24 Public Act 78-355 subject to confiscation or seizure under the
25 provisions of that Public Act. Nothing in Public Act 78-355
26 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 or~~
23 ~~delivery~~ of firearms in violation of paragraph (c), (e),
24 (f), (g), or (h) of subsection (A) commits a Class 4
25 felony. A person convicted of a violation of subsection
26 (i-5) of subsection (A) of this Section commits a Class A

1 misdemeanor for a first offense and a Class 4 felony for a
2 second or subsequent offense.

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

6 (3) Any person convicted of unlawful transfer ~~sale or~~
7 ~~delivery~~ of firearms in violation of paragraph (a) of
8 subsection (A) commits a Class 2 felony.

9 (4) Any person convicted of unlawful transfer ~~sale or~~
10 ~~delivery~~ of firearms in violation of paragraph (a), (b),
11 (b-5), or (i) of subsection (A) in any school, on the real
12 property comprising a school, within 1,000 feet of the real
13 property comprising a school, at a school related activity,
14 or on or within 1,000 feet of any conveyance owned, leased,
15 or contracted by a school or school district to transport
16 students to or from school or a school related activity,
17 regardless of the time of day or time of year at which the
18 offense was committed, commits a Class 1 felony. Any person
19 convicted of a second or subsequent violation of unlawful
20 transfer ~~sale or delivery~~ of firearms in violation of
21 paragraph (a), (b), (b-5), or (i) of subsection (A) in any
22 school, on the real property comprising a school, within
23 1,000 feet of the real property comprising a school, at a
24 school related activity, or on or within 1,000 feet of any
25 conveyance owned, leased, or contracted by a school or
26 school district to transport students to or from school or

1 a school related activity, regardless of the time of day or
2 time of year at which the offense was committed, commits a
3 Class 1 felony for which the sentence shall be a term of
4 imprisonment of no less than 5 years and no more than 15
5 years.

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

22 (6) Any person convicted of unlawful transfer ~~sale or~~
23 ~~delivery~~ of firearms in violation of paragraph (j) of
24 subsection (A) commits a Class A misdemeanor. A second or
25 subsequent violation is a Class 4 felony.

26 (7) Any person convicted of unlawful transfer ~~sale or~~

1 ~~delivery~~ of firearms in violation of paragraph (k) of
2 subsection (A) commits a Class 4 felony. A third or
3 subsequent conviction for a violation of paragraph (k) of
4 subsection (A) is a Class 1 felony.

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

14 (9) Any person convicted of unlawful transfer ~~sale or~~
15 ~~delivery~~ of firearms in violation of paragraph (d) of
16 subsection (A) commits a Class 3 felony.

17 (10) Any person convicted of unlawful transfer ~~sale or~~
18 ~~delivery~~ of firearms in violation of paragraph (l) of
19 subsection (A) commits a Class 2 felony if the delivery is
20 of one firearm. Any person convicted of unlawful transfer
21 ~~sale or delivery~~ of firearms in violation of paragraph (l)
22 of subsection (A) commits a Class 1 felony if the delivery
23 is of not less than 2 and not more than 5 firearms at the
24 same time or within a one year period. Any person convicted
25 of unlawful transfer ~~sale or delivery~~ of firearms in
26 violation of paragraph (l) of subsection (A) commits a

1 Class X felony for which he or she shall be sentenced to a
2 term of imprisonment of not less than 6 years and not more
3 than 30 years if the delivery is of not less than 6 and not
4 more than 10 firearms at the same time or within a 2 year
5 period. Any person convicted of unlawful transfer ~~sale or~~
6 ~~delivery~~ of firearms in violation of paragraph (1) of
7 subsection (A) commits a Class X felony for which he or she
8 shall be sentenced to a term of imprisonment of not less
9 than 6 years and not more than 40 years if the delivery is
10 of not less than 11 and not more than 20 firearms at the
11 same time or within a 3 year period. Any person convicted
12 of unlawful transfer ~~sale or delivery~~ of firearms in
13 violation of paragraph (1) of subsection (A) commits a
14 Class X felony for which he or she shall be sentenced to a
15 term of imprisonment of not less than 6 years and not more
16 than 50 years if the delivery is of not less than 21 and
17 not more than 30 firearms at the same time or within a 4
18 year period. Any person convicted of unlawful transfer ~~sale~~
19 ~~or delivery~~ of firearms in violation of paragraph (1) of
20 subsection (A) commits a Class X felony for which he or she
21 shall be sentenced to a term of imprisonment of not less
22 than 6 years and not more than 60 years if the delivery is
23 of 31 or more firearms at the same time or within a 5 year
24 period.

25 (11) A person convicted of unlawful transfer of
26 firearms in violation of paragraph (d) of subsection (A)

1 commits a Class 2 felony.

2 (D) For purposes of this Section:

3 "School" means a public or private elementary or secondary
4 school, community college, college, or university.

5 "School related activity" means any sporting, social,
6 academic, or other activity for which students' attendance or
7 participation is sponsored, organized, or funded in whole or in
8 part by a school or school district.

9 (E) A prosecution for a violation of paragraph (k) of
10 subsection (A) of this Section may be commenced within 6 years
11 after the commission of the offense. A prosecution for a
12 violation of this Section other than paragraph (g) of
13 subsection (A) of this Section may be commenced within 5 years
14 after the commission of the offense defined in the particular
15 paragraph.

16 (Source: P.A. 96-190, eff. 1-1-10; 97-227, eff. 1-1-12; 97-347,
17 eff. 1-1-12; 97-813, eff. 7-13-12.)

18 (720 ILCS 5/24-3.1A new)

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

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

24 (b) Acquisitions in excess of one handgun within a 30-day
25 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, Firearms and Explosives (ATF). The
12 Director of 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

1 authorization by the Department of State Police, issue
2 certificates forthwith under this Section. Applications and
3 certificates issued under this Section must be maintained as
4 records by the Department of State Police, and made available
5 to local law enforcement agencies.

6 (c) This Section does not apply to:

7 (1) A law enforcement agency;

8 (2) State and local correctional agencies and
9 departments;

10 (3) The acquisition of antique firearms as defined by
11 paragraph (4) of Section 1.1 of the Firearm Owners
12 Identification Card Act; or

13 (4) A person whose handgun is stolen or irretrievably
14 lost who deems it essential that the handgun be replaced
15 immediately. The person may acquire another handgun, even
16 if the person has previously acquired a handgun within a
17 30-day period, if: (i) the person provides the firearms
18 transferor with a copy of the official police report or a
19 summary of the official police report, on forms provided by
20 the Department of State Police, from the law enforcement
21 agency that took the report of the lost or stolen handgun;
22 (ii) the official police report or summary of the official
23 police report contains the name and address of the handgun
24 owner, the description and serial number of the handgun,
25 the location of the loss or theft, the date of the loss or
26 theft, and the date the loss or theft was reported to the

1 law enforcement agency; and (iii) the date of the loss or
2 theft as reflected on the official police report or summary
3 of the official police report occurred within 30 days of
4 the person's attempt to replace the handgun. The firearms
5 transferor must attach a copy of the official police report
6 or summary of the official police report to the original
7 copy of the form provided by the Department of State Police
8 completed for the transaction, retain it for the period
9 prescribed by the Department of State Police, and forward a
10 copy of the documents to the Department of State Police.
11 The documents must be maintained by the Department of State
12 Police and made available to local law enforcement
13 agencies.

14 (d) For the purposes of this Section, "acquisition" does
15 not include the exchange or replacement of a handgun by a
16 transferor for a handgun transferred from the transferor by the
17 same person seeking the exchange or replacement within the
18 30-day period immediately preceding the date of exchange or
19 replacement.

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

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