



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2370

Introduced 1/18/2006, by Sen. John J. Cullerton

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.

LRB094 16410 RLC 51669 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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.

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

31 (h) While holding any license as a dealer, importer,
32 manufacturer or pawnbroker under the federal Gun Control
33 Act of 1968, knowingly manufactures, sells or delivers to
34 any unlicensed person a handgun having a barrel, slide,
35 frame or receiver which is a die casting of zinc alloy or
36 any other nonhomogeneous metal which will melt or deform at

1 a temperature of less than 800 degrees Fahrenheit. For
2 purposes of this paragraph, (1) "firearm" is defined as in
3 the Firearm Owners Identification Card Act; and (2)
4 "handgun" is defined as a firearm designed to be held and
5 fired by the use of a single hand, and includes a
6 combination of parts from which such a firearm can be
7 assembled.

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

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

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

36 A person "engaged in the business" means a person who

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

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

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

35 (B) Paragraph (h) of subsection (A) does not include
36 firearms sold within 6 months after enactment of Public Act

1 78-355 (approved August 21, 1973, effective October 1, 1973),
2 nor is any firearm legally owned or possessed by any citizen or
3 purchased by any citizen within 6 months after the enactment of
4 Public Act 78-355 subject to confiscation or seizure under the
5 provisions of that Public Act. Nothing in Public Act 78-355
6 shall be construed to prohibit the gift or trade of any firearm
7 if that firearm was legally held or acquired within 6 months
8 after the enactment of that Public Act.

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

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

27 (C) Sentence.

28 (1) Any person convicted of unlawful transfer ~~sale~~ of
29 firearms in violation of paragraph (c), (e), (f), (g), or
30 ~~any of paragraphs (c) through~~ (h) of subsection (A) commits
31 a Class 4 felony. A person convicted of a violation of
32 subsection (i-5) of subsection (A) of this Section commits
33 a Class A misdemeanor for a first offense and a Class 4
34 felony for a second or subsequent offense.

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

1 subsection (A) commits a Class 3 felony.

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

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

27 (5) Any person convicted of unlawful transfer ~~sale~~ of
28 firearms in violation of paragraph (a) or (i) of subsection
29 (A) in residential property owned, operated, or managed by
30 a public housing agency or leased by a public housing
31 agency as part of a scattered site or mixed-income
32 development, in a public park, in a courthouse, on
33 residential property owned, operated, or managed by a
34 public housing agency or leased by a public housing agency
35 as part of a scattered site or mixed-income development, on
36 the real property comprising any public park, on the real

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

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

11 (7) Any person convicted of unlawful transfer ~~sale~~ of
12 firearms in violation of paragraph (k) of subsection (A)
13 commits a Class 4 felony. A third or subsequent conviction
14 for a violation of paragraph (k) of subsection (A) is a
15 Class 1 felony.

16 (8) A person convicted of unlawful transfer of firearms
17 in violation of paragraph (d) of subsection (A) commits a
18 Class 2 felony.

19 (D) For purposes of this Section:

20 "School" means a public or private elementary or secondary
21 school, community college, college, or university.

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

26 (E) A prosecution for a violation of paragraph (k) of
27 subsection (A) of this Section may be commenced within 6 years
28 after the commission of the offense. A prosecution for a
29 violation of this Section other than paragraph (g) of
30 subsection (A) of this Section may be commenced within 5 years
31 after the commission of the offense defined in the particular
32 paragraph.

33 (Source: P.A. 93-162, eff. 7-10-03; 93-906, eff. 8-11-04; 94-6,
34 eff. 1-1-06; 94-284, eff. 7-21-05; revised 8-19-05.)

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
27 surrendered to the transferor by the prospective transferee
28 before the consummation of the transfer and must be kept on
29 file at the transferor's place of business for inspection as
30 provided in Section 24-4. Upon request of any local law
31 enforcement agency, and under its rules, the Department of
32 State Police may certify the local law enforcement agency to
33 serve as its agent to receive applications and, upon
34 authorization by the Department of State Police, issue
35 certificates forthwith under this Section. Applications and
36 certificates issued under this Section must be maintained as

1 records by the Department of State Police, and made available
2 to local law enforcement agencies.

3 (c) This Section does not apply to:

4 (1) A law enforcement agency;

5 (2) State and local correctional agencies and
6 departments;

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

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

1 (d) For the purposes of this Section, "acquisition" does
2 not include the exchange or replacement of a handgun by a
3 transferor for a handgun transferred from the transferor by the
4 same person seeking the exchange or replacement within the
5 30-day period immediately preceding the date of exchange or
6 replacement.

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

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