

HB5130



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5130

by Rep. Jim Durkin - David Reis

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-3

from Ch. 38, par. 24-3

Amends the Criminal Code of 2012. Makes a technical change in a Section concerning the unlawful sale or delivery of firearms.

LRB098 17644 RLC 52757 b

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 as follows:

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

7 Sec. 24-3. Unlawful sale or delivery of firearms.

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

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

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

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

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

21 (e) Sells or gives any firearm to any person who has
22 been a patient in a mental institution within the past 5
23 years. In this subsection (e):

1 "Mental institution" means any hospital,
2 institution, clinic, evaluation facility, mental
3 health center, or part thereof, which is used primarily
4 for the care or treatment of persons with mental
5 illness.

6 "Patient in a mental institution" means the person
7 was admitted, either voluntarily or involuntarily, to
8 a mental institution for mental health treatment,
9 unless the treatment was voluntary and solely for an
10 alcohol abuse disorder and no other secondary
11 substance abuse disorder or mental illness.

12 (f) Sells or gives any firearms to any person who is
13 intellectually disabled.

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

1 person who desires to purchase a firearm for use in
2 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, manufactures, sells or delivers to any
18 unlicensed person a handgun having a barrel, slide, frame
19 or receiver which is a die casting of zinc alloy or any
20 other nonhomogeneous metal which will melt or deform at a
21 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) Sells or gives a firearm of any size to any person
3 under 18 years of age who does not possess a valid Firearm
4 Owner's Identification Card.

5 (j) Sells or gives a firearm while engaged in the
6 business of selling firearms at wholesale or retail without
7 being licensed as a federal firearms dealer under Section
8 923 of the federal Gun Control Act of 1968 (18 U.S.C. 923).
9 In this paragraph (j):

10 A person "engaged in the business" means a person who
11 devotes time, attention, and labor to engaging in the
12 activity as a regular course of trade or business with the
13 principal objective of livelihood and profit, but does not
14 include a person who makes occasional repairs of firearms
15 or who occasionally fits special barrels, stocks, or
16 trigger mechanisms to firearms.

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

26 (k) Sells or transfers ownership of a firearm to a

1 person who does not display to the seller or transferor of
2 the firearm a currently valid Firearm Owner's
3 Identification Card that has previously been issued in the
4 transferee's name by the Department of State Police under
5 the provisions of the Firearm Owners Identification Card
6 Act. This paragraph (k) does not apply to the transfer of a
7 firearm to a person who is exempt from the requirement of
8 possessing a Firearm Owner's Identification Card under
9 Section 2 of the Firearm Owners Identification Card Act.
10 For the purposes of this Section, a currently valid Firearm
11 Owner's Identification Card means (i) a Firearm Owner's
12 Identification Card that has not expired or (ii) an
13 approval number issued in accordance with subsection
14 (a-10) of subsection 3 or Section 3.1 of the Firearm Owners
15 Identification Card Act shall be proof that the Firearm
16 Owner's Identification Card was valid.

17 (1) In addition to the other requirements of this
18 paragraph (k), all persons who are not federally
19 licensed firearms dealers must also have complied with
20 subsection (a-10) of Section 3 of the Firearm Owners
21 Identification Card Act by determining the validity of
22 a purchaser's Firearm Owner's Identification Card.

23 (2) All sellers or transferors who have complied
24 with the requirements of subparagraph (1) of this
25 paragraph (k) shall not be liable for damages in any
26 civil action arising from the use or misuse by the

1 transferee of the firearm transferred, except for
2 willful or wanton misconduct on the part of the seller
3 or transferor.

4 (1) Not being entitled to the possession of a firearm,
5 delivers the firearm, knowing it to have been stolen or
6 converted. It may be inferred that a person who possesses a
7 firearm with knowledge that its serial number has been
8 removed or altered has knowledge that the firearm is stolen
9 or converted.

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

20 (C) Sentence.

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

24 (2) Any person convicted of unlawful sale or delivery
25 of firearms in violation of paragraph (b) or (i) of
26 subsection (A) commits a Class 3 felony.

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

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

26 (5) Any person convicted of unlawful sale or delivery

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

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

20 (7) Any person convicted of unlawful sale or delivery
21 of firearms in violation of paragraph (k) of subsection (A)
22 commits a Class 4 felony, except that a violation of
23 subparagraph (1) of paragraph (k) of subsection (A) shall
24 not be punishable as a crime or petty offense. A third or
25 subsequent conviction for a violation of paragraph (k) of
26 subsection (A) is a Class 1 felony.

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

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

13 (10) Any person convicted of unlawful sale or delivery
14 of firearms in violation of paragraph (l) of subsection (A)
15 commits a Class 2 felony if the delivery is of one firearm.
16 Any person convicted of unlawful sale or delivery of
17 firearms in violation of paragraph (l) of subsection (A)
18 commits a Class 1 felony if the delivery is of not less
19 than 2 and not more than 5 firearms at the same time or
20 within a one year period. Any person convicted of unlawful
21 sale or delivery of firearms in violation of paragraph (l)
22 of subsection (A) commits a Class X felony for which he or
23 she shall be sentenced to a term of imprisonment of not
24 less than 6 years and not more than 30 years if the
25 delivery is of not less than 6 and not more than 10
26 firearms at the same time or within a 2 year period. Any

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

20 (D) For purposes of this Section:

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

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

1 (E) A prosecution for a violation of paragraph (k) of
2 subsection (A) of this Section may be commenced within 6 years
3 after the commission of the offense. A prosecution for a
4 violation of this Section other than paragraph (g) of
5 subsection (A) of this Section may be commenced within 5 years
6 after the commission of the offense defined in the particular
7 paragraph.

8 (Source: P.A. 97-227, eff. 1-1-12; 97-347, eff. 1-1-12; 97-813,
9 eff. 7-13-12; 97-1167, eff. 6-1-13; 98-508, eff. 8-19-13.)