



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5727

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. Provides that notwithstanding any other rulemaking authority that may exist, neither the Governor nor any agency or agency head under the jurisdiction of the Governor has any authority to make or adopt rules to implement or enforce the provisions of the amendatory Act.

LRB099 19373 RLC 43765 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 institution within the past 5 years. In this
10 subsection (e):

11 "Mental institution" means any hospital,
12 institution, clinic, evaluation facility, mental
13 health center, or part thereof, which is used primarily
14 for the care or treatment of persons with mental
15 illness.

16 "Patient in a mental institution" means the person
17 was admitted, either voluntarily or involuntarily, to
18 a mental institution for mental health treatment,
19 unless the treatment was voluntary and solely for an
20 alcohol abuse disorder and no other secondary
21 substance abuse disorder or mental illness.

22 (f) Transfers or possesses with intent to transfer
23 ~~Sells or gives~~ any firearms to any person he or she knows
24 or has reasonable cause to believe ~~who~~ is a person with an
25 intellectual disability.

26 (g) Knowingly transfers ~~Delivers~~ any firearm of a size

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

1 competitor or attendee or non-resident registered
2 competitor or attendee by any dealer licensed as a federal
3 firearms dealer under Section 923 of the federal Gun
4 Control Act of 1968 at competitive shooting events held at
5 the World Shooting Complex sanctioned by a national
6 governing body. For purposes of transfers or sales under
7 subparagraph (5) of this paragraph (g), the Department of
8 Natural Resources shall give notice to the Department of
9 State Police at least 30 calendar days prior to any
10 competitive shooting events at the World Shooting Complex
11 sanctioned by a national governing body. The notification
12 shall be made on a form prescribed by the Department of
13 State Police. The sanctioning body shall provide a list of
14 all registered competitors and attendees at least 24 hours
15 before the events to the Department of State Police. Any
16 changes to the list of registered competitors and attendees
17 shall be forwarded to the Department of State Police as
18 soon as practicable. The Department of State Police must
19 destroy the list of registered competitors and attendees no
20 later than 30 days after the date of the event. Nothing in
21 this paragraph (g) relieves a federally licensed firearm
22 dealer from the requirements of conducting a NICS
23 background check through the Illinois Point of Contact
24 under 18 U.S.C. 922(t). For purposes of this paragraph (g),
25 "application" means when the buyer and seller reach an
26 agreement to purchase a firearm. For purposes of this

1 paragraph (g), "national governing body" means a group of
2 persons who adopt rules and formulate policy on behalf of a
3 national firearm sporting organization.

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

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

22 (i-5) While holding a license under the Federal Gun
23 Control Act of 1968, transfers or possesses with intent to
24 transfer more than one handgun to any person within any
25 30-day period or transfers or possesses with intent to
26 transfer a handgun to any person he or she knows or has

1 reasonable cause to believe has received a handgun within
2 the previous 30 days unless the receipt of multiple
3 handguns is exempted under subsection (c) or (d) of Section
4 24-3.1A. It is an affirmative defense to a violation of
5 this subsection that the transferor in good faith relied on
6 the records of the Department of State Police in concluding
7 that the transferor had not transferred a handgun within
8 the previous 30 days or that multiple purchases were
9 authorized by subsection (b) of Section 24-3.1A, or relied
10 in good faith on the records of a local law enforcement
11 agency that the transfer was authorized by subsection (c)
12 of Section 24-3.1A.

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

19 A person "engaged in the business" means a person who
20 devotes time, attention, and labor to engaging in the
21 activity as a regular course of trade or business with the
22 principal objective of livelihood and profit, but does not
23 include a person who makes occasional repairs of firearms
24 or who occasionally fits special barrels, stocks, or
25 trigger mechanisms to firearms.

26 "With the principal objective of livelihood and

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

9 (k) Transfers ~~Sells or transfers~~ ownership of a firearm
10 to a person who does not display to the seller or
11 transferor of the firearm either: (1) a currently valid
12 Firearm Owner's Identification Card that has previously
13 been issued in the transferee's name by the Department of
14 State Police under the provisions of the Firearm Owners
15 Identification Card Act; or (2) a currently valid license
16 to carry a concealed firearm that has previously been
17 issued in the transferee's name by the Department of State
18 Police under the Firearm Concealed Carry Act. This
19 paragraph (k) does not apply to the transfer of a firearm
20 to a person who is exempt from the requirement of
21 possessing a Firearm Owner's Identification Card under
22 Section 2 of the Firearm Owners Identification Card Act.
23 For the purposes of this Section, a currently valid Firearm
24 Owner's Identification Card means (i) a Firearm Owner's
25 Identification Card that has not expired or (ii) an
26 approval number issued in accordance with subsection

1 (a-10) of subsection 3 or Section 3.1 of the Firearm Owners
2 Identification Card Act shall be proof that the Firearm
3 Owner's Identification Card was valid.

4 (1) In addition to the other requirements of this
5 paragraph (k), all persons who are not federally
6 licensed firearms dealers must also have complied with
7 subsection (a-10) of Section 3 of the Firearm Owners
8 Identification Card Act by determining the validity of
9 a purchaser's Firearm Owner's Identification Card.

10 (2) All sellers or transferors who have complied
11 with the requirements of subparagraph (1) of this
12 paragraph (k) shall not be liable for damages in any
13 civil action arising from the use or misuse by the
14 transferee of the firearm transferred, except for
15 willful or wanton misconduct on the part of the seller
16 or transferor.

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

23 (B) Paragraph (h) of subsection (A) does not include
24 firearms sold within 6 months after enactment of Public Act
25 78-355 (approved August 21, 1973, effective October 1, 1973),
26 nor is any firearm legally owned or possessed by any citizen or

1 purchased by any citizen within 6 months after the enactment of
2 Public Act 78-355 subject to confiscation or seizure under the
3 provisions of that Public Act. Nothing in Public Act 78-355
4 shall be construed to prohibit the gift or trade of any firearm
5 if that firearm was legally held or acquired within 6 months
6 after the enactment of that Public Act.

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

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

25 (C) Sentence.

26 (1) Any person convicted of unlawful ~~sale or delivery~~

1 of firearms in violation of paragraph (c), (e), (f), (g),
2 or (h) of subsection (A) commits a Class 4 felony. A person
3 convicted of a violation of subsection (i-5) of subsection
4 (A) of this Section commits a Class A misdemeanor for a
5 first offense and a Class 4 felony for a second or
6 subsequent offense.

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

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

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

1 1,000 feet of the real property comprising a school, at a
2 school related activity, or on or within 1,000 feet of any
3 conveyance owned, leased, or contracted by a school or
4 school district to transport students to or from school or
5 a school related activity, regardless of the time of day or
6 time of year at which the offense was committed, commits a
7 Class 1 felony for which the sentence shall be a term of
8 imprisonment of no less than 5 years and no more than 15
9 years.

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

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

1 ~~delivery~~ of firearms in violation of paragraph (j) of
2 subsection (A) commits a Class A misdemeanor. A second or
3 subsequent violation is a Class 4 felony.

4 (7) Any person convicted of unlawful transfer ~~sale or~~
5 ~~delivery~~ of firearms in violation of paragraph (k) of
6 subsection (A) commits a Class 4 felony, except that a
7 violation of subparagraph (1) of paragraph (k) of
8 subsection (A) shall not be punishable as a crime or petty
9 offense. A third or subsequent conviction for a violation
10 of paragraph (k) of subsection (A) is a Class 1 felony.

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

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

23 (10) Any person convicted of unlawful transfer ~~sale or~~
24 ~~delivery~~ of firearms in violation of paragraph (l) of
25 subsection (A) commits a Class 2 felony if the delivery is
26 of one firearm. Any person convicted of unlawful sale or

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

1 shall be sentenced to a term of imprisonment of not less
2 than 6 years and not more than 60 years if the delivery is
3 of 31 or more firearms at the same time or within a 5 year
4 period.

5 (D) For purposes of this Section:

6 "School" means a public or private elementary or secondary
7 school, community college, college, or university.

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

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

19 (Source: P.A. 98-508, eff. 8-19-13; 99-29, eff. 7-10-15;
20 99-143, eff. 7-27-15; revised 10-16-15.)

21 (720 ILCS 5/24-3.1A new)

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

23 (a) Except as exempted in subsections (b) and (c), it is
24 unlawful for any person other than a person holding a license
25 under the Federal Gun Control Act of 1968, as amended, to

1 acquire more than one handgun within any 30-day period.

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

15 Upon being satisfied that these requirements have been met,
16 the Department of State Police must forthwith issue to the
17 applicant a nontransferable certificate that is valid for 7
18 days from the date of issue. The certificate must be
19 surrendered to the transferor by the prospective transferee
20 before the consummation of the transfer and must be kept on
21 file at the transferor's place of business for inspection as
22 provided in Section 24-4. Upon request of any local law
23 enforcement agency, the Department of State Police may certify
24 the local law enforcement agency to serve as its agent to
25 receive applications and, upon authorization by the Department
26 of State Police, issue certificates forthwith under this

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

5 (c) This Section does not apply to:

6 (1) A law enforcement agency;

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

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

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

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

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

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

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

24 (g) Notwithstanding any other rulemaking authority that
25 may exist, neither the Governor nor any agency or agency head
26 under the jurisdiction of the Governor has any authority to

1 make or adopt rules to implement or enforce the provisions of
2 this amendatory Act of the 99th General Assembly. If, however,
3 the Governor believes that rules are necessary to implement or
4 enforce the provisions of this amendatory Act of the 99th
5 General Assembly, the Governor may suggest rules to the General
6 Assembly by filing them with the Clerk of the House and the
7 Secretary of the Senate and by requesting that the General
8 Assembly authorize the rulemaking by law, enact those suggested
9 rules into law, or take any other appropriate action in the
10 General Assembly's discretion. Nothing contained in this
11 amendatory Act of the 99th General Assembly shall be
12 interpreted to grant rulemaking authority under any other
13 Illinois statute if the authority is not otherwise explicitly
14 given. For the purposes of this subsection, "rules" is given
15 the meaning contained in Section 1-70 of the Illinois
16 Administrative Procedure Act, and "agency" and "agency head"
17 are given the meanings contained in Sections 1-20 and 1-25 of
18 the Illinois Administrative Procedure Act to the extent that
19 those definitions apply to agencies or agency heads under the
20 jurisdiction of the Governor.