



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 151

132nd General Assembly
(As Introduced)

Rep. Patmon

BILL SUMMARY

- Prohibits a federally licensed firearms dealer from transferring a firearm to any person unless the dealer complies with the relevant requirements under federal law, which generally requires background checks through the National Instant Criminal Background Check System.
- Prohibits any transfer of a firearm from a person who is not a federally licensed firearms dealer to a person who is not a federally licensed firearms dealer unless the firearm is transferred through a federally licensed firearms dealer, through a state or local law enforcement agency, or pursuant to any of a list of specified exceptions.
- Requires that, when a firearm is transferred through a federally licensed firearms dealer or through a state or local law enforcement agency, the dealer or agency must comply with the relevant requirements under federal law, which generally requires background checks through the National Instant Criminal Background Check System.
- Provides for recordkeeping with respect to firearms transfers made through a federally licensed firearms dealer or through a state or local law enforcement agency and limits access and use of the records so maintained by a law enforcement agency.
- Specifies that none of its provisions permit or authorize the Ohio Attorney General or the U.S. Attorney General to impose recordkeeping requirements on any unlicensed transferor.

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CONTENT AND OPERATION

Illegal transfer of a firearm

Generally, the bill prohibits three types of firearm transfers:

- The transfer of a firearm by a federally licensed firearms dealer to any person unless the federally licensed firearms dealer complies with the relevant requirements under federal law.¹
- The transfer of a firearm by an unlicensed transferor to an unlicensed transferee.²
- The receipt of a firearm by an unlicensed transferee from an unlicensed transferor.³

A violation of any of the prohibitions listed above is the offense of "illegal transfer of a firearm." The offense generally is a first degree misdemeanor, but if the offender previously has been convicted of the offense, it is a fifth degree felony.⁴ Each of these prohibitions is discussed in detail below.

¹ R.C. 2923.26(B).

² R.C. 2923.26(C).

³ R.C. 2923.26(D).

⁴ R.C. 2923.26(K).



Firearm transfer by federally licensed firearms dealer

The bill prohibits a "federally licensed firearms dealer" from transferring a firearm to any person unless the dealer complies with the proper requirements under federal law. Under the bill, a "federally licensed firearms dealer" is an importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal "Gun Control Act of 1968," and any amendments or additions to that Act or reenactments of that Act (by reference to R.C. 5502.63, which is not in the bill). A violation of this prohibition is the offense of "illegal transfer of a firearm." The offense generally is a first degree misdemeanor, but if the offender previously has been convicted of the offense, it is a fifth degree felony.⁵

Firearm transfer by person who is not a federally licensed firearms dealer

The bill prohibits an "unlicensed transferor" from transferring a firearm to an "unlicensed transferee," unless (1) the firearm is transferred through a federally licensed firearms dealer, transferred through a law enforcement agency, or is exempt from the bill's prohibition (see "**Firearms transfers exempt from the bill's prohibitions,**" below) and (2) the firearm is transferred in accordance with the transfer requirements specified below. An "unlicensed transferee" is a person who is not a federally licensed firearms dealer and who desires to receive a firearm from an unlicensed transferor. An "unlicensed transferor" is a person who is not a federally licensed firearms dealer and who desires to transfer a firearm to an unlicensed transferee.⁶

Receipt of firearm by person who is not a federally licensed firearms dealer

The bill prohibits an "unlicensed transferee" from receiving a firearm from an "unlicensed transferor," unless (1) the firearm is transferred through a federally licensed firearms dealer, transferred through a law enforcement agency, or is exempt from the bill's prohibition (see "**Firearms transfers exempt from the bill's prohibitions,**" below) and (2) the firearm is transferred in accordance with the transfer requirements specified below.⁷

⁵ R.C. 2923.26(A), (B), and (K).

⁶ R.C. 2923.26(A) and (C)(1).

⁷ R.C. 2923.26(D)(1).



Transfer requirements

Prohibiting or authorizing notice

Under the bill, the federally licensed firearms dealer or law enforcement agency through which the transfer is made must give a specified "authorizing notice" to the transferor and transferee. If the transfer is made through a federally licensed firearms dealer, the "authorizing notice" is notice of the dealer's compliance with the provisions under federal law as if the dealer was transferring the firearm from the dealer's inventory to the transferee. If the transfer is made through a law enforcement agency, the "authorizing notice" is notice of the agency's compliance with the provisions described below in paragraphs (1) to (3) under "**Transfer through law enforcement agency**."⁸

Under the bill an unlicensed transferor generally is prohibited from transferring a firearm to an unlicensed transferee if the federally licensed firearms dealer or law enforcement agency through which the transfer is made gives a specified "prohibiting notice" to the transferor and transferee. The "prohibiting notice" is notice that the federally licensed firearms dealer or law enforcement agency, whichever is applicable, has received information from the National Instant Criminal Background Check (NICBC) System that the transfer is prohibited under federal law or any Ohio law.⁹

Transfer through licensed dealer

Under the bill, a federally licensed firearms dealer who agrees to assist in the transfer of a firearm between an unlicensed transferor and an unlicensed transferee must do all of the following:¹⁰

(1) Enter any information about the firearm that the Ohio Attorney General or the U.S. Attorney General may require by rule or regulation into a separate bound record;

(2) Record the transfer on a form prescribed by the Ohio Attorney General;

(3) Comply with provisions of federal law as if transferring the firearm from the inventory of the dealer to the unlicensed transferee, except that a dealer assisting in the transfer of a firearm is not required to comply again with the requirements of those provisions in delivering the firearm to the unlicensed transferee;

⁸ R.C. 2923.26(C)(2)(a).

⁹ R.C. 2923.26(C)(2)(b).

¹⁰ R.C. 2923.26(E).



(4) Notify the unlicensed transferor and unlicensed transferee of both of the following: (a) of compliance with the provisions of federal law as if transferring the firearm from the inventory of the dealer to the unlicensed transferee, and (b) if the transfer is subject to provisions of federal law that require receipt by the dealer of a notice from the NICBC System that the transfer is prohibited under federal law or any Ohio law;

(5) Not later than 31 days after the date on which the transfer occurs, submit to the U.S. Attorney General a report of the transfer on a form prescribed by the Ohio Attorney General that does not include the name of or other identifying information relating to the unlicensed transferor or unlicensed transferee;

(6) If the dealer assists an unlicensed transferor in transferring at the same time or during any five consecutive business days two or more pistols or revolvers, or any combination of pistols and revolvers totaling two or more, to the same unlicensed transferee, prepare a report of the multiple transfers on a form prescribed by the Ohio Attorney General and submit the report not later than the close of business on the date on which the transfer requiring the report occurs to the U.S. Attorney General and to the Bureau of Criminal Identification and Investigation;

(7) Retain a record of the transfer as part of the permanent business records of the dealer.

Transfer through law enforcement agency

A law enforcement agency of the state of Ohio or of an Ohio political subdivision that agrees to assist an unlicensed transferor in carrying out the responsibilities of the transferor must do all of the following:¹¹

(1) Contact the NICBC System and either receive an identification number or wait the period specified under federal law (the elapsing of three business days after the licensed dealer, manufacturer, or importer contacted the system without the system notifying the licensed dealer, manufacturer, or importer that the receipt of a firearm by the other person would violate federal law);

(2) Conduct any other checks that the agency considers appropriate to determine whether the receipt or possession of the firearm by the unlicensed transferee would be prohibited under federal law or any Ohio law;

¹¹ R.C. 2923.26(F).

(3) Verify the identity of the unlicensed transferee by either examining a valid "identification document" of the unlicensed transferee containing a photograph of the unlicensed transferee or confirming that the unlicensed transferor has examined such a valid identification document;

(4) Notify the unlicensed transferor and unlicensed transferee of both of the following: (a) compliance with the three provisions described above and (b) any receipt by the agency of a notice from the NICBC System that the transfer is prohibited under federal law or any Ohio law;

(5) Not later than 31 days after the date on which the transfer occurs, submit to the U.S. Attorney General a report of the transfer on a form prescribed by the Ohio Attorney General that does not include the name of or other identifying information relating to the unlicensed transferor or unlicensed transferee;

(6) If the agency assists an unlicensed transferor in transferring at the same time or during any five consecutive business days two or more pistols or revolvers, or any combination of pistols and revolvers totaling two or more, to the same unlicensed transferee, prepare a report of the multiple transfers on a form prescribed by the Ohio Attorney General and submit the report not later than 24 hours after the transfer requiring the report occurs to the U.S. Attorney General and to the Bureau of Criminal Identification and Investigation;

(7) Maintain records of the transfer at any place, and in any form, that the Ohio Attorney General or U.S. Attorney General may prescribe. The bill specifies that nothing in this record maintenance provision is to be construed to authorize either Attorney General to inspect records or to require that the records be transferred to a facility owned, managed, or controlled by the state of Ohio or the United States.¹²

Firearms transfers exempt from the bill's prohibitions

The bill's prohibitions regarding the transfer or receipt of a firearm by a person who is not a licensed firearms dealer do not apply to any transfer of a firearm if any of the following apply with respect to the transfer:¹³

- It is a *bona fide* gift between immediate family members, including spouses, parents, children, siblings, grandparents, and grandchildren.

¹² R.C. 2923.26(I).

¹³ R.C. 2923.26(G).



- It occurs by operation of law, or because of the death of another person for whom the unlicensed transferor is an executor or administrator of an estate or a trustee of a trust created in a will.
- It is temporary and occurs while in the home of the unlicensed transferee, the unlicensed transferee is not otherwise prohibited from possessing firearms, and the unlicensed transferee believes that possession of the firearm is necessary to prevent imminent death or great bodily harm to the unlicensed transferee.
- It is approved by the U.S. Attorney General under § 5812 of the Internal Revenue Code.
- It is a temporary transfer of possession without transfer of title that takes place in any of the following circumstances: (1) at a shooting range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in firearms, (2) at a target firearm shooting competition under the auspices of or approved by an agency of this state or a nonprofit organization, or (3) while hunting, fishing, or trapping, if the activity is legal in all places where the unlicensed transferee possesses the firearm, and the unlicensed transferee holds any required license or permit.
- It is to an authorized representative of a law enforcement agency of any municipal corporation, any county, the state of Ohio, or the federal government for exclusive use by that governmental entity and, prior to the transfer, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the transfer is being made. The proper written authorization must be verifiable written certification from the head of the agency by which the transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that person is employed.
- It is a loan of the firearm by an authorized law enforcement representative of a municipal corporation, a county, the state of Ohio, or the federal government, and the loan is made to a peace officer employed by that governmental entity and authorized to carry a firearm and is made for the carrying and use of that firearm by that peace officer in the course and scope of the officer's duties.
- It is by a law enforcement agency to a peace officer.

- It is by a law enforcement agency to a retiring peace officer of that agency who is authorized to carry a firearm.
- It is to an authorized representative of a municipal corporation, a county, the state of Ohio, or the federal government and is for the governmental entity, and the entity is acquiring the firearm as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals.
- It is by an authorized law enforcement representative of a municipal corporation, a county, the state of Ohio, or the federal government to any public or private nonprofit historical society, museum, or institutional collection, if all of the following conditions are met: (1) the entity receiving the firearm is open to the public, (2) prior to delivery, the firearm is deactivated or rendered inoperable, (3) the firearm is not of a type prohibited by law from being transferred to the public at large, and (4) prior to delivery, the entity receiving the firearm submits a written statement to the law enforcement representative stating that the firearm will not be restored to operating condition and either will remain with that entity, or if subsequently disposed of, will be transferred in accordance with law.
- It is by any person other than a representative of an authorized law enforcement agency to any public or private nonprofit historical society, museum, or institutional collection, if all of the conditions set forth in the prior paragraph are met.
- It is delivery of a firearm to a gunsmith for service or repair, is the return of the firearm to its owner by the gunsmith, or is the delivery of a firearm by a gunsmith to a federally licensed firearms dealer for service or repair or the return of the firearm to the gunsmith.
- It is made by a person who resides in Ohio, is made to a person who resides outside Ohio and is a federally licensed firearms dealer, and is in accordance with federal firearms law.
- It is of an unloaded firearm to a wholesaler as merchandise in the wholesaler's business by a manufacturer or importer licensed to engage in that business pursuant to federal firearms law or by another wholesaler and is made in accordance with federal firearms law.

No requirement for unlicensed transferor recordkeeping under the bill

The bill specifies that none of its provisions permit or authorize the Ohio Attorney General or the U.S. Attorney General to impose recordkeeping requirements on any unlicensed transferor.¹⁴

Fee for assistance in firearms transfer

The bill authorizes a federally licensed firearms dealer or law enforcement agency that processes the transfer of a firearm under the bill's provisions to assess and collect a fee, in an amount not to exceed \$10, with respect to each firearm transfer processed.¹⁵

Rules of Ohio Attorney General

The bill requires the Ohio Attorney General by rule to prescribe the forms to be used for keeping the records and making the reports required under its provisions, as described above. If the U.S. Attorney General adopts forms to be used for keeping similar records and making similar reports that may be required under federal law, the Ohio Attorney General must prescribe those forms to be used for keeping the records and making the reports required under the bill.¹⁶

Background

Prohibited transfers under federal law

Currently, federal law prohibits a firearms dealer, manufacturer, or importer who is licensed under federal law, subject to a few limited exceptions, from transferring a firearm to another person who is not a licensed firearms dealer, manufacturer, or importer unless all of the following occur:¹⁷

(1) Before completion of the transfer, the licensed dealer, manufacturer, or importer contacts the NICBC System administered by the U.S. Attorney General (when contacted, the system conducts a criminal background check).

(2) Either the system provides the licensed dealer, manufacturer, or importer with a unique identification number for the transfer, or three business days elapse

¹⁴ R.C. 2923.26(C)(3).

¹⁵ R.C. 2923.26(H).

¹⁶ R.C. 2923.26(J).

¹⁷ 18 U.S.C. § 922(t), not in the bill and R.C. 2923.26(A).



without the licensed dealer, manufacturer, or importer being notified that the receipt of a firearm by the other person would violate either of two specified "receipt prohibitions" of federal law that prohibit certain categories of persons from receiving any firearm that has been shipped or transported in interstate or foreign commerce.

(3) The licensed dealer, manufacturer, or importer has verified the identity of the other person by examining a valid identification document of that person containing a photograph of that person.

An "identification document" is a document made or issued by or under the authority of the U.S. government, the state of Ohio, or any other state, a political subdivision of Ohio or any other state, a sponsoring entity of an event designated as a special event of national significance, a foreign government, a political subdivision of a foreign government, an international governmental organization, or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

Prohibited receipt under federal law

Federal law currently prohibits certain categories of persons from receiving a firearm that has been shipped or transported in interstate or foreign commerce. Two of those prohibitions are relevant to the bill. The first relevant federal receipt prohibition specifies that it is unlawful for a person to possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce, if the person:¹⁸

(1) Has been convicted in a court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to a controlled substance;

(4) Has been adjudicated as a mental defective or committed to a mental institution;

(5) Is an alien who is illegally or unlawfully in the United States or, subject to a specified exception, who has been admitted to the United States under a nonimmigrant visa;

¹⁸ 18 U.S.C. § 922(g), not in the bill.



(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Having been a citizen of the United States, has renounced his or her citizenship;

(8) Is subject to a court order of a specified nature that restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child;

(9) Has been convicted in a court of a misdemeanor crime of domestic violence.

The second relevant federal "receipt prohibition" specifies that it is unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.¹⁹

HISTORY

ACTION	DATE
Introduced	03-22-17

H0151-I-132.docx/emr

¹⁹ 18 U.S.C. § 922(n), not in the bill.

