As Introduced

133rd General Assembly
Regular Session
2019-2020

H. B. No. 317

Representatives Robinson, Miller, A.


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A BILL

To amend sections 2929.28 and 5122.311 and to enact section 2923.26 of the Revised Code to enact the Protect Law Enforcement Act to require a firearm transfer to be made through a dealer, through a law enforcement agency, or pursuant to a specified exception, and to require a background check when a firearm is transferred.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2929.28 and 5122.311 be amended and section 2923.26 of the Revised Code be enacted to read as follows:

Sec. 2923.26. (A) As used in this section:

(1) "Federally licensed firearms dealer" has the same meaning as in section 5502.63 of the Revised Code.

(2) "Unlicensed transferee" means a person who is not a federally licensed firearms dealer and who desires to receive a
firearm from an unlicensed transferee.

(3) "Unlicensed transferor" means a person who is not a federally licensed firearms dealer and who desires to transfer a firearm to an unlicensed transferee.

(4) "Identification document" means a document made or issued by or under the authority of the United States government, this state, or any other state, a political subdivision of this state 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 and that includes a photograph of the individual.

(B) No federally licensed firearms dealer shall transfer a firearm to any person unless the federally licensed firearms dealer complies with the requirements of 18 U.S.C. 922(t).

(C)(1) No unlicensed transferee shall transfer a firearm to an unlicensed transferee, unless both of the following apply with respect to the transfer of the firearm:

(a) The firearm is transferred through a federally licensed firearms dealer under division (E) of this section, through a law enforcement agency under division (F) of this section, or in accordance with an exception described in division (G) of this section.

(b) Except as provided in division (G) of this section, the federally licensed firearms dealer through which the
transfer is made under division (E) of this section gives a notice described in division (E)(3)(a) of this section, or the law enforcement agency through which the transfer is made under division (F) of this section gives a notice described in division (F)(5)(a) of this section, with respect to the firearm.

(2) No unlicensed firearms dealer shall transfer a firearm to an unlicensed transferee if the federally licensed firearms dealer through which the transfer is to be made under division (E) of this section gives a notice described in division (E)(3)(b) of this section, or the law enforcement agency through which the transfer is to be made under division (F) of this section gives a notice described in division (F)(5)(b) of this section, with respect to the firearm.

(D)(1) No unlicensed transferee shall receive a firearm from an unlicensed transferor, unless both of the following apply with respect to the transfer of the firearm:

(a) The firearm is transferred through a federally licensed firearms dealer under division (E) of this section, through a law enforcement agency under division (F) of this section, or in accordance with an exception described in division (G) of this section.

(b) Except as provided in division (G) of this section, the federally licensed firearms dealer through which the transfer is made under division (E) of this section gives a notice described in division (E)(3)(a) of this section, or the law enforcement agency through which the transfer is made under division (F) of this section gives a notice described in division (F)(5)(a) of this section, with respect to the firearm.

(2) No unlicensed firearms transferee shall receive a
firearm from an unlicensed transferor if the federally licensed firearms dealer through which the transfer is to be made under division (E) of this section gives a notice described in division (E)(3)(b) of this section, or the law enforcement agency through which the transfer is to be made under division (F) of this section gives a notice described in division (F)(5)(b) of this section, with respect to the firearm.

(E) A federally licensed firearms dealer who agrees to assist in the transfer of a firearm between an unlicensed transferor and an unlicensed transferee under division (C) or (D) of this section shall do all of the following:

(1) Comply with 18 U.S.C. 922(t) as if transferring the firearm from the inventory of the federally licensed firearms dealer to the unlicensed transferee, except that a federally licensed firearms dealer assisting in the transfer of a firearm under this division shall not be required to comply again with the requirements of that provision in delivering the firearm to the unlicensed transferee;

(2) Conduct an incompetency records check of the unlicensed transferee by contacting the attorney general and requesting a check of the records maintained under section 5122.311 of the Revised Code, to determine if the transfer of the firearm to the unlicensed transferee or the unlicensed transferee's acquisition or possession of the firearm would violate the law of this state;

(3) Notify the unlicensed transferor and unlicensed transferee of whichever of the following is applicable:

(a) That the dealer has complied with 18 U.S.C. 922(t) as provided in division (E)(1) of this section and the transfer of
the firearm is not prohibited under that provision and that the
dealer has conducted the incompetency records check of the
unlicensed transferee as provided in division (E)(2) of this
section and has not determined in that check that the unlicensed
transferee's acquisition or possession of the firearm would
violate the law of this state;

(b) That the dealer has complied with 18 U.S.C. 922(t) as
provided in division (E)(1) of this section and has received a
notice from the national instant criminal background check
system that the transfer would violate 18 U.S.C. 922 or the law
of this state or that the dealer has conducted the incompetency
records check of the unlicensed transferee as provided in
division (E)(2) of this section and has determined in that check
that the unlicensed transferee's acquisition or possession of
the firearm would violate the law of this state.

(F) A law enforcement agency of this state or of a
political subdivision of this state that agrees to assist an
unlicensed transferor in carrying out the responsibilities of
the unlicensed transferor under division (C) or (D) of this
section with respect to the transfer of a firearm shall do all
of the following:

(1) Contact the national instant criminal background check
system under 18 U.S.C. 922(t) and either receive an
identification number as described in 18 U.S.C. 922(t)(1)(B)(i)
or wait the period described in 18 U.S.C. 922(t)(1)(B)(ii);

(2) Conduct an incompetency records check of the
unlicensed transferee by contacting the attorney general and
requesting a check of the records maintained under section
5122.311 of the Revised Code, to determine if the transfer of
the firearm to the unlicensed transferee or the unlicensed
transferee's acquisition or possession of the firearm would violate the law of this state;

(3) Conduct any other checks that the agency considers appropriate to determine whether the receipt or possession of the firearm by the unlicensed transferee would violate 18 U.S.C. 922 or the law of this state;

(4) 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;

(5) Notify the unlicensed transferor and transferee of whichever of the following is applicable:

(a) That the law enforcement agency has complied with the requirements under divisions (F)(1), (2), (3), and (4) of this section and that the transfer of the firearm is not prohibited under 18 U.S.C 922(t) and the agency has not determined in the incompetency records check conducted under division (F)(2) of this section or a records check conducted under division (F)(3) of this section that the unlicensed transferee's acquisition or possession of the firearm would violate the law of this state;

(b) That the law enforcement agency has complied with the requirements under divisions (F)(1), (2), (3), and (4) of this section and either has received a notification from the national instant criminal background check system that the transfer would violate 18 U.S.C. section 922 or the law of this state or has determined under the incompetency records check conducted under division (F)(2) of this section or a records check conducted under division (F)(3) of this section that the unlicensed
transferee's acquisition or possession of the firearm would violate the law of this state.

(G) Unless prohibited by any other provision of law, divisions (C) and (D) of this section shall not apply to any transfer of a firearm between an unlicensed transferor and unlicensed transferee if any of the following apply with respect to the transfer:

1. The transfer 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.

2. The transfer is a temporary transfer of possession without transfer of title that takes place in any of the following circumstances:
   a. 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;
   b. At a target firearm shooting competition under the auspices of or approved by an agency of this state or a nonprofit organization;
   c. 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.

3. The transfer is to an authorized representative of a law enforcement agency of any municipal corporation, any county, this state, 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 shall 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.

(4) The transfer is a loan of the firearm by an authorized law enforcement representative of a municipal corporation, a county, this state, or the federal government, the loan is made to a peace officer who is employed by that governmental entity and authorized to carry a firearm, and the loan is made for the carrying and use of that firearm by that peace officer in the course and scope of the officer's duties.

(5) The transfer is by a law enforcement agency to a peace officer.

(6) The transfer is to an authorized representative of a municipal corporation, a county, this state, 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.

(7) The transfer is by an authorized law enforcement representative of a municipal corporation, a county, this state, or the federal government to any public or private nonprofit historical society, museum, or institutional collection, if all of the following conditions are met:
(a) The entity receiving the firearm is open to the public.

(b) The firearm prior to delivery is deactivated or rendered inoperable.

(c) The firearm is not of a type prohibited by provision of law from being transferred to the public at large.

(d) 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 will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable provisions of law.

(8) The transfer 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 divisions (G)(7)(a) to (d) of this section are met.

(9) The transfer 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.

(10) The transfer is made by a person who resides in this state, is made to a person who resides outside this state and is a federally licensed firearms dealer, and is in accordance with federal firearms law.

(11) The transfer is of any 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.

(H) A federally licensed firearms dealer or law
enforcement agency that processes the transfer of a firearm
under this section may assess and collect a fee, in an amount
not to exceed ten dollars, with respect to each firearm transfer
processed.

(I) Nothing in this section shall be construed to
authorize the attorney general of the United States to inspect
records described in this section or to require that the records
be transferred to a facility owned, managed, or controlled by
this state or the United States.

(J)(1) No person shall recklessly violate division (B),
(C), or (D) of this section.

(2) Whoever violates division (J)(1) of this section is
guilty of illegal transfer of a firearm, and shall be punished
as provided in divisions (J)(2)(a) to (c) of this section.

(a) Except as otherwise provided in division (J)(2)(b) or
(c) of this section, illegal transfer of a firearm is a
misdemeanor of the fourth degree and the offender shall be fined
an amount from the range of possible fines for a misdemeanor of
the fourth degree set forth in section 2929.28 of the Revised
Code. Notwithstanding sections 2929.21 to 2929.28 of the Revised
Code, no other sanction shall be imposed on the offender under
any of those sections.

(b) If the offender previously has been convicted of or
pleaded guilty to one violation of this section, illegal
transfer of a firearm is a misdemeanor of the second degree and
the offender shall be fined an amount from the range of possible
fines for a misdemeanor of the second degree set forth in section 2929.28 of the Revised Code. Notwithstanding sections 2929.21 to 2929.28 of the Revised Code, no other sanction shall be imposed on the offender under any of those sections.

(c) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, illegal transfer of a firearm is a misdemeanor of the first degree, the offender shall be fined an amount from the range of possible fines for a misdemeanor of the first degree set forth in section 2929.28 of the Revised Code, and, in addition to the mandatory fine, the court may impose any other sanction or sanctions authorized for a misdemeanor of the first degree other than a fine specified in section 2929.28 of the Revised Code.

Sec. 2929.28. (A) In addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under Traffic Rule 13, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court may not impose restitution as a sanction pursuant to this division if the offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court.
under Traffic Rule 13. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim.

If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. No person may introduce evidence of an award of restitution under this section in a civil action for purposes of imposing liability against an insurer under section 3937.18 of the Revised Code.

If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than five per cent of the amount of the restitution otherwise ordered, to the entity
The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) A fine of the type described in divisions (A)(2)(a) and (b) of this section payable to the appropriate entity as required by law:

(a) A fine in the following amount:

(i) For a misdemeanor of the first degree, not more than one thousand dollars;

(ii) For a misdemeanor of the second degree, not more than seven hundred fifty dollars;

(iii) For a misdemeanor of the third degree, not more than five hundred dollars;

(iv) For a misdemeanor of the fourth degree, not more than two hundred fifty dollars;

(v) For a minor misdemeanor, not more than one hundred fifty dollars.

(b) A state fine or cost as defined in section 2949.111 of the Revised Code.

(3)(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including, but not limited to, the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under section
2951.021 of the Revised Code;

(ii) All or part of the costs of confinement in a jail or other residential facility, including, but not limited to, a per diem fee for room and board, the costs of medical and dental treatment, and the costs of repairing property damaged by the offender while confined;

(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under section 4510.13 of the Revised Code.

(b) The amount of reimbursement ordered under division (A)(3)(a) of this section shall not exceed the total amount of reimbursement the offender is able to pay and shall not exceed the actual cost of the sanctions. The court may collect any amount of reimbursement the offender is required to pay under that division. If the court does not order reimbursement under that division, confinement costs may be assessed pursuant to a repayment policy adopted under section 2929.37 of the Revised Code. In addition, the offender may be required to pay the fees specified in section 2929.38 of the Revised Code in accordance with that section.

(4) For a misdemeanor violation of section 2923.26 of the Revised Code, the court shall impose upon the offender a mandatory fine in the amount specified in division (J)(2)(a), (b), or (c) of that section.

(B) If the court determines a hearing is necessary, the court may hold a hearing to determine whether the offender is able to pay the financial sanction imposed pursuant to this
section or court costs or is likely in the future to be able to pay the sanction or costs.

    If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court shall consider imposing and may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of imposing a financial sanction or court costs. If the court does not determine that the offender is indigent, the court may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. The court may order community service for a minor misdemeanor pursuant to division (D) of section 2929.27 of the Revised Code in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. If a person fails to pay a financial sanction or court costs, the court may order community service in lieu of the financial sanction or court costs.

(C)(1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(3) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.26 of the Revised Code to the county treasurer. The county treasurer shall deposit the reimbursements in the county’s general fund. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.26 of the Revised Code.
(2) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(3) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.26 of the Revised Code to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in the municipal corporation's general fund. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code.

(3) The offender shall pay reimbursements imposed pursuant to division (A)(3) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code to the provider.

(D) In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for misdemeanor domestic violence or menacing by stalking may impose a fine of not less than seventy nor more than five hundred dollars, which shall be transmitted to the treasurer of state to be credited to the address confidentiality program fund created by section 111.48 of the Revised Code.

(E) Except as otherwise provided in this division, a financial sanction imposed under division (A) of this section is
a judgment in favor of the state or the political subdivision that operates the court that imposed the financial sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(3)(a)(i) of this section upon an offender is a judgment in favor of the entity administering the community control sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(3)(a)(ii) of this section upon an offender confined in a jail or other residential facility is a judgment in favor of the entity operating the jail or other residential facility, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (E)(1) of this section, through execution as described in division (E)(2) of this section, or through an order as described in division (E)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor.

Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following:

(1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;

(2) Obtain execution of the judgment or order through any available procedure, including any of the procedures identified.
in divisions (E)(1) and (2) of section 2929.18 of the Revised Code.

(3) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.

(F) The civil remedies authorized under division (E) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence.

(G) Each court imposing a financial sanction upon an offender under this section may designate the clerk of the court or another person to collect the financial sanction. The clerk, or another person authorized by law or the court to collect the financial sanction may do the following:

(1) Enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section, a court shall comply with sections 307.86 to 307.92 of the Revised Code.

(2) Permit payment of all or any portion of the sanction in installments, by financial transaction device if the court is a county court or a municipal court operated by a county, by credit or debit card or by another electronic transfer if the court is a municipal court not operated by a county, or by any other reasonable method, in any time, and on any terms that court considers just, except that the maximum time permitted for payment shall not exceed five years. If the court is a county court or a municipal court operated by a county, the acceptance of payments by any financial transaction device shall be
governed by the policy adopted by the board of county commissioners of the county pursuant to section 301.28 of the Revised Code. If the court is a municipal court not operated by a county, the clerk may pay any fee associated with processing an electronic transfer out of public money or may charge the fee to the offender.

(3) To defray administrative costs, charge a reasonable fee to an offender who elects a payment plan rather than a lump sum payment of any financial sanction.

(H) No financial sanction imposed under this section shall preclude a victim from bringing a civil action against the offender.

Sec. 5122.311. (A) Notwithstanding any provision of the Revised Code to the contrary, if, on or after April 8, 2004, an individual is found by a court to be a mentally ill person subject to court order or becomes an involuntary patient other than one who is a patient only for purposes of observation, the probate judge who made the adjudication or the chief clinical officer of the hospital, community mental health services provider, or facility in which the person is an involuntary patient shall notify the office of the attorney general, on the form described in division (C) of this section, of the identity of the individual. The notification shall be transmitted by the judge or the chief clinical officer not later than seven days after the adjudication or commitment.

(B) The office of the attorney general shall compile and maintain the notices it receives under division (A) of this section and the notices shall be used for the purpose of conducting incompetency records checks requested by sheriffs, federally licensed firearms dealers, or law enforcement agencies.
pursuant to section 311.41 or 2923.26 of the Revised Code.

Records checks requested by a federally licensed firearms dealer or law enforcement agency pursuant to section 2923.26 of the Revised Code shall be conducted, and results of the checks shall be provided, immediately upon receipt of the request. The notices referred to in this division and the information they contain are confidential, except as provided in this division, and are not public records.

(C) The attorney general, by rule adopted under Chapter 119. of the Revised Code, shall prescribe and make available to all probate judges and all chief clinical officers a form to be used by them for the purpose of making the notifications required by division (A) of this section.

Section 2. That existing sections 2929.28 and 5122.311 of the Revised Code are hereby repealed.

Section 3. This act shall be known as the Protect Law Enforcement Act.