

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 78

Representative Patmon

Cosponsors: Representatives Curtin, Lepore-Hagan

A BILL

To enact section 2923.26 of the Revised Code to 1
prohibit any transfer of a firearm from a person 2
who is not a federally licensed firearms dealer 3
to a person who is not a federally licensed 4
firearms dealer unless the firearm is 5
transferred through a federally licensed 6
firearms dealer, through a state or local law 7
enforcement agency, or pursuant to a specified 8
exception; to require that background checks be 9
conducted when a firearm is transferred through 10
a federally licensed firearms dealer or through 11
a state or local law enforcement agency; and to 12
provide for recordkeeping with respect to 13
information obtained pursuant to such a 14
background check. 15

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

Section 1. That section 2923.26 of the Revised Code be 16
enacted to read as follows: 17

Sec. 2923.26. (A) As used in this section: 18

(1) "Federally licensed firearms dealer" has the same meaning as in section 5502.63 of the Revised Code. 19
20

(2) "Unlicensed transferee" means a person who is not a federally licensed firearms dealer and who desires to receive a firearm from an unlicensed transferor. 21
22
23

(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. 24
25
26

(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. 27
28
29
30
31
32
33
34
35
36
37

(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. section 922(t). 38
39
40
41

(C)(1) No unlicensed transferor shall transfer a firearm to an unlicensed transferee, unless both of the following apply with respect to the transfer of the firearm: 42
43
44

(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 45
46
47

section, or in accordance with an exception described in 48
division (G) of this section. 49

(b) The firearm is transferred in accordance with division 50
(C) (2) of this section. 51

(2) Except as provided in division (G) of this section, an 52
unlicensed transferor shall not do any of the following: 53

(a) Subject to division (C) (2) (b) of this section, 54
transfer a firearm to an unlicensed transferee until the 55
federally licensed firearms dealer through which the transfer is 56
made under division (E) of this section gives a notice described 57
in division (E) (4) (a) of this section, or the law enforcement 58
agency through which the transfer is made under division (F) of 59
this section gives a notice described in division (F) (4) (a) of 60
this section; 61

(b) Transfer a firearm to an unlicensed transferee if the 62
federally licensed firearms dealer through which the transfer is 63
made under division (E) of this section gives a notice described 64
in division (E) (4) (b) of this section, or the law enforcement 65
agency through which the transfer is made under division (F) of 66
this section gives a notice described in division (F) (4) (b) of 67
this section. 68

(3) Nothing in this section permits or authorizes the 69
attorney general of this state or the attorney general of the 70
United States to impose recordkeeping requirements on any 71
unlicensed transferor. 72

(D) (1) No unlicensed transferee shall receive a firearm 73
from an unlicensed transferor, unless both of the following 74
apply with respect to the transfer of the firearm: 75

(a) The firearm is transferred through a federally 76

licensed firearms dealer under division (E) of this section, 77
through a law enforcement agency under division (F) of this 78
section, or in accordance with an exception described in 79
division (G) of this section. 80

(b) The firearm is transferred in accordance with division 81
(D) (2) of this section. 82

(2) Except as provided in division (G) of this section, an 83
unlicensed transferee shall not do any of the following: 84

(a) Subject to division (D) (2) (b) of this section, receive 85
a firearm from an unlicensed transferor until the federally 86
licensed firearms dealer through which the transfer is made 87
under division (E) of this section gives a notice described in 88
division (E) (4) (a) of this section, or the law enforcement 89
agency through which the transfer is made under division (F) of 90
this section gives a notice described in division (F) (4) (a) of 91
this section; 92

(b) Receive a firearm from another unlicensed transferor 93
if the federally licensed firearms dealer through which the 94
transfer is made under division (E) of this section gives a 95
notice described in division (E) (4) (b) of this section, or the 96
law enforcement agency through which the transfer is made under 97
division (F) of this section gives a notice described in 98
division (F) (4) (b) of this section. 99

(E) A federally licensed firearms dealer who agrees to 100
assist in the transfer of a firearm between an unlicensed 101
transferor and an unlicensed transferee under division (C) or 102
(D) of this section shall do all of the following: 103

(1) Enter any information about the firearm that the 104
attorney general of this state or the attorney general of the 105

United States may require by rule or regulation into a separate 106
bound record; 107

(2) Record the transfer on a form prescribed by the 108
attorney general of this state pursuant to division (J) of this 109
section; 110

(3) Comply with 18 U.S.C. section 922(t) as if 111
transferring the firearm from the inventory of the federally 112
licensed firearms dealer to the unlicensed transferee, except 113
that a federally licensed firearms dealer assisting in the 114
transfer of a firearm under this division shall not be required 115
to comply again with the requirements of that provision in 116
delivering the firearm to the unlicensed transferee; 117

(4) Notify the unlicensed transferor and unlicensed 118
transferee of both of the following: 119

(a) Of compliance with 18 U.S.C. section 922(t) as 120
provided in division (E) (3) of this section; 121

(b) If the transfer is subject to 18 U.S.C. section 922(t) 122
(1), of receipt by the federally licensed firearms dealer of a 123
notice from the national instant criminal background check 124
system that the transfer would violate 18 U.S.C. section 922 or 125
the law of this state. 126

(5) Not later than thirty-one days after the date on which 127
the transfer occurs, submit to the attorney general of the 128
United States a report of the transfer on a form prescribed by 129
the attorney general of this state pursuant to division (J) of 130
this section that does not include the name of or other 131
identifying information relating to the unlicensed transferor or 132
unlicensed transferee; 133

(6) If the federally licensed firearms dealer assists an 134

unlicensed transferor in transferring at the same time or during 135
any five consecutive business days two or more pistols or 136
revolvers, or any combination of pistols and revolvers totaling 137
two or more, to the same unlicensed transferee, in addition to 138
the reports required under division (E) (5) of this section, 139
prepare a report of the multiple transfers on a form prescribed 140
by the attorney general of this state pursuant to division (J) 141
of this section and submit the report not later than the close 142
of business on the date on which the transfer requiring the 143
report under this division occurs to the office specified on the 144
form described in division (E) (5) of this section and to the 145
bureau of criminal identification and investigation; 146

(7) Retain a record of the transfer as part of the 147
permanent business records of the federally licensed firearms 148
dealer. 149

(F) A law enforcement agency of this state or of a 150
political subdivision of this state that agrees to assist an 151
unlicensed transferor in carrying out the responsibilities of 152
the unlicensed transferor under division (C) of this section 153
with respect to the transfer of a firearm shall do all of the 154
following: 155

(1) Contact the national instant criminal background check 156
system under 18 U.S.C. section 922(t) and either receive an 157
identification number as described in 18 U.S.C. section 922(t) 158
(1) (B) (i) or wait the period described in 18 U.S.C. section 159
922(t) (1) (B) (ii); 160

(2) Conduct any other checks that the agency considers 161
appropriate to determine whether the receipt or possession of 162
the firearm by the unlicensed transferee would violate 18 U.S.C. 163
section 922 or the law of this state; 164

(3) Verify the identity of the unlicensed transferee by 165
either examining a valid identification document of the 166
unlicensed transferee containing a photograph of the unlicensed 167
transferee or confirming that the unlicensed transferor has 168
examined such a valid identification document; 169

(4) Notify the unlicensed transferor and transferee of all 170
of the following: 171

(a) The compliance by the law enforcement agency with the 172
requirements under divisions (F) (1), (2), and (3) of this 173
section; 174

(b) Any receipt by the law enforcement agency of a 175
notification from the national instant criminal background check 176
system or other information that the transfer would violate 18 177
U.S.C. section 922 or would violate the law of this state. 178

(5) Not later than thirty-one days after the date on which 179
the transfer occurs, submit to the attorney general of the 180
United States a report of the transfer on a form prescribed by 181
the attorney general of this state pursuant to division (J) of 182
this section that does not include the name of or other 183
identifying information relating to the unlicensed transferor or 184
unlicensed transferee; 185

(6) If the law enforcement agency assists an unlicensed 186
transferor in transferring at the same time or during any five 187
consecutive business days two or more pistols or revolvers, or 188
any combination of pistols and revolvers totaling two or more, 189
to the same unlicensed transferee, in addition to the reports 190
required under division (F) (5) of this section, prepare a report 191
of the multiple transfers on a form prescribed by the attorney 192
general of this state pursuant to division (J) of this section 193

and submit the report not later than twenty-four hours after the 194
transfer requiring the report under this division occurs to the 195
office specified on the form described in division (E) (5) of 196
this section and to the bureau of criminal identification and 197
investigation; 198

(7) Maintain records of the transfer at any place, and in 199
any form, that the attorney general of this state or the 200
attorney general of the United States may prescribe. 201

(G) Unless prohibited by any other provision of law, 202
divisions (C) and (D) of this section shall not apply to any 203
transfer of a firearm between an unlicensed transferor and 204
unlicensed transferee if any of the following apply with respect 205
to the transfer: 206

(1) The transfer is a bona fide gift between immediate 207
family members, including spouses, parents, children, siblings, 208
grandparents, and grandchildren. 209

(2) The transfer occurs by operation of law, or because of 210
the death of another person for whom the unlicensed transferor 211
is an executor or administrator of an estate or a trustee of a 212
trust created in a will. 213

(3) The transfer is temporary and occurs while in the home 214
of the unlicensed transferee, the unlicensed transferee is not 215
otherwise prohibited from possessing firearms, and the 216
unlicensed transferee believes that possession of the firearm is 217
necessary to prevent imminent death or great bodily harm to the 218
unlicensed transferee. 219

(4) The transfer is approved by the attorney general of 220
the United States under section 5812 of the Internal Revenue 221
Code of 1986. 222

(5) The transfer is a temporary transfer of possession 223
without transfer of title that takes place in any of the 224
following circumstances: 225

(a) At a shooting range located in or on premises owned or 226
occupied by a duly incorporated organization organized for 227
conservation purposes or to foster proficiency in firearms; 228

(b) At a target firearm shooting competition under the 229
auspices of or approved by an agency of this state or a 230
nonprofit organization; 231

(c) While hunting, fishing, or trapping, if the activity 232
is legal in all places where the unlicensed transferee possesses 233
the firearm, and the unlicensed transferee holds any required 234
license or permit. 235

(6) The transfer is to an authorized representative of a 236
law enforcement agency of any municipal corporation, any county, 237
this state, or the federal government for exclusive use by that 238
governmental entity and, prior to the transfer, written 239
authorization from the head of the agency authorizing the 240
transaction is presented to the person from whom the transfer is 241
being made. The proper written authorization shall be verifiable 242
written certification from the head of the agency by which the 243
transferee is employed, identifying the employee as an 244
individual authorized to conduct the transaction, and 245
authorizing the transaction for the exclusive use of the agency 246
by which that person is employed. 247

(7) The transfer is a loan of the firearm by an authorized 248
law enforcement representative of a municipal corporation, a 249
county, this state, or the federal government, the loan is made 250
to a peace officer who is employed by that governmental entity 251

and authorized to carry a firearm, and the loan is made for the 252
carrying and use of that firearm by that peace officer in the 253
course and scope of the officer's duties. 254

(8) The transfer is by a law enforcement agency to a peace 255
officer. 256

(9) The transfer is by a law enforcement agency to a 257
retiring peace officer of that agency who is authorized to carry 258
a firearm. 259

(10) The transfer is to an authorized representative of a 260
municipal corporation, a county, this state, or the federal 261
government and is for the governmental entity, and the entity is 262
acquiring the firearm as part of an authorized, voluntary 263
program in which the entity is buying or receiving weapons from 264
private individuals. 265

(11) The transfer is by an authorized law enforcement 266
representative of a municipal corporation, a county, this state, 267
or the federal government to any public or private nonprofit 268
historical society, museum, or institutional collection, if all 269
of the following conditions are met: 270

(a) The entity receiving the firearm is open to the 271
public. 272

(b) The firearm prior to delivery is deactivated or 273
rendered inoperable. 274

(c) The firearm is not of a type prohibited by provision 275
of law from being transferred to the public at large. 276

(d) Prior to delivery, the entity receiving the firearm 277
submits a written statement to the law enforcement 278
representative stating that the firearm will not be restored to 279

operating condition and will either remain with that entity, or 280
if subsequently disposed of, will be transferred in accordance 281
with the applicable provisions of law. 282

(12) The transfer is by any person other than a 283
representative of an authorized law enforcement agency to any 284
public or private nonprofit historical society, museum, or 285
institutional collection, if all of the conditions set forth in 286
divisions (G) (11) (a) to (d) of this section are met. 287

(13) The transfer is delivery of a firearm to a gunsmith 288
for service or repair, is the return of the firearm to its owner 289
by the gunsmith, or is the delivery of a firearm by a gunsmith 290
to a federally licensed firearms dealer for service or repair or 291
the return of the firearm to the gunsmith. 292

(14) The transfer is made by a person who resides in this 293
state, is made to a person who resides outside this state and is 294
a federally licensed firearms dealer, and is in accordance with 295
federal firearms law. 296

(15) The transfer is of any unloaded firearm to a 297
wholesaler as merchandise in the wholesaler's business by a 298
manufacturer or importer licensed to engage in that business 299
pursuant to federal firearms law or by another wholesaler and is 300
made in accordance with federal firearms law. 301

(H) A federally licensed firearms dealer or law 302
enforcement agency that processes the transfer of a firearm 303
under this section may assess and collect a fee, in an amount 304
not to exceed ten dollars, with respect to each firearm transfer 305
processed. 306

(I) Nothing in division (F) (7) of this section shall be 307
construed to authorize the attorney general of this state or the 308

attorney general of the United States to inspect records 309
described in that division or to require that the records be 310
transferred to a facility owned, managed, or controlled by this 311
state or the United States. 312

(J) The attorney general of this state by rule shall 313
prescribe the forms to be used for keeping the records and 314
making the reports required under this section. If the attorney 315
general of the United States adopts forms to be used for keeping 316
similar records and making similar reports that may be required 317
under federal law, the attorney general of this state shall 318
prescribe those forms to be used for keeping the records and 319
making the reports required under this section. 320

(K) Whoever violates division (B), (C), or (D) of this 321
section is guilty of illegal transfer of a firearm. Except as 322
otherwise provided in this division, illegal transfer of a 323
firearm is a misdemeanor of the first degree. If the offender 324
previously has been convicted of or pleaded guilty to a 325
violation of this section, illegal transfer of a firearm is a 326
felony of the fifth degree. 327