



Ohio Legislative Service Commission

Bill Analysis

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Reps. Patmon, Foley, Antonio, R. Hagan, Driehaus, Williams, Reece

BILL SUMMARY

- Similar to federal law, prohibits a federally licensed firearms dealer from transferring a firearm to any person unless the dealer complies with the requirements of 18 U.S.C. § 922(t), 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 under the provision described in the preceding dot point, the dealer or agency must comply with the requirements of 18 U.S.C. § 922(t), 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 under the provision described in the second preceding dot point, 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

Background

Prohibited transfers

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:¹

(1) Before completion of the transfer, the licensed dealer, manufacturer, or importer contacts the National Instant Criminal Background Check System (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 have elapsed since the licensed dealer, manufacturer, or importer contacted the System, and the System has not notified the licensed dealer, manufacturer, or importer that the receipt of a firearm by the other person would violate either of two specified "receipt

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



prohibitions" of federal law, described below 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.

A licensed dealer, manufacturer, or importer convicted of knowingly violating this prohibition is fined not more than \$100,000, imprisoned for not more than one year, or both.² A more detailed description of the prohibition and the exceptions to it is set forth below in "**Firearm transfer by a licensed firearms dealer, manufacturer, or importer**" under "**Relevant federal firearms transfer law.**"

Federal law does not impose a criminal background check requirement as a prerequisite to the transfer of a firearm by a person who is not a federally licensed firearms dealer, manufacturer, or importer. Ohio law does not impose a criminal background check requirement as a prerequisite to the transfer of a firearm by any person, although if a firearm transfer in Ohio is by a federally licensed firearms dealer, manufacturer, or importer, the federal prohibition described above applies to the dealer, manufacturer, or importer and with respect to the transfer. In addition to the prohibition described above, federal law imposes several other restrictions upon the transfer of a firearm by any person, with the most relevant of these restrictions described below in "**Firearm transfer by any person**" under "**Relevant federal firearms transfer law**" (prohibitions based on the age of a person are not discussed in this analysis). Definitions of the most significant terms used in the provision described above are set forth below in "**Federal definitions**" under "**Relevant federal firearms transfer law.**"

Prohibited receipt

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 (prohibitions based on the age of a person are not discussed in this analysis). 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:³

² 18 U.S.C. §§ 924, 3559, and 3771, not in the bill.

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



(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;

(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.

A person convicted of knowingly violating this prohibition is fined not more than \$250,000, imprisoned for not more than ten years, or both.⁴

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.⁵ A person convicted of willfully violating this prohibition is fined not more than \$250,000, imprisoned for not more than five years, or both.⁶

⁴ 18 U.S.C. §§ 924, 3559, and 3771, not in the bill.

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

⁶ 18 U.S.C. §§ 924, 3559, and 3771, not in the bill.



Definitions of the most significant terms used in the provisions described above are set forth below in "**Federal definitions**" under "**Relevant federal firearms transfer law.**"

Ohio prohibition

Current Ohio law also prohibits certain categories of persons from receiving a firearm (prohibitions based on the age of a person are not discussed in this analysis). Relevant to the bill, it prohibits a person, unless relieved from disability pursuant to a separate provision of law, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, if the person:

(1) Is a fugitive from justice;

(2) Is under indictment for or has been convicted of a felony offense of violence or has been adjudicated a delinquent child for committing an offense that, if committed by an adult, would be such a felony offense;

(3) Is under indictment for or has been convicted of a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for committing an offense that, if committed by an adult, would be such a felony offense;

(4) Is drug dependent, in danger of drug dependence, or a chronic alcoholic;

(5) Is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a "mentally ill person subject to hospitalization by court order," or is an involuntary "patient" other than one who is a patient only for purposes of observation ("mentally ill person subject to hospitalization by court order" and "patient" are defined terms).

A violation of this prohibition is the offense of "having weapons while under disability," a third degree felony.⁷

Operation of the bill

The bill establishes requirements regarding the transfer of a firearm by an "unlicensed transferor" to an "unlicensed transferee" and enacts a provision similar to current federal law that pertains to the transfer of a firearm by a "federally licensed

⁷ R.C. 2923.13, not in the bill.



firearms dealer" to any person (see "**Definitions in bill**," below, for definitions of the above terms in quotation marks).

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 requirements of 18 U.S.C. § 922(t). 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.⁸ In effect, this prohibition is the same as the existing provision of federal law described above in the first paragraph under "**Background**" and requires a federally licensed firearms dealer to comply with that existing federal provision.

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 both of the following apply with respect to the transfer: (1) the firearm is transferred through a "federally licensed firearms dealer" under the provisions described below in "**Transfer through licensed dealer**," through a law enforcement agency under the provisions described below in "**Transfer through law enforcement agency**," or in accordance with an exception described below in "**Transfer under an exception**," and (2) the firearm is transferred in accordance with the provisions described in the next two paragraphs.

Under the bill, except as described below in "**Transfer under an exception**" and subject to the provision described in the next paragraph, an unlicensed transferor is prohibited from transferring a firearm to an unlicensed transferee until the federally licensed firearms dealer or law enforcement agency through which the transfer is made gives a specified "authorizing notice" to the transferor and transferee. If the transfer is made through a federally licensed firearms dealer, the "authorizing notice" is of the dealer's compliance with the provisions of federal law described above in the first paragraph under "**Background**" 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 of the agency's compliance with the provisions described below in paragraphs (1) to (3) under "**Transfer through law enforcement agency**."

Under the bill, except as described below in "**Transfer under an exception**," an unlicensed transferor is prohibited from transferring a firearm to an unlicensed

⁸ R.C. 2923.26(B) and (K).



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," which is described below in "**Transfer through licensed dealer**" and "**Transfer through law enforcement agency**," is that the federally licensed firearms dealer or law enforcement agency, whichever is applicable, has received notice from the NICBC System that the transfer would violate the provision described above in "**Prohibited receipt**" under "**Background**," any other provision of federal law regulating the transfer or possession of firearms, or any Ohio law.⁹

A violation of a prohibition described in any of the three preceding paragraphs 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.¹⁰

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 both of the following apply with respect to the transfer: (1) the firearm is transferred through a "federally licensed firearms dealer" under the provisions described below in "**Transfer through licensed dealer**," through a law enforcement agency under the provisions described below in "**Transfer through law enforcement agency**," or in accordance with an exception described below in "**Transfer under an exception**," and (2) the firearm is transferred in accordance with the provisions described in the next two paragraphs.

Under the bill, except as described below in "**Transfer under an exception**" and subject to the provision described in the next paragraph, an unlicensed transferee is prohibited from receiving a firearm from an unlicensed transferor until the federally licensed firearms dealer or law enforcement agency through which the transfer is made gives a specified "authorizing notice" to the transferor and transferee. If the transfer is made through a federally licensed firearms dealer, the "authorizing notice" is of the dealer's compliance with the provisions of federal law described above in the first paragraph under "**Background**" 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 of the agency's compliance with the provisions described below in paragraphs (1) to (3) under "**Transfer through law enforcement agency**."

⁹ R.C. 2923.26(C)(1) and (2).

¹⁰ R.C. 2923.26(K).



Under the bill, except as described below in "**Transfer under an exception**," an unlicensed transferee is prohibited from receiving a firearm from an unlicensed transferor 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," described below in "**Transfer through licensed dealer**" and "**Transfer through law enforcement agency**," is that the federally licensed firearms dealer or law enforcement agency, whichever is applicable, has received notice from the NICBC System that the transfer would violate the provision described above in "**Prohibited receipt**" under "**Background**," any other provision of federal law regulating the transfer or possession of firearms, or any Ohio law.¹¹

A violation of a prohibition described in any of the three preceding paragraphs 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.¹²

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.¹³

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" under the provisions described above must do all of the following:¹⁴

(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 as described below in "**Rules of Ohio Attorney General**";

(3) Comply with the provisions of federal law described above in the first paragraph under "**Background**" as if transferring the firearm from the inventory of the

¹¹ R.C. 2923.26(D)(1) and (2).

¹² R.C. 2923.26(K).

¹³ R.C. 2923.26(C)(3).

¹⁴ R.C. 2923.26(E).

dealer to the unlicensed transferee, except that a dealer assisting in the transfer of a firearm under this provision is not required to comply again with the requirements of those provisions in delivering the firearm to the unlicensed transferee;

(4) Notify the unlicensed transferor and unlicensed transferee of both of the following: (a) of compliance with the provisions of federal law described above in the first paragraph under "**Background**" as if transferring the firearm from the inventory of the dealer to the unlicensed transferee, and (b) if the transfer is subject to the provisions of federal law described above in the first paragraph under "**Background**," of receipt by the dealer of a notice from the NICBC System that the transfer would violate the provision described above in "**Prohibited receipt**" under "**Background**," any other provision of federal law regulating the transfer or possession of firearms, 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 as described below in "**Rules of 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, in addition to the reports described above in (5), prepare a report of the multiple transfers on a form prescribed by the Ohio Attorney General as described below in "**Rules of Ohio Attorney General**" and submit the report not later than the close of business on the date on which the transfer requiring the report under this paragraph occurs to the office specified on the form described above in (5) 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 under the provisions described above in "**Transfer of firearm by person who is not a federally licensed firearms dealer**" with respect to the transfer of a firearm must do all of the following:¹⁵

¹⁵ R.C. 2923.26(F) and (I).



(1) Contact the NICBC System under the provisions of federal law summarized above in the first paragraph under "**Background**" and either receive an identification number or wait the period described in clause (2) under that paragraph;

(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 violate the provision described above in "**Prohibited receipt**" under "**Background**," any other provision of federal law regulating the transfer or possession of firearms, or any Ohio law;

(3) Verify the identity of the unlicensed transferee by either examining a valid "identification document" (see "**Definitions in bill**," below) 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 provisions described above in (1), (2), and (3), and (b) any receipt by the agency of a notice from the NICBC System that the transfer would violate the provision described above in "**Prohibited receipt**" under "**Background**," any other provision of federal law regulating the transfer or possession of firearms, 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 as described below in "**Rules of 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, in addition to the reports described above in (5), prepare a report of the multiple transfers on a form prescribed by the Ohio Attorney General as described below in "**Rules of Ohio Attorney General**" and submit the report not later than 24 hours after the transfer requiring the report under this paragraph occurs to the office specified on the form described above in (5) 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 provision is to be construed to authorize either Attorney General to



inspect records described in the provision or to require that the records be transferred to a facility owned, managed, or controlled by the state of Ohio or the United States.

Transfer under an exception

The bill provides that, unless prohibited by any other provision of law, the provisions described above in "**Transfer of firearm by person who is not a federally licensed firearms dealer**" and "**Receipt of firearm by person who is not a federally licensed firearms dealer**" do 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:¹⁶

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

(2) 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.

(3) 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.

(4) It is approved by the U.S. Attorney General under § 5812 of the Internal Revenue Code.

(5) It 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, or (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.

(6) It is to an authorized representative of a law enforcement agency of any city, 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

¹⁶ R.C. 2923.26(G).



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.

(7) 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.

(8) It is by a law enforcement agency to a peace officer.

(9) It is by a law enforcement agency to a retiring peace officer of that agency who is authorized to carry a firearm.

(10) 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.

(11) 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: (a) the entity receiving the firearm is open to the public, (b) prior to delivery, the firearm is deactivated or rendered inoperable, (c) the firearm is not of a type prohibited by law from being transferred to the public at large, and (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 either will remain with that entity, or if subsequently disposed of, will be transferred in accordance with law.

(12) 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 clauses (a) to (d) under (11), above, are met.

(13) 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.

(14) 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.

(15) 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.

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 described above to assess and collect a fee, in an amount not to exceed \$10, with respect to each firearm transfer processed.¹⁷

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's provisions.¹⁸

Definitions in bill

The bill defines the following terms that are used in its provisions:¹⁹

"Federally licensed firearms dealer" means 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).

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

¹⁷ R.C. 2923.26(H).

¹⁸ R.C. 2923.26(J).

¹⁹ R.C. 2923.26(A).

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

"Identification document" means 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.

Relevant federal firearms transfer law

Firearm transfer by licensed firearms dealer, manufacturer, or importer

Federal law prohibits a "licensed importer," "licensed manufacturer," or "licensed dealer" (see "**Federal definitions**," below) from transferring a firearm to any other person who is not licensed under federal law, unless: (1) before the completion of the transfer, the licensee contacts the NICBC System (when contacted, the System conducts a criminal background check), (2) either the System provides the licensee with a unique identification number, or three business days (i.e., a day on which State offices are open) have elapsed since the licensee contacted the System, and the System has not notified the licensee that the receipt of a firearm by such other person would violate 18 U.S.C. § 922(g) or (n), as described above in "**Prohibited receipt**" under "**Background**," and (3) the transferor has verified the identity of the transferee by examining a valid "identification document" (see "**Federal definitions**," below) of the transferee containing a photograph of the transferee. A licensed dealer, manufacturer, or importer convicted of knowingly violating this prohibition is fined not more than \$100,000, imprisoned for not more than one year, or both.

If receipt of a firearm would not violate 18 U.S.C. § 922(g) or (n) or state law, the System must assign a unique identification number to the transfer, provide the licensee with the number, and destroy all records of the System with respect to the call (other than the identifying number and the date the number was assigned) and all records of the System relating to the person or the transfer.

The provision described in the second preceding paragraph does not apply to a firearm transfer between a licensee and another person if any of the following applies: (1) the other person has presented to the licensee a permit, issued not more than five years earlier by the state in which the transfer is to take place, that allows the other person to possess or acquire a firearm, and the law of the state provides that such a



permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law, (2) the U.S. Attorney General has approved the transfer under § 5812 of the Internal Revenue Code, or (3) on application of the transferor, the U.S. Attorney General has certified that compliance with the NICBC System background check provisions described above is impracticable because the ratio of the number of law enforcement officers of the state in which the transfer is to occur to the number of square miles of land area of the state does not exceed 0.0025, the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

If the NICBC System notifies the licensee that the information available to the System does not demonstrate that the receipt of a firearm by the other person would violate 18 U.S.C. § 922(g) or (n) or state law, and the licensee transfers a firearm to the other person, the licensee must include in the record of the transfer the unique identification number provided by the System with respect to the transfer.

If the licensee knowingly transfers a firearm to the other person and knowingly fails to comply with the provisions described in the fourth preceding paragraph with respect to the transfer and, at the time the other person most recently proposed the transfer, the NICBC System was operating and information was available to the System demonstrating that receipt of a firearm by such other person would violate 18 U.S.C. § 922(g) or (n) or state law, the U.S. Attorney General may, after notice and opportunity for a hearing, suspend for not more than six months or revoke any license issued to the licensee under federal firearms law, and may impose on the licensee a civil fine of not more than \$5,000.

Neither a local government nor an employee of the federal government or of any state or local government, responsible for providing information to the NICBC System is liable in an action at law for damages for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section, or for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.²⁰

Firearm transfer by any person

Federal law currently prohibits certain categories of persons from receiving any firearm that has been shipped or transported in interstate or foreign commerce. Two of

²⁰ 18 U.S.C. §§ 922(t), 924, 3559, and 3771, not in the bill.



those prohibitions are relevant to the bill and are described above in "**Prohibited receipt**" under "**Background.**"

Federal law also currently prohibits any person from transferring any firearm to certain categories of persons. Relevant to the bill, it prohibits any person from selling or otherwise disposing of any firearm or ammunition to any person knowing or having reasonable cause to believe that the other person: (1) is under indictment for, or has been convicted in a court of, a "crime punishable by imprisonment for a term exceeding one year" (see "**Federal definitions,**" below), (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 either 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, (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, or (9) has been convicted in a court of a "misdemeanor crime of domestic violence" (see "**Federal definitions,**" below). This prohibition does not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to a specified provision of federal firearms law, is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to a different specified provision of federal firearms law.²¹ A person convicted of knowingly violating this prohibition is fined not more than \$250,000, imprisoned for not more than ten years, or both.²²

Federal definitions

Federal law defines many terms that are used in the provisions of federal law described in this analysis. Among the definitions are:²³

"Crime punishable by imprisonment for a term exceeding one year" does not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of

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

²² 18 U.S.C. §§ 924, 3559, and 3771, not in the bill.

²³ 18 U.S.C. § 921, not in the bill, except for "identification document," defined in 18 U.S.C. § 1028, not in the bill.



business practices, or any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime is determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction that has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored is not considered a conviction for purposes of this provision, unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

"Dealer" means: (1) any person "engaged in the business" of selling firearms at wholesale or retail, (2) any person "engaged in the business" of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (3) any person who is a pawnbroker. **"Licensed dealer"** means any dealer licensed under the federal firearms law.

"Engaged in the business" means: (1) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business "with the principal objective of livelihood and profit" through the sale or distribution of the firearms manufactured, (2) as applied to a dealer in firearms as defined in clause (1) of the definition of "dealer," a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business "with the principal objective of livelihood and profit" through the repetitive purchase and resale of firearms, but not including a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms, (3) as applied to a dealer in firearms as defined in clause (2) of the definition of "dealer," a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business "with the principal objective of livelihood and profit," but not including a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms, and (4) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business "with the principal objective of livelihood and profit" through the sale or distribution of the firearms imported.

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

"Importer" means any person "engaged in the business" of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. **"Licensed importer"** means any importer licensed under the federal firearms law.

"Manufacturer" means any person "engaged in the business" of manufacturing firearms or ammunition for purposes of sale or distribution. **"Licensed manufacturer"** means any manufacturer licensed under the federal firearms law.

"Misdemeanor crime of domestic violence" means an offense that is a misdemeanor under federal, state, or tribal law and that has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. A person is not considered to have been convicted of such an offense for purposes of this provision unless specified procedural safeguards applied with respect to the conviction. A person is not considered to have been convicted of such an offense for purposes of this provision if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

"With the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection. However, proof of profit is not required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or "terrorism" (a defined term).

HISTORY

ACTION	DATE
Introduced	04-18-13

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