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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Thomas

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SUMMARY

- Prohibits a federally licensed firearms dealer from transferring a firearm to any person unless the dealer complies with the relevant requirements under federal law, which generally requires background checks through the National Instant Criminal Background Check System.
- Prohibits any transfer of a firearm from a person who is not a federally licensed firearms dealer to a person who is not a federally licensed firearms dealer unless the firearm is transferred through a federally licensed firearms dealer, through a state or local law enforcement agency, or pursuant to any of a list of specified exceptions.
- Makes the penalty for a violation of the prohibitions a first, second, or fourth degree misdemeanor and imposes a mandatory fine.
- Requires that, when a firearm is transferred through a federally licensed firearms dealer or through a state or local law enforcement agency, the dealer or agency must comply with the relevant requirements under federal law, which generally requires background checks through the National Instant Criminal Background Check System and under state law, which generally requires incompetency records checks through the Ohio Attorney General.
- Requires that, immediately upon receipt, the Ohio Attorney General must conduct and provide results of incompetency records checks to the requesting federally licensed firearms dealer or law enforcement agency.
- Specifies that none of its provisions authorize the U.S. Attorney General to inspect records or to require that the records be transferred to a facility owned, managed, or controlled by the state of Ohio or the United States.

DETAILED ANALYSIS

Illegal transfer of a firearm

Generally, the bill prohibits three types of firearm transfers:

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

A reckless violation of any of the prohibitions listed above is the offense of “illegal transfer of a firearm.” The penalties for the offense are as follows:⁴

- Generally: A fourth degree misdemeanor and a mandatory fine of up to \$250 with no additional financial sanctions;
- If the offender previously has been convicted of the offense: A second degree misdemeanor and a mandatory fine of up to \$750 with no additional financial sanctions;
- If the offender previously has been convicted of two or more violations of the offense: A first degree misdemeanor and a mandatory fine of up to \$1,000 with the possibility of additional financial sanctions.

Each of these prohibitions is discussed in detail below.

Firearm transfer by federally licensed firearms dealer

The bill prohibits a “federally licensed firearms dealer” from transferring a firearm to any person unless the dealer complies with the proper requirements under federal law. Under the bill, a “federally licensed firearms dealer” is an importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal “Gun Control Act of 1968,” and any amendments or additions to that Act or reenactments of that Act (by reference to R.C. 5502.63, which is not in the bill).⁵

¹ R.C. 2923.26(B).

² R.C. 2923.26(C).

³ R.C. 2923.26(D).

⁴ R.C. 2923.26(J) and 2929.28(A)(4).

⁵ R.C. 2923.26(A)(1) and (B).

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

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

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

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

Transfer requirements

Prohibiting or authorizing notice

Under the bill, the federally licensed firearms dealer or law enforcement agency through which the transfer is made must give a specified “authorizing notice” to the transferor and transferee. The “authorizing notice” is notice that the federally licensed firearms dealer or law enforcement agency, whichever is applicable, has received information from the National Instant Criminal Background Check (NICBC) System or the Ohio Attorney General that the transfer is not prohibited under federal law or any Ohio law. If the transfer is made through a federally licensed firearms dealer, the “authorizing notice” is notice of the dealer’s compliance with the provisions described below in paragraph (3)(a) under “**Transfer through federally licensed firearms dealer**.” If the transfer is made through a law enforcement agency, the “authorizing notice” is notice of the agency’s compliance with the provisions described below in paragraph (5)(a) under “**Transfer through law enforcement agency**.”⁸

⁶ R.C. 2923.26(A)(2), (3), and (C)(1).

⁷ R.C. 2923.26(D)(1).

⁸ R.C. 2923.26(C)(1)(b) and (D)(1)(b).

Under the bill, the federally licensed firearms dealer or law enforcement agency through which the transfer is made must give a specified “prohibiting notice” to the transferor and transferee. The “prohibiting notice” is notice that the federally licensed firearms dealer or law enforcement agency, whichever is applicable, has received information from the National Instant Criminal Background Check (NICBC) System or the Ohio Attorney General that the transfer is prohibited under federal law or any Ohio law. If the transfer is made through a federally licensed firearms dealer, the “prohibiting notice” is notice of the dealer’s compliance with the provisions described below in paragraph (3)(b) under **“Transfer through federally licensed firearms dealer.”** If the transfer is made through a law enforcement agency, the “prohibiting notice” is notice of the agency’s compliance with the provisions described below in paragraph (5)(b) under **“Transfer through law enforcement agency.”**⁹

Transfer through federally licensed firearms dealer

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

1. Comply with provisions of federal law as if transferring the firearm from the inventory of the dealer to the unlicensed transferee, except that a dealer assisting in the transfer of a firearm is not required to comply again with the requirements of those provisions in delivering the firearm to the unlicensed transferee;
2. Conduct an incompetency records check by contacting the Ohio Attorney General and requesting a check of the following records to determine whether the acquisition or possession of the firearm by the unlicensed transferee would be prohibited under any Ohio law: (a) notice that the transferee has been found by a court to be a mentally ill person subject to a court order, or (b) notice that the transferee has become an involuntary patient, other than one who is a patient only for purposes of observation;
3. Notify the unlicensed transferor and unlicensed transferee of whichever of the following is applicable after compliance with (1) and (2) above: (a) the transfer of the firearm is not prohibited under federal law or any Ohio law, or (b) the dealer has received notice from the NICBC System or the Ohio Attorney General that the transfer of the firearm is prohibited under federal law or any Ohio law.

Transfer through law enforcement agency

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

⁹ R.C. 2923.26(C)(2) and (D)(2).

¹⁰ R.C. 2923.26(E) and 5122.311(A).

¹¹ R.C. 2923.26(F) and 5122.311(A).

1. Contact the NICBC System and either receive an identification number or wait the period specified under federal law (the elapsing of three business days after the licensed dealer, manufacturer, or importer contacted the system without the system notifying the licensed dealer, manufacturer, or importer that the receipt of a firearm by the other person would violate federal law);
2. Conduct an incompetency records check by contacting the Ohio Attorney General and requesting a check of the following records to determine whether the acquisition or possession of the firearm by the unlicensed transferee would be prohibited under any Ohio law: (a) notice that the transferee has been found by a court to be a mentally ill person subject to a court order, or (b) notice that the transferee has become an involuntary patient, other than one who is a patient only for purposes of observation;
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 be prohibited under federal law or any Ohio law;
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 unlicensed transferee of whichever of the following is applicable after compliance with (1) to (4) above: (a) the transfer of the firearm is not prohibited under federal law or any Ohio law, or (b) the dealer has received notice from the NICBC System or the Ohio Attorney General that the transfer of the firearm is prohibited under federal law or any Ohio law.

Firearms transfers exempt from the bill’s prohibitions

The bill’s prohibitions regarding the transfer or receipt of a firearm by a person who is not a licensed firearms dealer do not apply to any transfer of a firearm if any of the following apply with respect to the transfer:¹²

- It is temporary and occurs while in the home of the unlicensed transferee, the unlicensed transferee is not otherwise prohibited from possessing firearms, and the unlicensed transferee believes that possession of the firearm is necessary to prevent imminent death or great bodily harm to the unlicensed transferee.
- It is a temporary transfer of possession without transfer of title that takes place in any of the following circumstances: (1) at a shooting range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in firearms, (2) at a target firearm shooting competition under the auspices of or approved by an agency of this state or a nonprofit organization, or (3) while hunting, fishing, or trapping, if the activity is legal in all places where the

¹² R.C. 2923.26(G).

unlicensed transferee possesses the firearm, and the unlicensed transferee holds any required license or permit.

- It is to an authorized representative of a law enforcement agency of any municipal corporation, any county, the state of Ohio, or the federal government for exclusive use by that governmental entity and, prior to the transfer, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the transfer is being made. The proper written authorization must be verifiable written certification from the head of the agency by which the transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that person is employed.
- It is a loan of the firearm by an authorized law enforcement representative of a municipal corporation, a county, the state of Ohio, or the federal government, and the loan is made to a peace officer employed by that governmental entity and authorized to carry a firearm and is made for the carrying and use of that firearm by that peace officer in the course and scope of the officer's duties.
- It is by a law enforcement agency to a peace officer.
- It is to an authorized representative of a municipal corporation, a county, the state of Ohio, or the federal government and is for the governmental entity, and the entity is acquiring the firearm as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals.
- It is by an authorized law enforcement representative of a municipal corporation, a county, the state of Ohio, or the federal government to any public or private nonprofit historical society, museum, or institutional collection, if all of the following conditions are met: (1) the entity receiving the firearm is open to the public, (2) prior to delivery, the firearm is deactivated or rendered inoperable, (3) the firearm is not of a type prohibited by law from being transferred to the public at large, and (4) prior to delivery, the entity receiving the firearm submits a written statement to the law enforcement representative stating that the firearm will not be restored to operating condition and either will remain with that entity, or if subsequently disposed of, will be transferred in accordance with law.
- It is by any person other than a representative of an authorized law enforcement agency to any public or private nonprofit historical society, museum, or institutional collection, if all of the conditions set forth in the prior paragraph are met.
- It is delivery of a firearm to a gunsmith for service or repair, is the return of the firearm to its owner by the gunsmith, or is the delivery of a firearm by a gunsmith to a federally licensed firearms dealer for service or repair or the return of the firearm to the gunsmith.

- It is made by a person who resides in Ohio, is made to a person who resides outside Ohio and is a federally licensed firearms dealer, and is in accordance with federal firearms law.
- It is of an unloaded firearm to a wholesaler as merchandise in the wholesaler's business by a manufacturer or importer licensed to engage in that business pursuant to federal firearms law or by another wholesaler and is made in accordance with federal firearms law.

Fee for assistance in firearms transfer

The bill authorizes a federally licensed firearms dealer or law enforcement agency that processes the transfer of a firearm under the bill's provisions to assess and collect a fee, in an amount not to exceed \$10, with respect to each firearm transfer processed.¹³

Attorney General

Conducting incompetency records checks

Under the bill, when a federally licensed firearms dealer or law enforcement agency requests an incompetency records check, the Ohio Attorney General must conduct and provide the results of the check to the federally licensed firearms dealer or law enforcement agency immediately upon receipt of the request.¹⁴

Under current law, a probate judge that adjudicates an individual a mentally ill person or a chief clinical officer of the hospital, community mental health services provider, or facility that commits an individual as an involuntary patient, other than one who is a patient only for purposes of observation, must transmit notification of the individual's identity to the Ohio Attorney General within seven days of the adjudication or commitment. The Ohio Attorney General must then compile and maintain the notices for the purpose of conducting incompetency records checks.¹⁵

Inspection or transfer of records

The bill specifies that nothing in the above provisions are to be construed to authorize the U.S. Attorney General to inspect records or to require that the records be transferred to a facility owned, managed, or controlled by the state of Ohio or the United States.¹⁶

¹³ R.C. 2923.26(H).

¹⁴ R.C. 5122.311(B).

¹⁵ R.C. 5122.311(A).

¹⁶ R.C. 2923.26(I).

Background

Prohibited transfers under federal law

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

1. Before completion of the transfer, the licensed dealer, manufacturer, or importer contacts the NICBC System administered by the U.S. Attorney General (when contacted, the system conducts a criminal background check).
2. Either the system provides the licensed dealer, manufacturer, or importer with a unique identification number for the transfer, or three business days elapse without the licensed dealer, manufacturer, or importer being notified that the receipt of a firearm by the other person would violate either of two specified “receipt prohibitions” of federal law that prohibit certain categories of persons from receiving any firearm that has been shipped or transported in interstate or foreign commerce.
3. The licensed dealer, manufacturer, or importer has verified the identity of the other person by examining a valid identification document of that person containing a photograph of that person.

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

Prohibited receipt under federal law

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

1. Has been convicted in a court of a crime punishable by imprisonment for a term exceeding one year;
2. Is a fugitive from justice;

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

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

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.

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

HISTORY

Action	Date
Introduced	02-26-19

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