



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sens. Thomas and Schiavoni, Skindell, Williams, Tavares, Brown, Sykes, Yuko

BILL SUMMARY

Transfer of firearms at gun shows

- Prohibits an unlicensed transferor from recklessly transferring a firearm to an unlicensed transferee at a gun show unless:
 - The firearm is transferred through a federally licensed firearms dealer or point of contact agency;
 - The dealer or agency complies with provisions of the federal Brady Act that require background checks through the National Instant Criminal Background Check System (NICBCS) and a provision of the bill that requires an incompetency records check of a mental health-related database the Ohio Attorney General (OAG) currently maintains;
 - The dealer or agency, after complying with the background check and records check provisions described above, notifies the unlicensed transferor that the transfer would not violate federal or Ohio law and does not notify the transferor that the transfer would violate federal or Ohio law.
- Prohibits an unlicensed transferee from recklessly acquiring a firearm transferred from an unlicensed transferee at a gun show if the transfer is made in violation of the prohibition described in the preceding dotpoint.

Gun show promoter duties

- Prohibits a gun show promoter from recklessly operating a gun show unless the promoter satisfies preshow duties, and duties regarding the conduct of shows, that the bill imposes on promoters.
- Imposes preshow duties on gun show promoters with respect to a gun show that include:
 - Preparing a security plan for the show, certifying compliance with law (including the bill's provisions), obtaining liability insurance for the show, and certifying that firearms transfers at the show by unlicensed transferors to unlicensed transferees will comply with the bill;
 - Obtaining from a sheriff a permit for the show and providing copies of the permit to specified local law enforcement agencies.
- Imposes duties on gun show promoters with respect to the conduct of gun shows that include:
 - Providing the appropriate sheriff a list of all vendors at the show, and arranging for the presence of federally licensed firearms dealers or point of contact agencies at the show;
 - Ensuring that all firearms brought into the show do not contain ammunition and are identified, and prohibiting minors not accompanied by a parent, guardian, or custodian from entering the show;
 - Posting signs specifying that background checks and incompetency checks are required for firearms transfers at the show and that transfers in parking areas are treated the same as transfers in the show, and posting a copy of the show's permit;
 - Making specified records and reports for each firearms transfer completed at the show.

Firearms transfers exempt from the bill's prohibitions

- Exempts specified types of firearms transfers, including *bona fide* gifts between immediate family members or transfers in specified circumstances to law enforcement or government personnel, from the provisions described in the preceding dotpoints.



Duties of Ohio Attorney General and Department of Public Safety

- Requires the OAG and Department of Public Safety to prescribe specified forms to be used under the bill.
- Expands the authorized use of a database the OAG maintains to also authorize the use for incompetency records checks requested by a federally licensed firearms dealer or point of contact agency regarding a firearm transfer at a gun show by an unlicensed transferor to an unlicensed transferee.

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CONTENT AND OPERATION

Introduction

The bill regulates the transfer of firearms at a gun show by a person who is not a federally licensed firearms dealer to a person who is not a federally licensed firearms dealer, and the operation in general of gun shows.

Illegal transfer of a firearm at a gun show

Generally, the bill prohibits two types of firearm "transfers" at a "gun show," described below, that involve an "unlicensed transferor" and an "unlicensed transferee"¹ (see "**Definitions**," below, for definitions of the terms in quotation marks). Both prohibitions apply to a transfer of a firearm at a gun show if any part of the transaction

¹ R.C. 2923.27(B)(2) and (3).



takes place at the show.² Neither prohibition applies in any circumstance described below in "**Firearms transfers exempt from the bill's prohibitions.**"³

The first prohibition prohibits an unlicensed transferor from recklessly transferring a firearm to an unlicensed transferee at a gun show unless the firearm is transferred through a "federally licensed firearms dealer" or a "point of contact agency," as described below, and the dealer or agency through which the transfer is made gives an authorizing notice, as described below in "**Transfer activities and duties of licensed dealer or point of contact agency** (see "**Definitions,**" below, for definitions of the terms in quotation marks)."⁴

The second prohibition prohibits an unlicensed transferor from recklessly transferring a firearm to an unlicensed transferee at a gun show if the federally licensed firearms dealer or point of contact agency through which the transfer is made, as described below, gives a prohibiting notice, as described below in "**Transfer activities and duties of licensed dealer or point of contact agency.**"⁵

A violation of either prohibition listed above is one of the following: (1) generally, the violation is a first degree misdemeanor, the offender must be fined \$5,000, and no other sanction is permitted, (2) but if the offender previously has been convicted of one or more violations of either prohibition, the violation is a first degree misdemeanor, the offender must be fined \$5,000, and the court may impose any other sanction authorized for a first degree misdemeanor other than a fine. In addition to the sanctions required or authorized as described in clauses (1) and (2), the offender is forever barred from conducting a gun show.⁶

The bill expressly authorizes any point of contact agency with respect to a particular gun show to conduct background checks for transfers of firearms at the gun show by an unlicensed transferor to an unlicensed transferee and to otherwise comply with the bill's provisions regarding the gun show and firearms transfers at it.⁷

² R.C. 2923.27(B)(1)(a).

³ R.C. 2923.27(G).

⁴ R.C. 2923.27(B)(2).

⁵ R.C. 2923.27(B)(3).

⁶ R.C. 2923.27(H)(1) and 2929.28(A)(4).

⁷ R.C. 2923.27(B)(1)(b).



Illegal acquisition of a firearm at a gun show

The bill prohibits an unlicensed transferee from recklessly acquiring a firearm transferred from an unlicensed transferor at a gun show if the transfer is made in violation of either prohibition described above under "**Illegal transfer of a firearm at a gun show**."⁸ The prohibition applies to a transfer of a firearm at a gun show if any part of the transaction takes place at the show.⁹ The prohibition does not apply in any circumstance described below in "**Firearms transfers exempt from the bill's prohibitions**."¹⁰ A violation of the prohibition is a misdemeanor and the offender must be punished as follows: (1) generally, the offender must be fined \$250, and no other sanction is permitted, (2) but if the offender previously has been convicted of one or more violations of the prohibition, the offender must be fined \$500, and no other sanction is permitted.¹¹

Illegal gun show operation

The bill prohibits a "gun show promoter" (see "**Definitions**," below) from recklessly operating a gun show unless the promoter and show satisfy the requirements described below in "**Gun show promoter duties**."¹² The prohibition applies to a transfer of a firearm at a gun show if any part of the transaction takes place at the show.¹³ The prohibition does not apply in any circumstance described below in "**Firearms transfers exempt from the bill's prohibitions**."¹⁴ A violation of the prohibition is a misdemeanor, the offender must be fined \$5,000, and no other sanction is permitted.¹⁵

Transfer activities and duties of licensed dealer or point of contact agency

Under the bill, a federally licensed firearms dealer who assists in the transfer of a firearm at a gun show between an unlicensed transferor and an unlicensed transferee, or a point of contact agency that assists in the transfer of a firearm at a gun show

⁸ R.C. 2923.27(B)(4).

⁹ R.C. 2923.27(B)(1)(a).

¹⁰ R.C. 2923.27(G).

¹¹ R.C. 2923.27(H)(2) and 2929.28(A)(4).

¹² R.C. 2923.27(B)(5).

¹³ R.C. 2923.27(B)(1)(a).

¹⁴ R.C. 2923.27(G).

¹⁵ R.C. 2923.27(H)(3) and 2929.28(A)(4).

between an unlicensed transferor and an unlicensed transferee may assess and collect a fee, in an amount not exceeding \$10, with respect to each firearm transfer assisted.¹⁶ A dealer or agency who agrees to assist in such a transfer must do all of the following:¹⁷

(1) If a federally licensed firearms dealer is assisting in the transfer, the dealer must comply with specified provisions of the federal Brady Act that require background checks through the National Instant Criminal Background Check System¹⁸ (NICBCS) as if transferring the firearm from the dealer's inventory 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) If a point of contact agency is assisting in the transfer, the agency must comply with the specified provisions of the federal Brady Act that require background checks through the NICBCS with respect to the transfer;

(3) Conduct an incompetency records check of the unlicensed transferee by contacting the Ohio Attorney General (OAG) and requesting an incompetency records check of the records maintained by the OAG (see "**Incompetency database**," below), 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 Ohio law;

(4) Notify the unlicensed transferor and unlicensed transferee of whichever of the following is applicable: (a) of compliance with the specified provisions of the federal Brady Act that require background checks through the NICBCS, as described above, and that the transfer of the firearm is not prohibited under those provisions and of compliance with the incompetency records check requirement, as described above, and no determination in that check that the unlicensed transferee's acquisition or possession of the firearm would violate Ohio law (this notice is referred to in this analysis as an "authorizing notice"), or (b) of compliance with the specified provisions of the federal Brady Act that require background checks through the NICBCS, as described above, and receipt of notice from the NICBCS that the transfer would violate federal law or any Ohio law or of compliance with the incompetency records check requirement, as described above, and determination in that check that the unlicensed transferee's acquisition or possession of the firearm would violate Ohio law (this notice is referred to in this analysis as a "prohibiting notice");

¹⁶ R.C. 2923.27(D).

¹⁷ R.C. 2923.27(C).

¹⁸ 18 U.S.C. 922(t), not in the bill.



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

Gun show promoter duties

Promoter obtaining permit to operate a gun show

The bill requires a gun show promoter who wishes to operate a gun show to apply to the sheriff with jurisdiction over the location at which the gun show will be held, using the form prescribed by the Department of Public Safety, as described below regarding the Department's duties, for a permit authorizing the operation of the gun show. Upon such an application by a promoter for a permit authorizing the operation of a gun show, a sheriff must review the application and any supporting information presented by the promoter. If the sheriff determines that the location at which the gun show will be held is within the sheriff's jurisdiction, that the promoter has complied with the pre-permitting duties described below, and that the gun promoter previously has not been convicted of a violation of the prohibition described above in "**Illegal gun show operation**," the sheriff must issue the permit for the gun show to the applicant promoter.¹⁹ For each gun show held by a gun show promoter, the promoter must obtain the permit for operation of the show not earlier than 60 days and not later than 30 days before conducting the show.²⁰

Prepermitting duties of a promoter

The bill requires a gun show promoter to do all of the following with respect to each of the promoter's gun shows, prior to conducting the show (these duties are in addition to obtaining a permit under the provisions described above):²¹

(1) Prepare a security plan for the gun show and provide each "local law enforcement agency with jurisdiction over the show" (see "**Definitions**," below), and the State Highway Patrol, with notice of the plan;

(2) Certify to each local law enforcement agency with jurisdiction over the show that the promoter will comply with the bill's provisions and with other applicable provisions of Ohio law;

(3) Inform the sheriff with jurisdiction over the location at which the gun show will be held of the details of the show, obtain from the sheriff a statement of the amount

¹⁹ R.C. 2923.27(E)(3).

²⁰ R.C. 2923.27(F)(1)(e).

²¹ R.C. 2923.27(F)(1)(a) to (d).

of liability insurance coverage that the sheriff specifies as necessary for the show, and obtain liability insurance for the show in the amount specified by the sheriff;

(4) Certify to the sheriff described in paragraph (3), above, that the promoter agrees that for all firearm transfers at the show by an unlicensed transferor to an unlicensed transferee, the transferor will be required to comply with the bill's provisions described above in "**Illegal transfer of a firearm at a gun show**," "**Illegal acquisition of a firearm at a gun show**," and "**Illegal gun show operation**."

Promoter duties after permitting and regarding conduct of show

The bill requires that a gun show promoter, not later than seven days after obtaining from the appropriate sheriff the permit for the show required as described above, provide a copy of the permit to each local law enforcement agency with jurisdiction over the show.²² It requires a promoter to do all of the following with respect to each gun show that the promoter conducts:²³

(1) Prepare and maintain for the duration of the show a list of all gun show vendors present at the show and, not later than five days after the completion of the show, transmit a copy of that list to the sheriff with jurisdiction over the location of the show;

(2) Ensure that all firearms brought into the show have been cleared of ammunition before being brought into the show and are tagged for identification purposes;

(3) Prohibit a person under age 18 from entering the show unless accompanied by a parent, guardian, or custodian;

(4) Arrange for the services of one or more federally licensed firearms dealers or point of contact agencies on the premises of the show to perform the services required under the bill;

(5) Prominently post a sign, in a readily visible location at each entrance to the parking areas of the show, and in a form prescribed by the OAG as described below, that states the following: "The transfer of firearms in the parking areas of this facility must be completed in the same manner as is required for a transfer of a firearm in this facility, and the transfer of a firearm in the parking areas in any other manner is a crime."

²² R.C. 2923.27(F)(1)(f).

²³ R.C. 2923.27(F)(2)



(6) Prominently post a notice at the show, in a form prescribed by the OAG as described below, that sets forth the requirements for a background check and incompetency check as provided by the bill;

(7) Prominently post at the show a copy of the permit for the show obtained from the appropriate sheriff;

(8) For each firearm transfer that is completed at the gun show, do all of the following:

- Report the transfer to the law enforcement agencies with jurisdiction over the show's location;
- Record the transfer on a form prescribed by the OAG as described below regarding the OAG's duties, which record must include the serial number of the firearm transferred, the name of both the unlicensed transferor and the unlicensed transferee involved in the transfer, and any other identifying information required by the OAG;
- Redact the names of the unlicensed transferor and unlicensed transferee and all other identifying information relating to either of them from a copy of the form referred to in the preceding paragraph and, not later than 31 days after the date on which the transfer occurs, submit to the USAG the redacted copy of the form;
- Retain for at least ten years after the date of the transfer, as part of the permanent business records of the promoter, the record of the transfer specified in the second preceding paragraph.

Duties of Ohio Attorney General and Department of Public Safety

The bill requires the OAG by rule to prescribe the forms to be used for keeping the records and making the reports required under the bill and for the signs and notices the bill requires to be posted at gun shows and in gun show parking areas. If the USAG adopts forms to be used for keeping similar records and making similar reports that may be required under federal law, the OAG must prescribe those forms to be used for keeping the records and making the reports required under the bill.

The bill requires the Department of Public Safety to prescribe the form that a gun show promoter is required to use to apply for a permit to be issued by sheriffs to gun show promoters authorizing the operation of a gun show, and the form for a permit to

be issued by sheriffs to gun show promoters under the bill authorizing the operation of a gun show.²⁴

Firearms transfers exempt from the bill's prohibitions

The bill's prohibitions regarding the transfer of a firearm at a gun show by a person who is an unlicensed transferor to an unlicensed transferee, regarding the acquisition of a firearm at a gun show by an unlicensed transferee from an unlicensed transferor, and regarding gun show operation do not apply to any transfer of a firearm between an unlicensed transferor and an unlicensed transferee, unless the transfer is prohibited by any other provision of law, if any of the following apply with respect to the transfer:²⁵

- It is a *bona fide* gift between immediate family members, including spouses, parents, children, siblings, grandparents, and grandchildren.
- It is approved by the U.S. Attorney General under § 5812 of the Internal Revenue Code.
- 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 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 a person 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

²⁴ R.C. 2923.27(E)(1) and (2).

²⁵ R.C. 2923.27(G).



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 a law enforcement representative described in the second preceding paragraph 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.

Incompetency database

The bill expands the authorized use of a database the OAG currently maintains (see below) regarding certain findings regarding an individual's mental health. Currently, the database may be used only for purposes of conducting incompetency records checks for a sheriff who is conducting a records check with respect to an application for a license to carry a concealed handgun. The bill also authorizes the use of the database for purposes of conducting incompetency records checks upon request of a federally licensed firearms dealer or point of contact agency that is conducting a background check with respect to a transfer of a firearm at a gun show by an unlicensed transferor to an unlicensed transferee. The bill requires that records checks so requested by a federally licensed firearms dealer or point of contact agency must be conducted, and results of the checks must be provided, immediately upon receipt of the request.

Under existing law, unchanged by the bill, notwithstanding any provision of the Revised Code to the contrary, if 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 is required to notify the office of the OAG, on a form prescribed by the OAG, of the identity of the individual. The notification must be transmitted by the judge or the chief clinical officer not later than seven days after the adjudication or commitment. The office of the OAG is required to compile and maintain the notices it receives, and the notices may be used only as described in the preceding paragraph (expanded under the bill).²⁶

²⁶ R.C. 5122.311.

Definitions

The bill defines the following terms that apply to its provisions:²⁷

A "**federally licensed firearms dealer**" is an importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal "Gun Control Act of 1968," and any amendments or additions to that Act or reenactments of that Act (by reference to R.C. 5502.63, which is not in the bill).

A "**gun show**" is the entire premises provided for an event or function, including all parking areas for the event or function, that is sponsored to facilitate, in whole or in part, the purchase, transfer, offer for transfer, or collection of firearms and at which either or both of the following occurs: (1) 25 or more firearms are exhibited or offered for transfer, or (2) not less than three gun show vendors exhibit, transfer, or offer for transfer firearms.

A "**gun show promoter**" is a person who organizes or operates a gun show.

A "**gun show vendor**" is any person who exhibits, transfers, or offers for transfer any firearm at an event or function that is sponsored to facilitate any conduct of that nature, regardless of whether the person arranges with a gun show promoter for a fixed location from which to engage in that conduct.

A "**law enforcement agency with jurisdiction over the show**" is the sheriff with jurisdiction over the place at which a gun show is conducted and, for a gun show that is conducted in a municipal corporation, the law enforcement agency of that municipal corporation.

A "**point of contact agency**" with respect to a particular gun show is either of the following with jurisdiction over the place at which the gun show is conducted: (1) the sheriff with jurisdiction over the place at which the gun show is conducted, or (2) if the gun show is conducted in a municipal corporation, the law enforcement agency of that municipal corporation.

A "**transfer**" is any sale, exchange, trade, barter, or other type of transfer.

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.

²⁷ R.C. 2923.27(A).

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.

Background

Prohibited transfers under federal law

Currently, the federal Brady Act 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:²⁸

(1) Before completion of the transfer, the licensed dealer, manufacturer, or importer contacts the NICBC System administered by the USAG (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.

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



The first 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" (a defined term under 18 U.S.C. § 921(a)(20), not in the bill) to receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.²⁹

The second 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:³⁰

(1) Has been convicted in a court of a "crime punishable by imprisonment for a term exceeding one year" (a defined term under 18 U.S.C. § 921(a)(20), not in the bill);

(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 defined term under 18 U.S.C. § 921(a)(33), not in the bill).

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

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



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