

INITIATIVE PETITION

To the Attorney General of Ohio: Pursuant to Ohio Revised Code § 3519.01(A), the undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to you the full text of a proposed law and a summary of the same.

TITLE

An Act to Close Loopholes in Background Checks on Gun Sales

SUMMARY

The Act would enact Section 2923.26 of the Ohio Revised Code to require that sales and transfers of firearms in the State of Ohio between persons who are not federally licensed firearms dealers be conducted by a federally licensed firearms dealer and that sales or transfers of firearms between persons who are not federally licensed firearms dealers be conditioned on the person receiving the firearm being subjected to a background check by a federally licensed firearms dealer pursuant to federal law. The Act exempts from its provisions the following sales and transfers, as set forth more fully in the Act:

- Firearms given as a gift between family members;
- Temporary transfers to prevent death or physical injury;
- Transfers to and from a licensed gunsmith for the purpose of repair or maintenance;
- Sales and transfers of antique firearms, curios, and relics, as defined under federal law;
- Temporary transfers for the purpose of hunting, firearms safety classes, use at a shooting range, use at a shooting competition, or transfers of less than 24 hours when the transferee is continuously in the presence of the transferor;
- Sales or transfers to federally licensed firearms manufacturers, law enforcement, licensed security guards, active-duty members of the military, and persons who hold an Ohio concealed handgun license;
- Transfers explicitly authorized on behalf of a law enforcement agency;
- Transfers by operation of law upon the death of the owner of a firearm;
- Transfers pursuant to Ohio Revised Code 2923.123(C)(6), which permits certain individuals to enter a courthouse with a firearm so long as the firearm is transferred to the officer in charge of the courthouse.

Among other provisions, the Act also:

- Provides criminal penalties for persons who sell, buy, transfer, or receive a firearm in violation of the Act.
- Permits firearms dealers to charge a reasonable fee for conducting sales or transfers under the Act.
- Provides that no firearms dealer is required to conduct a sale or transfer by the Act.
- Requires firearms dealers to maintain records as required by state or federal law.
- Provides that if any provision of the Act is held to be invalid, the remaining provisions shall remain in effect.
- Provides that in the event that the Act and another law are adopted by the voters at the same election and contain conflicting provisions and the Act received less votes, the non-conflicting provisions of the Act shall take effect.

FULL TEXT OF LAW

Be it Enacted by the People of the State of Ohio that the following section is added to Title XXIX of the Revised Code:

Sec. 2923.26 Sales and transfers of firearms.

(A) As used in this section:

- (1) “Firearm” has the same meaning as in section 2923.11 of the Revised Code.
- (2) “Firearms dealer” has the same meaning as “federally licensed firearms dealer” in section 5502.63 of the Revised Code.
- (3) “Valid concealed handgun license” has the same meaning as in section 2923.11 of the Revised Code.

(B) No sale or transfer of a firearm or firearms shall take place in the state of Ohio, including but not limited to, sales and transfers at gun shows and sales and transfers initiated online, except as provided in this section.

(C) Except as provided in division (H) of this section, no person shall sell or transfer a firearm and no person shall purchase or receive a firearm unless:

- (1) The seller or transferor is a firearms dealer, acting in their capacity as a firearms dealer and is selling or transferring a firearm from their business inventory;
- (2) The purchaser or transferee is a firearms dealer, acting in their capacity as a firearms dealer; or
- (3) The purchase or transfer is facilitated by a firearms dealer and the transaction is conducted in accordance with division (D) of this section.

(D) When neither the seller or transferor nor the buyer or transferee of a firearm is a firearms dealer, the sale or transfer shall be conducted as follows:

- (1) The seller or transferor shall deliver the firearm to a firearms dealer to conduct the sale or transfer. The seller or transferor shall not be required to relinquish possession of the firearm prior to the background check. If the seller or transferor maintains possession of the firearm they shall deliver the firearm to the firearms dealer prior to completing the sale or transfer after the requirements of subdivision (D)(2) have been met.

- (2) The firearms dealer shall comply with all requirements of federal and state law that would apply if the firearms dealer were selling or transferring the firearm from their inventory, including but not limited to conducting a background check on the purchaser or transferee in accordance with federal law and complying with all federal and state recordkeeping requirements.
 - (3) The buyer or transferee must complete, sign, and submit to the firearms dealer all legally required forms for the firearms dealer to conduct a background check.
 - (4) If the results of the background check indicate that the purchaser or transferee is ineligible to possess a firearm, and the firearms dealer has possession of the firearm, the firearms dealer shall return the firearm to the seller or transferor and the seller or transferor may not then complete the sale or transfer to the buyer or transferee.
- (E) The firearms dealer may charge a fee that reflects the fair market value of the administrative costs and effort incurred by the firearms dealer for complying with the requirements of division (D) of this section.
- (F) No firearms dealer shall be required by this section to facilitate the transfer of firearms between private individuals who are not firearms dealers.
- (G) Firearms dealers shall maintain records of completed sales and transfers and records of all background checks conducted under this section for the period of time required by federal or state law, whichever is longer. No records required to be kept by this section shall be considered public records unless otherwise provided by law.
- (H) This section does not apply to the following sales or transfers of firearms:
- (1) A transfer that is a bona fide gift between spouses, between domestic partners, between parents and their children, between siblings, between grandparents and their grandchildren, between parents and children in law, between aunts and uncles and their nieces and nephews, inclusive of family relationships by birth, step-relation, and adoption;
 - (2) A transfer for the purpose of preventing death, suicide, or imminent physical injury, provided that the transfer lasts only as long as necessary to prevent death or physical injury;
 - (3) A transfer to a federally licensed gunsmith for the purpose of repair or maintenance of the firearm and the return of the firearm to its owner by the federally licensed gunsmith;

- (4) A sale or transfer of an antique firearm, or a curio or relic, as defined under federal law;
- (5) A temporary transfer under the following circumstances, provided that the transfer is for an otherwise legal purpose and the transferee is not, to the knowledge of the transferor, prohibited from possessing firearms:
 - (a) A transfer for less than 24 hours while the transferor is continuously in the presence of the transferee;
 - (b) A transfer exclusively for the purpose of hunting, provided that the transferee is legally permitted to hunt with the firearm in question in the location where the transferee will use the firearm;
 - (c) A transfer exclusively for use during firearms training and safety classes conducted in accordance with Ohio law;
 - (d) A transfer exclusively for use at a shooting range operated in accordance with Ohio law;
 - (e) A transfer exclusively for use at a firearm shooting competition conducted under the auspices of a state agency or nonprofit organization and conducted in accordance with state and federal law.
- (6) A sale or transfer to one of the following:
 - (a) A federally licensed firearms manufacturer;
 - (b) A law enforcement agency or law enforcement personnel authorized by law to possess a firearm in the course of and acting within the scope of their employment or official duties;
 - (c) A state-licensed security guard authorized by law to possess a firearm in the course of and acting within the scope of their employment or official duties;
 - (d) An active-duty member of the United States armed forces or Ohio National Guard acting within the scope of their official duties;
 - (e) A person who holds a valid concealed handgun license issued pursuant to Ohio law provided that the issuance of said license required the license holder to pass a criminal background check;
- (7) A transfer in which the transferor is explicitly authorized to transfer the firearm on behalf of a law enforcement agency;

(8) A transfer by operation of law upon the death of the former owner of the firearm;

(9) A transfer pursuant to section 2923.123(C)(6) of the Revised Code.

(I) Penalties

(1) Any person who sells or transfers a firearm in violation of this section is guilty of illegal transfer of a firearm.

(2) Any person who purchases or receives a firearm in violation of this section is guilty of illegal transfer of a firearm.

(3) The penalty for illegal transfer of a firearm shall be as follows:

(a) For a first violation, a misdemeanor of the fourth degree with either a jail term of up to thirty days or a fine of up to two hundred fifty dollars, or both;

(b) For a second conviction of illegal transfer of a firearm, a misdemeanor of the second degree with either a jail term of up to ninety days or a fine of up to seven hundred fifty dollars, or both;

(c) For a conviction of illegal transfer of a firearm with two or more previous convictions for illegal transfer of a firearm, a felony of the fifth degree with either a jail term of between six and twelve months or a fine of up to two thousand five hundred dollars, or both.

(J) If any provision of this section, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provision and parts of this section are severable. If this section and another law are approved by the voters at the same election with one or more conflicting provisions and this section receives fewer votes, the non-conflicting provisions of this section shall go into effect.