

By: Ramos

H.B. No. 1141

A BILL TO BE ENTITLED

AN ACT

relating to requiring a person convicted of an offense involving family violence or a person who is the subject of a protective order to surrender firearms owned by the person; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. SURRENDER OF FIREARM ON CONVICTION OF CERTAIN FAMILY VIOLENCE OFFENSES OR ISSUANCE OF CERTAIN PROTECTIVE ORDERS

Art. 68.001. APPLICABILITY. This chapter applies to a person who:

(1) is convicted of an offense involving family violence, as defined by Section 71.004, Family Code; or

(2) is the subject of:

(A) a protective order under Chapter 85, Family Code, or Subchapter A, Chapter 7B of this code; or

(B) a magistrate's order for emergency protection under Article 17.292.

Art. 68.002. NOTICE AND ORDER TO SURRENDER FIREARM. On conviction of a person for an offense described by Article 68.001(1) or issuance of an order described by Article 68.001(2), the court shall:

(1) provide written notice to the person who was convicted or who is the subject of the order that the person is

1 prohibited from acquiring, possessing, or controlling a firearm  
2 under 18 U.S.C. Section 922(g); and

3 (2) order the person to surrender all firearms the  
4 person owns in the manner provided by Article 68.003:

5 (A) if the person receives notice under this  
6 article, within the period provided by the notice for the surrender  
7 of the firearms, which may not be more than 48 hours after the  
8 receipt of the notice; or

9 (B) if the person was taken into custody  
10 immediately after conviction, not later than 48 hours after the  
11 person is released from confinement.

12 Art. 68.003. SURRENDER OF FIREARM. A person required to  
13 surrender a firearm under Article 68.002 shall surrender the  
14 firearm by:

15 (1) selling the firearm to a person who is a licensed  
16 firearms dealer under 18 U.S.C. Section 923;

17 (2) surrendering the firearm to a law enforcement  
18 agency for holding in the manner described by Article 68.006, if the  
19 person is required to surrender the firearm based on:

20 (A) a conviction described by Article 68.001(1)  
21 that the person intends to appeal; or

22 (B) an order described by Article 68.001(2); or

23 (3) surrendering the firearm to a law enforcement  
24 agency for disposition in the manner provided by Article 68.007, if  
25 the person is required to surrender the firearm based on a  
26 conviction described by Article 68.001(1) that the person does not  
27 intend to appeal.

1       Art. 68.004. REQUIRED DOCUMENTATION. (a) A person subject  
2 to an order under Article 68.002 who does not own a firearm shall  
3 submit to the court a signed affidavit affirming that the person  
4 does not own a firearm.

5       (b) A licensed firearms dealer who takes possession of a  
6 firearm from a person required to surrender the firearm under  
7 Article 68.002 shall immediately provide the person with a written  
8 receipt for the firearm, and the person shall file the receipt with  
9 the court.

10       Art. 68.005. LAW ENFORCEMENT AGENCY POLICY REGARDING  
11 SURRENDER OF FIREARM; FEE. (a) A law enforcement agency that takes  
12 possession of surrendered firearms under this chapter shall develop  
13 any necessary forms, policies, and procedures for collecting and  
14 storing and for returning, selling, or destroying the firearms.

15       (b) The law enforcement agency may impose a reasonable fee  
16 for storing a firearm surrendered under this chapter.

17       Art. 68.006. HOLDING OF FIREARM SURRENDERED TO LAW  
18 ENFORCEMENT AGENCY. (a) A law enforcement agency that takes  
19 possession of a firearm under Article 68.003(2) shall immediately  
20 provide the person surrendering the firearm a written receipt for  
21 the firearm and a written notice of the procedure for the return of  
22 the firearm under this article, including any applicable fees due  
23 on return of the firearm.

24       (b) A person who receives a receipt under Subsection (a)  
25 shall file the receipt with the court.

26       (c) Not later than the 30th day after the date of any of the  
27 following, the clerk of the court shall notify the law enforcement

1 agency that, as applicable:

2 (1) the conviction for which the person was required  
3 to surrender the person's firearm became final;

4 (2) the conviction for which the person was required  
5 to surrender the person's firearm was vacated, dismissed, reversed  
6 on appeal, or otherwise fully discharged or the person received a  
7 full pardon for the conviction; or

8 (3) the order for which the person was required to  
9 surrender the person's firearm has expired or has been rescinded.

10 (d) Not later than the 30th day after the date the law  
11 enforcement agency holding a firearm subject to disposition under  
12 this article receives the notice described by Subsection (c)(2) or  
13 (3), the law enforcement agency shall conduct a check of state and  
14 national criminal history record information to verify whether the  
15 person may lawfully possess a firearm under 18 U.S.C. Section  
16 922(g) and under the law of this state.

17 (e) If the check conducted under Subsection (d) verifies  
18 that the person may lawfully possess a firearm, the law enforcement  
19 agency shall provide to the person by certified mail written notice  
20 stating that the firearm may be returned to the person if, before  
21 the 121st day after the date of the notice, the person submits:

22 (1) a written request for the return of the firearm;  
23 and

24 (2) a reasonable fee for storing the firearm in the  
25 amount set by the law enforcement agency holding the firearm.

26 (f) If the law enforcement agency receives notice under  
27 Subsection (c)(1) or if the check conducted under Subsection (d)

1 shows that the person may not lawfully possess a firearm, the law  
2 enforcement agency shall provide to the person by certified mail  
3 written notice stating that:

4 (1) the person may not lawfully possess a firearm  
5 under 18 U.S.C. Section 922(g) or under the law of this state; and

6 (2) the law enforcement agency holding the firearm  
7 will dispose of the firearm in the manner provided by Article  
8 68.007.

9 Art. 68.007. DISPOSITION OF FIREARM SURRENDERED TO LAW  
10 ENFORCEMENT AGENCY. (a) A law enforcement agency shall provide for  
11 a firearm surrendered to the law enforcement agency under this  
12 chapter to be sold by a person who is a licensed firearms dealer  
13 under 18 U.S.C. Section 923 if:

14 (1) the person surrendered the firearm under Article  
15 68.003(2) and:

16 (A) the person did not respond to notice under  
17 Article 68.006(e) before the 121st day after the date of the notice;  
18 or

19 (B) the law enforcement agency has provided  
20 notice under Article 68.006(f) that the person may not lawfully  
21 possess a firearm and that the law enforcement agency intends to  
22 dispose of the firearm as provided by this article; or

23 (2) the person surrendered the firearm under Article  
24 68.003(3).

25 (b) The proceeds from the sale of a firearm under this  
26 article shall be paid to the owner of the firearm, less:

27 (1) the cost of administering this article with

1 respect to the firearm; and

2 (2) if applicable, a reasonable fee for storing the  
3 firearm under Article 68.006 in the amount set by the law  
4 enforcement agency holding the firearm.

5 (c) An unclaimed firearm that is surrendered as provided by  
6 this chapter may not be destroyed or forfeited to the state.

7 Art. 68.008. FORM OF AFFIDAVIT. The Office of Court  
8 Administration of the Texas Judicial System shall adopt a model  
9 affidavit for purposes of Article 68.004.

10 SECTION 2. Article 7B.006(a), Code of Criminal Procedure,  
11 is amended to read as follows:

12 (a) Each protective order issued under this subchapter,  
13 including a temporary ex parte order, must contain the following  
14 prominently displayed statements in boldfaced type, in capital  
15 letters, or underlined:

16 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR  
17 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN  
18 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

19 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS  
20 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY  
21 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS  
22 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT  
23 UNLESS A COURT CHANGES THE ORDER."

24 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS  
25 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT  
26 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL  
27 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A

1 FIREARM OR AMMUNITION. A PERSON SUBJECT TO THIS ORDER MUST DISPOSE  
2 OF OR SURRENDER ANY FIREARMS IN THE PERSON'S POSSESSION AS PROVIDED  
3 BY CHAPTER 68, CODE OF CRIMINAL PROCEDURE."

4 SECTION 3. Article 17.292(g), Code of Criminal Procedure,  
5 is amended to read as follows:

6 (g) An order for emergency protection issued under this  
7 article must contain the following statements printed in bold-face  
8 type or in capital letters:

9 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED  
10 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY  
11 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT  
12 RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE  
13 MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A  
14 VIOLATION OF THIS ORDER. IF THE ACT IS PROSECUTED AS A SEPARATE  
15 FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT  
16 LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER  
17 THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE,  
18 ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE  
19 OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS  
20 ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY  
21 CONFINEMENT OR IMPRISONMENT. A PERSON SUBJECT TO THIS ORDER MUST  
22 DISPOSE OF OR SURRENDER ANY FIREARMS IN THE PERSON'S POSSESSION AS  
23 PROVIDED BY CHAPTER 68, CODE OF CRIMINAL PROCEDURE."

24 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS  
25 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY  
26 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS  
27 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT

1 UNLESS A COURT CHANGES THE ORDER."

2 SECTION 4. Section 85.026(a), Family Code, is amended to  
3 read as follows:

4 (a) Each protective order issued under this subtitle,  
5 including a temporary ex parte order, must contain the following  
6 prominently displayed statements in boldfaced type, capital  
7 letters, or underlined:

8 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR  
9 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN  
10 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

11 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS  
12 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY  
13 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS  
14 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT  
15 UNLESS A COURT CHANGES THE ORDER."

16 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS  
17 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT  
18 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL  
19 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A  
20 FIREARM OR AMMUNITION. A PERSON SUBJECT TO THIS ORDER MUST DISPOSE  
21 OF OR SURRENDER ANY FIREARMS IN THE PERSON'S POSSESSION AS PROVIDED  
22 BY CHAPTER 68, CODE OF CRIMINAL PROCEDURE."

23 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED  
24 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY  
25 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT  
26 RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE  
27 MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A



1 SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON  
2 FOR AT LEAST TWO YEARS."

3 SECTION 5. (a) Chapter 68, Code of Criminal Procedure, as  
4 added by this Act, applies only to a person who is convicted of an  
5 offense described by Article 68.001(1), Code of Criminal Procedure,  
6 as added by this Act, on or after January 1, 2022, or who is the  
7 subject of an order described by Article 68.001(2), Code of  
8 Criminal Procedure, as added by this Act, that is issued on or after  
9 that date. A person who is convicted of an offense before January  
10 1, 2022, or who is the subject of an order issued before that date is  
11 governed by the law in effect immediately before the effective date  
12 of this Act, and the former law is continued in effect for that  
13 purpose.

14 (b) The Office of Court Administration of the Texas Judicial  
15 System shall adopt the model affidavit required by Article 68.008,  
16 Code of Criminal Procedure, as added by this Act, not later than  
17 December 1, 2021.

18 SECTION 6. The change in law made by this Act relating to  
19 the contents of a protective order or a magistrate's order for  
20 emergency protection applies to an order issued on or after January  
21 1, 2022. An order issued before that date is governed by the law as  
22 it existed immediately before the effective date of this Act, and  
23 the former law is continued in effect for that purpose.

24 SECTION 7. This Act takes effect September 1, 2021.