

By: Ortega

H.B. No. 1623

A BILL TO BE ENTITLED

AN ACT

relating to creating a criminal offense for the unlawful possession or transfer of certain semiautomatic rifles.

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

SECTION 1. Chapter 46, Penal Code, is amended by adding Section 46.055 to read as follows:

Sec. 46.055. UNLAWFUL POSSESSION OR TRANSFER OF CERTAIN SEMIAUTOMATIC RIFLES. (a) This section applies only to a semiautomatic rifle that is capable of accepting a detachable magazine and that has a caliber greater than .22.

(b) A person commits an offense if the person knowingly:

(1) possesses a semiautomatic rifle; or

(2) sells, offers to sell, or otherwise transfers a semiautomatic rifle.

(c) An offense under this section is a Class A misdemeanor.

(d) It is a defense to prosecution under this section that the actor engaged in the conduct while engaged in the actual discharge of official duties, or directly en route to or from the person's place of assignment, as:

(1) a peace officer; or

(2) a member of the armed forces or state military forces as defined by Section 431.001, Government Code.

(e) It is a defense to prosecution under Subsection (b)(1) that the actor lawfully possessed the semiautomatic rifle on August

1 31, 2023.

2 (f) If conduct that constitutes an offense under this
3 section also constitutes an offense under any other law, the actor
4 may be prosecuted under this section, the other law, or both.

5 SECTION 2. Section 5.141(a), Alcoholic Beverage Code, is
6 amended to read as follows:

7 (a) A commissioned inspector or representative of the
8 commission may purchase for an amount set by the commission, not to
9 exceed fair market value, a firearm issued to the inspector or
10 representative by the commission if:

11 (1) the firearm is not:

12 (A) listed as a prohibited weapon under Section
13 46.05, Penal Code; or

14 (B) a semiautomatic rifle described by Section
15 46.055(a), Penal Code; [7] and

16 (2) [if] the firearm is retired by the commission for
17 replacement purposes.

18 SECTION 3. Article 15.27(h), Code of Criminal Procedure, is
19 amended to read as follows:

20 (h) This article applies to any felony offense and the
21 following misdemeanors:

22 (1) an offense under Section 20.02, 21.08, 22.01,
23 22.05, 22.07, or 71.02, Penal Code;

24 (2) the unlawful use, sale, or possession of a
25 controlled substance, drug paraphernalia, or marihuana, as defined
26 by Chapter 481, Health and Safety Code; or

27 (3) the unlawful possession of any of the weapons or

1 devices listed in Sections 46.01(1)-(14) or Section 46.01(16)
2 [~~46.01(16)~~], Penal Code, ~~or~~ a weapon listed as a prohibited weapon
3 under Section 46.05, Penal Code, or a semiautomatic rifle described
4 by Section 46.055(a), Penal Code.

5 SECTION 4. The heading to Article 18.18, Code of Criminal
6 Procedure, is amended to read as follows:

7 Art. 18.18. DISPOSITION OF GAMBLING PARAPHERNALIA,
8 PROHIBITED WEAPON, SEMIAUTOMATIC RIFLE, CRIMINAL INSTRUMENT, AND
9 OTHER CONTRABAND.

10 SECTION 5. Articles 18.18(a), (b), (e), (f), and (g), Code
11 of Criminal Procedure, are amended to read as follows:

12 (a) Following the final conviction of a person for
13 possession of a gambling device or equipment, altered gambling
14 equipment, or gambling paraphernalia, for an offense involving a
15 criminal instrument, for an offense involving an obscene device or
16 material, for an offense involving child pornography, or for an
17 offense involving a scanning device or re-encoder, the court
18 entering the judgment of conviction shall order that the machine,
19 device, gambling equipment or gambling paraphernalia, instrument,
20 obscene device or material, child pornography, or scanning device
21 or re-encoder be destroyed or forfeited to the state. Not later than
22 the 30th day after the final conviction of a person for an offense
23 involving a prohibited weapon or semiautomatic rifle, the court
24 entering the judgment of conviction on its own motion, on the motion
25 of the prosecuting attorney in the case, or on the motion of the law
26 enforcement agency initiating the complaint on notice to the
27 prosecuting attorney in the case if the prosecutor fails to move for

1 the order shall order that the prohibited weapon or semiautomatic
2 rifle be destroyed or forfeited to the law enforcement agency that
3 initiated the complaint. If the court fails to enter the order
4 within the time required by this subsection, any magistrate in the
5 county in which the offense occurred may enter the order. Following
6 the final conviction of a person for an offense involving dog
7 fighting, the court entering the judgment of conviction shall order
8 that any dog-fighting equipment be destroyed or forfeited to the
9 state. Destruction of dogs, if necessary, must be carried out by a
10 veterinarian licensed in this state or, if one is not available, by
11 trained personnel of a humane society or an animal shelter. If
12 forfeited, the court shall order the contraband delivered to the
13 state, any political subdivision of the state, or to any state
14 institution or agency. If gambling proceeds were seized, the court
15 shall order them forfeited to the state and shall transmit them to
16 the grand jury of the county in which they were seized for use in
17 investigating alleged violations of the Penal Code, or to the
18 state, any political subdivision of the state, or to any state
19 institution or agency.

20 (b) If there is no prosecution or conviction following
21 seizure, the magistrate to whom the return was made shall notify in
22 writing the person found in possession of the alleged gambling
23 device or equipment, altered gambling equipment or gambling
24 paraphernalia, gambling proceeds, prohibited weapon, semiautomatic
25 rifle, obscene device or material, child pornography, scanning
26 device or re-encoder, criminal instrument, or dog-fighting
27 equipment to show cause why the property seized should not be

1 destroyed or the proceeds forfeited. The magistrate, on the motion
2 of the law enforcement agency seizing a prohibited weapon or a
3 semiautomatic rifle, shall order the weapon destroyed or forfeited
4 to the law enforcement agency seizing the weapon, unless a person
5 shows cause as to why the prohibited weapon or semiautomatic rifle
6 should not be destroyed or forfeited. A law enforcement agency
7 shall make a motion under this section in a timely manner after the
8 time at which the agency is informed in writing by the attorney
9 representing the state that no prosecution will arise from the
10 seizure.

11 (e) Any person interested in the alleged gambling device or
12 equipment, altered gambling equipment or gambling paraphernalia,
13 gambling proceeds, prohibited weapon, semiautomatic rifle, obscene
14 device or material, child pornography, scanning device or
15 re-encoder, criminal instrument, or dog-fighting equipment seized
16 must appear before the magistrate on the 20th day following the date
17 the notice was mailed or posted. Failure to timely appear forfeits
18 any interest the person may have in the property or proceeds seized,
19 and no person after failing to timely appear may contest
20 destruction or forfeiture.

21 (f) If a person timely appears to show cause why the
22 property or proceeds should not be destroyed or forfeited, the
23 magistrate shall conduct a hearing on the issue and determine the
24 nature of property or proceeds and the person's interest therein.
25 Unless the person proves by a preponderance of the evidence that the
26 property or proceeds is not gambling equipment, altered gambling
27 equipment, gambling paraphernalia, gambling device, gambling

1 proceeds, prohibited weapon, semiautomatic rifle, obscene device
2 or material, child pornography, criminal instrument, scanning
3 device or re-encoder, or dog-fighting equipment and that he is
4 entitled to possession, the magistrate shall dispose of the
5 property or proceeds in accordance with Paragraph (a) of this
6 article.

7 (g) For purposes of this article:

8 (1) "criminal instrument" has the meaning defined in
9 the Penal Code;

10 (2) "gambling device or equipment, altered gambling
11 equipment or gambling paraphernalia" has the meaning defined in the
12 Penal Code;

13 (3) "prohibited weapon" has the meaning defined in the
14 Penal Code;

15 (4) "dog-fighting equipment" means:

16 (A) equipment used for training or handling a
17 fighting dog, including a harness, treadmill, cage, decoy, pen,
18 house for keeping a fighting dog, feeding apparatus, or training
19 pen;

20 (B) equipment used for transporting a fighting
21 dog, including any automobile, or other vehicle, and its
22 appurtenances which are intended to be used as a vehicle for
23 transporting a fighting dog;

24 (C) equipment used to promote or advertise an
25 exhibition of dog fighting, including a printing press or similar
26 equipment, paper, ink, or photography equipment; or

27 (D) a dog trained, being trained, or intended to

1 be used to fight with another dog;

2 (5) "obscene device" and "obscene" have the meanings
3 assigned by Section 43.21, Penal Code;

4 (6) "re-encoder" has the meaning assigned by Section
5 522.001, Business & Commerce Code;

6 (7) "scanning device" has the meaning assigned by
7 Section 522.001, Business & Commerce Code; ~~and~~

8 (8) "obscene material" and "child pornography"
9 include digital images and the media and equipment on which those
10 images are stored; and

11 (9) "semiautomatic rifle" means a semiautomatic rifle
12 described by Section 46.055(a), Penal Code.

13 SECTION 6. Articles 18.19(a) and (d), Code of Criminal
14 Procedure, are amended to read as follows:

15 (a) Weapons seized in connection with an offense involving
16 the use of a weapon or an offense under Penal Code Chapter 46 shall
17 be held by the law enforcement agency making the seizure, subject to
18 the following provisions, unless:

19 (1) the weapon is a prohibited weapon identified in
20 Penal Code Chapter 46, or a semiautomatic rifle described by
21 Section 46.055(a), Penal Code, in which event Article 18.18 of this
22 code applies; or

23 (2) the weapon is alleged to be stolen property, in
24 which event Chapter 47 of this code applies.

25 (d) A person either convicted or receiving deferred
26 adjudication under Chapter 46, Penal Code, is entitled to the
27 weapon seized upon request to the court in which the person was

1 convicted or placed on deferred adjudication. However, the court
2 entering the judgment shall order the weapon destroyed, sold at
3 public sale by the law enforcement agency holding the weapon or by
4 an auctioneer licensed under Chapter 1802, Occupations Code, or
5 forfeited to the state for use by the law enforcement agency holding
6 the weapon or by a county forensic laboratory designated by the
7 court if:

8 (1) the person does not request the weapon before the
9 61st day after the date of the judgment of conviction or the order
10 placing the person on deferred adjudication;

11 (2) the person has been previously convicted under
12 Chapter 46, Penal Code;

13 (3) the weapon is one defined as a prohibited weapon
14 under Chapter 46, Penal Code, or a semiautomatic rifle described by
15 Section 46.055(a), Penal Code;

16 (4) the offense for which the person is convicted or
17 receives deferred adjudication was committed in or on the premises
18 of a playground, school, video arcade facility, or youth center, as
19 those terms are defined by Section 481.134, Health and Safety Code;
20 or

21 (5) the court determines based on the prior criminal
22 history of the defendant or based on the circumstances surrounding
23 the commission of the offense that possession of the seized weapon
24 would pose a threat to the community or one or more individuals.

25 SECTION 7. Section 37.005(c), Education Code, is amended to
26 read as follows:

27 (c) A student who is enrolled in a grade level below grade

1 three may not be placed in out-of-school suspension unless while on
2 school property or while attending a school-sponsored or
3 school-related activity on or off of school property, the student
4 engages in:

5 (1) conduct that contains the elements of an offense
6 related to weapons under Section 46.02, [~~or~~] 46.05, or 46.055,
7 Penal Code;

8 (2) conduct that contains the elements of a violent
9 offense under Section 22.01, 22.011, 22.02, or 22.021, Penal Code;
10 or

11 (3) selling, giving, or delivering to another person
12 or possessing, using, or being under the influence of any amount of:

13 (A) marihuana or a controlled substance, as
14 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
15 Section 801 et seq.;

16 (B) a dangerous drug, as defined by Chapter 483,
17 Health and Safety Code; or

18 (C) an alcoholic beverage, as defined by Section
19 1.04, Alcoholic Beverage Code.

20 SECTION 8. Section 37.007(a), Education Code, is amended to
21 read as follows:

22 (a) Except as provided by Subsection (k), a student shall be
23 expelled from a school if the student, on school property or while
24 attending a school-sponsored or school-related activity on or off
25 of school property:

26 (1) engages in conduct that contains the elements of
27 the offense of unlawfully carrying weapons under Section 46.02,

1 Penal Code, ~~[or]~~ elements of an offense relating to prohibited
2 weapons under Section 46.05, Penal Code, or elements of an offense
3 relating to semiautomatic rifles under Section 46.055, Penal Code;

4 (2) engages in conduct that contains the elements of
5 the offense of:

6 (A) aggravated assault under Section 22.02,
7 Penal Code, sexual assault under Section 22.011, Penal Code, or
8 aggravated sexual assault under Section 22.021, Penal Code;

9 (B) arson under Section 28.02, Penal Code;

10 (C) murder under Section 19.02, Penal Code,
11 capital murder under Section 19.03, Penal Code, or criminal
12 attempt, under Section 15.01, Penal Code, to commit murder or
13 capital murder;

14 (D) indecency with a child under Section 21.11,
15 Penal Code;

16 (E) aggravated kidnapping under Section 20.04,
17 Penal Code;

18 (F) aggravated robbery under Section 29.03,
19 Penal Code;

20 (G) manslaughter under Section 19.04, Penal
21 Code;

22 (H) criminally negligent homicide under Section
23 19.05, Penal Code; or

24 (I) continuous sexual abuse of young child or
25 disabled individual under Section 21.02, Penal Code; or

26 (3) engages in conduct specified by Section
27 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

1 SECTION 9. Section 411.020(a), Government Code, is amended
2 to read as follows:

3 (a) A commissioned officer of the department may purchase
4 for an amount set by the department, not to exceed fair market
5 value, a firearm issued to the officer by the department if:

6 (1) the firearm is not:

7 (A) listed as a prohibited weapon under Section
8 46.05, Penal Code; or

9 (B) a semiautomatic rifle described by Section
10 46.055(a), Penal Code; [7] and

11 (2) [~~if~~] the firearm is retired by the department for
12 replacement purposes.

13 SECTION 10. Section 614.051(a), Government Code, is amended
14 to read as follows:

15 (a) An individual may purchase a firearm from a governmental
16 entity if:

17 (1) the individual was a peace officer commissioned by
18 the entity;

19 (2) the individual was honorably retired from the
20 individual's commission by the entity;

21 (3) the firearm had been previously issued to the
22 individual by the entity; and

23 (4) the firearm is not a prohibited weapon under
24 Section 46.05, Penal Code, or a semiautomatic rifle described by
25 Section 46.055(a), Penal Code.

26 SECTION 11. Section 614.052(a), Government Code, is amended
27 to read as follows:

1 (a) An individual listed under Subsection (b) may purchase a
2 firearm from a governmental entity if:

3 (1) the firearm had been previously issued by the
4 entity to a peace officer commissioned by the entity who died while
5 commissioned, without regard to whether the officer died while
6 discharging the officer's official duties; and

7 (2) the firearm is not a prohibited weapon under
8 Section 46.05, Penal Code, or a semiautomatic rifle described by
9 Section 46.055(a), Penal Code.

10 SECTION 12. Section 11.0193(a), Parks and Wildlife Code, is
11 amended to read as follows:

12 (a) An employee commissioned by the director as a peace
13 officer may purchase for an amount set by the department, not to
14 exceed fair market value, a firearm issued to the person by the
15 department if:

16 (1) the firearm is not:

17 (A) listed as a prohibited weapon under Section
18 46.05, Penal Code; or

19 (B) a semiautomatic rifle described by Section
20 46.055(a), Penal Code; and

21 (2) the firearm is retired by the department for
22 replacement purposes.

23 SECTION 13. Section 9.31(b), Penal Code, is amended to read
24 as follows:

25 (b) The use of force against another is not justified:

26 (1) in response to verbal provocation alone;

27 (2) to resist an arrest or search that the actor knows

1 is being made by a peace officer, or by a person acting in a peace
2 officer's presence and at his direction, even though the arrest or
3 search is unlawful, unless the resistance is justified under
4 Subsection (c);

5 (3) if the actor consented to the exact force used or
6 attempted by the other;

7 (4) if the actor provoked the other's use or attempted
8 use of unlawful force, unless:

9 (A) the actor abandons the encounter, or clearly
10 communicates to the other his intent to do so reasonably believing
11 he cannot safely abandon the encounter; and

12 (B) the other nevertheless continues or attempts
13 to use unlawful force against the actor; or

14 (5) if the actor sought an explanation from or
15 discussion with the other person concerning the actor's differences
16 with the other person while the actor was:

17 (A) carrying a weapon in violation of Section
18 [46.02](#); ~~[or]~~

19 (B) possessing or transporting a weapon in
20 violation of Section [46.05](#); or

21 (C) possessing a semiautomatic rifle in
22 violation of Section 46.055.

23 SECTION 14. This Act takes effect September 1, 2023.