

1-1 By: Naishtat, Rodriguez (Senate Sponsor - Ellis) H.B. No. 3352
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 4, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 15, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 15, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3352 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the collection, dissemination, and correction of
1-11 certain judicial determinations for a federal firearm background
1-12 check.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter D, Chapter 411, Government Code, is
1-15 amended by adding Sections 411.052 and 411.0521 to read as follows:

1-16 Sec. 411.052. FEDERAL FIREARM REPORTING. (a) In this
1-17 section, "federal prohibited person information" means information
1-18 that identifies an individual as:

1-19 (1) a person ordered by a court to receive inpatient
1-20 mental health services under Chapter 574, Health and Safety Code;

1-21 (2) a person acquitted in a criminal case by reason of
1-22 insanity or lack of mental responsibility, regardless of whether
1-23 the person is ordered by a court to receive inpatient treatment or
1-24 residential care under Chapter 46C, Code of Criminal Procedure;

1-25 (3) a person determined to have mental retardation and
1-26 committed by a court for long-term placement in a residential care
1-27 facility under Chapter 593, Health and Safety Code;

1-28 (4) an incapacitated adult individual for whom a court
1-29 has appointed a guardian of the individual under Chapter XIII,
1-30 Probate Code, based on the determination that the person lacks the
1-31 mental capacity to manage the person's affairs; or

1-32 (5) a person determined to be incompetent to stand
1-33 trial under Chapter 46B, Code of Criminal Procedure.

1-34 (b) The department by rule shall establish a procedure to
1-35 provide federal prohibited person information to the Federal Bureau
1-36 of Investigation for use with the National Instant Criminal
1-37 Background Check System. Except as otherwise provided by state
1-38 law, the department may disseminate federal prohibited person
1-39 information under this subsection only to the extent necessary to
1-40 allow the Federal Bureau of Investigation to collect and maintain a
1-41 list of persons who are prohibited under federal law from engaging
1-42 in certain activities with respect to a firearm.

1-43 (c) The department shall grant access to federal prohibited
1-44 person information to the person who is the subject of the
1-45 information.

1-46 (d) Federal prohibited person information maintained by the
1-47 department is confidential information for the use of the
1-48 department and, except as otherwise provided by this section and
1-49 other state law, may not be disseminated by the department.

1-50 (e) The department by rule shall establish a procedure to
1-51 correct department records and transmit those corrected records to
1-52 the Federal Bureau of Investigation when a person provides:

1-53 (1) a copy of a judicial order or finding that a person
1-54 is no longer an incapacitated adult or is entitled to relief from
1-55 disabilities under Section 574.088, Health and Safety Code; or

1-56 (2) proof that the person has obtained notice of
1-57 relief from disabilities under 18 U.S.C. Section 925.

1-58 Sec. 411.0521. REPORT TO DEPARTMENT CONCERNING CERTAIN
1-59 PERSONS' ACCESS TO FIREARMS. (a) The clerk of the court shall
1-60 prepare and forward to the department the information described by
1-61 Subsection (b) not later than the 30th day after the date the court:

1-62 (1) orders a person to receive inpatient mental health
1-63 services under Chapter 574, Health and Safety Code;

2-1 (2) acquits a person in a criminal case by reason of
2-2 insanity or lack of mental responsibility, regardless of whether
2-3 the person is ordered to receive inpatient treatment or residential
2-4 care under Chapter 46C, Code of Criminal Procedure;

2-5 (3) commits a person determined to have mental
2-6 retardation for long-term placement in a residential care facility
2-7 under Chapter 593, Health and Safety Code;

2-8 (4) appoints a guardian of the incapacitated adult
2-9 individual under Chapter XIII, Probate Code, based on the
2-10 determination that the person lacks the mental capacity to manage
2-11 the person's affairs;

2-12 (5) determines a person is incompetent to stand trial
2-13 under Chapter 46B, Code of Criminal Procedure; or

2-14 (6) finds a person is entitled to relief from
2-15 disabilities under Section 574.088, Health and Safety Code.

2-16 (b) The clerk of the court shall prepare and forward the
2-17 following information under Subsection (a):

2-18 (1) the complete name, race, and sex of the person;

2-19 (2) any known identifying number of the person,
2-20 including social security number, driver's license number, or state
2-21 identification number;

2-22 (3) the person's date of birth; and

2-23 (4) the federal prohibited person information that is
2-24 the basis of the report required by this section.

2-25 (c) If practicable, the clerk of the court shall forward to
2-26 the department the information described by Subsection (b) in an
2-27 electronic format prescribed by the department.

2-28 (d) If an order previously reported to the department under
2-29 Subsection (a) is reversed by order of any court, the clerk shall
2-30 notify the department of the reversal not later than 30 days after
2-31 the clerk receives the mandate from the appellate court.

2-32 (e) The duty of a clerk to prepare and forward information
2-33 under this section is not affected by:

2-34 (1) any subsequent appeal of the court order;

2-35 (2) any subsequent modification of the court order; or

2-36 (3) the expiration of the court order.

2-37 SECTION 2. Subchapter F, Chapter 574, Health and Safety
2-38 Code, is amended by adding Section 574.088 to read as follows:

2-39 Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH
2-40 CASES. (a) A person who is furloughed or discharged from
2-41 court-ordered mental health services may petition the court that
2-42 entered the commitment order for an order stating that the person
2-43 qualifies for relief from a firearms disability.

2-44 (b) In determining whether to grant relief, the court must
2-45 hear and consider evidence about:

2-46 (1) the circumstances that led to imposition of the
2-47 firearms disability under 18 U.S.C. Section 922(g)(4);

2-48 (2) the person's mental history;

2-49 (3) the person's criminal history; and

2-50 (4) the person's reputation.

2-51 (c) A court may not grant relief unless it makes and enters
2-52 in the record the following affirmative findings:

2-53 (1) the person is no longer likely to act in a manner
2-54 dangerous to public safety; and

2-55 (2) removing the person's disability to purchase a
2-56 firearm is in the public interest.

2-57 SECTION 3. Each clerk of the court shall prepare and forward
2-58 information for each order issued on or after September 1, 1989, to
2-59 the Department of Public Safety as required by Section 411.0521,
2-60 Government Code, as added by this Act. Not later than September 1,
2-61 2010, each clerk of the court shall prepare and forward information
2-62 for any court orders issued on or after September 1, 1989, and
2-63 before September 1, 2009.

2-64 SECTION 4. This Act takes effect September 1, 2009.

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