

By: Van de Putte

S.B. No. 94

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to restrictions on the use of a stun gun; providing certain  
3 criminal penalties and defenses to prosecution for persons who  
4 obtain a stun gun license.

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

6 SECTION 1. Section 46.01, Penal Code, is amended by adding  
7 Subdivision (17) to read as follows:

8 (17) "Stun gun" means a device that is intended,  
9 designed, made, or adapted to incapacitate a person by inflicting  
10 an electrical charge through the emission of a projectile or  
11 conductive stream.

12 SECTION 2. Section 46.03, Penal Code, is amended by adding  
13 Subsections (j) and (k) to read as follows:

14 (j) It is a defense to prosecution under this section that  
15 the actor possessed a stun gun and was, at the time of the offense:

16 (1) a license holder under Subchapter H-1, Chapter  
17 411, Government Code, who engaged in the conduct after successfully  
18 completing the training described by Section 411.223, Government  
19 Code; or

20 (2) a security officer registered with the Private  
21 Security Bureau of the Department of Public Safety who engaged in  
22 the conduct:

23 (A) after successfully completing the training  
24 described by Section 411.223, Government Code; and

1                   (B) while traveling to or from the actor's place  
2 of assignment or in the actual discharge of duties as a security  
3 officer.

4                   (k) It is an exception to the application of this section  
5 that the actor possessed a stun gun and was, at the time of the  
6 offense, a peace officer, including a commissioned peace officer of  
7 a recognized state or a special investigator under Article 2.122,  
8 Code of Criminal Procedure, who was authorized by law to carry a  
9 weapon and who engaged in the conduct after successfully completing  
10 the training described by Section 411.223, Government Code.

11                   SECTION 3. Section 46.05, Penal Code, is amended by  
12 amending Subsections (a) and (b) and adding Subsections (h) and (i)  
13 to read as follows:

14                   (a) A person commits an offense if he intentionally or  
15 knowingly possesses, manufactures, transports, repairs, or sells:

- 16                   (1) an explosive weapon;
- 17                   (2) a machine gun;
- 18                   (3) a short-barrel firearm;
- 19                   (4) a firearm silencer;
- 20                   (5) a switchblade knife;
- 21                   (6) knuckles;
- 22                   (7) armor-piercing ammunition;
- 23                   (8) a chemical dispensing device; [~~or~~]
- 24                   (9) a zip gun; or
- 25                   (10) a stun gun.

26                   (b) It is a defense to prosecution under Subsections  
27 (a)(1)-(9) [~~this section~~] that the actor's conduct was incidental

1 to the performance of official duty by the armed forces or national  
2 guard, a governmental law enforcement agency, or a correctional  
3 facility.

4 (h) It is a defense to prosecution under Subsection (a)(10)  
5 that the actor was, at the time of the offense:

6 (1) a license holder under Subchapter H-1, Chapter  
7 411, Government Code, who engaged in the conduct after successfully  
8 completing the training described by Section 411.223, Government  
9 Code; or

10 (2) a security officer registered with the Private  
11 Security Bureau of the Department of Public Safety who engaged in  
12 the conduct:

13 (A) after successfully completing the training  
14 described by Section 411.223, Government Code; and

15 (B) while traveling to or from the actor's place  
16 of assignment or in the actual discharge of duties as a security  
17 officer.

18 (i) It is an exception to the application of Subsection  
19 (a)(10) that the actor was, at the time of the offense, a peace  
20 officer, including a commissioned peace officer of a recognized  
21 state or a special investigator under Article 2.122, Code of  
22 Criminal Procedure, who was authorized by law to carry a weapon and  
23 who engaged in the conduct after successfully completing the  
24 training described by Section 411.223, Government Code.

25 SECTION 4. Chapter 411, Government Code, is amended by  
26 adding Subchapter H-1 to read as follows:

1           SUBCHAPTER H-1. LICENSE TO CARRY A STUN GUN

2           Sec. 411.220. DEFINITIONS. In this subchapter, "stun gun"  
3 has the meaning assigned by Section 46.01, Penal Code.

4           Sec. 411.221. LICENSE TO CARRY A CONCEALED STUN GUN. The  
5 department by rule shall establish a procedure for a person to  
6 obtain a license to carry a stun gun.

7           Sec. 411.222. STANDARDS AND PROCEDURAL REQUIREMENTS. In  
8 establishing a procedure under Section 411.221, the department  
9 shall require an applicant for a license under this subchapter to  
10 meet standards and satisfy procedural requirements that are  
11 substantially similar to the standards and procedural requirements  
12 for obtaining a license to carry a concealed handgun described by  
13 the following sections of Subchapter H:

- 14           (1) eligibility (Section 411.172);  
15           (2) application (Section 411.174);  
16           (3) issuance or denial of license (Section 411.177);  
17           (4) form of license (Section 411.179(a));  
18           (5) notification of denial, revocation, or suspension  
19 of license; review (Section 411.180);  
20           (6) expiration (Section 411.183);  
21           (7) modification (Section 411.184);  
22           (8) renewal (Section 411.185);  
23           (9) revocation (Section 411.186); and  
24           (10) suspension of license (Section 411.187).

25           Sec. 411.223. STUN GUN PROFICIENCY AND TRAINING. (a) The  
26 director by rule shall establish minimum standards for stun gun  
27 proficiency and shall develop and make widely available throughout

1 the state a course to teach stun gun proficiency and an examination  
2 to measure stun gun proficiency. The examination to measure stun  
3 gun proficiency must require an actual demonstration by the  
4 applicant of the applicant's ability to safely and proficiently use  
5 a stun gun.

6 (b) Except as provided by Subsection (c), the department  
7 shall charge a fee for the training offered under this section.

8 (c) The director by rule shall establish minimum standards  
9 for the certification of stun gun instructors. An applicant for  
10 certification as a stun gun instructor under this subsection must  
11 be a peace officer employed by the department and must successfully  
12 complete the training offered under this section before the  
13 department may certify the applicant as a stun gun instructor. An  
14 applicant for certification as a stun gun instructor is not  
15 required to pay a fee for the training under this section.

16 Sec. 411.224. OTHER RULES AND PROCEDURES. The department  
17 shall adopt any other rule or establish any other procedure  
18 necessary or appropriate to administer this subchapter.

19 Sec. 411.225. CONFIDENTIALITY OF RECORDS. The department  
20 shall disclose to a criminal justice agency information contained  
21 in its files and records regarding whether a named individual or any  
22 individual named in a specified list is licensed under this  
23 subchapter. The department shall, on written request and payment  
24 of a reasonable fee to cover costs of copying, disclose to any other  
25 individual whether a named individual or any individual whose full  
26 name is listed on a specified written list is licensed under this  
27 subchapter. Information on an individual subject to disclosure

1 under this section includes the individual's name, date of birth,  
2 gender, race, and zip code. Except as otherwise provided by this  
3 section, all other records maintained under this subchapter are  
4 confidential and are not subject to mandatory disclosure under the  
5 open records law, Chapter 552, except that the applicant or license  
6 holder may be furnished a copy of disclosable records on request and  
7 the payment of a reasonable fee. The department shall notify a  
8 license holder of any request that is made for information relating  
9 to the license holder under this section and provide the name of the  
10 person or agency making the request. This section does not prohibit  
11 the department from making public and distributing to the public at  
12 no cost lists of individuals who are certified as stun gun  
13 instructors by the department.

14 Sec. 411.226. DISPLAYING LICENSE; PENALTY. (a) If a  
15 license holder is carrying a stun gun on or about the license  
16 holder's person when a magistrate or a peace officer demands that  
17 the license holder display identification, the license holder shall  
18 display both the license holder's driver's license or  
19 identification certificate issued by the department and the license  
20 holder's license issued under this subchapter. A person who fails  
21 or refuses to display the license and identification as required by  
22 this subsection is subject to suspension of the person's license as  
23 provided by department rule adopted under this subchapter.

24 (b) A person commits an offense if the person fails or  
25 refuses to display the license and identification as required by  
26 Subsection (a) after previously having had the person's license  
27 suspended for a violation of that subsection. An offense under this

1 subsection is a Class B misdemeanor.

2 Sec. 411.227. AUTHORITY OF PEACE OFFICER TO DISARM. A peace  
3 officer who is acting in the lawful discharge of the officer's  
4 official duties may disarm a license holder at any time the officer  
5 reasonably believes it is necessary for the protection of the  
6 license holder, the officer, or another individual. The peace  
7 officer shall return the stun gun to the license holder before  
8 discharging the license holder from the scene if the officer  
9 determines that the license holder is not a threat to the officer,  
10 the license holder, or another individual and if the license holder  
11 has not violated any provision of this subchapter or committed any  
12 other violation that results in the arrest of the license holder.

13 SECTION 5. The public safety director of the Department of  
14 Public Safety shall adopt the rules required by Section 411.223,  
15 Government Code, as added by this Act, not later than November 1,  
16 2009.

17 SECTION 6. (a) Except as provided by Subsection (b) of this  
18 section, this Act takes effect September 1, 2009.

19 (b) Sections 1, 2, and 3 of this Act take effect March 1,  
20 2010.