

SENATE AMENDMENTS

2nd Printing

By: Naishtat, Rodriguez

H.B. No. 3352

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the collection, dissemination, and correction of
3 certain judicial determinations for a federal firearm background
4 check.

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

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

8 Sec. 411.052. FEDERAL FIREARM REPORTING. (a) In this
9 section, "federal prohibited person information" means information
10 that identifies an individual as:

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

13 (2) a person acquitted in a criminal case by reason of
14 insanity or lack of mental responsibility, regardless of whether
15 the person is ordered by a court to receive inpatient treatment or
16 residential care under Chapter 46C, Code of Criminal Procedure;

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

20 (4) an incapacitated adult individual for whom a court
21 has appointed a guardian of the individual under Chapter XIII,
22 Probate Code, based on the determination that the person lacks the
23 mental capacity to manage the person's affairs; or

24 (5) a person determined to be incompetent to stand

1 trial under Chapter 46B, Code of Criminal Procedure.

2 (b) The department by rule shall establish a procedure to
3 provide federal prohibited person information to the Federal Bureau
4 of Investigation for use with the National Instant Criminal
5 Background Check System. Except as otherwise provided by state
6 law, the department may disseminate federal prohibited person
7 information under this subsection only to the extent necessary to
8 allow the Federal Bureau of Investigation to collect and maintain a
9 list of persons who are prohibited under federal law from engaging
10 in certain activities with respect to a firearm.

11 (c) The department shall grant access to federal prohibited
12 person information to the person who is the subject of the
13 information.

14 (d) Federal prohibited person information maintained by the
15 department is confidential information for the use of the
16 department and, except as otherwise provided by this section and
17 other state law, may not be disseminated by the department.

18 (e) The department by rule shall establish a procedure to
19 correct department records and transmit those corrected records to
20 the Federal Bureau of Investigation when a person provides:

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

24 (2) proof that the person has obtained notice of
25 relief from disabilities under 18 U.S.C. Section 925.

26 Sec. 411.0521. REPORT TO DEPARTMENT CONCERNING CERTAIN
27 PERSONS' ACCESS TO FIREARMS. (a) The clerk of the court shall

1 prepare and forward to the department the information described by
2 Subsection (b) not later than the 30th day after the date the court:

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

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

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

12 (4) appoints a guardian of the incapacitated adult
13 individual under Chapter XIII, Probate Code, based on the
14 determination that the person lacks the mental capacity to manage
15 the person's affairs;

16 (5) determines a person is incompetent to stand trial
17 under Chapter 46B, Code of Criminal Procedure; or

18 (6) finds a person is entitled to relief from
19 disabilities under Section 574.088, Health and Safety Code.

20 (b) The clerk of the court shall prepare and forward the
21 following information under Subsection (a):

22 (1) the complete name, race, and sex of the person;

23 (2) any known identifying number of the person,
24 including social security number, driver's license number, or state
25 identification number; and

26 (3) the person's date of birth.

27 (c) If practicable, the clerk of the court shall forward to

1 the department the information described by Subsection (b) in an
2 electronic format prescribed by the department.

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

7 (e) The duty of a clerk to prepare and forward information
8 under this section is not affected by:

- 9 (1) any subsequent appeal of the court order;
10 (2) any subsequent modification of the court order; or
11 (3) the expiration of the court order.

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

14 Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH
15 CASES. (a) A person who is furloughed or discharged from
16 court-ordered mental health services may petition the court that
17 entered the commitment order for an order stating that the person
18 qualifies for relief from a firearms disability.

19 (b) In determining whether to grant relief, the court must
20 hear and consider evidence about:

- 21 (1) the circumstances that led to imposition of the
22 firearms disability under 18 U.S.C. Section 922(g)(4);
23 (2) the person's mental history;
24 (3) the person's criminal history; and
25 (4) the person's reputation.

26 (c) A court may not grant relief unless it makes and enters
27 in the record the following affirmative findings:

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

3 (2) removing the person's disability to purchase a
4 firearm is in the public interest.

5 SECTION 3. Each clerk of the court shall prepare and forward
6 information for each order issued on or after September 1, 1999, to
7 the Department of Public Safety as required by Section 411.0521,
8 Government Code, as added by this Act. Not later than September 1,
9 2010, each clerk of the court shall prepare and forward information
10 for any court orders issued on or after September 1, 1999, and
11 before September 1, 2009.

12 SECTION 4. This Act takes effect September 1, 2009.

ADOPTED

MAY 26 2009

Atty. Gen.
Secretary of the Senate

By: Naishtat et al. / Ellis

H.B. No. 3352

Substitute the following for H.B. No. 3352.

By: *Rodney Ellis*

C.S. H.B. No. 3352

A BILL TO BE ENTITLED

1 AN ACT

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12 mental health services under Chapter 574, Health and Safety Code;

13 (2) a person acquitted in a criminal case by reason of
14 insanity or lack of mental responsibility, regardless of whether
15 the person is ordered by a court to receive inpatient treatment or
16 residential care under Chapter 46C, Code of Criminal Procedure;

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

20 (4) an incapacitated adult individual for whom a court
21 has appointed a guardian of the individual under Chapter XIII,
22 Probate Code, based on the determination that the person lacks the
23 mental capacity to manage the person's affairs; or

24 (5) a person determined to be incompetent to stand

1 trial under Chapter 46B, Code of Criminal Procedure.

2 (b) The department by rule shall establish a procedure to
3 provide federal prohibited person information to the Federal Bureau
4 of Investigation for use with the National Instant Criminal
5 Background Check System. Except as otherwise provided by state
6 law, the department may disseminate federal prohibited person
7 information under this subsection only to the extent necessary to
8 allow the Federal Bureau of Investigation to collect and maintain a
9 list of persons who are prohibited under federal law from engaging
10 in certain activities with respect to a firearm.

11 (c) The department shall grant access to federal prohibited
12 person information to the person who is the subject of the
13 information.

14 (d) Federal prohibited person information maintained by the
15 department is confidential information for the use of the
16 department and, except as otherwise provided by this section and
17 other state law, may not be disseminated by the department.

18 (e) The department by rule shall establish a procedure to
19 correct department records and transmit those corrected records to
20 the Federal Bureau of Investigation when a person provides:

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

24 (2) proof that the person has obtained notice of
25 relief from disabilities under 18 U.S.C. Section 925.

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27 PERSONS' ACCESS TO FIREARMS. (a) The clerk of the court shall

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2 Subsection (b) not later than the 30th day after the date the court:

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

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

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

12 (4) appoints a guardian of the incapacitated adult
13 individual under Chapter XIII, Probate Code, based on the
14 determination that the person lacks the mental capacity to manage
15 the person's affairs;

16 (5) determines a person is incompetent to stand trial
17 under Chapter 46B, Code of Criminal Procedure; or

18 (6) finds a person is entitled to relief from
19 disabilities under Section 574.088, Health and Safety Code.

20 (b) The clerk of the court shall prepare and forward the
21 following information under Subsection (a):

22 (1) the complete name, race, and sex of the person;

23 (2) any known identifying number of the person,
24 including social security number, driver's license number, or state
25 identification number;

26 (3) the person's date of birth; and

27 (4) the federal prohibited person information that is

1 the basis of the report required by this section.

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

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

9 (e) The duty of a clerk to prepare and forward information
10 under this section is not affected by:

11 (1) any subsequent appeal of the court order;

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

13 (3) the expiration of the court order.

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

16 Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH
17 CASES. (a) A person who is furloughed or discharged from
18 court-ordered mental health services may petition the court that
19 entered the commitment order for an order stating that the person
20 qualifies for relief from a firearms disability.

21 (b) In determining whether to grant relief, the court must
22 hear and consider evidence about:

23 (1) the circumstances that led to imposition of the
24 firearms disability under 18 U.S.C. Section 922(g)(4);

25 (2) the person's mental history;

26 (3) the person's criminal history; and

27 (4) the person's reputation.

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

3 (1) the person is no longer likely to act in a manner
4 dangerous to public safety; and

5 (2) removing the person's disability to purchase a
6 firearm is in the public interest.

7 SECTION 3. Each clerk of the court shall prepare and forward
8 information for each order issued on or after September 1, 1989, to
9 the Department of Public Safety as required by Section 411.0521,
10 Government Code, as added by this Act. Not later than September 1,
11 2010, each clerk of the court shall prepare and forward information
12 for any court orders issued on or after September 1, 1989, and
13 before September 1, 2009.

14 SECTION 4. This Act takes effect September 1, 2009.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 27, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3352 by Naishtat (Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and Health and Safety Code concerning matters of the collection, dissemination and correction of certain judicial determinations for a federal firearm background check. The bill would provide for a reporting procedure whereby a court clerk must prepare and forward to the Department of Public Safety (DPS) certain information, including identifying information, regarding persons who meet certain criteria related to mental health or status. The bill also would provide that a person furloughed or discharged from court ordered mental health treatment may petition the court for an order stating that the person qualifies for relief from a firearms disability. The bill would take effect on September 1, 2009. This analysis assumes that implementing the provisions of the bill would pose no significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety

LBB Staff: JOB, SZ, ESi, GG, MWU, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 13, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3352** by Naishtat (Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and Health and Safety Code concerning matters of the collection, dissemination and correction of certain judicial determinations for a federal firearm background check. The bill would provide for a reporting procedure whereby a court clerk must prepare and forward to the Department of Public Safety (DPS) certain information, including identifying information, regarding persons who meet certain criteria related to mental health or status. The bill also would provide that a person furloughed or discharged from court ordered mental health treatment may petition the court for an order stating that the person qualifies for relief from a firearms disability. The bill would take effect on September 1, 2009. This analysis assumes that implementing the provisions of the bill would pose no significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety

LBB Staff: JOB, ESi, GG, MWU, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 8, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3352 by Naishtat (Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and Health and Safety Code concerning matters of the collection, dissemination and correction of certain judicial determinations for a federal firearm background check. The bill would provide for a reporting procedure whereby a court clerk must prepare and forward to the Department of Public Safety (DPS) certain information, including identifying information, regarding persons who meet certain criteria related to mental health or status. The bill also would provide that a person furloughed or discharged from court ordered mental health treatment may petition the court for an order stating that the person qualifies for relief from a firearms disability. The bill would take effect on September 1, 2009. This analysis assumes that implementing the provisions of the bill would pose no significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety

LBB Staff: JOB, ESi, GG, MWU, TP

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 21, 2009

TO: Honorable Tommy Merritt, Chair, House Committee on Public Safety

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3352 by Naishtat (Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and Health and Safety Code concerning matters of the collection, dissemination and correction of certain judicial determinations for a federal firearm background check. The bill would provide for a reporting procedure whereby a court clerk must prepare and forward to the Department of Public Safety (DPS) certain information, including identifying information, regarding persons who meet certain criteria related to mental health or status. The bill also would provide that a person furloughed or discharged from court ordered mental health treatment may petition the court for an order stating that the person qualifies for relief from a firearms disability. The bill would take effect on September 1, 2009. This analysis assumes that implementing the provisions of the bill would pose no significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety

LBB Staff: JOB, ESi, GG, MWU, TP

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 13, 2009

TO: Honorable Tommy Merritt, Chair, House Committee on Public Safety

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3352** by Naishtat (Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and Health and Safety Code concerning matters of the collection, dissemination and correction of certain judicial determinations for a federal firearm background check. The bill would provide for a reporting procedure whereby a court clerk must prepare and forward to the Department of Public Safety (DPS) certain information, including identifying information and the relevant court order, regarding persons who meet certain criteria related to mental health or status. The bill also would provide that a person furloughed or discharged from court ordered mental health treatment may petition the court for an order stating that the person qualifies for relief from a firearms disability. The bill would take effect on September 1, 2009. This analysis assumes that implementing the provisions of the bill would pose no significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety

LBB Staff: JOB, ESi, GG, MWU, TP

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**LEGISLATIVE BUDGET BOARD
Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT
81ST LEGISLATIVE REGULAR SESSION**

May 13, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3352 by Naishtat (Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.), **Committee Report 2nd House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 11, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3352 by Naishtat (Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, LM