

By: West

S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

relating to certain criminal offenses concerning the unlawful transfer or purchase of certain weapons.

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

SECTION 1. The heading to Section 46.06, Penal Code, is amended to read as follows:

Sec. 46.06. UNLAWFUL TRANSFER OR PURCHASE OF CERTAIN WEAPONS.

SECTION 2. Section 46.06, Penal Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (a-1), (c-1), (e), and (f) to read as follows:

(a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a firearm ~~handgun~~ to any person knowing that the person to whom the firearm ~~handgun~~ is to be delivered intends to use the firearm ~~it~~ unlawfully or in the commission of an unlawful act;

(2) purchases or attempts to purchase a firearm with intent to deliver the firearm to a person knowing that the person to whom the firearm is to be delivered intends to possess the firearm unlawfully or to use the firearm unlawfully or in the commission of an unlawful act; or

(3) knowingly makes a materially false or misleading statement in providing information to a person for purposes of complying with the national instant criminal background check

1 system in the manner required by 18 U.S.C. Section 922.

2 (a-1) A person commits an offense if the person:

3 (1) [~~(2)~~] intentionally or knowingly sells, rents,  
4 leases, or gives or offers to sell, rent, lease, or give to any  
5 child younger than 18 years any firearm, club, or illegal knife;

6 (2) [~~(3)~~] intentionally, knowingly, or recklessly  
7 sells a firearm or ammunition for a firearm to any person who is  
8 intoxicated;

9 (3) [~~(4)~~] knowingly sells a firearm or ammunition for  
10 a firearm to any person who has been convicted of a felony before  
11 the fifth anniversary of the later of the following dates:

12 (A) the person's release from confinement  
13 following conviction of the felony; or

14 (B) the person's release from supervision under  
15 community supervision, parole, or mandatory supervision following  
16 conviction of the felony;

17 (4) [~~(5)~~] sells, rents, leases, loans, or gives a  
18 handgun to any person knowing that an active protective order is  
19 directed to the person to whom the handgun is to be delivered; or

20 (5) [~~(6)~~] knowingly purchases, rents, leases, or  
21 receives as a loan or gift from another a handgun while an active  
22 protective order is directed to the actor.

23 (c) It is an affirmative defense to prosecution under  
24 Subsection (a-1)(1) [~~(a)(2)~~] that the transfer was to a minor whose  
25 parent or the person having legal custody of the minor had given  
26 written permission for the sale or, if the transfer was other than a  
27 sale, the parent or person having legal custody had given effective

1 consent.

2 (c-1) The renunciation defense described by Section  
3 15.04(a) is available as an affirmative defense to prosecution  
4 under Subsection (a)(2).

5 (d) An offense under Subsection (a) is a felony of the third  
6 degree.

7 (e) An offense under Subsection (a-1) [~~this section~~] is a  
8 Class A misdemeanor, except that an offense under Subsection  
9 (a-1)(1) [~~(a)(2)~~] is a state jail felony if the weapon that is the  
10 subject of the offense is a handgun.

11 (f) To the extent of any conflict between this section and a  
12 federal law related to the unlawful transfer or purchase of  
13 weapons, the federal law prevails.

14 SECTION 3. (a) If H.B. No. 8, Acts of the 83rd Legislature,  
15 Regular Session, 2013, does not become law, Section 71.02(a), Penal  
16 Code, as effective September 1, 2013, is amended to read as follows:

17 (a) A person commits an offense if, with the intent to  
18 establish, maintain, or participate in a combination or in the  
19 profits of a combination or as a member of a criminal street gang,  
20 the person commits or conspires to commit one or more of the  
21 following:

22 (1) murder, capital murder, arson, aggravated  
23 robbery, robbery, burglary, theft, aggravated kidnapping,  
24 kidnapping, aggravated assault, aggravated sexual assault, sexual  
25 assault, forgery, deadly conduct, assault punishable as a Class A  
26 misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
27 motor vehicle;

- 1           (2) any gambling offense punishable as a Class A  
2 misdemeanor;
- 3           (3) promotion of prostitution, aggravated promotion  
4 of prostitution, or compelling prostitution;
- 5           (4) unlawful manufacture, transportation, repair, or  
6 sale of firearms or prohibited weapons;
- 7           (5) unlawful manufacture, delivery, dispensation, or  
8 distribution of a controlled substance or dangerous drug, or  
9 unlawful possession of a controlled substance or dangerous drug  
10 through forgery, fraud, misrepresentation, or deception;
- 11          (5-a) causing the unlawful delivery, dispensation, or  
12 distribution of a controlled substance or dangerous drug in  
13 violation of Subtitle B, Title 3, Occupations Code;
- 14          (6) any unlawful wholesale promotion or possession of  
15 any obscene material or obscene device with the intent to wholesale  
16 promote the same;
- 17          (7) any offense under Subchapter B, Chapter 43,  
18 depicting or involving conduct by or directed toward a child  
19 younger than 18 years of age;
- 20          (8) any felony offense under Chapter 32;
- 21          (9) any offense under Chapter 36;
- 22          (10) any offense under Chapter 34, 35, or 35A;
- 23          (11) any offense under Section 37.11(a);
- 24          (12) any offense under Chapter 20A;
- 25          (13) any offense under Section 37.10;
- 26          (14) any offense under Section 38.06, 38.07, 38.09, or  
27 38.11;

- 1 (15) any offense under Section 42.10;
- 2 (16) any offense under Section 46.06(a) [~~46.06(a)(1)~~]
- 3 or 46.14;
- 4 (17) any offense under Section 20.05; or
- 5 (18) any offense classified as a felony under the Tax
- 6 Code.

7 (b) If H.B. No. 8, Acts of the 83rd Legislature, Regular  
8 Session, 2013, becomes law, Section 71.02(a), Penal Code, as  
9 effective September 1, 2013, is amended to read as follows:

10 (a) A person commits an offense if, with the intent to  
11 establish, maintain, or participate in a combination or in the  
12 profits of a combination or as a member of a criminal street gang,  
13 the person commits or conspires to commit one or more of the  
14 following:

15 (1) murder, capital murder, arson, aggravated  
16 robbery, robbery, burglary, theft, aggravated kidnapping,  
17 kidnapping, aggravated assault, aggravated sexual assault, sexual  
18 assault, continuous sexual abuse of young child or children,  
19 solicitation of a minor, forgery, deadly conduct, assault  
20 punishable as a Class A misdemeanor, burglary of a motor vehicle, or  
21 unauthorized use of a motor vehicle;

22 (2) any gambling offense punishable as a Class A  
23 misdemeanor;

24 (3) promotion of prostitution, aggravated promotion  
25 of prostitution, or compelling prostitution;

26 (4) unlawful manufacture, transportation, repair, or  
27 sale of firearms or prohibited weapons;

1           (5) unlawful manufacture, delivery, dispensation, or  
2 distribution of a controlled substance or dangerous drug, or  
3 unlawful possession of a controlled substance or dangerous drug  
4 through forgery, fraud, misrepresentation, or deception;

5           (5-a) causing the unlawful delivery, dispensation, or  
6 distribution of a controlled substance or dangerous drug in  
7 violation of Subtitle B, Title 3, Occupations Code;

8           (6) any unlawful wholesale promotion or possession of  
9 any obscene material or obscene device with the intent to wholesale  
10 promote the same;

11           (7) any offense under Subchapter B, Chapter 43,  
12 depicting or involving conduct by or directed toward a child  
13 younger than 18 years of age;

14           (8) any felony offense under Chapter 32;

15           (9) any offense under Chapter 36;

16           (10) any offense under Chapter 34, 35, or 35A;

17           (11) any offense under Section 37.11(a);

18           (12) any offense under Chapter 20A;

19           (13) any offense under Section 37.10;

20           (14) any offense under Section 38.06, 38.07, 38.09, or  
21 38.11;

22           (15) any offense under Section 42.10;

23           (16) any offense under Section 46.06(a) [~~46.06(a)(1)~~]  
24 or 46.14;

25           (17) any offense under Section 20.05; or

26           (18) any offense classified as a felony under the Tax  
27 Code.

1           SECTION 4. The change in law made by this Act applies only  
2 to an offense committed on or after the effective date of this Act.  
3 An offense committed before the effective date of this Act is  
4 governed by the law in effect on the date the offense was committed,  
5 and the former law is continued in effect for that purpose. For  
6 purposes of this section, an offense was committed before the  
7 effective date of this Act if any element of the offense occurred  
8 before that date.

9           SECTION 5. This Act takes effect on the 91st day after the  
10 last day of the legislative session.