

By: Coleman

H.B. No. 3772

A BILL TO BE ENTITLED

AN ACT

relating to criminal history background checks in connection with
firearm transfers; creating offenses.

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

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

SUBCHAPTER H-1. FIREARM BACKGROUND CHECKS

Sec. 411.221. DEFINITIONS. In this subchapter:

(1) "Firearm" has the meaning assigned by 18 U.S.C.
Section 921(a)(3).

(2) "National instant criminal background check
system" means the national instant criminal background check system
created by Pub. L. No. 103-159.

(3) "Transfer" means the sale or delivery of any
firearm in this state to a transferee. The term includes redemption
of a pawned firearm by any person who is not licensed as a federal
firearms licensee by the Bureau of Alcohol, Tobacco, Firearms and
Explosives. The term does not include the return or replacement of
a firearm that has been delivered to a federal firearms licensee for
the sole purpose of repair or customizing.

(4) "Transferee" means any person who is not licensed
as a federal firearms licensee by the Bureau of Alcohol, Tobacco,
Firearms and Explosives, or any of its successor agencies, in
accordance with 18 U.S.C. Chapter 44 and to whom a transferor wishes

1 to sell or deliver a firearm.

2 (5) "Transferor" means any licensed importer,
3 licensed manufacturer, or licensed dealer as defined by 18 U.S.C.
4 Sections 921(a)(9), (10), and (11).

5 Sec. 411.222. STATE POINT OF CONTACT. The department
6 serves as the state point of contact for:

7 (1) implementation of 18 U.S.C. Section 922(t) and all
8 federal regulations and all applicable guidelines adopted under
9 that law; and

10 (2) the national instant criminal background check
11 system.

12 Sec. 411.223. TRANSMISSION OF BACKGROUND CHECK REQUEST.

13 (a) The department, acting as the state point of contact under this
14 subchapter, shall transmit to the national instant criminal
15 background check system a request for a criminal history background
16 check in connection with the prospective transfer of a firearm and
17 may also search other databases. The department shall deny a
18 transfer of a firearm if the transfer would violate 18 U.S.C.
19 Section 922(g) or (n) or any law of this state.

20 (b) In addition to the grounds for denial specified in
21 Subsection (a), the department shall deny a transfer of a firearm
22 if, on or after the date a request for a criminal history background
23 check is initiated, the prospective transferee:

24 (1) is arrested for or charged with an offense for
25 which the prospective transferee, if convicted, would be prohibited
26 under state or federal law from purchasing, receiving, or
27 possessing a firearm and there is no final disposition of the case;

1 or

2 (2) is charged with an offense punishable by
3 confinement for a term exceeding one year and there is no final
4 disposition of the case.

5 (c) The department may cooperate with federal, state, and
6 local law enforcement agencies to retrieve or assist any other law
7 enforcement agency in retrieving a firearm transferred in violation
8 of this subchapter and may assist in any prosecution related to a
9 transfer made in violation of this subchapter.

10 Sec. 411.224. PROCESSING INFORMATION. The department shall
11 receive and process information concerning final case disposition
12 data in this state within 72 hours after the final disposition of
13 the case for purposes of carrying out the department's duties under
14 this subchapter.

15 Sec. 411.225. NOTIFICATION OF DENIAL. (a) On denial of a
16 firearm transfer, the department shall notify the transferor and
17 send notice of the denial to the national instant criminal
18 background check system, as required by 18 U.S.C. Section 922(t).
19 The department shall also immediately send notification of the
20 denial and the basis for the denial to the federal, state, and local
21 law enforcement agencies having jurisdiction in the county in which
22 the prospective transferee resides and in which the transferor
23 conducts any business.

24 (b) On denial of a firearm transfer, the transferor shall
25 provide the prospective transferee with written information
26 prepared by the department concerning the procedure by which the
27 prospective transferee, within 30 days after the denial, may

1 request a review of the denial and of the criminal history record
2 information that prompted the denial. Within 30 days after
3 receiving a request from a prospective transferee under this
4 subsection, the department shall:

5 (1) perform a thorough review of the criminal history
6 record information that prompted the denial; and

7 (2) render a final administrative decision regarding
8 the denial within 30 days after receiving information from the
9 prospective transferee that alleges the transfer was improperly
10 denied.

11 (c) If the department withdraws a denial, the department
12 shall immediately request that the agency that provided the
13 criminal history record information prompting the denial make a
14 permanent change to the information as necessary to make the
15 information accurate. The department shall also immediately
16 provide notification of a withdrawal of a denial to all agencies and
17 entities that were previously notified of a denial under Subsection
18 (a).

19 Sec. 411.226. INFORMATION ON WARRANTS. If in the course of
20 conducting a criminal history background check under this
21 subchapter the department obtains information that indicates the
22 prospective transferee is the subject of an outstanding warrant,
23 the department shall immediately provide notice of the warrant to
24 the federal, state, and local law enforcement agencies having
25 jurisdiction in the county in which the prospective transferee
26 resides and in which the transferor conducts any business.

27 Sec. 411.227. RULES. (a) The director or the director's

1 designee shall adopt rules necessary to:

2 (1) carry out the duties of the department under this
3 subchapter; and

4 (2) ensure the proper maintenance, confidentiality,
5 and security of all records and data provided under this
6 subchapter.

7 (b) The rules adopted under Subsection (a) must include
8 procedures regarding:

9 (1) the manner in which a prospective transferee whose
10 transfer is denied may request a review of the denial and of the
11 criminal history record information that prompted the denial;

12 (2) the retention of records obtained or created for
13 purposes of this subchapter or for implementation of 18 U.S.C.
14 Section 922(t), except that the rules must state that the
15 department may not retain a record for more than 48 hours after the
16 date on which the department approves a transfer; and

17 (3) the collection of information from and proper
18 identification of a prospective transferee, including forms
19 adopted by the department for those purposes.

20 (c) In addition to the procedures described by Subsection
21 (b), the rules adopted under Subsection (a) shall establish
22 requirements for the department to:

23 (1) be open for business at least 12 hours each day,
24 except Christmas Day and Thanksgiving Day, to transmit the requests
25 for criminal history background checks to the national instant
26 criminal background check system and to search other databases;

27 (2) provide a toll-free telephone number for any

1 person calling from within this state that is operational every day
2 that the department is open for business under Subdivision (1); and
3 (3) employ and train personnel as necessary to ensure
4 prompt processing of the reasonably anticipated volume of requests
5 for criminal history background checks received under this
6 subchapter.

7 Sec. 411.228. CIVIL CAUSES OF ACTION. This subchapter does
8 not create a civil cause of action for damages in addition to those
9 causes of action available under Chapter 101, Civil Practice and
10 Remedies Code.

11 Sec. 411.229. CONFLICT WITH CODE OF CRIMINAL PROCEDURE. If
12 a provision of this subchapter conflicts with a provision of the
13 Code of Criminal Procedure governing the transfer of a firearm,
14 this subchapter controls.

15 Sec. 411.230. OFFENSES. (a) A person commits an offense if
16 the person:

17 (1) is a transferor who knowingly requests a criminal
18 history background check or any specific criminal history record
19 information under false pretenses or knowingly disseminates
20 criminal history record information to any other person other than
21 the subject of the information; or

22 (2) is an agent or employee or former agent or employee
23 of the department who knowingly violates this subchapter.

24 (b) An offense under Subsection (a) is a Class A
25 misdemeanor.

26 (c) The provisions of Chapter 37, Penal Code, apply to
27 statements and actions made as required by this subchapter.

1 Sec. 411.231. IMMUNITIES FOR TRANSFEROR. A transferor who
2 complies with this subchapter is not subject to civil or criminal
3 liability or a regulatory sanction that otherwise would arise from
4 the lawful transfer or lawful denial of the transfer of a firearm.

5 Sec. 411.232. FAMILY TRANSFERS. This subchapter does not
6 apply to transfers between transferors and transferees related
7 within the third degree by consanguinity or within the second
8 degree by affinity, as determined under Chapter 573.

9 SECTION 2. Sections 46.06(a) and (b), Penal Code, are
10 amended to read as follows:

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

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

16 (2) intentionally or knowingly sells, rents, leases,
17 or gives or offers to sell, rent, lease, or give to any child
18 younger than 18 years any firearm, club, or illegal knife;

19 (3) intentionally, knowingly, or recklessly sells a
20 firearm or ammunition for a firearm to any person who is
21 intoxicated;

22 (4) knowingly sells a firearm or ammunition for a
23 firearm to any person who has been convicted of a felony before the
24 fifth anniversary of the later of the following dates:

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

27 (B) the person's release from supervision under

1 community supervision, parole, or mandatory supervision following
2 conviction of the felony;

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

6 (6) knowingly purchases, rents, leases, or receives as
7 a loan or gift from another a handgun while an active protective
8 order is directed to the actor; or

9 (7) intentionally, knowingly, or recklessly transfers
10 a firearm without obtaining approval for the transfer following a
11 criminal history background check under Subchapter H-1, Chapter
12 411, Government Code, unless the transfer is to an immediate family
13 member.

14 (b) In this section:

15 (1) "Intoxicated" means substantial impairment of
16 mental or physical capacity resulting from introduction of any
17 substance into the body.

18 (2) "Active protective order" means a protective order
19 issued under Title 4, Family Code, that is in effect. The term does
20 not include a temporary protective order issued before the court
21 holds a hearing on the matter.

22 (3) "Immediate family member" means related within the
23 third degree by consanguinity or within the second degree by
24 affinity, as determined under Chapter 573, Government Code.

25 (4) "Transfer" has the meaning assigned by Section
26 411.221, Government Code.

27 SECTION 3. The change in law made by this Act to Section

1 46.06, Penal Code, applies only to an offense committed on or after
2 the effective date of this Act. An offense committed before the
3 effective date of this Act is governed by the law in effect on the
4 date the offense was committed, and the former law is continued in
5 effect for that purpose. For purposes of this section, an offense
6 was committed before the effective date of this Act if any element
7 of the offense occurred before that date.

8 SECTION 4. This Act takes effect September 1, 2013.