

By: Moody

H.B. No. 866

A BILL TO BE ENTITLED

AN ACT

relating to lethal violence protective orders; creating a criminal offense.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 7B to read as follows:

CHAPTER 7B. LETHAL VIOLENCE PROTECTIVE ORDER

Art. 7B.01. DEFINITIONS. In this chapter:

(1) "Bodily injury" and "serious bodily injury" have the meanings assigned by Section 1.07, Penal Code.

(2) "Family," "family violence," and "household" have the meanings assigned by Chapter 71, Family Code.

(3) "Firearm" has the meaning assigned by Section 46.01, Penal Code.

Art. 7B.02. APPLICATION FOR LETHAL VIOLENCE PROTECTIVE ORDER. (a) An application for a protective order under this chapter may be filed by:

(1) a member of the respondent's family or household;

(2) a parent, guardian, or conservator of a person who is under 18 years of age and a member of the respondent's family or household; or

(3) a prosecuting attorney acting:

(A) on behalf of a person described by Subdivision (1) or (2); or

1 (B) at the request of a peace officer.

2 (b) An application must:

3 (1) include:

4 (A) detailed allegations, based on personal
5 knowledge of a person described by Subsection (a)(1) or (2) or of a
6 peace officer, regarding any dangerous behavior or conduct
7 exhibited by the respondent, including any behavior or conduct
8 related to the respondent's use of firearms;

9 (B) information concerning the quantity, type,
10 and location of any firearms the applicant believes to be in the
11 respondent's possession or control, if any;

12 (C) any other relevant facts indicating a need
13 for a protective order; and

14 (D) a statement that the applicant believes the
15 respondent poses an immediate and present danger of causing bodily
16 injury, serious bodily injury, or death to any person, including
17 the respondent, as a result of the respondent's access to firearms;
18 and

19 (2) be signed by the applicant under an oath that, to
20 the knowledge and belief of the applicant, the facts and
21 circumstances contained in the application are true.

22 (c) An application for a protective order under this chapter
23 may be filed in a district court, juvenile court having the
24 jurisdiction of a district court, statutory county court, or
25 constitutional county court in the county in which the applicant or
26 the respondent resides.

27 Art. 7B.03. CONFIDENTIALITY OF CERTAIN INFORMATION. On

1 receiving an application containing specific health information
2 concerning the respondent, the court shall order the clerk to:

3 (1) strike the information from the public records of
4 the court; and

5 (2) maintain a confidential record of the information
6 for use only by the court.

7 Art. 7B.04. TEMPORARY EX PARTE ORDER. (a) If the court
8 finds from the information contained in an application for a
9 protective order under this chapter that there is reasonable cause
10 to believe that the respondent poses an immediate and present
11 danger of causing bodily injury, serious bodily injury, or death to
12 any person, including the respondent, as a result of the
13 respondent's access to firearms, the court, without further notice
14 to the respondent and without a hearing, may issue a temporary ex
15 parte order prohibiting the respondent from purchasing, owning,
16 possessing, or controlling a firearm.

17 (b) In a temporary ex parte order, the court may order the
18 respondent to:

19 (1) relinquish, without delay, any firearms owned by
20 or in the actual or constructive possession or control of the
21 respondent to a law enforcement agency for holding in the manner
22 provided by Article 18.192; and

23 (2) if applicable, surrender to the court the
24 respondent's license to carry a handgun issued under Subchapter H,
25 Chapter 411, Government Code.

26 Art. 7B.05. HEARING; ISSUANCE OF PROTECTIVE ORDER. (a) Not
27 later than the 14th day after the later of the date an application

1 is filed or the date a temporary ex parte order is issued, the court
2 shall hold a hearing on the issuance of the protective order.

3 (b) The court shall provide personal notice of the hearing
4 to the respondent.

5 (c) In determining whether to issue a protective order under
6 this article, the court:

7 (1) shall consider:

8 (A) any history of threats or acts of violence by
9 the respondent directed at any person, including the respondent;

10 (B) any history of the respondent using,
11 attempting to use, or threatening to use physical force against
12 another person;

13 (C) any recent violation by the respondent of an
14 order issued:

15 (i) under Chapter 7A or Article 17.292;

16 (ii) under Section 6.504 or Chapter 85,
17 Family Code;

18 (iii) under Chapter 83, Family Code, if the
19 temporary ex parte order has been served on the respondent; or

20 (iv) by another jurisdiction as provided by
21 Chapter 88, Family Code;

22 (D) any arrest or conviction of the respondent
23 for:

24 (i) an offense under Section 42.072, Penal
25 Code; or

26 (ii) a misdemeanor offense involving
27 violence, including family violence;

1 (E) any conviction of the respondent for an
2 offense under Section 42.09, 42.091, or 42.092, Penal Code; and

3 (F) evidence related to the respondent's abuse of
4 a controlled substance or alcohol, including evidence of any
5 treatment for and recovery from abusing a controlled substance or
6 alcohol; and

7 (2) may consider any other relevant factor including:

8 (A) any previous violation by the respondent of
9 an order described by Subdivision (1)(C); and

10 (B) evidence regarding the respondent's recent
11 acquisition of firearms, ammunition, or other deadly weapons.

12 (d) At the close of the hearing, if the court finds by clear
13 and convincing evidence that the respondent poses an immediate and
14 present danger of causing bodily injury, serious bodily injury, or
15 death to any person, including the respondent, as a result of the
16 respondent's access to firearms, the court shall issue a protective
17 order that includes a statement of the required finding.

18 (e) If the court does not make the finding described by
19 Subsection (d), the court shall, as applicable, rescind any
20 temporary ex parte order issued under Article 7B.04 and return the
21 respondent's license to carry a handgun.

22 Art. 7B.06. CONTENTS OF PROTECTIVE ORDER. In a protective
23 order issued under Article 7B.05, the court shall:

24 (1) prohibit the person who is subject to the order
25 from purchasing, owning, possessing, or controlling a firearm
26 during the duration of the order; and

27 (2) order the person to:

1 (A) relinquish, without delay, any firearms
2 owned by or in the actual or constructive possession or control of
3 the person to a law enforcement agency for holding in the manner
4 provided by Article 18.192; and

5 (B) if applicable, surrender to the court the
6 person's license to carry a handgun issued under Subchapter H,
7 Chapter 411, Government Code.

8 Art. 7B.07. DURATION OF PROTECTIVE ORDER. (a) A protective
9 order issued under Article 7B.05 is effective until the first
10 anniversary of the date the order was issued.

11 (b) The court may renew a protective order issued under
12 Article 7B.05 for a period not to exceed one year after the order's
13 original expiration date. Before renewing the order the court must
14 hold a hearing and provide personal notice of the hearing to the
15 person who is the subject of the order.

16 (c) A person who is the subject of a protective order may
17 file a motion not earlier than the 91st day after the date on which
18 the order was initially issued or renewed, as applicable,
19 requesting that the court review the order and determine whether
20 there is a continuing need for the order. After a hearing on the
21 motion, if the court does not make a finding that there is no
22 continuing need for the order, the order remains in effect until the
23 date the order expires as provided by this article.

24 (d) At a hearing to renew or rescind a protective order
25 under this article, the court shall consider the factors described
26 by Article 7B.05(c).

27 Art. 7B.08. NOTICE TO DEPARTMENT OF PUBLIC SAFETY REGARDING

1 ISSUANCE OR EXPIRATION OF ORDER. (a) Not later than the 30th day
2 after the date a protective order is issued under Article 7B.05, the
3 clerk of the issuing court shall provide the following to the
4 Department of Public Safety:

5 (1) the complete name, race, and sex of the person who
6 is the subject of the order;

7 (2) any known identifying number of the person,
8 including a social security number, driver's license number, or
9 state identification number;

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

11 (4) if applicable, the person's license to carry a
12 handgun issued under Subchapter H, Chapter 411, Government Code.

13 (b) Not later than the 30th day after the date the
14 protective order expires under Article 7B.07, the clerk of the
15 issuing court shall notify the Department of Public Safety of the
16 expiration.

17 Art. 7B.09. APPLICATION OF OTHER LAW. To the extent
18 applicable, except as otherwise provided by this chapter, Title 4,
19 Family Code, applies to a protective order issued under this
20 chapter.

21 SECTION 2. Chapter 18, Code of Criminal Procedure, is
22 amended by adding Article 18.192 to read as follows:

23 Art. 18.192. HOLDING AND DISPOSITION OF FIREARM
24 RELINQUISHED UNDER LETHAL VIOLENCE PROTECTIVE ORDER. (a) A law
25 enforcement officer who takes possession of a firearm from a person
26 who is the subject of a lethal violence protective order issued
27 under Chapter 7B shall immediately provide the person a written

1 copy of the receipt for the firearm and a written notice of the
2 procedure for the return of a firearm under this article.

3 (b) Not later than the seventh day after the date a firearm
4 subject to disposition under this article is received, the law
5 enforcement agency holding the firearm shall notify the court that
6 issued the lethal violence protective order that the person who is
7 the subject of the order has relinquished the firearm.

8 (c) Not later than the 30th day after the date the lethal
9 violence protective order is rescinded or expires, the clerk of the
10 court shall notify the law enforcement agency of the rescission or
11 expiration.

12 (d) Not later than the 30th day after the date the law
13 enforcement agency holding a firearm subject to disposition under
14 this article receives the notice described by Subsection (c), the
15 law enforcement agency shall conduct a check of state and national
16 criminal history record information to verify whether the person
17 may lawfully possess a firearm under 18 U.S.C. Section 922(g) and
18 under the law of this state.

19 (e) If the check conducted under Subsection (d) verifies
20 that the person may lawfully possess a firearm, the law enforcement
21 agency shall provide written notice to the person by certified mail
22 that the firearm may be returned to the person if the person submits
23 a written request before the 121st day after the date of the notice.

24 (f) An unclaimed firearm that is received under a lethal
25 violence protective order issued under Chapter 7B may not be
26 destroyed or forfeited to the state.

27 (g) The law enforcement agency holding the firearm may

1 provide for the firearm to be sold by a person who is a licensed
2 firearms dealer under 18 U.S.C. Section 923 if:

3 (1) the check conducted under Subsection (d) shows
4 that the person may not lawfully possess a firearm; or

5 (2) the notice is provided under Subsection (e) and
6 the person does not submit, before the 121st day after the date of
7 the notice, a written request for the return of the firearm.

8 (h) The proceeds from the sale of a firearm under this
9 article shall be paid to the owner of the seized firearm, less the
10 cost of administering this article with respect to the firearm.

11 SECTION 3. Subchapter D, Chapter 411, Government Code, is
12 amended by adding Section 411.0522 to read as follows:

13 Sec. 411.0522. INFORMATION CONCERNING LETHAL VIOLENCE
14 PROTECTIVE ORDER. (a) The department by rule shall establish a
15 procedure to provide information concerning a person who is the
16 subject of a lethal violence protective order to the Federal Bureau
17 of Investigation for inclusion in the National Instant Criminal
18 Background Check System.

19 (b) The procedure must require the department to provide any
20 information received under Article 7B.08, Code of Criminal
21 Procedure, to the Federal Bureau of Investigation not later than
22 the 30th day after the date the department received the
23 information.

24 SECTION 4. Section 411.172(a), Government Code, is amended
25 to read as follows:

26 (a) A person is eligible for a license to carry a handgun if
27 the person:

1 (1) is a legal resident of this state for the six-month
2 period preceding the date of application under this subchapter or
3 is otherwise eligible for a license under Section 411.173(a);

4 (2) is at least 21 years of age;

5 (3) has not been convicted of a felony;

6 (4) is not charged with the commission of a Class A or
7 Class B misdemeanor or equivalent offense, or of an offense under
8 Section 42.01, Penal Code, or equivalent offense, or of a felony
9 under an information or indictment;

10 (5) is not a fugitive from justice for a felony or a
11 Class A or Class B misdemeanor or equivalent offense;

12 (6) is not a chemically dependent person;

13 (7) is not incapable of exercising sound judgment with
14 respect to the proper use and storage of a handgun;

15 (8) has not, in the five years preceding the date of
16 application, been convicted of a Class A or Class B misdemeanor or
17 equivalent offense or of an offense under Section 42.01, Penal
18 Code, or equivalent offense;

19 (9) is fully qualified under applicable federal and
20 state law to purchase a handgun;

21 (10) has not been finally determined to be delinquent
22 in making a child support payment administered or collected by the
23 attorney general;

24 (11) has not been finally determined to be delinquent
25 in the payment of a tax or other money collected by the comptroller,
26 the tax collector of a political subdivision of the state, or any
27 agency or subdivision of the state;

1 (12) is not currently:

2 (A) restricted under a court protective order,
3 including a lethal violence protective order issued under Chapter
4 7B, Code of Criminal Procedure; or

5 (B) subject to a restraining order affecting the
6 spousal relationship, other than a restraining order solely
7 affecting property interests;

8 (13) has not, in the 10 years preceding the date of
9 application, been adjudicated as having engaged in delinquent
10 conduct violating a penal law of the grade of felony; and

11 (14) has not made any material misrepresentation, or
12 failed to disclose any material fact, in an application submitted
13 pursuant to Section 411.174.

14 SECTION 5. Chapter 37, Penal Code, is amended by adding
15 Section 37.082 to read as follows:

16 Sec. 37.082. FALSE REPORT REGARDING REQUEST FOR LETHAL
17 VIOLENCE PROTECTIVE ORDER. (a) In this section, "prosecuting
18 attorney" means a district attorney, criminal district attorney, or
19 county attorney.

20 (b) A person commits an offense if, with intent to deceive,
21 the person knowingly makes to a prosecuting attorney or peace
22 officer a false statement relating to a request that a prosecuting
23 attorney file an application for a lethal violence protective order
24 under Chapter 7B, Code of Criminal Procedure.

25 (c) An offense under this section is a Class B misdemeanor.

26 SECTION 6. Section 46.04, Penal Code, is amended by adding
27 Subsection (c-1) and amending Subsection (e) to read as follows:

1 (c-1) A person commits an offense if, after receiving notice
2 that the person is subject to a lethal violence protective order
3 issued under Chapter 7B, Code of Criminal Procedure, and before
4 expiration of the order, the person purchases, owns, possesses, or
5 controls a firearm in violation of the order.

6 (e) An offense under Subsection (a) is a felony of the third
7 degree. An offense under Subsection (b), ~~(c)~~, or (c-1) is a
8 Class A misdemeanor.

9 SECTION 7. Not later than October 1, 2017, the Department of
10 Public Safety shall adopt rules as required by Section 411.0522,
11 Government Code, as added by this Act.

12 SECTION 8. This Act takes effect September 1, 2017.