

By: Burns

H.B. No. 3801

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility requirements for a license to carry a handgun.

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

SECTION 1. Chapter 28, Code of Criminal Procedure, is amended by adding Article 28.15 to read as follows:

Art. 28.15. MOTION REGARDING LICENSE TO CARRY HANDGUN. (a)
If a defendant's eligibility for a license to carry a handgun would be affected by a criminal charge pending against the defendant in this state, the defendant may file with the court in which the charge is pending a petition for an order under this article authorizing the defendant to hold a license to carry a handgun if the defendant is able to satisfy all other applicable eligibility requirements for holding the license.

(b) In determining whether to issue an order under this article, the court shall consider:

(1) the nature of the offense with which the defendant is charged;

(2) the criminal history record information of the defendant; and

(3) any potential risks to public safety.

(c) A defendant whose license to carry a handgun is suspended because of the charge described by Subsection (a) may present to the Department of Public Safety a copy of an order issued

1 under this article. On receipt of the copy, the department shall
2 reinstate the suspended license, provided that the defendant is
3 otherwise eligible to hold the license.

4 (d) A defendant who does not hold a license to carry a
5 handgun may submit with the defendant's application materials a
6 copy of an order issued under this article. The Department of
7 Public Safety may not deny the issuance of a license based solely on
8 a charged offense that is the subject of an order issued under this
9 article.

10 (e) The court may rescind an order issued under this article
11 on the motion of the attorney representing the state or on the
12 court's own motion. If the court rescinds the order, the court
13 shall immediately notify the appropriate division of the Department
14 of Public Safety.

15 (f) On receipt of a notice of a rescinded order under
16 Subsection (e), the Department of Public Safety shall, while the
17 charge is pending:

18 (1) suspend the handgun license of the defendant; or
19 (2) if the defendant does not have a handgun license,
20 deny any application the defendant submits for a license.

21 (g) An order may be issued under this article only with
22 respect to a single pending criminal charge.

23 SECTION 2. Section [411.172](#)(a), Government Code, is amended
24 to read as follows:

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

27 (1) is a legal resident of this state for the six-month

1 period preceding the date of application under this subchapter or
2 is otherwise eligible for a license under Section 411.173(a);

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

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

5 (4) is not charged with the commission of a Class A or
6 Class B misdemeanor or equivalent offense, or of an offense under
7 Section 42.01, Penal Code, or equivalent offense, or of a felony
8 under an information or indictment, unless a court order has been
9 issued under Article 28.15, Code of Criminal Procedure, relating to
10 that offense;

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

13 (6) is not a chemically dependent person;

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

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

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

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

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

1 agency or subdivision of the state;

2 (12) is not currently restricted under a court
3 protective order or subject to a restraining order affecting the
4 spousal relationship, other than a restraining order solely
5 affecting property interests;

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

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

12 SECTION 3. Section 411.174(a), Government Code, is amended
13 to read as follows:

14 (a) An applicant for a license to carry a handgun must
15 submit to the director's designee described by Section 411.176:

16 (1) a completed application on a form provided by the
17 department that requires only the information listed in Subsection
18 (b);

19 (2) one or more photographs of the applicant that meet
20 the requirements of the department;

21 (3) a certified copy of the applicant's birth
22 certificate or certified proof of age;

23 (4) proof of residency in this state;

24 (5) two complete sets of legible and classifiable
25 fingerprints of the applicant taken by a person appropriately
26 trained in recording fingerprints who is employed by a law
27 enforcement agency or by a private entity designated by a law

enforcement agency as an entity qualified to take fingerprints of an applicant for a license under this subchapter;

(6) a nonrefundable application and license fee of \$140 paid to the department;

(7) evidence of handgun proficiency, in the form and manner required by the department;

(8) an affidavit signed by the applicant stating that the applicant:

(A) has read and understands each provision of this subchapter that creates an offense under the laws of this state and each provision of the laws of this state related to use of deadly force; and

(B) fulfills all the eligibility requirements listed under Section 411.172; ~~and~~

(9) a form executed by the applicant that authorizes the director to make an inquiry into any noncriminal history records that are necessary to determine the applicant's eligibility for a license under Section 411.172(a); and

(10) a copy of a court order issued under Article 28.15, Code of Criminal Procedure, if the applicant would otherwise be ineligible for the license under Section 411.172(a)(4).

SECTION 4. Sections 411.187(a) and (c), Government Code, are amended to read as follows:

(a) The department shall suspend a license under this section if the license holder:

(1) is charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under

1 Section 42.01, Penal Code, or equivalent offense, or of a felony
2 under an information or indictment, unless a court order has been
3 issued under Article 28.15, Code of Criminal Procedure, relating to
4 that offense;

5 (2) fails to notify the department of a change of
6 address, name, or status as required by Section 411.181;

7 (3) commits an act of family violence and is the
8 subject of an active protective order rendered under Title 4,
9 Family Code; or

10 (4) is arrested for an offense involving family
11 violence or an offense under Section 42.072, Penal Code, and is the
12 subject of an order for emergency protection issued under Article
13 17.292, Code of Criminal Procedure.

14 (c) The department shall suspend a license under this
15 section:

16 (1) for 30 days, if the person's license is subject to
17 suspension for a reason listed in Subsection (a)(2), (3), or (4),
18 except as provided by Subdivision (2);

19 (2) for not less than one year and not more than three
20 years, if the person's license:

21 (A) is subject to suspension for a reason listed
22 in Subsection (a), other than the reason listed in Subsection
23 (a)(1); and

24 (B) has been previously suspended for the same
25 reason;

26 (3) until the earlier of:

27 (A) the date of dismissal of the charges, if the

1 person's license is subject to suspension for the reason listed in
2 Subsection (a)(1); or

3 (B) the date the person provides the department
4 with a copy of a court order issued under Article 28.15, Code of
5 Criminal Procedure, relating to the offense charged; or

6 (4) for the duration of or the period specified by:

7 (A) the protective order issued under Title 4,
8 Family Code, if the person's license is subject to suspension for
9 the reason listed in Subsection (a)(3) [~~(a)(5)~~]; or

10 (B) the order for emergency protection issued
11 under Article [17.292](#), Code of Criminal Procedure, if the person's
12 license is subject to suspension for the reason listed in
13 Subsection (a)(4) [~~(a)(6)~~].

14 SECTION 5. Sections [411.201](#)(c) and (d), Government Code,
15 are amended to read as follows:

16 (c) An active judicial officer is eligible for a license to
17 carry a handgun under the authority of this subchapter. A retired
18 judicial officer is eligible for a license to carry a handgun under
19 the authority of this subchapter if the officer:

20 (1) has not been convicted of a felony;

21 (2) has not, in the five years preceding the date of
22 application, been convicted of a Class A or Class B misdemeanor or
23 equivalent offense;

24 (3) is not charged with the commission of a Class A or
25 Class B misdemeanor or equivalent offense or of a felony under an
26 information or indictment, unless a court order has been issued
27 under Article 28.15, Code of Criminal Procedure, relating to that

1 offense;

2 (4) is not a chemically dependent person; and

3 (5) is not a person of unsound mind.

4 (d) An applicant for a license who is an active or retired
5 judicial officer must submit to the department:

6 (1) a completed application, including all required
7 affidavits, on a form prescribed by the department;

8 (2) one or more photographs of the applicant that meet
9 the requirements of the department;

10 (3) two complete sets of legible and classifiable
11 fingerprints of the applicant, including one set taken by a person
12 employed by a law enforcement agency who is appropriately trained
13 in recording fingerprints;

14 (4) evidence of handgun proficiency, in the form and
15 manner required by the department for an applicant under this
16 section;

17 (5) a nonrefundable application and license fee set by
18 the department in an amount reasonably designed to cover the
19 administrative costs associated with issuance of a license to carry
20 a handgun under this subchapter; ~~and~~

21 (6) if the applicant is a retired judicial officer, a
22 form executed by the applicant that authorizes the department to
23 make an inquiry into any noncriminal history records that are
24 necessary to determine the applicant's eligibility for a license
25 under this subchapter; and

26 (7) a copy of a court order issued under Article 28.15,
27 Code of Criminal Procedure, if the applicant would otherwise be

1 ineligible for the license under Subsection (c)(3).

2 SECTION 6. The changes in law made by this Act to Sections
3 411.172, 411.174, and 411.201, Government Code, apply only to an
4 application for the issuance or renewal of a license that is
5 submitted to the Department of Public Safety on or after the
6 effective date of this Act. An application submitted before the
7 effective date of this Act is governed by the law in effect on the
8 date the application was submitted, and the former law is continued
9 in effect for that purpose.

10 SECTION 7. The change in law made by this Act to Section
11 411.187, Government Code, applies only to an administrative or
12 judicial determination concerning the suspension of a license to
13 carry a handgun that is made on or after the effective date of this
14 Act. An administrative or judicial determination made before the
15 effective date of this Act is governed by the law in effect on the
16 date the determination was made, and the former law is continued in
17 effect for that purpose.

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