86R1485 JCG-D

By:  Canales H.B. No. 38

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the manufacture, assembly, or ownership of unmarked firearms; creating a criminal offense; authorizing a fee.

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. MARKING OF UNMARKED FIREARMS REQUIRED

Sec. 411.221.  DEFINITION. In this subchapter, "firearm" has the meaning assigned by Section 46.01, Penal Code.

Sec. 411.222.  APPLICABILITY. (a) Except as provided by Subsections (b) and (c), this subchapter applies only to a firearm that has not been:

(1)  assigned a unique serial number or other mark of identification under federal law or the law of this state or another state; and

(2)  marked with that serial number or mark in a manner that meets or exceeds the requirements imposed under federal law on licensed importers and licensed manufacturers of firearms for marking imported or manufactured firearms with a serial number.

(b)  This subchapter does not apply to:

(1)  a firearm, other than a handgun, manufactured or assembled before December 16, 1968;

(2)  a firearm that is a curio or relic, as those terms are defined by 27 C.F.R. Section 478.11, or an antique firearm, as that term is defined by 27 C.F.R. Section 479.11; or

(3)  a firearm assigned a unique serial number or other mark of identification for the purpose of entering a description of the firearm into a criminal intelligence database.

(c)  This subchapter does not apply to the importation or manufacture of a firearm by a person licensed under federal law to engage in the business of importing or manufacturing firearms, if the firearms imported or manufactured by that person are marked with a unique serial number in compliance with federal law.

Sec. 411.223.  RULEMAKING AUTHORITY; ADMINISTRATION. (a) The director shall adopt rules necessary to implement this subchapter.

(b)  The department shall:

(1)  administer this subchapter and the rules adopted by the director under Subsection (a); and

(2)  take action necessary to ensure compliance with this subchapter.

Sec. 411.224.  FEE. To cover the cost of administering this subchapter, the department may collect a reasonable fee from an applicant for a unique serial number or other mark of identification under this subchapter.

Sec. 411.225.  MARKING REQUIREMENTS FOR MANUFACTURING OR ASSEMBLING FIREARMS. A person who manufactures or assembles a firearm to which this subchapter applies shall:

(1)  before manufacturing or assembling the firearm, apply to the department for a unique serial number or other mark of identification;

(2)  not later than the 10th day after the date of manufacturing or assembling the firearm or the date of receiving a serial number or mark provided by the department, whichever is later:

(A)  in a manner that meets or exceeds the requirements described by Section 411.222(a)(2), permanently affix to the firearm the serial number or mark provided by the department; or

(B)  if the firearm is composed primarily of parts made out of plastic, permanently affix to a piece of steel the serial number or mark provided by the department and embed that marked piece of steel in the firearm in a manner that meets or exceeds the requirements of the Undetectable Firearms Act of 1988 (18 U.S.C. Section 922(p)) and the requirements described by Section 411.222(a)(2); and

(3)  after permanently affixing to the firearm the serial number or mark provided by the department, as described by Subdivision (2), notify the department in a manner prescribed by the department:

(A)  that the serial number or mark has been affixed to the firearm; and

(B)  of the name of the owner of the firearm.

Sec. 411.226.  MARKING REQUIREMENTS FOR UNMARKED FIREARMS. (a) Except as provided by Subsection (b), a person who owns a firearm to which this subchapter applies shall, not later than the 30th day after the date the person acquires the firearm or enters this state with the firearm:

(1)  apply to the department for a unique serial number or other mark of identification;

(2)  not later than the 10th day after the date of receiving a serial number or mark provided by the department:

(A)  in a manner that meets or exceeds the requirements described by Section 411.222(a)(2), permanently affix to the firearm the serial number or mark provided by the department; or

(B)  if the firearm is composed primarily of parts made out of plastic, permanently affix to a piece of steel the serial number or mark provided by the department and embed that marked piece of steel in the firearm in a manner that meets or exceeds the requirements of the Undetectable Firearms Act of 1988 (18 U.S.C. Section 922(p)) and the requirements described by Section 411.222(a)(2); and

(3)  after permanently affixing to the firearm the serial number or mark provided by the department, as described by Subdivision (2), notify the department in a manner prescribed by the department:

(A)  that the serial number or mark has been affixed to the firearm; and

(B)  of the name of the owner of the firearm.

(b)  A person who owns a firearm to which this subchapter applies, who has obtained for that firearm a unique serial number or other mark of identification as described by Section 411.222(a)(1), but who has not yet permanently affixed the number or mark to the firearm, promptly shall permanently affix the applicable number or mark to the firearm as provided by Subsection (a)(2)(A) or (B).

Sec. 411.227.  SALE OR TRANSFER OF UNMARKED FIREARMS PROHIBITED; EXCEPTION; DUTY TO DESTROY. (a) A person may not sell or otherwise transfer ownership of a firearm to which this subchapter applies unless the person sells or otherwise transfers ownership of the firearm to a law enforcement agency.

(b)  Notwithstanding Article 18.18, 18.19, or 18.191, Code of Criminal Procedure, a law enforcement agency that purchases or otherwise obtains ownership of a firearm to which this subchapter applies shall destroy the firearm.

Sec. 411.228.  SERIAL NUMBER ISSUANCE; APPLICATION. (a) The department shall issue a unique serial number or other mark of identification to an applicant who meets all the eligibility requirements and submits all the application materials as described by this subchapter.

(b)  An applicant for a unique serial number or other mark of identification must:

(1)  on each occasion the applicant requests a serial number or mark for a firearm to which this subchapter applies, provide the department information sufficient to enable the department to determine that the applicant is not prohibited by state or federal law from possessing each firearm included in the application;

(2)  provide proof of identity and age showing that the applicant is 18 years of age or older;

(3)  provide a description of the firearm to which this subchapter applies that the applicant owns or intends to manufacture or assemble;

(4)  provide any other information the department may require; and

(5)  pay any applicable fee prescribed by the department.

(c)  The department shall review and either approve or deny an application not later than the 15th day after the date the department receives the application. The department shall notify the applicant in writing if the department denies the application and include a detailed description of the reason for the denial.

Sec. 411.229.  OFFENSE. (a) A person commits an offense if the person:

(1)  manufactures or assembles a firearm to which this subchapter applies and fails to comply with Section 411.225;

(2)  owns a firearm to which this subchapter applies and fails to comply with Section 411.226; or

(3)  in violation of Section 411.227, sells or otherwise transfers ownership of a firearm to which this subchapter applies.

(b)  An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the firearm is a handgun.

(c)  For purposes of this section, each firearm manufactured, assembled, or owned in violation of this subchapter is a separate offense.

(d)  If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Sec. 411.230.  PUBLIC INFORMATION. The department shall make available on the department's Internet website:

(1)  the number of unique serial numbers or other marks of identification issued under this subchapter; and

(2)  the number of arrests and convictions for an offense under Section 411.229.

SECTION 2.  As soon as practicable after September 1, 2019, the Department of Public Safety of the State of Texas shall adopt rules as required by Subchapter H-1, Government Code, as added by this Act.

SECTION 3.  (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2019.

(b)  Sections 411.225 and 411.229(a)(1), Government Code, as added by this Act, take effect September 1, 2021.

(c)  Sections 411.226 and 411.229(a)(2), Government Code, as added by this Act, take effect September 1, 2022.