

By: Ramos

H.B. No. 1713

A BILL TO BE ENTITLED

AN ACT

relating to requiring a person convicted of an offense involving family violence or a felony or a person who is the subject of a protective order to surrender firearms owned by the person.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. SURRENDER OF FIREARM ON CONVICTION OF CERTAIN OFFENSES
OR ISSUANCE OF CERTAIN PROTECTIVE ORDERS

Art. 68.01. APPLICABILITY. This chapter applies to a person who:

(1) is convicted of:

(A) an offense involving family violence, as defined by Section 71.004, Family Code; or

(B) a felony; or

(2) is the subject of:

(A) a protective order under Chapter 85, Family Code, or Chapter 7A of this code; or

(B) a magistrate's order for emergency protection under Article 17.292.

Art. 68.02. NOTICE AND ORDER TO SURRENDER FIREARM. On conviction of a person for an offense described by Article 68.01(1) or issuance of an order described by Article 68.01(2), the court shall:

1 (1) provide written notice to the person who was
2 convicted or who is the subject of the order that the person is
3 prohibited from acquiring, possessing, or controlling a firearm
4 under 18 U.S.C. Section 922(g); and

5 (2) order the person to surrender all firearms the
6 person owns in the manner provided by Article 68.03 not later than
7 the 30th day after:

8 (A) the date the person receives notice under
9 this article; or

10 (B) if the person was taken into custody
11 immediately after conviction, the date the person is released from
12 confinement.

13 Art. 68.03. SURRENDER OF FIREARM. A person required to
14 surrender a firearm under Article 68.02 shall surrender the firearm
15 by:

16 (1) selling the firearm to a person who is a licensed
17 firearms dealer under 18 U.S.C. Section 923;

18 (2) surrendering the firearm to a law enforcement
19 agency for holding in the manner described by Article 68.05, if the
20 person is required to surrender the firearm based on:

21 (A) a conviction described by Article 68.01(1)
22 that the person intends to appeal; or

23 (B) an order described by Article 68.01(2); or

24 (3) surrendering the firearm to a law enforcement
25 agency for disposition in the manner provided by Article 68.06, if
26 the person is required to surrender the firearm based on a
27 conviction described by Article 68.01(1) that the person does not

1 intend to appeal.

2 Art. 68.04. REQUIRED DOCUMENTATION. (a) A person subject
3 to an order under Article 68.02 who does not own a firearm shall
4 submit to the court a signed affidavit affirming that the person
5 does not own a firearm.

6 (b) A licensed firearms dealer who takes possession of a
7 firearm from a person required to surrender the firearm under
8 Article 68.02 shall immediately provide the person with a written
9 receipt for the firearm, and the person shall file the receipt with
10 the court.

11 Art. 68.05. HOLDING OF FIREARM SURRENDERED TO LAW
12 ENFORCEMENT AGENCY. (a) A law enforcement agency that takes
13 possession of a firearm under Article 68.03(2) shall immediately
14 provide the person surrendering the firearm a written receipt for
15 the firearm and a written notice of the procedure for the return of
16 the firearm under this article.

17 (b) A person who receives a receipt under Subsection (a)
18 shall file the receipt with the court.

19 (c) Not later than the 30th day after the date of any of the
20 following, the clerk of the court shall notify the law enforcement
21 agency that, as applicable:

22 (1) the conviction for which the person was required
23 to surrender the person's firearm became final;

24 (2) the conviction for which the person was required
25 to surrender the person's firearm was vacated, dismissed, reversed
26 on appeal, or otherwise fully discharged or the person received a
27 full pardon for the conviction; or

1 (3) the order for which the person was required to
2 surrender the person's firearm has expired.

3 (d) Not later than the 30th day after the date the law
4 enforcement agency holding a firearm subject to disposition under
5 this article receives the notice described by Subsection (c)(2) or
6 (3), the law enforcement agency shall conduct a check of state and
7 national criminal history record information to verify whether the
8 person may lawfully possess a firearm under 18 U.S.C. Section
9 922(g) and under the law of this state.

10 (e) If the check conducted under Subsection (d) verifies
11 that the person may lawfully possess a firearm, the law enforcement
12 agency shall provide to the person by certified mail written notice
13 stating that the firearm may be returned to the person if, before
14 the 121st day after the date of the notice, the person submits a
15 written request for the return of the firearm.

16 (f) If the law enforcement agency receives notice under
17 Subsection (c)(1) or if the check conducted under Subsection (d)
18 shows that the person may not lawfully possess a firearm, the law
19 enforcement agency shall provide to the person by certified mail
20 written notice stating that:

21 (1) the person may not lawfully possess a firearm
22 under 18 U.S.C. Section 922(g) or under the law of this state; and

23 (2) the law enforcement agency holding the firearm
24 will dispose of the firearm in the manner provided by Article 68.06.

25 Art. 68.06. DISPOSITION OF FIREARM SURRENDERED TO LAW
26 ENFORCEMENT AGENCY. (a) A law enforcement agency shall provide for
27 a firearm surrendered to the law enforcement agency under this

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

3 (1) the person surrendered the firearm under Article
4 68.03(2) and:

5 (A) the person did not respond to notice under
6 Article 68.05(e) before the 121st day after the date of the notice;
7 or

8 (B) the law enforcement agency has provided
9 notice under Article 68.05(f) that the person may not lawfully
10 possess a firearm and that the law enforcement agency intends to
11 dispose of the firearm as provided by this article; or

12 (2) the person surrendered the firearm under Article
13 68.03(3).

14 (b) The proceeds from the sale of a firearm under this
15 article shall be paid to the owner of the firearm, less the cost of
16 administering this article and, if applicable, Article 68.05 with
17 respect to the firearm.

18 (c) An unclaimed firearm that is surrendered as provided by
19 this chapter may not be destroyed or forfeited to the state.

20 Art. 68.07. FORM OF AFFIDAVIT. The Office of Court
21 Administration of the Texas Judicial System shall adopt a model
22 affidavit for purposes of Article 68.04.

23 SECTION 2. Article 7A.06(a), Code of Criminal Procedure, is
24 amended to read as follows:

25 (a) Each protective order issued under this chapter,
26 including a temporary ex parte order, must contain the following
27 prominently displayed statements in boldfaced type, capital

1 letters, or underlined:

2 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
3 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
4 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

5 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
6 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
7 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
8 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
9 UNLESS A COURT CHANGES THE ORDER."

10 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS
11 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT
12 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL
13 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A
14 FIREARM OR AMMUNITION. A PERSON SUBJECT TO THIS ORDER MUST DISPOSE
15 OF OR SURRENDER ANY FIREARMS IN THE PERSON'S POSSESSION AS PROVIDED
16 BY CHAPTER 68, CODE OF CRIMINAL PROCEDURE."

17 SECTION 3. Article 17.292(g), Code of Criminal Procedure,
18 is amended to read as follows:

19 (g) An order for emergency protection issued under this
20 article must contain the following statements printed in bold-face
21 type or in capital letters:

22 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
23 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
24 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT
25 RESULTS IN FAMILY VIOLENCE OR A STALKING OR TRAFFICKING OFFENSE MAY
26 BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS
27 APPLICABLE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE,

1 IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO
2 YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE
3 OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED
4 IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY
5 OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE
6 PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR
7 IMPRISONMENT. A PERSON SUBJECT TO THIS ORDER MUST DISPOSE OF OR
8 SURRENDER ANY FIREARMS IN THE PERSON'S POSSESSION AS PROVIDED BY
9 CHAPTER 68, CODE OF CRIMINAL PROCEDURE.

10 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
11 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
12 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
13 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
14 UNLESS A COURT CHANGES THE ORDER."

15 SECTION 4. Section 85.026(a), Family Code, is amended to
16 read as follows:

17 (a) Each protective order issued under this subtitle,
18 including a temporary ex parte order, must contain the following
19 prominently displayed statements in boldfaced type, capital
20 letters, or underlined:

21 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
22 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
23 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

24 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
25 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
26 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
27 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT

1 UNLESS A COURT CHANGES THE ORDER."

2 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS
3 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT
4 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL
5 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A
6 FIREARM OR AMMUNITION. A PERSON SUBJECT TO THIS ORDER MUST DISPOSE
7 OF OR SURRENDER ANY FIREARMS IN THE PERSON'S POSSESSION AS PROVIDED
8 BY CHAPTER 68, CODE OF CRIMINAL PROCEDURE."

9 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
10 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
11 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT
12 RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE
13 MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A
14 SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON
15 FOR AT LEAST TWO YEARS."

16 SECTION 5. (a) Chapter 68, Code of Criminal Procedure, as
17 added by this Act, applies only to a person who is convicted of an
18 offense described by Article 68.01(1), Code of Criminal Procedure,
19 as added by this Act, on or after January 1, 2020, or who is the
20 subject of an order described by Article 68.01(2), Code of Criminal
21 Procedure, as added by this Act, that is issued on or after that
22 date. A person who is convicted of an offense before January 1,
23 2020, or who is the subject of an order issued before that date is
24 governed by the law in effect immediately before the effective date
25 of this Act, and the former law is continued in effect for that
26 purpose.

27 (b) The Office of Court Administration of the Texas Judicial

1 System shall adopt the model affidavit required by Article 68.07,
2 Code of Criminal Procedure, as added by this Act, not later than
3 December 1, 2019.

4 SECTION 6. The change in law made by this Act relating to
5 the contents of a protective order or a magistrate's order for
6 emergency protection applies to an order issued on or after January
7 1, 2020. An order issued before that date is governed by the law as
8 it existed immediately before the effective date of this Act, and
9 the former law is continued in effect for that purpose.

10 SECTION 7. This Act takes effect September 1, 2019.