

By: West

S.B. No. 388

A BILL TO BE ENTITLED

AN ACT

relating to certain criminal offenses concerning the unlawful transfer or purchase of certain weapons; increasing a criminal penalty.

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

SECTION 1. The heading to Section 46.06, Penal Code, is amended to read as follows:

Sec. 46.06. UNLAWFUL TRANSFER OR PURCHASE OF CERTAIN WEAPONS.

SECTION 2. Section 46.06, Penal Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (a-1), (c-1), (e), and (f) to read as follows:

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

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

(2) purchases or attempts to purchase a firearm with intent to deliver the firearm to a person knowing that the person to whom the firearm is to be delivered intends to possess the firearm unlawfully or to use the firearm unlawfully or in the commission of an unlawful act; or

(3) knowingly makes a materially false or misleading statement in providing information to a person for purposes of

1 complying with the national instant criminal background check
2 system in the manner required by 18 U.S.C. Section 922.

3 (a-1) A person commits an offense if the person:

4 (1) [~~(2)~~] intentionally or knowingly sells, rents,
5 leases, or gives or offers to sell, rent, lease, or give to any
6 child younger than 18 years of age any firearm, club, or
7 location-restricted knife;

8 (2) [~~(3)~~] intentionally, knowingly, or recklessly
9 sells a firearm or ammunition for a firearm to any person who is
10 intoxicated;

11 (3) [~~(4)~~] knowingly sells a firearm or ammunition for
12 a firearm to any person who has been convicted of a felony before
13 the fifth anniversary of the later of the following dates:

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

16 (B) the person's release from supervision under
17 community supervision, parole, or mandatory supervision following
18 conviction of the felony;

19 (4) [~~(5)~~] sells, rents, leases, loans, or gives a
20 handgun to any person knowing that an active protective order is
21 directed to the person to whom the handgun is to be delivered; or

22 (5) [~~(6)~~] knowingly purchases, rents, leases, or
23 receives as a loan or gift from another a handgun while an active
24 protective order is directed to the actor.

25 (c) It is an affirmative defense to prosecution under
26 Subsection (a-1)(1) [~~(a)(2)~~] that the transfer was to a minor whose
27 parent or the person having legal custody of the minor had given

1 written permission for the sale or, if the transfer was other than a
2 sale, the parent or person having legal custody had given effective
3 consent.

4 (c-1) The renunciation defense described by Section
5 15.04(a) is available as an affirmative defense to prosecution of
6 an attempted purchase under Subsection (a)(2).

7 (d) An offense under Subsection (a) is a felony of the third
8 degree.

9 (e) An offense under Subsection (a-1) [~~this section~~] is a
10 Class A misdemeanor, except that an offense under Subsection
11 (a-1)(1) [~~(a)(2)~~] is a state jail felony if the weapon that is the
12 subject of the offense is a handgun.

13 (f) To the extent of any conflict between this section and a
14 federal law related to the unlawful transfer or purchase of
15 weapons, the federal law prevails.

16 SECTION 3. Article 59.01(2), Code of Criminal Procedure, is
17 amended to read as follows:

18 (2) "Contraband" means property of any nature,
19 including real, personal, tangible, or intangible, that is:

20 (A) used in the commission of:

21 (i) any first or second degree felony under
22 the Penal Code;

23 (ii) any felony under Section 15.031(b),
24 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33,
25 33A, or 35, Penal Code;

26 (iii) any felony under The Securities Act
27 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

1 (iv) any offense under Chapter 49, Penal
2 Code, that is punishable as a felony of the third degree or state
3 jail felony, if the defendant has been previously convicted three
4 times of an offense under that chapter;

5 (B) used or intended to be used in the commission
6 of:

7 (i) any felony under Chapter 481, Health
8 and Safety Code (Texas Controlled Substances Act);

9 (ii) any felony under Chapter 483, Health
10 and Safety Code;

11 (iii) a felony under Chapter 151, Finance
12 Code;

13 (iv) any felony under Chapter 34, Penal
14 Code;

15 (v) a Class A misdemeanor under Subchapter
16 B, Chapter 365, Health and Safety Code, if the defendant has been
17 previously convicted twice of an offense under that subchapter;

18 (vi) any felony under Chapter 32, Human
19 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
20 involves the state Medicaid program;

21 (vii) a Class B misdemeanor under Chapter
22 522, Business & Commerce Code;

23 (viii) a Class A misdemeanor under Section
24 306.051, Business & Commerce Code;

25 (ix) any offense under Section 42.10, Penal
26 Code;

27 (x) any offense under Section 46.06(a)

1 ~~[46.06(a)(1)]~~ or 46.14, Penal Code;

2 (xi) any offense under Chapter 71, Penal
3 Code;

4 (xii) any offense under Section 20.05 or
5 20.06, Penal Code; or

6 (xiii) an offense under Section 326.002,
7 Business & Commerce Code;

8 (C) the proceeds gained from the commission of a
9 felony listed in Paragraph (A) or (B) of this subdivision, a
10 misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of
11 this subdivision, or a crime of violence;

12 (D) acquired with proceeds gained from the
13 commission of a felony listed in Paragraph (A) or (B) of this
14 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),
15 or (xi) of this subdivision, or a crime of violence;

16 (E) used to facilitate or intended to be used to
17 facilitate the commission of a felony under Section 15.031 or
18 43.25, Penal Code; or

19 (F) used to facilitate or intended to be used to
20 facilitate the commission of a felony under Section 20A.02 or
21 Chapter 43, Penal Code.

22 SECTION 4. Section 71.02(a), Penal Code, is amended to read
23 as follows:

24 (a) A person commits an offense if, with the intent to
25 establish, maintain, or participate in a combination or in the
26 profits of a combination or as a member of a criminal street gang,
27 the person commits or conspires to commit one or more of the

1 following:

2 (1) murder, capital murder, arson, aggravated
3 robbery, robbery, burglary, theft, aggravated kidnapping,
4 kidnapping, aggravated assault, aggravated sexual assault, sexual
5 assault, continuous sexual abuse of young child or children,
6 solicitation of a minor, forgery, deadly conduct, assault
7 punishable as a Class A misdemeanor, burglary of a motor vehicle, or
8 unauthorized use of a motor vehicle;

9 (2) any gambling offense punishable as a Class A
10 misdemeanor;

11 (3) promotion of prostitution, aggravated promotion
12 of prostitution, or compelling prostitution;

13 (4) unlawful manufacture, transportation, repair, or
14 sale of firearms or prohibited weapons;

15 (5) unlawful manufacture, delivery, dispensation, or
16 distribution of a controlled substance or dangerous drug, or
17 unlawful possession of a controlled substance or dangerous drug
18 through forgery, fraud, misrepresentation, or deception;

19 (5-a) causing the unlawful delivery, dispensation, or
20 distribution of a controlled substance or dangerous drug in
21 violation of Subtitle B, Title 3, Occupations Code;

22 (6) any unlawful wholesale promotion or possession of
23 any obscene material or obscene device with the intent to wholesale
24 promote the same;

25 (7) any offense under Subchapter B, Chapter 43,
26 depicting or involving conduct by or directed toward a child
27 younger than 18 years of age;

- 1 (8) any felony offense under Chapter 32;
- 2 (9) any offense under Chapter 36;
- 3 (10) any offense under Chapter 34, 35, or 35A;
- 4 (11) any offense under Section 37.11(a);
- 5 (12) any offense under Chapter 20A;
- 6 (13) any offense under Section 37.10;
- 7 (14) any offense under Section 38.06, 38.07, 38.09, or
- 8 38.11;
- 9 (15) any offense under Section 42.10;
- 10 (16) any offense under Section 46.06(a) [~~46.06(a)(1)~~]
- 11 or 46.14;
- 12 (17) any offense under Section 20.05 or 20.06; or
- 13 (18) any offense classified as a felony under the Tax
- 14 Code.

15 SECTION 5. The change in law made by this Act applies only
16 to an offense committed on or after the effective date of this Act.
17 An offense committed before the effective date of this Act is
18 governed by the law in effect on the date the offense was committed,
19 and the former law is continued in effect for that purpose. For
20 purposes of this section, an offense was committed before the
21 effective date of this Act if any element of the offense occurred
22 before that date.

23 SECTION 6. This Act takes effect September 1, 2019.