87R3020 MAW-D

By:  Anchia H.B. No. 1766

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

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

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

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

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

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

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

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

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

(c)  It is an affirmative defense to prosecution under Subsection (a-1)(1) [~~(a)(2)~~] that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

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

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

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

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

SECTION 3.  (a) Article 59.01(2), Code of Criminal Procedure, as effective until January 1, 2022, is amended to read as follows:

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

(A)  used in the commission of:

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

(ii)  any felony under Section 15.031(b), 21.11, or 38.04 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii)  any felony under Chapter 43, Penal Code, except as provided by Paragraph (B);

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

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

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

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

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

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

(iv)  any felony under Chapter 20A or 34, Penal Code;

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

(vi)  any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves a health care program, as defined by Section 35A.01, Penal Code;

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

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

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

(x)  any offense under Section 46.06(a) [~~46.06(a)(1)~~] or 46.14, Penal Code;

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

(xii)  any offense under Section 20.05, 20.06, 20.07, 43.04, or 43.05, Penal Code; or

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

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

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

(E)  used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or Chapter 43, Penal Code; or

(F)  used to facilitate or intended to be used to facilitate the commission of an offense under Section 20.05, 20.06, or 20.07 or Chapter 20A, Penal Code.

(b)  Article 59.01(2), Code of Criminal Procedure, as effective on January 1, 2022, is amended to read as follows:

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

(A)  used in the commission of:

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

(ii)  any felony under Section 15.031(b), 21.11, or 38.04 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii)  any felony under Chapter 43, Penal Code, except as provided by Paragraph (B);

(iv)  any felony under The Securities Act (Title 12, Government Code); or

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

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

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

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

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

(iv)  any felony under Chapter 20A or 34, Penal Code;

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

(vi)  any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves a health care program, as defined by Section 35A.01, Penal Code;

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

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

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

(x)  any offense under Section 46.06(a) [~~46.06(a)(1)~~] or 46.14, Penal Code;

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

(xii)  any offense under Section 20.05, 20.06, 20.07, 43.04, or 43.05, Penal Code; or

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

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

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

(E)  used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or Chapter 43, Penal Code; or

(F)  used to facilitate or intended to be used to facilitate the commission of an offense under Section 20.05, 20.06, or 20.07 or Chapter 20A, Penal Code.

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

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

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

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

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

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

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

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

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

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

(8)  any felony offense under Chapter 32;

(9)  any offense under Chapter 36;

(10)  any offense under Chapter 34, 35, or 35A;

(11)  any offense under Section 37.11(a);

(12)  any offense under Chapter 20A;

(13)  any offense under Section 37.10;

(14)  any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15)  any offense under Section 42.10;

(16)  any offense under Section 46.06(a) [~~46.06(a)(1)~~] or 46.14;

(17)  any offense under Section 20.05 or 20.06;

(18)  any offense under Section 16.02; or

(19)  any offense classified as a felony under the Tax Code.

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

SECTION 6.  This Act takes effect September 1, 2021.