

By: Ortega

H.B. No. 241

A BILL TO BE ENTITLED

AN ACT

relating to creating a criminal offense for the unlawful possession or transfer of an assault weapon.

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

SECTION 1. Chapter 46, Penal Code, is amended by adding Section 46.055 to read as follows:

Sec. 46.055. UNLAWFUL POSSESSION OR TRANSFER OF ASSAULT WEAPON. (a) In this section, "assault weapon" means:

(1) a semiautomatic centerfire rifle that has the capacity to accept a detachable magazine that has:

(A) a pistol grip that protrudes conspicuously beneath the action of the firearm;

(B) a folding or telescoping stock;

(C) a thumbhole stock;

(D) a second handgrip or a protruding grip that can be held by the non-trigger hand;

(E) a flash suppressor; or

(F) a grenade launcher or flare launcher;

(2) a semiautomatic centerfire rifle that has a fixed magazine that holds more than 10 rounds of ammunition;

(3) a semiautomatic centerfire rifle that has an overall length of less than 30 inches;

(4) a semiautomatic shotgun that has the capacity to accept a detachable magazine;

1 (5) a semiautomatic shotgun that has a folding or
2 telescoping stock and has:

3 (A) a thumbhole stock; or

4 (B) a second handgrip or a protruding grip that
5 can be held by the non-trigger hand;

6 (6) a semiautomatic pistol that has the capacity to
7 accept a detachable magazine and has:

8 (A) a second handgrip or a protruding grip that
9 can be held by the non-trigger hand;

10 (B) an ammunition magazine that attaches to the
11 pistol outside of the pistol grip;

12 (C) a threaded barrel capable of accepting a
13 flash suppressor, forward handgrip, or silencer; or

14 (D) a shroud that is attached to or partially or
15 completely encircles the barrel and that permits the shooter to
16 hold the firearm with the non-trigger hand without being burned;

17 (7) a semiautomatic pistol that has a fixed magazine
18 that holds more than 10 rounds of ammunition;

19 (8) a revolving cylinder shotgun; or

20 (9) a conversion kit, part, or combination of parts
21 from which an assault weapon can be assembled or with which a
22 firearm may be converted into a weapon described by Subdivision
23 (1), (2), (3), (4), (5), (6), (7), or (8).

24 (b) A person commits an offense if the person knowingly:

25 (1) possesses an assault weapon; or

26 (2) sells, offers to sell, or otherwise transfers an
27 assault weapon.

1 (c) An offense under this section is a Class A misdemeanor.

2 (d) It is a defense to prosecution under this section that
3 the actor engaged in the conduct while engaged in the actual
4 discharge of official duties, or directly en route to or from the
5 person's place of assignment, as:

6 (1) a peace officer; or

7 (2) a member of the armed forces or state military
8 forces as defined by Section 431.001, Government Code.

9 (e) It is a defense to prosecution under Subsection (b)(1)
10 that the actor lawfully possessed the assault weapon on August 31,
11 2021.

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

15 SECTION 2. Section 5.141(a), Alcoholic Beverage Code, is
16 amended to read as follows:

17 (a) A commissioned inspector or representative of the
18 commission may purchase for an amount set by the commission, not to
19 exceed fair market value, a firearm issued to the inspector or
20 representative by the commission if:

21 (1) the firearm is not:

22 (A) listed as a prohibited weapon under Section
23 46.05, Penal Code; or

24 (B) an assault weapon as defined by Section
25 46.055, Penal Code; [7] and

26 (2) [~~if~~] the firearm is retired by the commission for
27 replacement purposes.

1 SECTION 3. Article 15.27(h), Code of Criminal Procedure, is
2 amended to read as follows:

3 (h) This article applies to any felony offense and the
4 following misdemeanors:

5 (1) an offense under Section 20.02, 21.08, 22.01,
6 22.05, 22.07, or 71.02, Penal Code;

7 (2) the unlawful use, sale, or possession of a
8 controlled substance, drug paraphernalia, or marihuana, as defined
9 by Chapter 481, Health and Safety Code; or

10 (3) the unlawful possession of any of the weapons or
11 devices listed in Sections 46.01(1)-(14) or Section 46.01(16)
12 [~~46.01(16)~~], Penal Code, ~~or~~ a weapon listed as a prohibited weapon
13 under Section 46.05, Penal Code, or an assault weapon as defined by
14 Section 46.055, Penal Code.

15 SECTION 4. The heading to Article 18.18, Code of Criminal
16 Procedure, is amended to read as follows:

17 Art. 18.18. DISPOSITION OF GAMBLING PARAPHERNALIA,
18 PROHIBITED WEAPON, ASSAULT WEAPON, CRIMINAL INSTRUMENT, AND OTHER
19 CONTRABAND.

20 SECTION 5. Articles 18.18(a), (b), (e), (f), and (g), Code
21 of Criminal Procedure, are amended to read as follows:

22 (a) Following the final conviction of a person for
23 possession of a gambling device or equipment, altered gambling
24 equipment, or gambling paraphernalia, for an offense involving a
25 criminal instrument, for an offense involving an obscene device or
26 material, for an offense involving child pornography, or for an
27 offense involving a scanning device or re-encoder, the court

1 entering the judgment of conviction shall order that the machine,
2 device, gambling equipment or gambling paraphernalia, instrument,
3 obscene device or material, child pornography, or scanning device
4 or re-encoder be destroyed or forfeited to the state. Not later than
5 the 30th day after the final conviction of a person for an offense
6 involving a prohibited weapon or an assault weapon, the court
7 entering the judgment of conviction on its own motion, on the motion
8 of the prosecuting attorney in the case, or on the motion of the law
9 enforcement agency initiating the complaint on notice to the
10 prosecuting attorney in the case if the prosecutor fails to move for
11 the order shall order that the prohibited weapon or assault weapon
12 be destroyed or forfeited to the law enforcement agency that
13 initiated the complaint. If the court fails to enter the order
14 within the time required by this subsection, any magistrate in the
15 county in which the offense occurred may enter the order. Following
16 the final conviction of a person for an offense involving dog
17 fighting, the court entering the judgment of conviction shall order
18 that any dog-fighting equipment be destroyed or forfeited to the
19 state. Destruction of dogs, if necessary, must be carried out by a
20 veterinarian licensed in this state or, if one is not available, by
21 trained personnel of a humane society or an animal shelter. If
22 forfeited, the court shall order the contraband delivered to the
23 state, any political subdivision of the state, or to any state
24 institution or agency. If gambling proceeds were seized, the court
25 shall order them forfeited to the state and shall transmit them to
26 the grand jury of the county in which they were seized for use in
27 investigating alleged violations of the Penal Code, or to the

1 state, any political subdivision of the state, or to any state
2 institution or agency.

3 (b) If there is no prosecution or conviction following
4 seizure, the magistrate to whom the return was made shall notify in
5 writing the person found in possession of the alleged gambling
6 device or equipment, altered gambling equipment or gambling
7 paraphernalia, gambling proceeds, prohibited weapon, assault
8 weapon, obscene device or material, child pornography, scanning
9 device or re-encoder, criminal instrument, or dog-fighting
10 equipment to show cause why the property seized should not be
11 destroyed or the proceeds forfeited. The magistrate, on the motion
12 of the law enforcement agency seizing a prohibited weapon or an
13 assault weapon, shall order the weapon destroyed or forfeited to
14 the law enforcement agency seizing the weapon, unless a person
15 shows cause as to why the prohibited weapon or assault weapon should
16 not be destroyed or forfeited. A law enforcement agency shall make a
17 motion under this section in a timely manner after the time at which
18 the agency is informed in writing by the attorney representing the
19 state that no prosecution will arise from the seizure.

20 (e) Any person interested in the alleged gambling device or
21 equipment, altered gambling equipment or gambling paraphernalia,
22 gambling proceeds, prohibited weapon, assault weapon, obscene
23 device or material, child pornography, scanning device or
24 re-encoder, criminal instrument, or dog-fighting equipment seized
25 must appear before the magistrate on the 20th day following the date
26 the notice was mailed or posted. Failure to timely appear forfeits
27 any interest the person may have in the property or proceeds seized,

1 and no person after failing to timely appear may contest
2 destruction or forfeiture.

3 (f) If a person timely appears to show cause why the
4 property or proceeds should not be destroyed or forfeited, the
5 magistrate shall conduct a hearing on the issue and determine the
6 nature of property or proceeds and the person's interest therein.
7 Unless the person proves by a preponderance of the evidence that the
8 property or proceeds is not gambling equipment, altered gambling
9 equipment, gambling paraphernalia, gambling device, gambling
10 proceeds, prohibited weapon, assault weapon, obscene device or
11 material, child pornography, criminal instrument, scanning device
12 or re-encoder, or dog-fighting equipment and that he is entitled to
13 possession, the magistrate shall dispose of the property or
14 proceeds in accordance with Paragraph (a) of this article.

15 (g) For purposes of this article:

16 (1) "criminal instrument" has the meaning defined in
17 the Penal Code;

18 (2) "gambling device or equipment, altered gambling
19 equipment or gambling paraphernalia" has the meaning defined in the
20 Penal Code;

21 (3) "prohibited weapon" has the meaning defined in the
22 Penal Code;

23 (4) "dog-fighting equipment" means:

24 (A) equipment used for training or handling a
25 fighting dog, including a harness, treadmill, cage, decoy, pen,
26 house for keeping a fighting dog, feeding apparatus, or training
27 pen;

1 (B) equipment used for transporting a fighting
2 dog, including any automobile, or other vehicle, and its
3 appurtenances which are intended to be used as a vehicle for
4 transporting a fighting dog;

5 (C) equipment used to promote or advertise an
6 exhibition of dog fighting, including a printing press or similar
7 equipment, paper, ink, or photography equipment; or

8 (D) a dog trained, being trained, or intended to
9 be used to fight with another dog;

10 (5) "obscene device" and "obscene" have the meanings
11 assigned by Section 43.21, Penal Code;

12 (6) "re-encoder" has the meaning assigned by Section
13 522.001, Business & Commerce Code;

14 (7) "scanning device" has the meaning assigned by
15 Section 522.001, Business & Commerce Code; ~~and~~

16 (8) "obscene material" and "child pornography"
17 include digital images and the media and equipment on which those
18 images are stored; and

19 (9) "assault weapon" has the meaning assigned by
20 Section 46.055, Penal Code.

21 SECTION 6. Articles 18.19(a) and (d), Code of Criminal
22 Procedure, are amended to read as follows:

23 (a) Weapons seized in connection with an offense involving
24 the use of a weapon or an offense under Penal Code Chapter 46 shall
25 be held by the law enforcement agency making the seizure, subject to
26 the following provisions, unless:

27 (1) the weapon is a prohibited weapon identified in

1 Penal Code Chapter 46, or an assault weapon as defined by Section
2 46.055, Penal Code, in which event Article 18.18 of this code
3 applies; or

4 (2) the weapon is alleged to be stolen property, in
5 which event Chapter 47 of this code applies.

6 (d) A person either convicted or receiving deferred
7 adjudication under Chapter 46, Penal Code, is entitled to the
8 weapon seized upon request to the court in which the person was
9 convicted or placed on deferred adjudication. However, the court
10 entering the judgment shall order the weapon destroyed, sold at
11 public sale by the law enforcement agency holding the weapon or by
12 an auctioneer licensed under Chapter 1802, Occupations Code, or
13 forfeited to the state for use by the law enforcement agency holding
14 the weapon or by a county forensic laboratory designated by the
15 court if:

16 (1) the person does not request the weapon before the
17 61st day after the date of the judgment of conviction or the order
18 placing the person on deferred adjudication;

19 (2) the person has been previously convicted under
20 Chapter 46, Penal Code;

21 (3) the weapon is one defined as a prohibited weapon or
22 an assault weapon under Chapter 46, Penal Code;

23 (4) the offense for which the person is convicted or
24 receives deferred adjudication was committed in or on the premises
25 of a playground, school, video arcade facility, or youth center, as
26 those terms are defined by Section 481.134, Health and Safety Code;
27 or

1 (5) the court determines based on the prior criminal
2 history of the defendant or based on the circumstances surrounding
3 the commission of the offense that possession of the seized weapon
4 would pose a threat to the community or one or more individuals.

5 SECTION 7. Section 37.005(c), Education Code, is amended to
6 read as follows:

7 (c) A student who is enrolled in a grade level below grade
8 three may not be placed in out-of-school suspension unless while on
9 school property or while attending a school-sponsored or
10 school-related activity on or off of school property, the student
11 engages in:

12 (1) conduct that contains the elements of an offense
13 related to weapons under Section 46.02, ~~[or]~~ 46.05, or 46.055,
14 Penal Code;

15 (2) conduct that contains the elements of a violent
16 offense under Section 22.01, 22.011, 22.02, or 22.021, Penal Code;
17 or

18 (3) selling, giving, or delivering to another person
19 or possessing, using, or being under the influence of any amount of:

20 (A) marihuana or a controlled substance, as
21 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
22 Section 801 et seq.;

23 (B) a dangerous drug, as defined by Chapter 483,
24 Health and Safety Code; or

25 (C) an alcoholic beverage, as defined by Section
26 1.04, Alcoholic Beverage Code.

27 SECTION 8. Section 37.007(a), Education Code, is amended to

1 read as follows:

2 (a) Except as provided by Subsection (k), a student shall be
3 expelled from a school if the student, on school property or while
4 attending a school-sponsored or school-related activity on or off
5 of school property:

6 (1) engages in conduct that contains the elements of
7 the offense of unlawfully carrying weapons under Section 46.02,
8 Penal Code, ~~[or]~~ elements of an offense relating to prohibited
9 weapons under Section 46.05, Penal Code, or elements of an offense
10 relating to assault weapons under Section 46.055, Penal Code;

11 (2) engages in conduct that contains the elements of
12 the offense of:

13 (A) aggravated assault under Section 22.02,
14 Penal Code, sexual assault under Section 22.011, Penal Code, or
15 aggravated sexual assault under Section 22.021, Penal Code;

16 (B) arson under Section 28.02, Penal Code;

17 (C) murder under Section 19.02, Penal Code,
18 capital murder under Section 19.03, Penal Code, or criminal
19 attempt, under Section 15.01, Penal Code, to commit murder or
20 capital murder;

21 (D) indecency with a child under Section 21.11,
22 Penal Code;

23 (E) aggravated kidnapping under Section 20.04,
24 Penal Code;

25 (F) aggravated robbery under Section 29.03,
26 Penal Code;

27 (G) manslaughter under Section 19.04, Penal

1 Code;

2 (H) criminally negligent homicide under Section
3 19.05, Penal Code; or

4 (I) continuous sexual abuse of young child or
5 children under Section 21.02, Penal Code; or

6 (3) engages in conduct specified by Section
7 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

8 SECTION 9. Section 411.020(a), Government Code, is amended
9 to read as follows:

10 (a) A commissioned officer of the department may purchase
11 for an amount set by the department, not to exceed fair market
12 value, a firearm issued to the officer by the department if:

13 (1) the firearm is not:

14 (A) listed as a prohibited weapon under Section
15 46.05, Penal Code; or

16 (B) an assault weapon as defined by Section
17 46.055, Penal Code; [7] and

18 (2) [if] the firearm is retired by the department for
19 replacement purposes.

20 SECTION 10. Section 614.051(a), Government Code, is amended
21 to read as follows:

22 (a) An individual may purchase a firearm from a governmental
23 entity if:

24 (1) the individual was a peace officer commissioned by
25 the entity;

26 (2) the individual was honorably retired from the
27 individual's commission by the entity;

1 (3) the firearm had been previously issued to the
2 individual by the entity; and

3 (4) the firearm is not a prohibited weapon under
4 Section 46.05, Penal Code, or an assault weapon as defined by
5 Section 46.055, Penal Code.

6 SECTION 11. Section 614.052(a), Government Code, is amended
7 to read as follows:

8 (a) An individual listed under Subsection (b) may purchase a
9 firearm from a governmental entity if:

10 (1) the firearm had been previously issued by the
11 entity to a peace officer commissioned by the entity who died while
12 commissioned, without regard to whether the officer died while
13 discharging the officer's official duties; and

14 (2) the firearm is not a prohibited weapon under
15 Section 46.05, Penal Code, or an assault weapon as defined by
16 Section 46.055, Penal Code.

17 SECTION 12. Section 11.0193(a), Parks and Wildlife Code, is
18 amended to read as follows:

19 (a) An employee commissioned by the director as a peace
20 officer may purchase for an amount set by the department, not to
21 exceed fair market value, a firearm issued to the person by the
22 department if:

23 (1) the firearm is not:

24 (A) listed as a prohibited weapon under Section
25 46.05, Penal Code; or

26 (B) an assault weapon as defined by Section
27 46.055, Penal Code; and

1 (2) the firearm is retired by the department for
2 replacement purposes.

3 SECTION 13. Section 9.31(b), Penal Code, is amended to read
4 as follows:

5 (b) The use of force against another is not justified:

6 (1) in response to verbal provocation alone;

7 (2) to resist an arrest or search that the actor knows
8 is being made by a peace officer, or by a person acting in a peace
9 officer's presence and at his direction, even though the arrest or
10 search is unlawful, unless the resistance is justified under
11 Subsection (c);

12 (3) if the actor consented to the exact force used or
13 attempted by the other;

14 (4) if the actor provoked the other's use or attempted
15 use of unlawful force, unless:

16 (A) the actor abandons the encounter, or clearly
17 communicates to the other his intent to do so reasonably believing
18 he cannot safely abandon the encounter; and

19 (B) the other nevertheless continues or attempts
20 to use unlawful force against the actor; or

21 (5) if the actor sought an explanation from or
22 discussion with the other person concerning the actor's differences
23 with the other person while the actor was:

24 (A) carrying a weapon in violation of Section
25 46.02; [~~or~~]

26 (B) possessing or transporting a weapon in
27 violation of Section 46.05; or

1 (C) possessing an assault weapon in violation of
2 Section 46.055.

3 SECTION 14. This Act takes effect September 1, 2021.