

By: Anchia

H.B. No. 1766

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain criminal offenses concerning the unlawful
3 transfer or purchase of certain weapons; increasing a criminal
4 penalty.

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

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

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

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

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

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

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

23 (3) knowingly makes a materially false or misleading
24 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. (a) Article 59.01(2), Code of Criminal
17 Procedure, as effective until January 1, 2022, is amended to read as
18 follows:

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

21 (A) used in the commission of:

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

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

27 (iii) any felony under Chapter 43, Penal

1 Code, except as provided by Paragraph (B);

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

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

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

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

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

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

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

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

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

25 (vii) a Class B misdemeanor under Chapter
26 522, Business & Commerce Code;

27 (viii) a Class A misdemeanor under Section

1 306.051, Business & Commerce Code;

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

4 (x) any offense under Section 46.06(a)
5 [~~46.06(a)(1)~~] or 46.14, Penal Code;

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

8 (xii) any offense under Section 20.05,
9 20.06, 20.07, 43.04, or 43.05, Penal Code; or

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

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

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

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

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

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

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

3 (A) used in the commission of:

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

6 (ii) any felony under Section 15.031(b),
7 21.11, or 38.04 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal
8 Code;

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

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

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

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

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

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

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

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

27 (v) a Class A misdemeanor under Subchapter

1 B, Chapter 365, Health and Safety Code, if the defendant has been
2 previously convicted twice of an offense under that subchapter;

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

7 (vii) a Class B misdemeanor under Chapter
8 522, Business & Commerce Code;

9 (viii) a Class A misdemeanor under Section
10 306.051, Business & Commerce Code;

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

13 (x) any offense under Section 46.06(a)
14 [~~46.06(a)(1)~~] or 46.14, Penal Code;

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

17 (xii) any offense under Section 20.05,
18 20.06, 20.07, 43.04, or 43.05, Penal Code; or

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

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

25 (D) acquired with proceeds gained from the
26 commission of a felony listed in Paragraph (A) or (B) of this
27 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),

1 (xi), or (xii) of this subdivision, or a crime of violence;

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

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

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

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

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

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

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

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

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

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

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

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

14 (8) any felony offense under Chapter 32;

15 (9) any offense under Chapter 36;

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

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

18 (12) any offense under Chapter 20A;

19 (13) any offense under Section 37.10;

20 (14) any offense under Section 38.06, 38.07, 38.09, or
21 38.11;

22 (15) any offense under Section 42.10;

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

25 (17) any offense under Section 20.05 or 20.06;

26 (18) any offense under Section 16.02; or

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

1 Code.

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

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