By:  Gutierrez S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to regulating certain firearm transfers, possession of certain firearms, and protective orders prohibiting possession of a firearm; creating criminal offenses; increasing criminal penalties.

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

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01.  SHORT TITLE. This Act shall be known as the Robb Elementary Firearm Safety Act.

SECTION 1.02.  PURPOSE. The purpose of this Act is to ensure the State of Texas is meeting its responsibility to protect the health and safety of all Texans by enacting common sense, evidence-based firearm safety laws. Texans deserve to live free from the threat and fear of firearm violence.

SECTION 1.03.  FINDINGS. The legislature finds that:

(1)  the State of Texas mourns the loss of 19 innocent children and two teachers in a senseless attack on Robb Elementary School in Uvalde, Texas, on May 24, 2022;

(2)  the shooting at Robb Elementary School is the second deadliest school shooting in the history of the United States;

(3)  the victims of the attack are Makenna Lee Elrod, 10; Layla Salazar, 11; Maranda Mathis, 11; Nevaeh Bravo, 10; Jose Manuel Flores, Jr., 10; Xavier Lopez, 10; Tess Marie Mata, 10; Rojelio Torres, 10; Eliahna "Ellie" Amyah Garcia, 9; Eliahna A. Torres, 10; Annabell Guadalupe Rodriguez, 10; Jackie Cazares, 9; Uziyah Garcia, 10; Jayce Carmelo Luevanos, 10; Maite Yuleana Rodriguez, 10; Jailah Nicole Silguero, 10; Amerie Jo Garza, 10; Alexandria "Lexi" Aniyah Rubio, 10; Alithia Ramirez, 10; Irma Garcia, fourth grade teacher; and Eva Mireles, fourth grade teacher;

(4)  three of the ten deadliest mass shootings in modern United States history have occurred in Texas in the past five years;

(5)  the following mass shootings have occurred in Texas:

(A)  26 people were killed in Sutherland Springs, Texas, in 2017;

(B)  23 people were killed in Killeen, Texas, in 1991;

(C)  23 people were killed in El Paso, Texas, in 2019;

(D)  21 people were killed in Uvalde, Texas, in 2022;

(E)  17 people were killed at The University of Texas at Austin in 1966;

(F)  13 people were killed in Killeen, Texas, in 2009; and

(G)  10 people were killed in Santa Fe, Texas, in 2018;

(6)  firearm homicide rates for children under 18 have more than doubled in Texas between 2014 and 2020;

(7)  from 2015 to 2020, Texas lost 572 children to firearm homicides, more than any other state; and

(8)  overall firearm homicide rates in Texas have increased 66 percent from 2014 to 2020.

ARTICLE 2. UNLAWFUL POSSESSION AND TRANSFER OF CERTAIN ASSAULT WEAPONS

SECTION 2.01.  Chapter 46, Penal Code, is amended by adding Section 46.055 to read as follows:

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

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

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

(A)  a thumbhole stock; or

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

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

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

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

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

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

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

(8)  a revolving cylinder shotgun; or

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

(b)  A person who is younger than 21 years of age commits an offense if the person knowingly possesses an assault weapon.

(c)  An offense under this section is a state jail felony.

(d)  It is a defense to prosecution under this section that:

(1)  the actor possessed the assault weapon for the actual discharge of official duties as:

(A)  a peace officer, as defined by Section 1.07; or

(B)  a member of the armed forces or state military forces, as defined by Section 431.001, Government Code; or

(2)  the actor lawfully possessed the assault weapon on August 31, 2023.

(e)  This section does not apply to an assault weapon that has been rendered permanently inoperable.

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

SECTION 2.02.  Section 46.06, Penal Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (c-1) and (e) to read as follows:

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

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

(2)  intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give:

(A)  a [~~to any child younger than 18 years of age any firearm,~~] club, [~~or~~] location-restricted knife, or firearm other than an assault weapon to a person younger than 18 years of age; or

(B)  an assault weapon to a person younger than 21 years of age;

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

(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;

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

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

(7)  while prohibited from possessing a firearm under state or federal law, knowingly makes a material false statement on a form that is:

(A)  required by state or federal law for the purchase, sale, or other transfer of a firearm; and

(B)  submitted to a [~~licensed~~] firearms dealer licensed under [~~, as defined by~~] 18 U.S.C. Section 923.

(c)  It is an affirmative defense to prosecution under Subsection (a)(2)(A) [~~(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)  It is a defense to prosecution under Subsection (a)(2)(B), (a)(5), or (a)(6) that the transfer was to a person who provided evidence to the actor that the person is:

(1)  a peace officer, as defined by Section 1.07; or

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

(d)  An offense under this section is a Class A misdemeanor, except that:

(1)  an offense under Subsection (a)(2)(A) [~~(a)(2)~~] is a state jail felony if the weapon that is the subject of the offense is a handgun; [~~and~~]

(2)  an offense under Subsection (a)(2)(B) or (a)(7) is a state jail felony; and

(3)  an offense under Subsection (a)(5) or (a)(6) is a state jail felony if the weapon that is the subject of the offense is an assault weapon.

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

SECTION 2.03.  Section 46.06(b), Penal Code, is amended by adding Subdivision (3) to read as follows:

(3)  "Assault weapon" has the meaning assigned by Section 46.055.

SECTION 2.04.  The change in law made by this article 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.

ARTICLE 3. REGULATION OF FIREARM TRANSFERS

SECTION 3.01.  Title 6, Business & Commerce Code, is amended by adding Chapter 205 to read as follows:

CHAPTER 205. REGULATION OF FIREARM TRANSFERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 205.001.  DEFINITIONS. In this chapter:

(1)  "Firearm" has the meaning assigned by Section 46.01, Penal Code.

(2)  "Licensed firearms dealer" means a person who is licensed as a firearms dealer under 18 U.S.C. Section 923.

SUBCHAPTER B. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK FOR PRIVATE FIREARM TRANSFERS

Sec. 205.051.  NATIONAL INSTANT CRIMINAL BACKGROUND CHECK REQUIRED FOR PRIVATE TRANSFER OF FIREARM. A person may not sell or otherwise transfer a firearm to another person unless:

(1)  the person is a licensed firearms dealer;

(2)  the person sells or transfers the firearm to a licensed firearms dealer; or

(3)  before the firearm is delivered to the person to whom the firearm is being sold or transferred, the person selling or transferring the firearm delivers the firearm to a licensed firearms dealer to retain possession of the firearm until the dealer conducts a national instant criminal background check in the manner required by 18 U.S.C. Section 922 and verifies that the person to whom the firearm is being sold or transferred may lawfully possess a firearm.

Sec. 205.052.  DUTIES OF LICENSED FIREARMS DEALER. (a) If a licensed firearms dealer receives a firearm under Section 205.051(3), the dealer shall conduct a national instant criminal background check in the manner required by 18 U.S.C. Section 922 to verify that the person to whom the firearm is being sold or transferred may lawfully possess a firearm.

(b)  If a licensed firearms dealer determines that the person to whom the firearm is being sold or transferred may not lawfully possess a firearm, the dealer shall return the firearm to the person selling or transferring the firearm.

(c)  If a licensed firearms dealer determines that the person to whom the firearm is being sold or transferred may lawfully possess a firearm, the dealer shall transfer the firearm as directed by the person selling or transferring the firearm.

(d)  A licensed firearms dealer to whom a firearm is delivered under Section 205.051(3) may collect a reasonable fee from the person who is selling or transferring the firearm.

Sec. 205.053.  EXCEPTION. This subchapter does not apply to:

(1)  a transfer of a firearm to a person by inheritance or bequest on the death of the owner of the firearm; or

(2)  a sale or other transfer of a firearm by the owner of the firearm if the transferor and the transferee are related within the third degree by consanguinity or within the second degree by affinity as determined under Chapter 573, Government Code.

Sec. 205.054.  OFFENSE. (a) A person who violates this subchapter commits an offense.

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

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

SUBCHAPTER C. REQUIREMENTS FOR CERTAIN FIREARM SALES BY LICENSED FIREARMS DEALERS

Sec. 205.101.  WAITING PERIOD REQUIRED FOR CERTAIN SALES OF FIREARMS; OFFENSE. (a) A licensed firearms dealer who sells a firearm to a person in exchange for money or other consideration commits an offense if the licensed firearms dealer delivers the firearm to the person to whom the firearm is being sold before the later of:

(1)  the third business day after the date on which the firearm was sold to the person; or

(2)  the date on which the licensed firearms dealer verifies, by conducting a national instant criminal background check in the manner required by 18 U.S.C. Section 922, that the person to whom the firearm is being sold may lawfully possess a firearm.

(b)  This section does not apply to the sale of a firearm to a person who is:

(1)  a peace officer, as defined by Section 1.07, Penal Code; or

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

(c)  An offense under this section is a state jail felony.

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

(e)  A licensed firearms dealer shall make records of firearm sales available for inspection by a law enforcement agency during regular business hours.

ARTICLE 4. PROTECTIVE ORDERS

SECTION 4.01.  Article 7B.005(a), Code of Criminal Procedure, is amended to read as follows:

(a)  In a protective order issued under this subchapter, the court may:

(1)  order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant's family or household; or

(2)  prohibit the alleged offender from:

(A)  communicating:

(i)  directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner; or

(ii)  in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition;

(B)  going to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household;

(C)  engaging in conduct directed specifically toward the applicant or any member of the applicant's family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

(D)  possessing a firearm, unless the alleged offender possesses the firearm for the actual discharge of the alleged offender's official duties as:

(i)  [~~is~~] a peace officer, as defined by Section 1.07, Penal Code; or

(ii)  a member of the armed forces or state military forces, as defined by Section 431.001, Government Code[~~, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision~~].

SECTION 4.02.  Article 7B.006(a), Code of Criminal Procedure, is amended to read as follows:

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

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

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

"IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION, OTHER THAN A PERSON WHO POSSESSES A FIREARM FOR THE ACTUAL DISCHARGE OF THE PERSON'S OFFICIAL DUTIES AS A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, OR AS A MEMBER OF THE ARMED FORCES OR STATE MILITARY FORCES, AS DEFINED BY SECTION 431.001, GOVERNMENT CODE [~~ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION~~]."

SECTION 4.03.  Chapter 7B, Code of Criminal Procedure, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. EXTREME RISK PROTECTIVE ORDER

Art. 7B.151.  DEFINITIONS. In this subchapter:

(1)  "Bodily injury" and "serious bodily injury" have the meanings assigned by Section 1.07, Penal Code.

(2)  "Family," "family violence," and "household" have the meanings assigned by Chapter 71, Family Code.

(3)  "Firearm" has the meaning assigned by Section 46.01, Penal Code.

Art. 7B.152.  APPLICATION FOR EXTREME RISK PROTECTIVE ORDER. (a) An application for a protective order under this subchapter may be filed by:

(1)  a member of the respondent's family or household;

(2)  a parent, guardian, or conservator of a person who is:

(A)  under 18 years of age; and

(B)  a member of the respondent's family or household; or

(3)  a peace officer.

(b)  An application must:

(1)  include:

(A)  detailed allegations, based on personal knowledge of a person described by Subsection (a), regarding any dangerous behavior or conduct exhibited by the respondent, including any behavior or conduct related to the respondent's use of firearms;

(B)  information concerning the quantity, type, and location of any firearms the applicant believes to be in the respondent's possession or control, if any;

(C)  any other relevant facts indicating a need for a protective order under this subchapter; and

(D)  a statement that the applicant believes the respondent poses an immediate and present danger of causing bodily injury, serious bodily injury, or death to any person, including the respondent, as a result of the respondent's access to firearms; and

(2)  be signed by the applicant under an oath that, to the knowledge and belief of the applicant, the facts and circumstances contained in the application are true.

(c)  An application for a protective order under this subchapter may be filed in a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in the county in which the applicant or the respondent resides.

Art. 7B.153.  CONFIDENTIALITY OF CERTAIN INFORMATION. On receiving an application containing specific health information concerning the respondent, the court shall order the clerk to:

(1)  strike the information from the public records of the court; and

(2)  maintain a confidential record of the information for use only by the court.

Art. 7B.154.  TEMPORARY EX PARTE ORDER. (a) If the court finds from the information contained in an application for a protective order under this subchapter that there is reasonable cause to believe that the respondent poses an immediate and present danger of causing bodily injury, serious bodily injury, or death to any person, including the respondent, as a result of the respondent's access to firearms, the court, without further notice to the respondent and without a hearing, may issue a temporary ex parte order prohibiting the respondent from purchasing, owning, possessing, or controlling a firearm.

(b)  In a temporary ex parte order, the court may order the respondent to:

(1)  not later than 24 hours after the time the order is issued, relinquish any firearms owned by or in the actual or constructive possession or control of the respondent to a law enforcement agency for holding in the manner provided by Article 18.192; and

(2)  if applicable, surrender to the court the respondent's license to carry a handgun issued under Subchapter H, Chapter 411, Government Code.

Art. 7B.155.  HEARING; ISSUANCE OF PROTECTIVE ORDER. (a) Not later than the 14th day after the later of the date an application is filed or the date a temporary ex parte order is issued, the court shall hold a hearing on the issuance of the protective order.

(b)  The court shall provide personal notice of the hearing to the respondent.

(c)  In determining whether to issue a protective order under this article, the court:

(1)  shall consider:

(A)  any history of threats or acts of violence by the respondent directed at any person, including the respondent;

(B)  any history of the respondent using, attempting to use, or threatening to use physical force against another person;

(C)  any recent violation by the respondent of an order issued:

(i)  under another provision of Chapter 7B or under Article 17.292;

(ii)  under Section 6.504 or Chapter 85, Family Code;

(iii)  under Chapter 83, Family Code, if the temporary ex parte order has been served on the respondent; or

(iv)  by another jurisdiction as provided by Chapter 88, Family Code;

(D)  any arrest or conviction of the respondent for:

(i)  an offense under Section 42.072, Penal Code; or

(ii)  an offense involving violence, including family violence;

(E)  any conviction of the respondent for an offense under Section 42.09, 42.091, or 42.092, Penal Code; and

(F)  evidence related to the respondent's current or recent abuse of a controlled substance or alcohol, not including any evidence of previous treatment for or recovery from abusing a controlled substance or alcohol; and

(2)  may consider any other relevant factor including:

(A)  any previous violation by the respondent of an order described by Subdivision (1)(C); and

(B)  evidence regarding the respondent's recent acquisition of firearms, ammunition, or other deadly weapons.

(d)  At the close of the hearing, if the court finds by clear and convincing evidence that the respondent poses an immediate and present danger of causing bodily injury, serious bodily injury, or death to any person, including the respondent, as a result of the respondent's access to firearms, the court shall issue a protective order that includes a statement of the required finding.

(e)  If the court does not make the finding described by Subsection (d), the court shall, as applicable, rescind any temporary ex parte order issued under Article 7B.154 and return the respondent's license to carry a handgun.

Art. 7B.156.  CONTENTS OF PROTECTIVE ORDER. In a protective order issued under Article 7B.155, the court shall:

(1)  prohibit the person who is subject to the order from purchasing, owning, possessing, or controlling a firearm for the duration of the order;

(2)  order the person to:

(A)  not later than 24 hours after the time the order is issued, relinquish any firearms owned by or in the actual or constructive possession or control of the person to a law enforcement agency for holding in the manner provided by Article 18.192; and

(B)  if applicable, surrender to the court the person's license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(3)  suspend a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code, that is held by the person.

Art. 7B.157.  DURATION OF PROTECTIVE ORDER. (a) A protective order issued under Article 7B.155 is effective until the first anniversary of the date the order was issued.

(b)  The court may renew a protective order issued under Article 7B.155 for a period not to exceed one year after the order's original expiration date. Before renewing the order the court must hold a hearing after providing personal notice of the hearing to the person who is the subject of the order.

(c)  A person who is the subject of a protective order may file a motion not earlier than the 91st day after the date on which the order was initially issued or renewed, as applicable, requesting that the court review the order and determine whether there is a continuing need for the order. After a hearing on the motion, if the court fails to make the finding that there is no continuing need for the order, the order remains in effect until the date the order expires as provided by this article.

(d)  At a hearing to renew or rescind a protective order under this article, the court shall consider the factors described by Article 7B.155(c).

Art. 7B.158.  NOTICE TO DEPARTMENT OF PUBLIC SAFETY. (a) Not later than 24 hours after the time a protective order is issued under Article 7B.155, the clerk of the issuing court shall provide the following to the Department of Public Safety:

(1)  the complete name, race, and sex of the person who is the subject of the order;

(2)  any known identifying number of the person, including a social security number, driver's license number, or state identification number;

(3)  the person's date of birth;

(4)  if surrendered to the court, the person's license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(5)  a copy of the order suspending the person's license to carry a handgun under Subchapter H, Chapter 411, Government Code.

(b)  On receipt of an order suspending a license to carry a handgun, the department shall:

(1)  record the suspension of the license in the records of the department;

(2)  report the suspension to local law enforcement agencies, as appropriate; and

(3)  if the license was not surrendered to the court, demand surrender of the suspended license from the license holder.

(c)  Not later than the 30th day after the date the protective order is rescinded or expires under Article 7B.157, the clerk of the issuing court shall notify the Department of Public Safety of the rescission or expiration, as applicable.

Art. 7B.159.  APPLICATION OF OTHER LAW. To the extent applicable, except as otherwise provided by this subchapter, Title 4, Family Code, applies to a protective order issued under this subchapter.

SECTION 4.04.  Articles 17.292(c) and (g), Code of Criminal Procedure, are amended to read as follows:

(c)  The magistrate in the order for emergency protection may prohibit the arrested party from:

(1)  committing:

(A)  family violence or an assault on the person protected under the order; or

(B)  an act in furtherance of an offense under Section 20A.02 or 42.072, Penal Code;

(2)  communicating:

(A)  directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner;

(B)  a threat through any person to a member of the family or household or to the person protected under the order; or

(C)  if the magistrate finds good cause, in any manner with a person protected under the order or a member of the family or household of a person protected under the order, except through the party's attorney or a person appointed by the court;

(3)  going to or near:

(A)  the residence, place of employment, or business of a member of the family or household or of the person protected under the order; or

(B)  the residence, child care facility, or school where a child protected under the order resides or attends; or

(4)  possessing a firearm, unless the person possesses the firearm for the actual discharge of the person's official duties as:

(A)  [~~is~~] a peace officer, as defined by Section 1.07, Penal Code; or

(B)  a member of the armed forces or state military forces, as defined by Section 431.001, Government Code [~~, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision~~].

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

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH.  AN ACT THAT RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A VIOLATION OF THIS ORDER.  IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.  THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PERSON WHO POSSESSES A FIREARM FOR THE ACTUAL DISCHARGE OF THE PERSON'S OFFICIAL DUTIES AS A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, OR AS A MEMBER OF THE ARMED FORCES OR STATE MILITARY FORCES, AS DEFINED BY SECTION 431.001, GOVERNMENT CODE [~~ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION~~], WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

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

SECTION 4.05.  Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.192 to read as follows:

Art. 18.192.  HOLDING AND DISPOSITION OF FIREARM RELINQUISHED UNDER EXTREME RISK PROTECTIVE ORDER. (a) A law enforcement officer who takes possession of a firearm from a person who is the subject of an extreme risk protective order issued under Subchapter D, Chapter 7B, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b)  Not later than the seventh day after the date a firearm subject to disposition under this article is received, the law enforcement agency holding the firearm shall notify the court that issued the extreme risk protective order that the person who is the subject of the order has relinquished the firearm.

(c)  Not later than the 30th day after the date the extreme risk protective order is rescinded or expires, the clerk of the court shall notify the law enforcement agency of the rescission or expiration.

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

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

(f)  An unclaimed firearm that is received under an extreme risk protective order issued under Subchapter D, Chapter 7B, may not be destroyed or forfeited to the state.

(g)  The law enforcement agency holding the firearm may provide for the firearm to be sold by a firearms dealer licensed under 18 U.S.C. Section 923 if:

(1)  the check conducted under Subsection (d) shows that the person may not lawfully possess a firearm; or

(2)  the notice is provided under Subsection (e) and the person does not submit, before the 121st day after the date of the notice, a written request for the return of the firearm.

(h)  The proceeds from the sale of a firearm under this article shall be paid to the owner of the seized firearm, less the cost of administering this article with respect to the firearm.

SECTION 4.06.  Section 85.022(b), Family Code, is amended to read as follows:

(b)  In a protective order, the court may prohibit the person found to have committed family violence from:

(1)  committing family violence;

(2)  communicating:

(A)  directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;

(B)  a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and

(C)  if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;

(3)  going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;

(4)  going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;

(5)  engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person;

(6)  possessing a firearm, unless the person possesses the firearm for the actual discharge of the person's official duties as:

(A)  [~~is~~] a peace officer, as defined by Section 1.07, Penal Code; or

(B)  a member of the armed forces or state military forces, as defined by Section 431.001, Government Code [~~, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision~~]; and

(7)  harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code, that is possessed by or is in the actual or constructive care of a person protected by an order or by a member of the family or household of a person protected by an order.

SECTION 4.07.  Section 85.026(a), Family Code, is amended to read as follows:

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

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

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

"IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION, OTHER THAN A PERSON WHO POSSESSES A FIREARM FOR THE ACTUAL DISCHARGE OF THE PERSON'S OFFICIAL DUTIES AS A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, OR AS A MEMBER OF THE ARMED FORCES OR STATE MILITARY FORCES, AS DEFINED BY SECTION 431.001, GOVERNMENT CODE [~~ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION~~]."

"IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON:

"(1)  THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR

"(2)  THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."

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

SECTION 4.08.  Subchapter D, Chapter 411, Government Code, is amended by adding Section 411.0522 to read as follows:

Sec. 411.0522.  INFORMATION CONCERNING EXTREME RISK PROTECTIVE ORDER. (a) The department by rule shall establish a procedure to provide information concerning a person who is the subject of an extreme risk protective order to the Federal Bureau of Investigation for inclusion in the National Instant Criminal Background Check System.

(b)  The procedure must require the department to provide any information received under Article 7B.158, Code of Criminal Procedure, to the Federal Bureau of Investigation not later than 24 hours after the time the department received the information.

SECTION 4.09.  Section 411.172(a), Government Code, is amended to read as follows:

(a)  A person is eligible for a license to carry a handgun if the person:

(1)  is a legal resident of this state for the six-month period preceding the date of application under this subchapter or is otherwise eligible for a license under Section 411.173(a);

(2)  is at least 21 years of age;

(3)  has not been convicted of a felony;

(4)  is not charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under Section 42.01, Penal Code, or equivalent offense, or of a felony under an information or indictment;

(5)  is not a fugitive from justice for a felony or a Class A or Class B misdemeanor or equivalent offense;

(6)  is not a chemically dependent person;

(7)  is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun;

(8)  has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense or of an offense under Section 42.01, Penal Code, or equivalent offense;

(9)  is fully qualified under applicable federal and state law to purchase a handgun;

(10)  has not been finally determined to be delinquent in making a child support payment administered or collected by the attorney general;

(11)  has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the tax collector of a political subdivision of the state, or any agency or subdivision of the state;

(12)  is not currently:

(A)  restricted under a court protective order, including an extreme risk protective order issued under Subchapter D, Chapter 7B, Code of Criminal Procedure; or

(B)  subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;

(13)  has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and

(14)  has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section 411.174.

SECTION 4.10.  Sections 411.187(a) and (c), Government Code, are amended to read as follows:

(a)  The department shall suspend a license under this section if the license holder:

(1)  is charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under Section 42.01, Penal Code, or equivalent offense, or of a felony under an information or indictment;

(2)  fails to notify the department of a change of address, name, or status as required by Section 411.181;

(3)  commits an act of family violence and is the subject of an active protective order rendered under Title 4, Family Code; [~~or~~]

(4)  is arrested for an offense involving family violence or an offense under Section 42.072, Penal Code, and is the subject of an order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(5)  is the subject of an active protective order issued under Subchapter D, Chapter 7B, Code of Criminal Procedure.

(c)  The department shall suspend a license under this section:

(1)  for 30 days, if the person's license is subject to suspension for a reason listed in Subsection (a)(2)[~~, (3), or (4), except as provided by Subdivision (2)~~];

(2)  [~~for not less than one year and not more than three years, if the person's license:~~

[~~(A)  is subject to suspension for a reason listed in Subsection (a), other than the reason listed in Subsection (a)(1); and~~

[~~(B)  has been previously suspended for the same reason;~~

[~~(3)~~]  until dismissal of the charges, if the person's license is subject to suspension for the reason listed in Subsection (a)(1); or

(3) [~~(4)~~]  for the duration of or the period specified by:

(A)  the protective order issued under Title 4, Family Code, if the person's license is subject to suspension for the reason listed in Subsection (a)(3) [~~(a)(5)~~]; [~~or~~]

(B)  the order for emergency protection issued under Article 17.292, Code of Criminal Procedure, if the person's license is subject to suspension for the reason listed in Subsection (a)(4); or

(C)  the extreme risk protective order issued under Subchapter D, Chapter 7B, Code of Criminal Procedure, if the person's license is subject to suspension for the reason listed in Subsection (a)(5) [~~(a)(6)~~].

SECTION 4.11.  Chapter 37, Penal Code, is amended by adding Section 37.083 to read as follows:

Sec. 37.083.  FALSE REPORT REGARDING REQUEST FOR EXTREME RISK PROTECTIVE ORDER. (a) A person commits an offense if, with intent to deceive, the person makes a statement that the person knows to be false to a peace officer relating to a request that the officer file an application for an extreme risk protective order under Subchapter D, Chapter 7B, Code of Criminal Procedure.

(b)  An offense under this section is a Class B misdemeanor.

(c)  If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

SECTION 4.12.  Section 46.04, Penal Code, is amended by amending Subsections (c) and (e) and adding Subsections (c-1) and (c-2) to read as follows:

(c)  A person [~~, other than a peace officer, as defined by Section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision,~~] who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292 or Subchapter A, Chapter 7B, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

(c-1)  It is a defense to prosecution under Subsection (c) that the actor possessed the firearm for the actual discharge of official duties as:

(1)  a peace officer, as defined by Section 1.07; or

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

(c-2)  A person commits an offense if, after receiving notice that the person is subject to an extreme risk protective order issued under Subchapter D, Chapter 7B, Code of Criminal Procedure, and before rescission or expiration of the order, the person purchases, owns, possesses, or controls a firearm in violation of the order.

(e)  An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (a-1), (b), [~~or~~] (c), or (c-2) is a Class A misdemeanor.

SECTION 4.13.  Not later than October 1, 2023, the Department of Public Safety shall adopt rules as required by Section 411.0522, Government Code, as added by this article.

SECTION 4.14.  The change in law made by this article relating to the contents of a protective order or a magistrate's order for emergency protection applies to an order issued on or after the effective date of this Act. An order issued before that date is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4.15.  Section 46.04, Penal Code, as amended by this article, 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.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01.  This Act takes effect September 1, 2023.