88R3350 MCF-D

By:  Meza H.B. No. 735

A BILL TO BE ENTITLED

AN ACT

relating to requiring a person convicted of an offense involving family violence or a person who is the subject of a family violence protective order to surrender firearms owned by the person.

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

SECTION 1.  Title 1, Code of Criminal Procedure, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. SURRENDER OF FIREARM ON CONVICTION OF CERTAIN OFFENSES OR ISSUANCE OF CERTAIN PROTECTIVE ORDERS

Art. 68.01.  APPLICABILITY. This chapter applies to a person who:

(1)  is convicted of an offense involving family violence, as defined by Section 71.004, Family Code;

(2)  is the subject of a protective order under Chapter 85, Family Code; or

(3)  is the subject of a magistrate's order for emergency protection under Article 17.292 following an arrest for an offense involving family violence.

Art. 68.02.  NOTICE AND ORDER TO SURRENDER FIREARM. On conviction of a person for an offense described by Article 68.01(1) or issuance of an order described by Article 68.01(2) or (3), the court shall:

(1)  provide written notice to the person who was convicted or who is the subject of the order that the person is prohibited from acquiring, possessing, or controlling a firearm under 18 U.S.C. Section 922(g); and

(2)  order the person to surrender all firearms the person owns in the manner provided by Article 68.03 not later than the seventh day after:

(A)  the date the person receives notice under this article; or

(B)  if the person was taken into custody immediately after conviction, the date the person is released from confinement.

Art. 68.03.  SURRENDER OF FIREARM. A person required to surrender a firearm under Article 68.02 shall surrender the firearm by:

(1)  regardless of the reason for which the person is required to surrender the firearm, releasing the firearm to the person's designee, if the designee provides to the court of conviction or the court issuing the order, as applicable, a signed affidavit affirming that the designee:

(A)  may lawfully possess a firearm under 18 U.S.C. Section 922(g) and under the law of this state; and

(B)  has taken possession of the firearm;

(2)  selling the firearm to a person who is a licensed firearms dealer under 18 U.S.C. Section 923, regardless of the reason for which the person is required to surrender the firearm;

(3)  surrendering the firearm to a law enforcement agency for holding in the manner described by Article 68.05, if the person is required to surrender the firearm based on:

(A)  a conviction described by Article 68.01(1) that the person intends to appeal; or

(B)  an order described by Article 68.01(2) or (3); or

(4)  surrendering the firearm to a law enforcement agency for disposition in the manner provided by Article 68.06, if the person is required to surrender the firearm based on a conviction described by Article 68.01(1) that the person does not intend to appeal.

Art. 68.04.  REQUIRED DOCUMENTATION. (a) A person subject to an order under Article 68.02 who does not own a firearm shall submit to the court a signed affidavit affirming that the person does not own a firearm.

(b)  A licensed firearms dealer who takes possession of a firearm from a person required to surrender the firearm under Article 68.02 shall immediately provide the person with a written receipt for the firearm, and the person shall file the receipt with the court.

Art. 68.05.  HOLDING OF FIREARM SURRENDERED TO LAW ENFORCEMENT AGENCY. (a) A law enforcement agency that takes possession of a firearm under Article 68.03(3) shall immediately provide the person surrendering the firearm a written receipt for the firearm and a written notice of the procedure for the return of the firearm under this article.

(b)  A person who receives a receipt under Subsection (a) shall file the receipt with the court.

(c)  Not later than the 30th day after the date of any of the following, the clerk of the court shall notify the law enforcement agency that, as applicable:

(1)  the conviction for which the person was required to surrender the person's firearm became final;

(2)  the conviction for which the person was required to surrender the person's firearm was vacated, dismissed, reversed on appeal, or otherwise fully discharged or the person received a full pardon for the conviction; or

(3)  the order for which the person was required to surrender the person's firearm has expired.

(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)(2) or (3), 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, before the 121st day after the date of the notice, the person submits a written request for the return of the firearm.

(f)  If the law enforcement agency receives notice under Subsection (c)(1) or if the check conducted under Subsection (d) shows that the person may not lawfully possess a firearm, the law enforcement agency shall provide to the person by certified mail written notice stating that the person:

(1)  may not lawfully possess a firearm under 18 U.S.C. Section 922(g) or under the law of this state; and

(2)  may dispose of the firearm by releasing the firearm to:

(A)  the person's designee if:

(i)  the person requests that disposition before the 121st day after the date of the notice; and

(ii)  the designee provides to the law enforcement agency a signed affidavit affirming that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g) and under the law of this state; or

(B)  the law enforcement agency holding the firearm, for disposition in the manner provided by Article 68.06.

Art. 68.06.  DISPOSITION OF FIREARM SURRENDERED TO LAW ENFORCEMENT AGENCY. (a) A law enforcement agency shall provide for a firearm surrendered to the law enforcement agency under this chapter to be sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923 if:

(1)  the firearm was surrendered under Article 68.03(3) and the person who surrendered the firearm did not respond to notice under Article 68.05(e) or (f) before the 121st day after the date of the notice; or

(2)  the firearm was surrendered under Article 68.03(4).

(b)  The proceeds from the sale of a firearm under this article shall be paid to the owner of the firearm, less the cost of administering this article and, if applicable, Article 68.05 with respect to the firearm.

(c)  An unclaimed firearm that is surrendered as provided by this chapter may not be destroyed or forfeited to the state.

Art. 68.07.  FORM OF AFFIDAVITS. The Office of Court Administration of the Texas Judicial System shall adopt model affidavits for purposes of Articles 68.03, 68.04, and 68.05.

SECTION 2.  (a) The change in law made by this Act applies only to a person who is convicted of an offense described by Article 68.01(1), Code of Criminal Procedure, as added by this Act, on or after January 1, 2024, or who is the subject of an order described by Article 68.01(2) or (3), Code of Criminal Procedure, as added by this Act, that is issued on or after that date. A person who is convicted of an offense before January 1, 2024, or who is the subject of an order issued before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b)  The Office of Court Administration of the Texas Judicial System shall adopt the model affidavits required by Article 68.07, Code of Criminal Procedure, as added by this Act, not later than December 1, 2023.

SECTION 3.  This Act takes effect September 1, 2023.