88R1659 AJA-F

By:  Dutton H.B. No. 925

A BILL TO BE ENTITLED

AN ACT

relating to firearms; authorizing a private civil right of action.

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

SECTION 1.  (a)  The legislature finds and declares that the proliferation of assault weapons, .50 caliber rifles, and unserialized firearms poses a threat to the health, safety, and security of all residents of, and visitors to, this state. All Texans are directly harmed by the proliferation of these weapons, and this state has a compelling interest in protecting its citizens from gun violence and from intimidation by persons brandishing these weapons. Further, this state has a compelling interest in enabling law enforcement authorities to trace firearms used, manufactured, distributed, or transported unlawfully.

(b)  The legislature further finds and declares that the proliferation of firearms to and among young people poses a threat to the health, safety, and security of all residents of, and visitors to, this state. Firearms are especially dangerous in the hands of young people because current research and scientific evidence show that young people are more impulsive, more likely to engage in risky and reckless behavior, unduly influenced by peer pressure, motivated more by rewards than costs or negative consequences, less likely to consider the future consequences of their actions and decisions, and less able to control themselves in emotionally arousing situations. In recognition of these facts, the legislature has previously prohibited certain transfers of firearms to a person under 18 years of age. This state has a compelling interest in further restricting the proliferation of firearms among those under 21 years of age.

(c)  The legislature finds it necessary to restrict assault weapons based on a finding that each assault weapon has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. The legislature also finds it necessary to restrict .50 caliber rifles based on a finding that they pose a clear and present threat to the health, safety, and security of all residents of, and visitors to, this state because those firearms have such a high capacity for long-distance and highly destructive firepower that they pose an unacceptable risk of death and serious injury of human beings, and destruction or serious damage of vital public and private buildings, civilian, police, and military vehicles, power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure. The legislature further finds and declares that the manufacture, distribution, transport, importation, and sale of unserialized firearms pose a threat to the health, safety, and security of all residents of, and visitors to, this state and impede law enforcement activities, and that the manufacture, distribution, transport, importation, and sale of firearm precursor parts and kits are contributing to the proliferation of unserialized firearms in this state.

(d)  It is the intent of the legislature in enacting this Act to further restrict in this state the manufacture, distribution, transportation, importation, sale, loan, and transfer of assault weapons, .50 caliber rifles, and unserialized firearms and further restrict the proliferation of firearms to and among those under 21 years of age by creating new civil law prohibitions and a civil enforcement mechanism, independent of existing law. This Act may not be construed to limit in any way the enforceability of existing laws concerning firearms, including Chapter 46, Penal Code.

(e)  The legislature has defined "assault weapon" to include the types, series, and models listed in the definition of that term because it is the most effective way to identify and restrict a specific class of semiautomatic weapons. The legislature finds a significant public purpose in exempting from the definition of "assault weapon" pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that were used for Olympic target shooting purposes as of January 1, 2001, and that would otherwise fall within the definition of "assault weapon" under this Act, are exempt as provided by this Act.

SECTION 2.  Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 769 to read as follows:

CHAPTER 769.  MANUFACTURE, DISTRIBUTION, TRANSPORTATION, IMPORTATION, SALE, LOAN, OR TRANSFER OF FIREARMS AND PRECURSOR PARTS

Sec. 769.001.  DEFINITIONS.  In this chapter:

(1)  ".50 caliber rifle" means a centerfire rifle that can fire a .50 caliber cartridge and is not already an assault weapon or a machine gun. The term does not include an antique firearm, curio, or relic, as defined by 27 C.F.R. Section 478.11.

(2)  "Assault weapon":

(A)  includes:

(i)  all of the following specified rifles:

(a)  all AK series, including the models identified as:

(1)  made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S;

(2)  Norinco 56, 56S, 84S, and 86S;

(3)  Poly Technologies AKS and AK47; and

(4)  MAADI AK47 and ARM;

(b)  UZI and Galil;

(c)  Beretta AR-70;

(d)  CETME Sporter;

(e)  Colt AR-15 series;

(f)  Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C;

(g)  Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter;

(h)  MAS 223;

(i)  HK-91, HK-93, HK-94, and HK-PSG-1;

(j)  the following MAC types:

(1)  RPB Industries Incorporated sM10 and sM11; and

(2)  SWD Incorporated M11;

(k)  SKS with detachable magazine;

(l)  SIG AMT, PE-57, SG 550, and SG 551;

(m)  Springfield Armory BM59 and SAR-48;

(n)  Sterling MK-6;

(o)  Steyer AUG;

(p)  Valmet M62S, M71S, and M78S;

(q)  Armalite AR-180;

(r)  Bushmaster Assault Rifle;

(s)  Calico M-900;

(t)  J&R ENG M-68; and

(u)  Weaver Arms Nighthawk;

(ii)  all of the following specified pistols:

(a)  UZI;

(b)  Encom MP-9 and MP-45; and

(c)  the following MAC types:

(1)  RPB Industries Incorporated sM10 and sM11;

(2)  SWD Incorporated M-11;

(3)  Advance Armament Incorporated M-11;

(4)  Military Armament Corporation Ingram M-11;

(5)  Intratec TEC-9;

(6)  Sites Spectre;

(7)  Sterling MK-7;

(8)  Calico M-950; and

(9)  Bushmaster Pistol;

(iii)  all of the following specified shotguns:

(a)  Franchi SPAS 12 and LAW 12;

(b)  Striker 12; and

(c)  the Streetsweeper type S/S Incorporated SS/12;

(iv)  any firearm declared to be an assault weapon by a court;

(v)  a semiautomatic centerfire rifle that does not have a fixed magazine but has any one of the following:

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

(b)  a thumbhole stock;

(c)  a folding or telescoping stock;

(d)  a grenade launcher or flare launcher;

(e)  a flash suppressor; or

(f)  a forward pistol grip;

(vi)  a semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds;

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

(viii)  a semiautomatic pistol that does not have a fixed magazine but has any one of the following:

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

(b)  a second handgrip;

(c)  a shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel; or

(d)  the capacity to accept a detachable magazine at some location outside of the pistol grip;

(ix)  a semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds;

(x)  a semiautomatic shotgun that has both of the following:

(a)  a folding or telescoping stock; and

(b)  a pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip;

(xi)  a semiautomatic shotgun that does not have a fixed magazine;

(xii)  any shotgun with a revolving cylinder;

(xiii)  a semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun and does not have a fixed magazine but has any one of the following:

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

(b)  a thumbhole stock;

(c)  a folding or telescoping stock;

(d)  a grenade launcher or flare launcher;

(e)  a flash suppressor;

(f)  a forward pistol grip;

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

(h)  a second handgrip;

(i)  a shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel; or

(j)  the capacity to accept a detachable magazine at some location outside of the pistol grip;

(xiv)  a semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun and has a fixed magazine with the capacity to accept more than 10 rounds; and

(xv)  a semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun and has an overall length of less than 30 inches; and

(B)  does not include:

(i)  any antique firearm; or

(ii)  any of the following pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that were used for Olympic target shooting purposes as of January 1, 2001:

(a)  a Benelli MP90 .22 caliber long rifle;

(b)  a Benelli MP90 .32 caliber Smith & Wesson long;

(c)  a Benelli MP95 .22 caliber long rifle;

(d)  a Benelli MP95 .32 caliber Smith & Wesson long;

(e)  a Hammerli 280 .22 caliber long rifle;

(f)  a Hammerli 280 .32 caliber Smith & Wesson long;

(g)  a Hammerli SP20 .22 caliber long rifle;

(h)  a Hammerli SP20 .32 caliber Smith & Wesson long;

(i)  a Pardini GPO .22 caliber short;

(j)  a Pardini GPO-Schumann .22 caliber short;

(k)  a Pardini HP .32 caliber Smith & Wesson long;

(l)  a Pardini MP .32 caliber Smith & Wesson long;

(m)  a Pardini SP .22 caliber long rifle;

(n)  a Pardini SPE .22 caliber long rifle;

(o)  a Walther GSP .22 caliber long rifle;

(p)  a Walther GSP .32 caliber Smith & Wesson long;

(q)  a Walther OSP .22 caliber short; or

(r)  a Walther OSP-2000 .22 caliber short.

(3)  "Federally regulated firearm precursor part" means any firearm precursor part considered to be a firearm under 18 U.S.C. Chapter 44 and regulations issued under that chapter, and that has been imprinted with a serial number by a federal licensee authorized to serialize firearms in compliance with all applicable federal laws and regulations.

(4)  "Firearm" means a device, designed to be used as a weapon, from which a projectile is expelled through a barrel by the force of an explosion or other form of combustion.

(5)  "Firearm precursor part" means any forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture where the article may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted. The term does not include firearm parts that can only be used on antique firearms.

(6)  "Fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

(7)  "Series" includes all other models that are only variations, with minor differences, of those models listed in Subdivision (2)(A)(i) regardless of the manufacturer.

(8)  "Unserialized firearm" means a firearm that does not have a serial number as required by law or has had its serial number altered or obliterated.

Sec. 769.002.  MANUFACTURE, DISTRIBUTION, TRANSPORTATION, IMPORTATION, SALE, LOAN, OR TRANSFER OF CERTAIN FIREARMS AND PRECURSOR PARTS. (a)  Notwithstanding any other law, a person within this state may not manufacture or cause to be manufactured, distribute, transport, or import into this state, or cause to be distributed, transported, or imported into this state, keep for sale, offer or expose for sale, or give or lend any assault weapon, .50 caliber rifle, or unserialized firearm, except as provided by Subsections (f) and (g) and Section 769.003.

(b)  Except by operation of law, a person may not purchase, sell, offer to sell, or transfer ownership of any firearm precursor part in this state that is not a federally regulated firearm precursor part. This subsection does not apply to:

(1)  the purchase of a firearm precursor part that is not a federally regulated firearm precursor part by a federally licensed firearms manufacturer or importer, or by a federal licensee authorized to serialize firearms;

(2)  the sale, offer to sell, or transfer of ownership of a firearm precursor part that is not a federally regulated firearm precursor part to a federally licensed firearms manufacturer or importer, or to a federal licensee authorized to serialize firearms; or

(3)  a common carrier licensed under state law, or a motor carrier, air carrier, or carrier affiliated with an air carrier through common controlling interest that is subject to Title 49, United States Code, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

(c)  A person may not sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age. This subsection does not apply to or affect the sale, supply, delivery, or giving of possession or control of a firearm that:

(1)  is not a handgun or a semiautomatic centerfire rifle to a person 18 years of age or older who possesses a valid, unexpired hunting license issued by the Parks and Wildlife Department;

(2)  is not a handgun, semiautomatic centerfire rifle, completed frame or receiver, or firearm precursor part to a person who is 18 years of age or older and provides proper identification of being an honorably discharged member of the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States; or

(3)  is not a handgun to a person who is 18 years of age or older and:

(A)  is an active peace officer, as described by Article 2.12, Code of Criminal Procedure, who is authorized to carry a firearm in the course and scope of employment;

(B)  is an active federal officer or law enforcement agent who is authorized to carry a firearm in the course and scope of employment;

(C)  is a reserve peace officer who is authorized to carry a firearm in the course and scope of employment as a reserve peace officer; or

(D)  provides proper identification of active membership in the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States.

(d)  For purposes of Subsection (c)(2), proper identification includes a military identification card or other written documentation certifying that the person is an honorably discharged member.

(e)  The prohibitions described by Subsections (a), (b), and (c) apply regardless of whether the firearm or firearm precursor part is misused or is intended to be misused in a criminal or unlawful manner.

(f)  Subsections (a), (b), and (c) do not apply to the sale of an assault weapon, .50 caliber rifle, unserialized firearm, or firearm precursor part to, or the purchase, transportation, importation, sale or other transfer, or manufacture of an assault weapon, .50 caliber rifle, unserialized firearm, or firearm precursor part by, any law enforcement agency or public entity that employs peace officers, or any authorized law enforcement representative thereof, if that agency, entity, or representative is not prohibited by law from possessing an assault weapon, .50 caliber rifle, unserialized firearm, or firearm precursor part, including the Texas Department of Criminal Justice, a police department or sheriff's or marshal's office, the Department of Public Safety, a district attorney's office, the Parks and Wildlife Department, the military or naval forces of this state or of the United States, a law enforcement or military agency of another state, any federal law enforcement agency, or any foreign government or agency approved by the United States Department of State, for use in the discharge of the official duties of those entities.

(g)  Subsections (a) and (b) do not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 caliber rifle that is disposed of as authorized by the probate court.

Sec. 769.003.  SERVICING OR REPAIR OF CERTAIN FIREARMS AND PRECURSOR PARTS; TRANSPORTATION; RELINQUISHMENT. (a)  Notwithstanding Section 769.002, a firearms dealer may take possession of any assault weapon or .50 caliber rifle from any person who may legally possess the assault weapon or rifle, or of any firearm precursor part, for the purpose of servicing or repair.

(b)  Notwithstanding Section 769.002, a firearms dealer may transfer possession of any assault weapon, .50 caliber rifle, or firearm precursor part received under Subsection (a) to a gunsmith for the purpose of servicing or repair. A transfer is permissible only to the following persons:

(1)  a gunsmith employed by the dealer; or

(2)  a gunsmith with whom the dealer has contracted for gunsmithing services.

(c)  Subsection (b)(2) applies only if the gunsmith receiving the assault weapon, .50 caliber rifle, or firearm precursor part meets both of the following qualifications:

(1)  the gunsmith holds a dealer license issued under 18 U.S.C. Chapter 44 and the regulations issued under that chapter; and

(2)  the gunsmith holds any business license required by a state or local governmental entity.

(d)  A firearms dealer who lawfully possesses an assault weapon, .50 caliber rifle, or firearm precursor part in accordance with this section may:

(1)  transport the firearm or firearm precursor part between dealers or out of this state if that person is permitted under the National Firearms Act; or

(2)  sell the firearm or firearm precursor part to a resident outside this state.

(e)  A firearm or firearm precursor part that is transported under this section or Section 769.002 must be:

(1)  transported in a motor vehicle while:

(A)  locked in the vehicle's trunk; or

(B)  in a locked container in the vehicle that:

(i)  is secure and fully enclosed and locked by a padlock, keylock, combination lock, or similar device; and

(ii)  is not a utility or glove compartment of the vehicle; and

(2)  carried directly to or from the motor vehicle in the locked container described by Subdivision (1)(B).

(f)  Notwithstanding Section 769.002, and provided that the firearm or firearm precursor part is transported in compliance with Subsection (e), an individual may:

(1)  arrange in advance to relinquish an assault weapon, .50 caliber rifle, unserialized firearm, or firearm precursor part to a police or sheriff's department;

(2)  sell, deliver, or transfer an assault weapon, .50 caliber rifle, unserialized firearm, or firearm precursor part to an authorized representative of a municipality, municipality and county, county, or state government, or of the federal government, provided that the entity is acquiring the weapon as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals; or

(3)  transfer, relinquish, or dispose of a firearm or firearm precursor part.

Sec. 769.004.  LIMITATIONS ON PUBLIC ENFORCEMENT. (a)  Notwithstanding any other law, the requirements of this chapter shall be enforced exclusively through the private civil actions described by Section 769.005. Enforcement of this chapter may not be taken or threatened by this state, a political subdivision of this state, a district, county, or municipal attorney, or an executive or administrative officer or employee of this state or a political subdivision of this state against any person, except as provided by Section 769.005.

(b)  The fact that conduct violates this chapter is not an independent basis for enforcement of any other law of this state, or the denial, revocation, suspension, or withholding of any right or privilege conferred by the law of this state or a political subdivision of this state, or a threat to do the same, by this state, a political subdivision of this state, a district, county, or municipal attorney, or an executive or administrative officer or employee of this state or a political subdivision of this state, or a board, commission, or similar body assigned authority to do so under law, against any person, except as provided by Section 769.005. A civil action predicated on a violation of this chapter may not be brought by this state, a political subdivision of this state, a district, county, or municipal attorney, or an executive or administrative officer or employee of this state or a political subdivision of this state. For avoidance of doubt, the rights and privileges described by this section include any business licenses and permits issued under a law of this state. This subsection may not be construed to prevent or limit enforcement of any other law regulating conduct that also violates this chapter.

(c)  Subsections (a) and (b) may not be construed to:

(1)  legalize the conduct prohibited by this chapter;

(2)  limit or affect the availability of a remedy established by Section 769.005; or

(3)  limit the enforceability of any other laws that regulate or prohibit any conduct relating to firearms or firearm precursor parts.

Sec. 769.005.  CIVIL LIABILITY FOR VIOLATION OR AIDING AND ABETTING VIOLATION. (a)  Any person, other than an officer or employee of this state or political subdivision of this state, may bring a civil action against any person who:

(1)  knowingly violates Section 769.002;

(2)  knowingly engages in conduct that aids or abets another person in violating Section 769.002, regardless of whether the person knew or should have known that the person aided or abetted would be violating Section 769.002; or

(3)  knowingly commits an act with the intent to engage in the conduct described by Subdivision (1) or (2).

(b)  If a claimant prevails in an action brought under this section, the court shall award:

(1)  injunctive relief sufficient to prevent the defendant from violating this chapter or engaging in acts that aid or abet a violation of this chapter;

(2)  statutory damages in an amount of not less than $10,000 for each weapon or firearm precursor part as to which the defendant violated Section 769.002, and for each weapon or firearm precursor part as to which the defendant aided or abetted a violation of Section 769.002; and

(3)  attorney's fees and costs.

(c)  Notwithstanding Subsection (b), a court may not award relief under this section in response to conduct described by Subsection (a) if the defendant demonstrates that the defendant previously paid the full amount of any monetary award under Subsection (b)(2) in a previous action for each firearm or firearm precursor part as to which the defendant violated, or aided or abetted a violation of, Section 769.002 or committed an act with the intent to violate or aid or abet a violation of that section.

(d)  Notwithstanding any other law, a cause of action under this section is extinguished unless the action is brought not later than the fourth anniversary of the day the cause of action accrues.

(e)  An act or omission in violation of Section 769.002 shall be considered an injury in fact to all residents of, and visitors to, this state, and any such person shall have standing to bring an action under this section. Damages under Subsection (b)(2) may not be considered exemplary damages for purposes of Chapter 41, Civil Practice and Remedies Code.

(f)  Notwithstanding any other law, none of the following is a defense to an action brought under this section:

(1)  a defendant's ignorance or mistake of law;

(2)  a defendant's belief that the requirements of this chapter are unconstitutional or were unconstitutional;

(3)  a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this chapter;

(4)  a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5)  a nonmutual issue preclusion or nonmutual claim preclusion;

(6)  any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate a constitutional right of a third party;

(7)  a defendant's assertion that this chapter proscribes conduct that is separately prohibited by the Penal Code or any other law of this state, or that this chapter proscribes conduct beyond that which is already prohibited by the Penal Code or any other law of this state; or

(8)  any claim that the firearm or firearm precursor part at issue was not misused, or was not intended to be misused, in a criminal or unlawful manner.

(g)  The following are affirmative defenses to an action brought under this section:

(1)  a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the person aided or abetted was complying with this chapter; and

(2)  a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the person was complying with this chapter or was aiding or abetting another who was complying with this chapter.

(h)  The defendant in an action under this section has the burden of proving an affirmative defense under Subsection (g) by a preponderance of the evidence.

(i)  This section may not be construed to impose liability on any speech or conduct protected by the First Amendment to the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment to the United States Constitution, or by Section 8, Article I, Texas Constitution.

(j)  Notwithstanding any other law, this state, a state official, or a district, county, or municipal attorney may not intervene in an action brought under this section. However, this subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(k)  Notwithstanding any other law, a court may not award attorney's fees or costs to a defendant in an action brought under this section.

(l)  An action may not be brought under this section against a federal government, state, or political subdivision, or an employee of a federal government, state, or political subdivision on the basis of acts or omissions in the course of discharge of official duties.

Sec. 769.006.  STANDING TO ASSERT CERTAIN DEFENSES. (a)  A defendant against whom an action is brought under Section 769.005 does not have standing to assert the right of another individual to keep and bear arms under the Second Amendment to the United States Constitution as a defense to liability under that section unless:

(1)  the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of other individuals in state court as a matter of federal constitutional law; or

(2)  the defendant has standing to assert the rights of other individuals under the tests for third-party standing established by the United States Supreme Court.

(b)  A defendant in an action brought under Section 769.005 may assert an affirmative defense to liability under this section if the defendant:

(1)  has standing to assert the third-party right of an individual to keep and bear arms in accordance with Subsection (a); and

(2)  demonstrates that the relief sought by the claimant will violate the third party's rights under the Second Amendment to the United States Constitution as defined by clearly established case law of the United States Supreme Court.

(c)  This section may not be construed to limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 769.005. A court may not award relief under Section 769.005 if the conduct for which the defendant has been sued was an exercise of a state or federal constitutional right that personally belongs to the defendant.

Sec. 769.007.  CONSTRUCTION OF CHAPTER.  This chapter may not be construed to:

(1)  authorize the initiation of an action under this chapter against a person purchasing, obtaining, or attempting to purchase or obtain an assault weapon, .50 caliber rifle, unserialized firearm, or firearm precursor part from a person acting in violation of this chapter;

(2)  wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits any conduct relating to firearms or firearm precursor parts; or

(3)  restrict a political subdivision from regulating or prohibiting conduct relating to assault weapons, .50 caliber rifles, unserialized firearms, or firearm precursor parts in a manner that is at least as stringent as the laws of this state.

Sec. 769.008.  VENUE. (a)  Notwithstanding any other law, an action brought under Section 769.005 shall be brought in:

(1)  the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2)  the county of residence of any natural person defendant at the time the cause of action accrued;

(3)  the county of the principal office in this state of any defendant that is not a natural person; or

(4)  the county of residence for the claimant if the claimant is a natural person residing in this state.

(b)  Notwithstanding any other law, if an action is brought under Section 769.005 in one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Sec. 769.009.  SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a)  Notwithstanding any other law, this state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision of this state has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(b)  A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (a) unless the provision expressly waives immunity under this section.

Sec. 769.010.  SEVERABILITY. (a)  It is the intent of the legislature that every provision, section, subdivision, sentence, clause, phrase, and word in this chapter, and every application of the provisions of this chapter, are severable from each other.

(b)  If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an unconstitutional burden in a large or substantial fraction of relevant cases, the applications that do not present an unconstitutional burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an unconstitutional burden. If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and the Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and the Texas Constitution.

(c)  The legislature further declares that it would have enacted this chapter, and each provision, section, subdivision, sentence, clause, phrase, and word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subdivision, sentence, clause, phrase, or word, or application of this chapter, were to be declared unconstitutional or to represent an unconstitutional burden.

(d)  If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e)  A court may not decline to enforce the severability requirements of this section on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision of this chapter does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality of a provision of this chapter:

(1)  is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or the United States Constitution;

(2)  is not a formal amendment of the language in a statute; and

(3)  does not rewrite a statute any more than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

Sec. 769.011.  OPERATION OF CHAPTER. This chapter becomes inoperative on invalidation of Subchapter H, Chapter 171, Health and Safety Code, in its entirety by a final decision of the United States Supreme Court or Texas Supreme Court.

SECTION 3.  Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.023 to read as follows:

Sec. 30.023.  AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING FIREARMS LAW. (a)  Notwithstanding any other law, any person, including an entity, attorney, or law firm, that seeks declaratory or injunctive relief to prevent this state, a political subdivision of this state, a governmental entity or public official in this state, or a person in this state from enforcing any statute, ordinance, rule, regulation, or other type of law that regulates or restricts firearms, or that represents any litigant seeking that relief, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.

(b)  For purposes of this section, a party is considered a prevailing party if a court:

(1)  dismisses any claim or cause of action brought by the party seeking the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or

(2)  enters judgment in favor of the party opposing the declaratory or injunctive relief described by Subsection (a), on any claim or cause of action.

(c)  Regardless of whether a prevailing party sought to recover attorney's fees or costs in the underlying action, a prevailing party under this section may bring a civil action to recover attorney's fees and costs against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:

(1)  the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or

(2)  the time for seeking appellate review expires.

(d)  None of the following is a defense to an action brought under Subsection (c):

(1)  a prevailing party under this section failed to seek recovery of attorney's fees or costs in the underlying action;

(2)  the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3)  the court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(e)  Any person, including an entity, attorney, or law firm, that seeks declaratory or injunctive relief as described by Subsection (a) may not be considered a prevailing party under this section or any other provision of this chapter.

SECTION 4.  Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.037 to read as follows:

Sec. 311.037.  CONSTRUCTION OF FIREARMS STATUTES. (a)  A statute that regulates or prohibits firearms may not be construed to repeal any other statute that regulates or prohibits firearms, either wholly or partly, unless the later-enacted statute explicitly states that it is repealing the other statute.

(b)  A statute may not be construed to restrict a political subdivision from regulating or prohibiting firearms in a manner that is at least as stringent as the laws of this state, unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting firearms in the manner described by the statute.

(c)  Every statute that regulates or prohibits firearms is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits firearms is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

SECTION 5.  This Act takes effect September 1, 2023.