88R4062 EAS-D

By:  Johnson S.B. No. 906

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Do-Not-Sell Registry for firearms; creating a criminal offense.

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

SECTION 1.  Chapter 411, Government Code, is amended by adding Subchapter H-1 to read as follows:

SUBCHAPTER H-1. TEXAS DO-NOT-SELL REGISTRY

Sec. 411.221.  DEFINITIONS. In this subchapter:

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

(2)  "Registry" means the Texas Do-Not-Sell Registry established under this subchapter.

Sec. 411.222.  REGISTRY OF INDIVIDUALS WAIVING RIGHT TO PURCHASE OR RECEIVE TRANSFER OF FIREARM. (a) The department shall establish and maintain a secure electronic registry to collect and store information regarding individuals who have voluntarily waived the right to purchase or receive transfer of a firearm under Section 411.223.

(b)  To be eligible to have the individual's waiver information included in the registry, an individual must be:

(1)  a resident of this state;

(2)  at least 18 years of age; and

(3)  not otherwise prohibited by state or federal law from possessing a firearm.

Sec. 411.223.  WAIVER OF RIGHT TO PURCHASE OR RECEIVE TRANSFER OF FIREARM. (a) An individual may submit to the department, on a form prescribed by the department, a waiver of the individual's right to purchase or receive transfer of a firearm. The individual may submit the waiver form to the department either in person or by mail and must include with the form any supplemental materials required by the department under Subsection (c) to ensure accuracy of information on the form.

(b)  The waiver form must require the individual to provide information sufficient to enable the department to:

(1)  verify the individual's identity; and

(2)  submit the information to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System.

(c)  The department by rule shall require an individual to submit a copy of the individual's government-issued photo identification with the waiver form and may require any other supplemental materials to ensure accuracy of information on the form. The waiver form must include instructions on which supplemental materials should accompany the waiver form, if any.

(d)  In addition to other requirements specified by department rule, the waiver form must contain the following prominently displayed statement:

"BECAUSE YOU HAVE SUBMITTED THIS WAIVER, YOUR INFORMATION WILL BE SUBMITTED TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM WHICH WILL PREVENT YOU FROM PURCHASING OR RECEIVING TRANSFER OF ANY FIREARMS WHILE THE WAIVER IS IN EFFECT. YOU MAY VOLUNTARILY REVOKE THIS WAIVER AT ANY TIME BY SUBMITTING A REVOCATION FORM TO THE TEXAS DEPARTMENT OF PUBLIC SAFETY."

(e)  In submitting the waiver, the individual may provide the name and contact information of a third person to be notified if the individual revokes the waiver.

(f)  The fact that an individual has submitted a waiver under this section or is listed in the voluntary registry does not in itself prohibit the individual from possessing a firearm under state law.

(g)  A waiver under this subchapter is valid only if the waiver:

(1)  is submitted by an individual described by Section 411.222(b) for the purpose of waiving that individual's right to purchase or receive transfer of a firearm;

(2)  provides all of the information required to be included on the waiver form under Subsection (b); and

(3)  includes any supplemental materials required under Subsection (c).

Sec. 411.224.  ADDITION TO REGISTRY AND NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM. (a) As soon as practicable after the department receives a waiver form and any accompanying materials, the department shall determine whether the waiver is valid and meets the requirements of Section 411.223(g).

(b)  If the department determines that the submitted waiver is valid, the department shall:

(1)  provide the information from the waiver to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System; and

(2)  notify the individual by mail that the individual's information has been submitted for inclusion in the National Instant Criminal Background Check System.

(c)  If the department determines that the submitted waiver is not valid, the department shall provide to the individual by mail, as applicable:

(1)  notice that there is a deficiency in the waiver form or in the supplemental materials submitted with the waiver form, which must include instructions that will assist the individual in correcting the deficiency; or

(2)  notice that the individual is not eligible to be included on the registry.

Sec. 411.225.  REVOCATION OF WAIVER; REMOVAL FROM REGISTRY. (a) An individual who has previously submitted a valid waiver to the department and whose information has been included in the registry may revoke the waiver under this subchapter in person or by mail by submitting a revocation to the department on a form prescribed by the department.

(b)  The revocation form must require the individual to provide information sufficient to enable the department to verify that the individual submitting the revocation form is the same individual who submitted the waiver.

(c)  As soon as practicable after the department receives a revocation form, the department shall determine if the revocation is valid.

(d)  If the department determines that the submitted revocation is valid, the department shall notify both the individual who submitted the revocation form and the third person designated with the submission of the waiver under Section 411.223(e), if applicable:

(1)  that the department has received a revocation form; and

(2)  of the date by which the department will provide the information from the form to the Federal Bureau of Investigation to enable that agency to remove the individual's information from the National Instant Criminal Background Check System.

(e)  If the department determines that the submitted revocation is not valid, the department shall provide to the individual by mail:

(1)  notice that the revocation is deficient; and

(2)  instructions that will assist the individual in correcting the deficiency.

(f)  A revocation under this subchapter is valid only if:

(1)  the individual requesting the revocation submits the revocation form as required by the department;

(2)  the revocation form provides all of the information required to be included on the form by the department; and

(3)  the department is able to verify the individual's identity through the information provided on the revocation form.

(g)  Except as provided by Subsection (h), as soon as practicable after the date the department receives a valid revocation form, the department shall:

(1)  provide the information from the form to the Federal Bureau of Investigation to enable that agency to remove the individual's information from the National Instant Criminal Background Check System; and

(2)  remove the individual's information from the voluntary registry.

(h)  The department may not remove information about an individual from the voluntary registry, and may not provide that individual's information to the Federal Bureau of Investigation for removal from the National Instant Criminal Background Check System, before the 10th day after the date the individual submitted a waiver for inclusion in the registry, regardless of whether a revocation of the waiver is submitted before the expiration of that period.

Sec. 411.226.  WAIVERS AND REVOCATIONS BY OTHER INDIVIDUALS NOT PERMITTED. (a) An individual may not submit a waiver or revocation form under this subchapter on behalf of another individual, regardless of the relationship between the individuals.

(b)  The department may not add or remove an individual's information from the registry based on a waiver or revocation form, as applicable, that is submitted by another individual.

Sec. 411.227.  MULTIPLE WAIVERS AND REVOCATIONS PERMITTED. An individual may make one or more waivers or revocations of waiver under this subchapter, as the individual considers necessary or appropriate.

Sec. 411.228.  AVAILABILITY OF FORMS. The department shall make available the waiver form described by Section 411.223 and the revocation form described by Section 411.225 on the department's Internet website. The Internet website must include clear instructions for:

(1)  completing and submitting a waiver or revocation form; and

(2)  submitting with the waiver any supplemental materials needed to ensure accuracy of information on the waiver form.

Sec. 411.229.  CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (a) Except as provided by Subsection (b), information maintained by the department regarding an individual who has voluntarily waived the right to purchase or receive transfer of a firearm under this subchapter:

(1)  is confidential and not subject to disclosure under Chapter 552; and

(2)  may only be disclosed to:

(A)  a law enforcement officer in connection with a prospective transfer of a firearm; or

(B)  the individual who is the subject of the information in the form.

(b)  The department may release anonymized statistics regarding:

(1)  the number of individuals who submitted waivers under Section 411.223 for inclusion on the registry;

(2)  the number of individuals who submitted revocations under Section 411.225 for removal of their information from the registry; and

(3)  the number of individuals whose information is currently included in the registry.

Sec. 411.230.  OFFENSE: SUBMITTING INFORMATION ON BEHALF OF ANOTHER. (a) A person commits an offense if the person knowingly submits to the department:

(1)  a waiver under Section 411.223 to add the information of another individual to the registry; or

(2)  a revocation under Section 411.225 to remove the information of another individual from the registry.

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

Sec. 411.231.  OFFENSE: DISCRIMINATION. (a) A person commits an offense if the person for any reason discriminates against an individual with respect to employment, housing, education, public benefits, insurance, or any other benefit or service because of the individual's perceived status as:

(1)  a person listed in the registry; or

(2)  a person not listed in the registry.

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

Sec. 411.232.  OFFENSE: REQUIRING REGISTRATION OR REVOCATION OF REGISTRATION. (a) A person commits an offense if the person requires, as a condition for employment, housing, education, public benefits, insurance, or any other benefit or service, the individual to disclose or modify the individual's status as:

(1)  a person listed in the registry; or

(2)  a person not listed in the registry.

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

Sec. 411.233.  CONSIDERATION IN LEGAL PROCEEDINGS PROHIBITED. A court may not consider a waiver or revocation under this subchapter as evidence in any legal proceeding other than in the prosecution of an offense under Section 46.06(a)(8), Penal Code, or an offense under this subchapter.

Sec. 411.234.  RULES. (a) The director shall adopt rules to establish and maintain the secure electronic registry, including rules prescribing the forms necessary for submission or revocation of a waiver described by this subchapter. The rules may not establish any eligibility requirements to submit a waiver or revocation form other than the requirements under this subchapter.

(b)  The department by rule shall establish procedures that will enable the department to provide information from a waiver form under Section 411.223 or a revocation form under Section 411.225 to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System.

(c)  The department by rule shall establish a procedure to correct department records as necessary to accurately reflect an individual's waiver status and a procedure to transmit the corrected records to the Federal Bureau of Investigation.

SECTION 2.  Section 51.9194(a), Education Code, is amended to read as follows:

(a)  A general academic teaching institution shall provide to each entering full-time undergraduate, graduate, or professional student, including each full-time undergraduate, graduate, or professional student who transfers to the institution, information about:

(1)  available mental health and suicide prevention services offered by the institution or by any associated organizations or programs; [~~and~~]

(2)  an individual's ability to voluntarily waive the right to purchase or receive transfer of a firearm through the registry established under Subchapter H-1, Chapter 411, Government Code; and

(3)  early warning signs that are often present in and appropriate intervention for a person who may be considering suicide.

SECTION 3.  Section 1001.072, Health and Safety Code, is amended to read as follows:

Sec. 1001.072.  GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO MENTAL HEALTH. The department is responsible for administering human services programs regarding mental health, including:

(1)  administering and coordinating mental health services at the local and state level;

(2)  operating the state's mental health facilities; [~~and~~]

(3)  incorporating an individual's ability to voluntarily waive the right to purchase or receive transfer of a firearm under Subchapter H-1, Chapter 411, Government Code, into department training, curriculum, guidance, or other standards relating to suicide prevention; and

(4)  inspecting, licensing, and enforcing regulations regarding mental health facilities, other than long-term care facilities regulated by the Health and Human [~~Department of Aging and Disability~~] Services Commission.

SECTION 4.  Section 46.06(a), Penal Code, is amended 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 to any child younger than 18 years of age any firearm, club, or location-restricted knife;

(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 handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered;

(6)  knowingly purchases, rents, leases, or receives as a loan or gift from another a 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; or

(8)  is a licensed firearms dealer and sells or otherwise transfers a firearm to a person the dealer knows is listed in the voluntary registry established under Subchapter H-1, Chapter 411, Government Code[~~, as defined by 18 U.S.C. Section 923~~].

SECTION 5.  Section 46.06(b), Penal Code, is amended by adding Subdivision (3) to read as follows:

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

SECTION 6.  (a) Not later than September 1, 2024, the Department of Public Safety of the State of Texas shall:

(1)  develop and make available the waiver and revocation forms and establish the voluntary registry required by Subchapter H-1, Chapter 411, Government Code, as added by this Act;

(2)  adopt the procedures regarding providing information under Subchapter H-1, Chapter 411, Government Code, as added by this Act, to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System; and

(3)  adopt procedures regarding correcting department records of individuals listed in the voluntary registry under Subchapter H-1, Chapter 411, Government Code, as added by this Act.

(b)  Section 46.06(a), Penal Code, as amended by this Act, applies only to a sale or other transfer of a firearm that occurs on or after September 1, 2024.

SECTION 7.  This Act takes effect September 1, 2023.