

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

1 legislature has previously prohibited certain transfers of  
2 firearms to a person under 18 years of age. This state has a  
3 compelling interest in further restricting the proliferation of  
4 firearms among those under 21 years of age.

5 (c) The legislature finds it necessary to restrict assault  
6 weapons based on a finding that each assault weapon has such a high  
7 rate of fire and capacity for firepower that its function as a  
8 legitimate sports or recreational firearm is substantially  
9 outweighed by the danger that it can be used to kill and injure  
10 human beings. The legislature also finds it necessary to restrict  
11 .50 caliber rifles based on a finding that they pose a clear and  
12 present threat to the health, safety, and security of all residents  
13 of, and visitors to, this state because those firearms have such a  
14 high capacity for long-distance and highly destructive firepower  
15 that they pose an unacceptable risk of death and serious injury of  
16 human beings, and destruction or serious damage of vital public and  
17 private buildings, civilian, police, and military vehicles, power  
18 generation and transmission facilities, petrochemical production  
19 and storage facilities, and transportation infrastructure. The  
20 legislature further finds and declares that the manufacture,  
21 distribution, transport, importation, and sale of unserialized  
22 firearms pose a threat to the health, safety, and security of all  
23 residents of, and visitors to, this state and impede law  
24 enforcement activities, and that the manufacture, distribution,  
25 transport, importation, and sale of firearm precursor parts and  
26 kits are contributing to the proliferation of unserialized firearms  
27 in this state.

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

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

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

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

27 PARTS

1        Sec. 769.001. DEFINITIONS. In this chapter:

2            (1) ".50 caliber rifle" means a centerfire rifle that  
3 can fire a .50 caliber cartridge and is not already an assault  
4 weapon or a machine gun. The term does not include an antique  
5 firearm, curio, or relic, as defined by 27 C.F.R. Section 478.11.

6            (2) "Assault weapon":

7                (A) includes:

8                    (i) all of the following specified rifles:

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

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

13                            (2) Norinco 56, 56S, 84S, and  
14 86S;

15                            (3) Poly Technologies AKS and  
16 AK47; and

17                            (4) MAADI AK47 and ARM;

18                            (b) UZI and Galil;

19                            (c) Beretta AR-70;

20                            (d) CETME Sporter;

21                            (e) Colt AR-15 series;

22                            (f) Daewoo K-1, K-2, Max 1, Max 2, AR  
23 100, and AR 110C;

24                            (g) Fabrique Nationale FAL, LAR, FNC,  
25 308 Match, and Sporter;

26                            (h) MAS 223;

27                            (i) HK-91, HK-93, HK-94, and

1 HK-PSG-1;

2 (j) the following MAC types:

3 (1) RPB Industries Incorporated

4 sM10 and sM11; and

5 (2) SWD Incorporated M11;

6 (k) SKS with detachable magazine;

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

8 551;

9 (m) Springfield Armory BM59 and

10 SAR-48;

11 (n) Sterling MK-6;

12 (o) Steyer AUG;

13 (p) Valmet M62S, M71S, and M78S;

14 (q) Armalite AR-180;

15 (r) Bushmaster Assault Rifle;

16 (s) Calico M-900;

17 (t) J&R ENG M-68; and

18 (u) Weaver Arms Nighthawk;

19 (ii) all of the following specified

20 pistols:

21 (a) UZI;

22 (b) Encom MP-9 and MP-45; and

23 (c) the following MAC types:

24 (1) RPB Industries Incorporated

25 sM10 and sM11;

26 (2) SWD Incorporated M-11;

27 (3) Advance Armament

- 1 Incorporated M-11;  
2 (4) Military Armament  
3 Corporation Ingram M-11;  
4 (5) Intratec TEC-9;  
5 (6) Sites Spectre;  
6 (7) Sterling MK-7;  
7 (8) Calico M-950; and  
8 (9) Bushmaster Pistol;  
9 (iii) all of the following specified  
10 shotguns:  
11 (a) Franchi SPAS 12 and LAW 12;  
12 (b) Striker 12; and  
13 (c) the Streetsweeper type S/S  
14 Incorporated SS/12;  
15 (iv) any firearm declared to be an assault  
16 weapon by a court;  
17 (v) a semiautomatic centerfire rifle that  
18 does not have a fixed magazine but has any one of the following:  
19 (a) a pistol grip that protrudes  
20 conspicuously beneath the action of the weapon;  
21 (b) a thumbhole stock;  
22 (c) a folding or telescoping stock;  
23 (d) a grenade launcher or flare  
24 launcher;  
25 (e) a flash suppressor; or  
26 (f) a forward pistol grip;  
27 (vi) a semiautomatic centerfire rifle that

1 has a fixed magazine with the capacity to accept more than 10  
2 rounds;

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

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

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

9 (b) a second handgrip;

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

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

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

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

20 (a) a folding or telescoping stock;

21 and

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

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

27 (xii) any shotgun with a revolving

1 cylinder;

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

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

7 (b) a thumbhole stock;

8 (c) a folding or telescoping stock;

9 (d) a grenade launcher or flare  
10 launcher;

11 (e) a flash suppressor;

12 (f) a forward pistol grip;

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

15 (h) a second handgrip;

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

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

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

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



1                   (B) does not include:

2                   (i) any antique firearm; or

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

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

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

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

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

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

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

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

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

24                  (i) a Pardini GPO .22 caliber short;

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

27                  (k) a Pardini HP .32 caliber Smith &

1 Wesson long;

2 (l) a Pardini MP .32 caliber Smith &

3 Wesson long;

4 (m) a Pardini SP .22 caliber long

5 rifle;

6 (n) a Pardini SPE .22 caliber long

7 rifle;

8 (o) a Walther GSP .22 caliber long

9 rifle;

10 (p) a Walther GSP .32 caliber Smith &

11 Wesson long;

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

13 or

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

15 short.

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

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

25 (5) "Firearm precursor part" means any forging,  
26 casting, printing, extrusion, machined body, or similar article  
27 that has reached a stage in manufacture where the article may

1 readily be completed, assembled, or converted to be used as the  
2 frame or receiver of a functional firearm, or that is marketed or  
3 sold to the public to become or be used as the frame or receiver of a  
4 functional firearm once completed, assembled, or converted. The  
5 term does not include firearm parts that can only be used on antique  
6 firearms.

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

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

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

17 Sec. 769.002. MANUFACTURE, DISTRIBUTION, TRANSPORTATION,  
18 IMPORTATION, SALE, LOAN, OR TRANSFER OF CERTAIN FIREARMS AND  
19 PRECURSOR PARTS. (a) Notwithstanding any other law, a person  
20 within this state may not manufacture or cause to be manufactured,  
21 distribute, transport, or import into this state, or cause to be  
22 distributed, transported, or imported into this state, keep for  
23 sale, offer or expose for sale, or give or lend any assault weapon,  
24 .50 caliber rifle, or unserialized firearm, except as provided by  
25 Subsections (f) and (g) and Section 769.003.

26 (b) Except by operation of law, a person may not purchase,  
27 sell, offer to sell, or transfer ownership of any firearm precursor

1 part in this state that is not a federally regulated firearm  
2 precursor part. This subsection does not apply to:

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

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

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

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

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

27 (2) is not a handgun, semiautomatic centerfire rifle,

1 completed frame or receiver, or firearm precursor part to a person  
2 who is 18 years of age or older and provides proper identification  
3 of being an honorably discharged member of the United States Armed  
4 Forces, the National Guard, the Air National Guard, or the active  
5 reserve components of the United States; or

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

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

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

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

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

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

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

1 unlawful manner.

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

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

25 Sec. 769.003. SERVICING OR REPAIR OF CERTAIN FIREARMS AND  
26 PRECURSOR PARTS; TRANSPORTATION; RELINQUISHMENT.

27 (a) Notwithstanding Section 769.002, a firearms dealer may take

1 possession of any assault weapon or .50 caliber rifle from any  
2 person who may legally possess the assault weapon or rifle, or of  
3 any firearm precursor part, for the purpose of servicing or repair.

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

9 (1) a gunsmith employed by the dealer; or

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

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

15 (1) the gunsmith holds a dealer license issued under  
16 18 U.S.C. Chapter 44 and the regulations issued under that chapter;  
17 and

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

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

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

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

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

3           (1) transported in a motor vehicle while:

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

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

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

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

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

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

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

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

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

27       Sec. 769.004. LIMITATIONS ON PUBLIC ENFORCEMENT.



1 (a) Notwithstanding any other law, the requirements of this  
2 chapter shall be enforced exclusively through the private civil  
3 actions described by Section 769.005. Enforcement of this chapter  
4 may not be taken or threatened by this state, a political  
5 subdivision of this state, a district, county, or municipal  
6 attorney, or an executive or administrative officer or employee of  
7 this state or a political subdivision of this state against any  
8 person, except as provided by Section 769.005.

9 (b) The fact that conduct violates this chapter is not an  
10 independent basis for enforcement of any other law of this state, or  
11 the denial, revocation, suspension, or withholding of any right or  
12 privilege conferred by the law of this state or a political  
13 subdivision of this state, or a threat to do the same, by this  
14 state, a political subdivision of this state, a district, county,  
15 or municipal attorney, or an executive or administrative officer or  
16 employee of this state or a political subdivision of this state, or  
17 a board, commission, or similar body assigned authority to do so  
18 under law, against any person, except as provided by Section  
19 769.005. A civil action predicated on a violation of this chapter  
20 may not be brought by this state, a political subdivision of this  
21 state, a district, county, or municipal attorney, or an executive  
22 or administrative officer or employee of this state or a political  
23 subdivision of this state. For avoidance of doubt, the rights and  
24 privileges described by this section include any business licenses  
25 and permits issued under a law of this state. This subsection may  
26 not be construed to prevent or limit enforcement of any other law  
27 regulating conduct that also violates this chapter.

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

2 (1) legalize the conduct prohibited by this chapter;

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

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

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

12 (1) knowingly violates Section 769.002;

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

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

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

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

24 (2) statutory damages in an amount of not less than  
25 \$10,000 for each weapon or firearm precursor part as to which the  
26 defendant violated Section 769.002, and for each weapon or firearm  
27 precursor part as to which the defendant aided or abetted a

1 violation of Section 769.002; and

2 (3) attorney's fees and costs.

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

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

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

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

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

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

25 (3) a defendant's reliance on any court decision that  
26 has been overruled on appeal or by a subsequent court, even if that  
27 court decision had not been overruled when the defendant engaged in

1 conduct that violates this chapter;

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

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

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

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

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

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

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

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

27 (h) The defendant in an action under this section has the

1 burden of proving an affirmative defense under Subsection (g) by a  
2 preponderance of the evidence.

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

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

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

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

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

27 (1) the United States Supreme Court holds that the

1 courts of this state must confer standing on that defendant to  
2 assert the third-party rights of other individuals in state court  
3 as a matter of federal constitutional law; or

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

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

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

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

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

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

25 (1) authorize the initiation of an action under this  
26 chapter against a person purchasing, obtaining, or attempting to  
27 purchase or obtain an assault weapon, .50 caliber rifle,

1 unserialized firearm, or firearm precursor part from a person  
2 acting in violation of this chapter;

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

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

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

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

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

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

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

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

24 Sec. 769.009. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL  
25 IMMUNITY PRESERVED. (a) Notwithstanding any other law, this state  
26 has sovereign immunity, a political subdivision has governmental  
27 immunity, and each officer and employee of this state or a political

1 subdivision of this state has official immunity in any action,  
2 claim, or counterclaim or any type of legal or equitable action that  
3 challenges the validity of any provision or application of this  
4 chapter, on constitutional grounds or otherwise.

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

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

12 (b) If any application of any provision in this chapter to  
13 any person, group of persons, or circumstances is found by a court  
14 to be invalid or unconstitutional, the remaining applications of  
15 that provision to all other persons and circumstances shall be  
16 severed and may not be affected. All constitutionally valid  
17 applications of this chapter shall be severed from any applications  
18 that a court finds to be invalid, leaving the valid applications in  
19 force, because it is the legislature's intent and priority that the  
20 valid applications be allowed to stand alone. Even if a reviewing  
21 court finds a provision of this chapter to impose an  
22 unconstitutional burden in a large or substantial fraction of  
23 relevant cases, the applications that do not present an  
24 unconstitutional burden shall be severed from the remaining  
25 applications and shall remain in force, and shall be treated as if  
26 the legislature had enacted a statute limited to the persons, group  
27 of persons, or circumstances for which the statute's application



1 does not present an unconstitutional burden. If any court declares  
2 or finds a provision of this chapter facially unconstitutional,  
3 when discrete applications of that provision can be enforced  
4 against a person, group of persons, or circumstances without  
5 violating the United States Constitution and the Texas  
6 Constitution, those applications shall be severed from all  
7 remaining applications of the provision, and the provision shall be  
8 interpreted as if the legislature had enacted a provision limited  
9 to the persons, group of persons, or circumstances for which the  
10 provision's application will not violate the United States  
11 Constitution and the Texas Constitution.

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

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

23 (e) A court may not decline to enforce the severability  
24 requirements of this section on the ground that severance would  
25 rewrite the statute or involve the court in legislative or  
26 lawmaking activity. A court that declines to enforce or enjoins a  
27 state official from enforcing a statutory provision of this chapter

1 does not rewrite a statute, as the statute continues to contain the  
2 same words as before the court's decision. A judicial injunction or  
3 declaration of unconstitutionality of a provision of this chapter:

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

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

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

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

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

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

1 and costs of the prevailing party.

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

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

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

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

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

19 (2) the time for seeking appellate review expires.

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

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

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

26 (3) the court in the underlying action held that any  
27 provision of this section is invalid, unconstitutional, or

1 preempted by federal law, notwithstanding the doctrines of issue or  
2 claim preclusion.

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

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

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

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

20 (c) Every statute that regulates or prohibits firearms is  
21 severable in each of its applications to every person and  
22 circumstance. If any statute that regulates or prohibits firearms  
23 is found by any court to be unconstitutional, either on its face or  
24 as applied, then all applications of that statute that do not  
25 violate the United States Constitution and Texas Constitution shall  
26 be severed from the unconstitutional applications and shall remain  
27 enforceable, notwithstanding any other law, and the statute shall

1 be interpreted as if containing language limiting the statute's  
2 application to the persons, group of persons, or circumstances for  
3 which the statute's application will not violate the United States  
4 Constitution and Texas Constitution.

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