

TEXAS GUN LAW CHANGES FOR 2009

The following bills passed in 2009, making changes to the Texas gun laws. The bills are marked up to show the changes—underlined text is new language, words with a line through them have been repealed. The changes apply to the current edition of *The Texas Gun Owner's Guide* (edition 6).

81R1890 GCB-D

By: Bonnen H.B. No. 267

AN ACT relating to the interstate purchase of certain firearms.

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

SECTION 1. Section 46.07, Penal Code, is amended to read as follows:

Sec. 46.07. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in another state [~~contiguous states~~]. This authorization is enacted in conformance with 18 U.S.C. Section 922(b)(3)(A) [~~Public Law 90-618, 90th Congress~~].

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

81R5679 SLB-D

By: Homer H.B. No. 968

AN ACT relating to the use of crossbows for hunting.

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

SECTION 1. Section 43.201(a), Parks and Wildlife Code, is amended to read as follows:

(a) Except as provided by Subsection (c) or (d), no person may hunt deer, turkey, or javelina (collared peccary) during an open archery season provided by law or by the proclamations of the commission and during which season only crossbows, used by hunters with upper limb disabilities and longbows, recurved bows, and compound bows may be used unless the person has acquired an archery hunting stamp issued to the person by the department. The commission by rule may prescribe requirements relating to possessing a stamp required by this subchapter.

SECTION 2. The change in law made by this Act applies to a proceeding regarding hunting with a crossbow that is pending or filed on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2009.

81R6134 CAE-D

By: Deshotel H.B. No. 1020

AN ACT relating to the use, exhibition, or possession of a firearm by public school students participating in certain school-sponsored programs and activities sponsored or supported by the Parks and Wildlife Department.

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

SECTION 1. Section 37.007, Education Code, is amended by amending Subsection (a) and

adding Subsection (k) to read as follows:

- (a) Except as provided by Subsection (k), a [A] student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:
- (1) uses, exhibits, or possesses:
- (A) a firearm as defined by Section 46.01(3), Penal Code;
- (B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;
- (C) a club as defined by Section 46.01(1), Penal Code; or
- (D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;
- (2) engages in conduct that contains the elements of the offense of:
- (A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
- (B) arson under Section 28.02, Penal Code;
- (C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;
- (D) indecency with a child under Section 21.11, Penal Code;
- (E) aggravated kidnapping under Section 20.04, Penal Code;
- (F) aggravated robbery under Section 29.03, Penal Code;
- (G) manslaughter under Section 19.04, Penal Code;
- (H) criminally negligent homicide under Section 19.05, Penal Code; or
- (I) continuous sexual abuse of young child or children under Section 21.02, Penal Code; or
- (3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.
- (k) A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:
- (1) at an approved target range facility that is not located on a school campus; and
- (2) while participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

SECTION 2. This Act applies beginning with the 2009-2010 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

81R9230 SGA-F

By: Kuempel H.B. No. 1805

AN ACT relating to the use of laser sighting devices by hunters who have certain documented disabilities.

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

SECTION 1. Section 62.005, Parks and Wildlife Code, is amended to read as follows:

Sec. 62.005. HUNTING WITH LIGHT. Except as provided by Section 62.0055 or 62.0056, no person may hunt a game animal or bird protected by this code with the aid of an artificial light that casts or reflects a beam of light onto or otherwise illuminates the game animal or bird, including the headlights of a motor vehicle.

SECTION 2. Subchapter A, Chapter 62, Parks and Wildlife Code, is amended by adding

Section 62.0056 to read as follows:

Sec. 62.0056. HUNTING WITH LASER SIGHTING DEVICE BY HUNTERS WITH CERTAIN DISABILITIES. (a) In this section, "physically disabled person" means a person with a documented physical disability that renders the person incapable of using a traditional firearm sighting device. A physician's statement certifying the extent of the disability is sufficient documentation.

(b) A hunter who is a physically disabled person may use a laser sighting device during regular hunting hours when assisted by a person who:

(1) is not physically disabled;

(2) has a hunting license; and

(3) is at least 13 years of age.

(c) The hunter who is a physically disabled person must carry proof of being physically disabled.

(d) Section 62.014 applies to a hunter under this section.

SECTION 3. (a) Not later than September 1, 2009, the Parks and Wildlife Commission shall adopt rules that prescribe what is acceptable as proof of being a physically disabled person under Section 62.0056, Parks and Wildlife Code, as added by this Act.

(b) The Parks and Wildlife Department may not enforce Section 62.0056(c), Parks and Wildlife Code, as added by this Act, until the rules adopted under Subsection (a) of this section take effect.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

81R3150 SJM-F

By: Ritter H.B. No. 2664

AN ACT relating to creating a defense to prosecution for the offense of unlawful carrying of a handgun by a license holder on the premises of certain businesses.

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

SECTION 1. Section 46.035, Penal Code, is amended by adding Subsection (k) to read as follows:

(k) It is a defense to prosecution under Subsection (b)(1) that the actor was not given effective notice under Section 411.204, Government Code.

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. This Act takes effect September 1, 2009.

HB 2730

[NOTE: CHL- and firearms-relevant sections only, from this 244-page bill.]

"AN ACT

relating to the continuation and functions of the Department of Public Safety of the State

of Texas and the Texas Private Security Board; providing a penalty.

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

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ARTICLE 10. COLLECTION, MAINTENANCE, AND TRANSFER AND OTHER
DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION AND JUVENILE
JUSTICE INFORMATION

SECTION 10.01. Section 411.042(b), Government Code, as amended by Chapters 70 (H.B. 76), 1306 (S.B. 839), and 1372 (S.B. 9), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(b) The bureau of identification and records shall:

(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated;

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of offenses in which family violence was involved and a statistical breakdown of offenses under Sections 22.011 and 22.021, Penal Code;

(3) make ballistic tests of bullets and firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state;

(4) cooperate with identification and crime records bureaus in other states and the United States Department of Justice;

(5) maintain a list of all previous background checks for applicants for any position regulated under Chapter 1702, Occupations Code, who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense;

(6) collect information concerning the number and nature of protective orders and all other pertinent information about all persons on active protective orders. Information in the law enforcement information system relating to an active protective order shall include:

(A) the name, sex, race, date of birth, personal descriptors, address, and county of residence of the person to whom the order is directed;

(B) any known identifying number of the person to whom the order is directed, including the person's social security number or driver's license number;

(C) the name and county of residence of the person protected by the order;

(D) the residence address and place of employment or business of the person protected by the order, unless that information is excluded from the order under Section 85.007, Family Code;

(E) the child-care facility or school where a child protected by the order normally resides or which the child normally attends, unless that information is excluded from the order under Section 85.007, Family Code;

(F) the relationship or former relationship between the person who is protected by the order and the person to whom the order is directed; and

(G) the date the order expires; ~~and~~

(7) grant access to criminal history record information in the manner authorized under Subchapter F;

~~(8) [7]~~ collect and disseminate information regarding offenders with mental impairments in compliance with Chapter 614, Health and Safety Code; and

(9) record data and maintain a state database for a computerized criminal

history record system and computerized juvenile justice information system that serves:

(A) as the record creation point for criminal history record information and juvenile justice information maintained by the state; and

(B) as the control terminal for the entry of records, in accordance with federal law and regulations, federal executive orders, and federal policy, into the federal database maintained by the Federal Bureau of Investigation.

SECTION 10.02. Section 411.083(b), Government Code, is amended to read as follows:

(b) The department shall grant access to criminal history record information to:

(1) criminal justice agencies;

(2) noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information;

(3) the person who is the subject of the criminal history record information;

(4) a person working on a research or statistical project that:

(A) is funded in whole or in part by state funds; or

(B) meets the requirements of Part 22, Title 28, Code of Federal Regulations, and is approved by the department;

(5) an individual or an agency that has a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice under that agreement, if the agreement:

(A) specifically authorizes access to information;

(B) limits the use of information to the purposes for which it is given;

(C) ensures the security and confidentiality of the information; ~~and~~

(D) provides for sanctions if a requirement imposed under Paragraph (A),

(B), or (C) is violated; and

(E) requires the individual or agency to perform the applicable services in a manner prescribed by the department;

(6) an individual or an agency that has a specific agreement with a noncriminal justice agency to provide services related to the use of criminal history record information disseminated under this subchapter, if the agreement:

(A) specifically authorizes access to information;

(B) limits the use of information to the purposes for which it is given;

(C) ensures the security and confidentiality of the information; ~~and~~

(D) provides for sanctions if a requirement imposed under Paragraph (A),

(B), or (C) is violated; and

(E) requires the individual or agency to perform the applicable services in a manner prescribed by the department;

(7) a county or district clerk's office; and

(8) the Office of Court Administration of the Texas Judicial System.

SECTION 10.03. Section 411.084(b), Government Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) or any other provision in this subchapter, criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal law and regulations ~~[statute, federal rule], [or] federal executive orders, and federal policy [order].~~

SECTION 10.04. Sections 411.0845(e), (i), and (k), Government Code, are amended to read as follows:

(e) A person entitled to receive criminal history record information under this section must provide the department with the following information regarding the person who is the subject of the criminal history record information requested:

(1) the person's full name, date of birth, sex, ~~[Texas driver's license number or~~

~~personal identification certificate number,]~~ and social security number, and the number assigned to any form of unexpired identification card issued by this state or another state, the District of Columbia, or a territory of the United States that includes the person's photograph;

(2) a recent electronic digital image photograph of the person and a complete set of the person's fingerprints as required by the department; and

(3) any other information required by the department.

(i) The release under this section of any criminal history record information maintained by the Federal Bureau of Investigation, including the computerized information submitted to the federal database maintained by the Federal Bureau of Investigation as described by Section 411.042(b)(9)(B), is subject to federal law and regulations, federal executive orders, and federal policy.

(k) A governmental agency may coordinate with the department regarding the use of the fingerprinting fee collection process to collect ~~[collection of]~~ a fee for the criminal history record information and any other fees associated with obtaining a person's fingerprints as required by the department ~~[through the fingerprinting fee collection process].~~

SECTION 10.05. Section 411.085(a), Government Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally:

(1) obtains criminal history record information in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information;

~~[(2) provides a person with a copy of the person's criminal history record information obtained from the department;] or~~

~~(2) [(3)]~~ violates a rule of the department adopted under this subchapter.

SECTION 10.06. Section 411.094(d), Government Code, is amended to read as follows:

(d) Criminal history record information received by an institution of higher education under Subsection (b) may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

SECTION 10.07. Section 411.0985(c), Government Code, is amended to read as follows:

(c) The Texas Commission for the Blind may not release or disclose information obtained under Subsection (a) except on court order or with the consent of the person who is the subject of the criminal history record information.

SECTION 10.08. Section 411.1005(b), Government Code, is amended to read as follows:

(b) Information received by the state bar is confidential and may be disseminated only:

(1) in a disciplinary action or proceeding conducted by the state bar, the Board of Disciplinary Appeals, or any court; or

(2) with the consent of the person who is the subject of the criminal history record information.

SECTION 10.09. Section 411.1131(c), Government Code, is amended to read as follows:

(c) The Texas Commission for the Deaf and Hard of Hearing may not release or disclose information obtained under Subsection (a), except on court order or with the consent of the person who is the subject of the criminal history record information, and shall destroy all criminal history record information obtained under Subsection (a) after the information is used for its authorized purpose.

SECTION 10.10. Section 411.1182(c), Government Code, is amended to read as follows:

(c) Criminal history information obtained from the department may not be released or

disclosed except:

- (1) as needed in protecting the security of a commercial nuclear power plant;
- (2) ~~[or]~~ as authorized by the United States Nuclear Regulatory Commission, a court order, or a federal or state law or order; or
- (3) with the consent of the person who is the subject of the criminal history record information.

SECTION 10.11. Section 411.120(b), Government Code, is amended to read as follows:

(b) Criminal history record information obtained by a county judge under Subsection (a) may not be released or disclosed to any person except in a hearing held under Chapter 25 or 69, Alcoholic Beverage Code, or with the consent of the person who is the subject of the criminal history record information.

SECTION 10.12. Section 411.1236(b), Government Code, is amended to read as follows:

(b) Criminal history record information obtained by the Texas Commission on Fire Protection under Subsection (a) may not be released to any person or agency except on court order or with the consent of the person who is the subject of the criminal history record information, or if [unless] the information is entered into evidence by the board in an administrative, civil, or criminal hearing under Chapter 419.

SECTION 10.13. Section 411.136(e), Government Code, is amended to read as follows:

(e) All criminal history record information received by a public or nonprofit hospital or hospital district under this section is privileged, confidential, and intended for the exclusive use of the entity that obtained the information. The hospital or district may not release or disclose criminal history record information to any person or agency except in a criminal proceeding, in a hearing conducted by the hospital or district, to another governmental entity as required by law, ~~[or]~~ as required by court order, or with the consent of the person who is the subject of the criminal history record information.

SECTION 10.14. Section 411.139(b), Government Code, is amended to read as follows:

(b) Criminal history record information obtained by the securities commissioner under this section may not be released by any person or agency except on court order or with the consent of the person who is the subject of the criminal history record information, unless the information is entered into evidence by the State Securities Board or a court at an administrative proceeding or a civil or criminal action under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

SECTION 10.15. Section 411.140(b), Government Code, is amended to read as follows:

(b) Information received by the State Commission on Judicial Conduct is confidential and may be disseminated only in an investigation or proceeding conducted by the commission or with the consent of the person who is the subject of the criminal history record information.

SECTION 10.16. Section 411.1402(c), Government Code, is amended to read as follows:

(c) The Employees Retirement System of Texas may not release or disclose information obtained under Subsection (a) except on court order or with the consent of the person who is the subject of the criminal history record information.

SECTION 10.17. Section 411.1406(d), Government Code, as added by Chapter 406 (S.B. 885), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(d) The court may not release or disclose information obtained under Subsection (b) except on order of a district court or with the consent of the person who is the subject of the

criminal history record information.

SECTION 10.18. To the extent of any conflict, this article prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10.19. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2009.

ARTICLE 11. ADMINISTRATION OF CERTAIN PROVISIONS AFFECTING THE
LICENSING OF PERSONS TO CARRY A CONCEALED HANDGUN

SECTION 11.01. Section 411.1711, Government Code, is amended to read as follows:

Sec. 411.1711. CERTAIN EXEMPTIONS FROM CONVICTIONS. A person is not convicted, as that term is defined by Section 411.171, if an order of deferred adjudication was entered against the person on a date not less than 10 years preceding the date of the person's application for a license under this subchapter unless the order of deferred adjudication was entered against the person for:

(1) a felony ~~[an]~~ offense under:

(A) Title 5, Penal Code;

(B) ~~[, or]~~ Chapter 29, Penal Code;

(C) Section 25.07, Penal Code; or

(D) Section 30.02, Penal Code, if the offense is punishable under

Subsection (c)(2) or (d) of that section; or

(2) an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense listed in Subdivision (1).

SECTION 11.02. Section 411.171(4), Government Code, is amended to read as follows:

(4) "Convicted" means an adjudication of guilt or, except as provided in Section 411.1711, an order of deferred adjudication entered against a person by a court of competent jurisdiction whether or not the imposition of the sentence is subsequently probated and the person is discharged from community supervision. The term does not include an adjudication of guilt or an order of deferred adjudication that has been subsequently:

(A) expunged; ~~[or]~~

(B) pardoned under the authority of a state or federal official; or

(C) otherwise vacated, set aside, annulled, invalidated, voided, or sealed

under any state or federal law.

SECTION 11.03. Section 411.172, Government Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsection (b-1) to read as follows:

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

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

(2) is at least 21 years of age;

(3) has not been convicted of a felony;

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

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

(6) is not a chemically dependent person;

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

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

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

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

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

(12) ~~[has not been finally determined to be in default on a loan made under Chapter 57, Education Code;~~

~~[(13)]~~ is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;

~~(13)~~ ~~[(44)]~~ has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and

~~(14)~~ ~~[(45)]~~ has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section 411.174 ~~[or in a request for application submitted pursuant to Section 411.175].~~

(b) For the purposes of this section, an offense under the laws of this state, another state, or the United States is:

(1) except as provided by Subsection (b-1), a felony if the offense, at the time the offense is committed ~~[of a person's application for a license to carry a concealed handgun]~~:

(A) is designated by a law of this state as a felony;

(B) contains all the elements of an offense designated by a law of this state as a felony; or

(C) is punishable by confinement for one year or more in a penitentiary; and

(2) a Class A misdemeanor if the offense is not a felony and confinement in a jail other than a state jail felony facility is affixed as a possible punishment.

(b-1) An offense is not considered a felony for purposes of Subsection (b) if, at the time of a person's application for a license to carry a concealed handgun, the offense:

(1) is not designated by a law of this state as a felony; and

(2) does not contain all the elements of any offense designated by a law of this state as a felony.

(d) For purposes of Subsection (a)(7), a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person:

(1) has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;

(2) suffers from a psychiatric disorder or condition described by Subdivision (1) that:

(A) is in remission but is reasonably likely to redevelop at a future time;

or

(B) requires continuous medical treatment to avoid redevelopment;

(3) has been diagnosed by a licensed physician, determined by a review board or similar authority, or declared by a court to be incompetent to manage the person's own affairs; or

(4) has entered in a criminal proceeding a plea of not guilty by reason of insanity.

(e) The following constitutes evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1):

(1) involuntary psychiatric hospitalization ~~[in the preceding five-year period];~~

(2) psychiatric hospitalization ~~[in the preceding two-year period];~~

(3) inpatient or residential substance abuse treatment in the preceding five-year period;

(4) diagnosis in the preceding five-year period by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(5) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:

(A) schizophrenia or delusional disorder;

(B) bipolar disorder;

(C) chronic dementia, whether caused by illness, brain defect, or brain injury;

(D) dissociative identity disorder;

(E) intermittent explosive disorder; or

(F) antisocial personality disorder.

SECTION 11.04. Sections 411.174(a) and (b), Government Code, are amended to read as follows:

(a) An applicant for a license to carry a concealed handgun must submit to the director's designee described by Section 411.176:

(1) a completed application on a form provided by the department that requires only the information listed in Subsection (b);

(2) one or more ~~[two recent color passport]~~ photographs of the applicant that meet the requirements of the department ~~[, except that an applicant who is younger than 21 years of age must submit two recent color passport photographs in profile of the applicant];~~

(3) a certified copy of the applicant's birth certificate or certified proof of age;

(4) proof of residency in this state;

(5) two complete sets of legible and classifiable fingerprints of the applicant taken by a person appropriately trained in recording fingerprints who is employed by a law enforcement agency or by a private entity designated by a law enforcement agency as an entity qualified to take fingerprints of an applicant for a license under this subchapter;

(6) a nonrefundable application and license fee of \$140 paid to the department;

(7) evidence of [a] handgun proficiency, in the form and manner required by the department ~~[certificate described by Section 411.189];~~

(8) an affidavit signed by the applicant stating that the applicant:

(A) has read and understands each provision of this subchapter that creates an offense under the laws of this state and each provision of the laws of this state related to use of deadly force; and

(B) fulfills all the eligibility requirements listed under Section 411.172;

and

(9) a form executed by the applicant that authorizes the director to make an inquiry into any noncriminal history records that are necessary to determine the applicant's eligibility for a license under Section 411.172(a).

(b) An applicant must provide on the application a statement of the applicant's:

(1) full name and place and date of birth;

(2) race and sex;

(3) residence and business addresses for the preceding five years;

- (4) hair and eye color;
- (5) height and weight;
- (6) driver's license number or identification certificate number issued by the department;
- (7) criminal history record information of the type maintained by the department under this chapter, including a list of offenses for which the applicant was arrested, charged, or under an information or indictment and the disposition of the offenses; and
- (8) history ~~[during the preceding five years]~~, if any, of treatment received by, commitment to, or residence in:
 - (A) a drug or alcohol treatment center licensed to provide drug or alcohol treatment under the laws of this state or another state, but only if the treatment, commitment, or residence occurred during the preceding five years; or
 - (B) a psychiatric hospital.

SECTION 11.05. Section 411.176, Government Code, is amended to read as follows:

Sec. 411.176. REVIEW OF APPLICATION MATERIALS. (a) On receipt of ~~the~~ application materials by the department at its Austin headquarters, the department shall conduct the appropriate criminal history record check of the applicant through its computerized criminal history system. Not later than the 30th day after the date the department receives the application materials, the department shall forward the materials to the director's designee in the geographical area of the applicant's residence so that the designee may conduct the investigation described by Subsection (b). For purposes of this section, the director's designee may be a noncommissioned employee of the department.

(b) The director's designee as needed shall conduct an additional criminal history record check of the applicant and an investigation of the applicant's local official records to verify the accuracy of the application materials. The director's designee may access any records necessary for purposes of this subsection. The scope of the record check and the investigation are at the sole discretion of the department, except that the director's designee shall complete the record check and investigation not later than the 60th day after the date the department receives the application materials. The department shall send a fingerprint card to the Federal Bureau of Investigation for a national criminal history check of the applicant. On completion of the investigation, the director's designee shall return all materials and the result of the investigation to the appropriate division of the department at its Austin headquarters.

(c) The director's designee may submit to the appropriate division of the department, at the department's Austin headquarters, along with the application materials a written recommendation for disapproval of the application, accompanied by an affidavit stating personal knowledge or naming persons with personal knowledge of a ground for denial under Section 411.172. The director's designee ~~[in the appropriate geographical area]~~ may also submit the application and the recommendation that the license be issued.

(d) On receipt at the department's Austin headquarters of the application materials and the result of the investigation by the director's designee, the department shall conduct any further record check or investigation the department determines is necessary if a question exists with respect to the accuracy of the application materials or the eligibility of the applicant, except that the department shall complete the record check and investigation not later than the 180th day after the date the department receives the application materials from the applicant.

SECTION 11.06. Sections 411.177(a) and (b), Government Code, are amended to read as follows:

(a) The department shall issue a license to carry a concealed handgun to an applicant if the applicant meets all the eligibility requirements and submits all the application materials.

The department may issue a license to carry handguns only of the categories for which the applicant has demonstrated proficiency in the form and manner required by the department [~~indicated on the applicant's certificate of proficiency issued under Section 411.189~~]. The department shall administer the licensing procedures in good faith so that any applicant who meets all the eligibility requirements and submits all the application materials shall receive a license. The department may not deny an application on the basis of a capricious or arbitrary decision by the department.

(b) The department shall, not later than the 60th day after the date of the receipt by the director's designee of the completed application materials:

(1) issue the license;

(2) notify the applicant in writing that the application was denied:

(A) on the grounds that the applicant failed to qualify under the criteria listed in Section 411.172;

(B) based on the affidavit of the director's designee submitted to the department under Section 411.176(c) [~~411.176(b)~~]; or

(C) based on the affidavit of the qualified handgun instructor submitted to the department under Section 411.188(k) [~~411.189(e)~~]; or

(3) notify the applicant in writing that the department is unable to make a determination regarding the issuance or denial of a license to the applicant within the 60-day period prescribed by this subsection and include in that notification an explanation of the reason for the inability and an estimation of the amount of time the department will need to make the determination.

SECTION 11.07. Section 411.179(c), Government Code, as added by Chapter 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(c) In adopting the form of the license under Subsection (a), the department shall establish a procedure for the license of a qualified handgun instructor or of a judge, justice, prosecuting attorney, or assistant prosecuting attorney, as described by Section 46.15(a)(4) or (6), Penal Code, to indicate on the license the license holder's status as a qualified handgun instructor or as a judge, justice, district attorney, criminal district attorney, or county attorney. In establishing the procedure, the department shall require sufficient documentary evidence to establish the license holder's status under this subsection.

SECTION 11.08. Sections 411.181(a) and (b), Government Code, as amended by Chapters 594 (H.B. 41) and 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007, are reenacted and amended to read as follows:

(a) If a person who is a current license holder moves from any residence [~~the~~] address stated on the license [~~to a new residence address~~], if the name of the person is changed by marriage or otherwise, or if the person's status [~~as a judge, justice, district attorney, prosecuting attorney, or assistant prosecuting attorney, as a federal judge, a state judge, or the spouse of a federal judge or state judge,~~] becomes inapplicable for purposes of the information required to be displayed on the license under Section 411.179 [~~411.179(e)~~], the person shall, not later than the 30th day after the date of the address, name, or status change, notify the department and provide the department with the number of the person's license and, as applicable, the person's:

(1) former and new addresses; [~~or~~]

(2) former and new names; or

(3) former and new status.

(b) If the name of the license holder is changed by marriage or otherwise, or if the person's status [~~as a federal judge or state judge, or the spouse of a federal judge or state judge~~] becomes inapplicable as described by Subsection (a), the person shall apply for a duplicate license. The duplicate license must reflect [~~include~~] the person's current name,

residence address, and status.

SECTION 11.09. Section 411.184(a), Government Code, is amended to read as follows:

(a) To modify a license to allow a license holder to carry a handgun of a different category than the license indicates, the license holder must:

(1) complete a proficiency examination as provided by Section 411.188(e);

~~[(2) obtain a handgun proficiency certificate under Section 411.189 not more than six months before the date of application for a modified license;]~~ and

(2) [(3)] submit to the department:

(A) an application for a modified license on a form provided by the department;

(B) evidence of [a copy of the] handgun proficiency, in the form and manner required by the department [certificate];

(C) payment of a modified license fee of \$25; and

(D) one or more [two recent color passport] photographs of the license holder that meet the requirements of the department [except that an applicant who is younger than 21 years of age must submit two recent color passport photographs in profile of the applicant].

SECTION 11.10. Section 411.185(a), Government Code, is amended to read as follows:

(a) To renew a license, a license holder must:

(1) complete a continuing education course in handgun proficiency under Section 411.188(c) within the six-month period preceding:

(A) the date of application for renewal, for a first or second renewal; and

(B) the date of application for renewal or the date of application for the preceding renewal, for a third or subsequent renewal, to ensure that the license holder is not required to complete the course more than once in any 10-year period;

~~[(2) obtain a handgun proficiency certificate under Section 411.189 within the six-month period preceding:~~

~~[(A) the date of application for renewal, for a first or second renewal; and~~

~~[(B) the date of application for renewal or the date of application for the preceding renewal, for a third or subsequent renewal, to ensure that the license holder is not required to obtain the certificate more than once in any 10-year period;]~~ and

(2) [(3)] submit to the department:

(A) an application for renewal on a form provided by the department;

(B) evidence of [a copy of the] handgun proficiency, in the form and manner required by the department [certificate];

(C) payment of a nonrefundable renewal fee as set by the department; and

(D) one or more [two recent color passport] photographs of the applicant that meet the requirements of the department.

SECTION 11.11. Section 411.186(a), Government Code, is amended to read as follows:

(a) The department shall revoke a [A] license [may be revoked] under this section if the license holder:

(1) was not entitled to the license at the time it was issued;

(2) made a material misrepresentation or failed to disclose a material fact in an application submitted under this subchapter [gave false information on the application];

(3) subsequently becomes ineligible for a license under Section 411.172, unless the sole basis for the ineligibility is that the license holder is charged with the

commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under Section 42.01, Penal Code, or equivalent offense, or of a felony under an information or indictment;

(4) is convicted of an offense under Section 46.035, Penal Code;

(5) is determined by the department to have engaged in conduct constituting a reason to suspend a license listed in Section 411.187(a) after the person's license has been previously suspended twice for the same reason; or

(6) submits an application fee that is dishonored or reversed if the applicant fails to submit a cashier's check or money order made payable to the "Department of Public Safety of the State of Texas" in the amount of the dishonored or reversed fee, plus \$25, within 30 days of being notified by the department that the fee was dishonored or reversed.

SECTION 11.12. Sections 411.187(a) and (c), Government Code, are amended to read as follows:

(a) The department shall suspend a [A] license [may be suspended] under this section if the license holder:

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

(2) fails to display a license as required by Section 411.205;

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

(4) carries a concealed handgun under the authority of this subchapter of a different category than the license holder is licensed to carry;

(5) fails to return a previously issued license after a license is modified as required by Section 411.184(d);

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

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

(c) The department shall suspend a [A] license [may be suspended] under this section:

(1) for 30 days, if the person's license is subject to suspension for a reason listed in Subsection (a)(3), (4), or (5), except as provided by Subdivision (3);

(2) for 90 days, if the person's license is subject to suspension for a reason listed in Subsection (a)(2), except as provided by Subdivision (3);

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

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

(B) ~~[the person's license]~~ has been previously suspended for the same reason;

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

(5) for the duration of or the period specified by:

(A) the protective order issued under Title 4, Family Code, if the person's license is subject to suspension for the reason listed in Subsection (a)(6); or

(B) the order for emergency protection issued under Article 17.292, Code of Criminal Procedure, if the person's license is subject to suspension for the reason listed in Subsection (a)(7).

SECTION 11.13. Section 411.188, Government Code, is amended by amending Subsections (a), (g), (h), and (i) and adding Subsection (k) to read as follows:

(a) The director by rule shall establish minimum standards for handgun proficiency and shall develop a course to teach handgun proficiency and examinations to measure handgun proficiency. The course to teach handgun proficiency must contain training sessions divided into two parts. One part of the course must be classroom instruction and the other part must be range instruction and an actual demonstration by the applicant of the applicant's ability to safely and proficiently use the applicable category of handgun ~~[for which the applicant seeks certification]~~. An applicant ~~must be able to demonstrate [may not be certified unless the applicant demonstrates]~~, at a minimum, the degree of proficiency that is required to effectively operate a handgun of .32 caliber or above. The department shall distribute the standards, course requirements, and examinations on request to any qualified handgun instructor.

(g) A person who wishes to obtain or renew a license to carry a concealed handgun must apply in person to a qualified handgun instructor to take the appropriate course in handgun proficiency and [7] demonstrate handgun proficiency as required by the department~~[, and obtain a handgun proficiency certificate as described by Section 411.189]~~.

(h) A license holder who wishes to modify a license to allow the license holder to carry a handgun of a different category than the license indicates must apply in person to a qualified handgun instructor to demonstrate the required knowledge and proficiency ~~[to obtain a handgun proficiency certificate]~~ in that category ~~[as described by Section 411.189]~~.

(i) A certified firearms instructor of the department may monitor any class or training presented by a qualified handgun instructor. A qualified handgun instructor shall cooperate with the department in the department's efforts to monitor the presentation of training by the qualified handgun instructor. A qualified handgun instructor shall make available for inspection to the department any and all records maintained by a qualified handgun instructor under this subchapter. The qualified handgun instructor shall keep a record of all ~~[certificates of handgun proficiency issued by the qualified handgun instructor and other]~~ information required by department rule.

(k) A qualified handgun instructor may submit to the department a written recommendation for disapproval of the application for a license, renewal, or modification of a license, accompanied by an affidavit stating personal knowledge or naming persons with personal knowledge of facts that lead the instructor to believe that an applicant does not possess the required handgun proficiency. The department may use a written recommendation submitted under this subsection as the basis for denial of a license only if the department determines that the recommendation is made in good faith and is supported by a preponderance of the evidence. The department shall make a determination under this subsection not later than the 45th day after the date the department receives the written recommendation. The 60-day period in which the department must take action under Section 411.177(b) is extended one day for each day a determination is pending under this subsection.

SECTION 11.14. Section 411.1882, Government Code, is amended to read as follows:

Sec. 411.1882. EVIDENCE OF [EXEMPTION FROM] HANDGUN PROFICIENCY [CERTIFICATE REQUIREMENT] FOR CERTAIN PERSONS. (a) A person who is serving in this state as a judge or justice of a federal court, as an active judicial officer, as defined by Section 411.201, or as a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney may establish handgun proficiency for the purposes of this subchapter by obtaining from a handgun proficiency instructor approved by the Commission on Law Enforcement Officer Standards and Education for purposes of Section 1702.1675, Occupations Code, a sworn statement that:

(1) indicates that the person, during the 12-month period preceding the date of the person's application to the department, demonstrated to the instructor proficiency in the use of handguns; and

(2) designates the categories of handguns with respect to which the person demonstrated proficiency [~~Notwithstanding any other provision of this subchapter, a person may not be required to submit to the department a handgun proficiency certificate to obtain or renew a concealed handgun license issued under this subchapter if:~~

~~[(1) the person is currently serving in this state as:~~

~~[(A) a judge or justice of a federal court;~~

~~[(B) an active judicial officer, as defined by Section 411.201, Government Code; or~~

~~[(C) a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney; and~~

~~[(2) a handgun proficiency instructor approved by the Commission on Law Enforcement Officer Standards and Education for purposes of Section 1702.1675, Occupations Code, makes a sworn statement indicating that the person demonstrated proficiency to the instructor in the use of handguns during the 12-month period preceding the date of the person's application to the department and designating the types of handguns with which the person demonstrated proficiency].~~

(b) The director by rule shall adopt a procedure by which a person described [~~who is exempt~~] under Subsection (a) [~~from the handgun proficiency certificate requirement~~] may submit a form demonstrating the person's qualification for an exemption under that subsection. The form must provide sufficient information to allow the department to verify whether the person qualifies for the exemption.

(c) A license issued under this section automatically expires on the six-month anniversary of the date the person's status under Subsection (a) becomes inapplicable. A license that expires under this subsection may be renewed under Section 411.185.

SECTION 11.15. Section 411.190, Government Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) The department shall ensure that an applicant may renew certification under Subsection (d) from any county in this state by using an online format to complete the required retraining courses if:

(1) the applicant is renewing certification for the first time; or

(2) the applicant completed the required retraining courses in person the previous time the applicant renewed certification.

SECTION 11.16. Sections 411.199(a) and (e), Government Code, are amended to read as follows:

(a) A person who is licensed as a peace officer under Chapter 1701, Occupations Code, [~~445~~] and who has been employed full-time as a peace officer by a law enforcement agency may apply for a license under this subchapter at any time after retirement.

(e) A retired peace officer who obtains a license under this subchapter must maintain, for the category of weapon licensed, the proficiency required for a peace officer under Section 1701.355, Occupations Code [~~445.035~~]. The department or a local law enforcement agency shall allow a retired peace officer of the department or agency an opportunity to annually demonstrate the required proficiency. The proficiency shall be reported to the department on application and renewal.

SECTION 11.17. Section 411.1991(a), Government Code, is amended to read as follows:

(a) A person who is licensed as a peace officer under Chapter 1701, Occupations Code, [~~445~~] and is employed full-time as a peace officer by a law enforcement agency may apply for a license under this subchapter. The person shall submit to the department two complete sets of legible and classifiable fingerprints and a sworn statement of the head of the law enforcement agency employing the applicant. A head of a law enforcement agency may not refuse to issue a statement under this subsection. If the applicant alleges that the

statement is untrue, the department shall investigate the validity of the statement. The statement must include:

- (1) the name and rank of the applicant;
- (2) whether the applicant has been accused of misconduct at any time during the applicant's period of employment with the agency and the disposition of that accusation;
- (3) a description of the physical and mental condition of the applicant;
- (4) a list of the types of weapons the applicant has demonstrated proficiency with during the preceding year; and
- (5) a recommendation from the agency head that a license be issued to the person under this subchapter.

SECTION 11.18. Sections 411.201(c) and (d), Government Code, are amended to read as follows:

(c) An active judicial officer is eligible for a license to carry a concealed handgun under the authority of this subchapter. A retired judicial officer is eligible for a license to carry a concealed handgun under the authority of this subchapter if the officer:

- (1) has not been convicted of a felony;
- (2) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense;
- (3) is not charged with the commission of a Class A or Class B misdemeanor or equivalent offense or of a felony under an information or indictment;
- (4) is not a chemically dependent person; and
- (5) is not a person of unsound mind.

(d) An applicant for a license who is an active or retired judicial officer must submit to the department:

- (1) a completed application, including all required affidavits, on a form prescribed by the department;
- (2) one or more [~~two recent color passport~~] photographs of the applicant that meet the requirements of the department;
- (3) two complete sets of legible and classifiable fingerprints of the applicant, including one set taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints;
- (4) evidence of [a] handgun proficiency, in the form and manner required by the department for an applicant under this section [~~certificate issued to the applicant as evidence that the applicant successfully completed the proficiency requirements of this subchapter~~];
- (5) [(4)] a nonrefundable application and license fee set by the department in an amount reasonably designed to cover the administrative costs associated with issuance of a license to carry a concealed handgun under this subchapter; and
- (6) [(5)] if the applicant is a retired judicial officer, [:
 - [(A)] ~~two complete sets of legible and classifiable fingerprints of the applicant taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints~~; and
 - [(B)] a form executed by the applicant that authorizes the department to make an inquiry into any noncriminal history records that are necessary to determine the applicant's eligibility for a license under this subchapter.];

SECTION 11.19. Section 411.208, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The immunities granted under Subsection (a) to a qualified handgun instructor do not apply to a cause of action for fraud or a deceptive trade practice.

SECTION 11.20. Article 17.292(l), Code of Criminal Procedure, is amended to read as follows:

(l) In the order for emergency protection, the magistrate shall ~~may~~ suspend a license to carry a concealed handgun issued under Subchapter H, Chapter 411 ~~[Section 411.177]~~, Government Code, that is held by the defendant.

SECTION 11.21. Section 85.022(d), Family Code, is amended to read as follows:

(d) In a protective order, the court shall ~~may~~ suspend a license to carry a concealed handgun issued under Subchapter H, Chapter 411 ~~[Section 411.177]~~, Government Code, that is held by a person found to have committed family violence.

SECTION 11.22. Section 12.095(e), Health and Safety Code, is amended to read as follows:

(e) The panel may require the applicant or license holder to undergo a medical or other examination at the applicant's or holder's expense. A person who conducts an examination under this subsection may be compelled to testify before the panel and in any subsequent proceedings under Subchapter H, Chapter 411, Government Code, or Subchapter N, Chapter 521, Transportation Code, as applicable, concerning the person's observations and findings.

SECTION 11.23. Section 12.097(b), Health and Safety Code, is amended to read as follows:

(b) In a subsequent proceeding under Subchapter H, Chapter 411, Government Code, or Subchapter N, Chapter 521, Transportation Code, the medical standards division may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

- (1) the Department of Public Safety of the State of Texas;
- (2) the applicant or license holder; and
- (3) the officer who presides at the hearing.

SECTION 11.24. Section 46.04, Penal Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) For the purposes of this section , an offense under the laws of this state, another state, or the United States is, except as provided by Subsection (g), a felony if, at the time it is committed, the offense:

- (1) is designated by a law of this state as a felony;
- (2) contains all the elements of an offense designated by a law of this state as a felony; or
- (3) is punishable by confinement for one year or more in a penitentiary.

(g) An offense is not considered a felony for purposes of Subsection (f) if, at the time the person possesses a firearm, the offense:

- (1) is not designated by a law of this state as a felony; and
- (2) does not contain all the elements of any offense designated by a law of this

state as a felony.

SECTION 11.25. Sections 411.175 and 411.189, Government Code, are repealed.

SECTION 11.26. The changes in law made by Sections 411.171, 411.1711, 411.172, and 411.201(c), Government Code, as amended by this article, apply only to the eligibility of a person for the issuance, modification, or renewal of a license, the application for which is made on or after the effective date of this article. A holder of a license that was issued, modified, or renewed before the effective date of this article is not disqualified from holding that license solely by reason of this article.

SECTION 11.27. The changes in law made by Sections 411.174, 411.176, 411.177, 411.184, 411.185, 411.188, 411.1882, and 411.201(d), Government Code, as amended by this article, and by the repeal of Sections 411.175 and 411.189, Government Code, apply only to an application for the issuance, modification, or renewal of a license that is submitted to the Department of Public Safety on or after the effective date of this article. An application submitted before the effective date of this article is governed by the law in effect when the

application was submitted, and the former law is continued in effect for that purpose.

SECTION 11.28. The changes in law made by this article to Sections 411.186 and 411.187, Government Code, Article 17.292, Code of Criminal Procedure, and Section 85.022, Family Code, apply only to an administrative or judicial determination concerning the revocation or suspension of a license to carry a concealed handgun that is made on or after the effective date of this article. An administrative or judicial determination made before the effective date of this article is covered by the law in effect when the determination was made, and the former law is continued in effect for that purpose.

SECTION 11.29. The change in law made by Section 411.208, Government Code, as amended by this article, applies only to a cause of action that accrues on or after the effective date of this article. A cause of action that accrued before the effective date of this article is governed by the law in effect immediately before the effective date of this article, and the former law is continued in effect for that purpose.

SECTION 11.30. The change in law made by this Act in amending Section 46.04, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11.31. This article takes effect September 1, 2009.

81R11343 GCB-D

By: Naishtat H.B. No. 3352

AN ACT relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.

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

SECTION 1. Subchapter D, Chapter 411, Government Code, is amended by adding Sections 411.052 and 411.0521 to read as follows:

Sec. 411.052. FEDERAL FIREARM REPORTING. (a) In this section, "federal prohibited person information" means information that identifies an individual as:

- (1) a person ordered by a court to receive inpatient mental health services under Chapter 574, Health and Safety Code;
 - (2) a person acquitted in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered by a court to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;
 - (3) a person determined to have mental retardation and committed by a court for long-term placement in a residential care facility or state developmental center under Chapter 593, Health and Safety Code;
 - (4) an incapacitated adult individual for whom a court has appointed a guardian of the individual under Chapter XIII, Probate Code, based on the determination that the person lacks the mental capacity to manage the person's affairs; or
 - (5) a person determined to be incompetent to stand trial under Chapter 46B, Code of Criminal Procedure.
- (b) The department by rule shall establish a procedure to provide federal prohibited person information to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System. Except as otherwise provided by state law, the department may disseminate federal prohibited person information under this subsection only to the extent necessary to allow the Federal Bureau of Investigation to collect and maintain a list of persons who are prohibited under federal law from

engaging in certain activities with respect to a firearm.

- (c) The department shall grant access to federal prohibited person information to the person who is the subject of the information.
- (d) Federal prohibited person information maintained by the department is confidential information for the use of the department and, except as otherwise provided by this section and other state law, may not be disseminated by the department.
- (e) The department by rule shall establish a procedure to correct department records and transmit those corrected records to the Federal Bureau of Investigation when a person provides:
 - (1) a copy of a judicial order or finding that a person is no longer an incapacitated adult or is entitled to relief from disabilities under Section 574.088, Health and Safety Code; or
 - (2) proof that the person has obtained notice of relief from disabilities under 18 U.S.C. Section 925.

Sec. 411.0521. REPORT TO DEPARTMENT CONCERNING CERTAIN PERSONS' ACCESS TO FIREARMS. (a) The clerk of the court shall prepare and forward to the department the information described by Subsection (b) not later than the 30th day after the date the court:

- (1) orders a person to receive inpatient mental health services under Chapter 574, Health and Safety Code;
 - (2) acquits a person in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;
 - (3) commits a person determined to have mental retardation for long-term placement in a residential care facility or state developmental center under Chapter 593, Health and Safety Code;
 - (4) appoints a guardian of the incapacitated adult individual under Chapter XIII, Probate Code, based on the determination that the person lacks the mental capacity to manage the person's affairs;
 - (5) determines a person is incompetent to stand trial under Chapter 46B, Code of Criminal Procedure; or
 - (6) finds a person is entitled to relief from disabilities under Section 574.088, Health and Safety Code.
- (b) The clerk of the court shall prepare and forward the following information under Subsection (a):
- (1) the complete name, race, and sex of the person;
 - (2) any known identifying number of the person, including social security number, driver's license number, or state identification number;
 - (3) the person's date of birth; and
 - (4) a copy of or an electronic transmission of information continued in:
 - (A) the order for inpatient mental health services;
 - (B) the order for inpatient treatment or residential care;
 - (C) the order committing the person to a residential care facility;
 - (D) the order appointing a guardian;
 - (E) the judgment specifying that the person was found not guilty of a criminal offense by reason of insanity or lack of mental responsibility;
 - (F) the order determining that the person is incompetent to stand trial; or
 - (G) the order stating that the person is no longer an incapacitated adult or is entitled to relief under Section 574.088, Health and Safety Code.
- (c) If practicable, the clerk of the court shall forward to the department the information described by Subsection (b) in an electronic format prescribed by the department.
 - (d) If an order previously reported to the department under Subsection (a) is reversed by

order of any court, the clerk shall notify the department of the reversal not later than 30 days after the clerk receives the mandate from the appellate court.

(e) The duty of a clerk to prepare and forward information under this section is not affected by:

- (1) any subsequent appeal of the court order;
- (2) any subsequent modification of the court order; or
- (3) the expiration of the court order.

SECTION 2. Subchapter F, Chapter 574, Health and Safety Code, is amended by adding Section 574.088 to read as follows:

Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES. (a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

- (1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
- (2) the person's mental history;
- (3) the person's criminal history; and
- (4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

- (1) the person is no longer likely to act in a manner dangerous to public safety; and
- (2) removing the person's disability to purchase a firearm is in the public interest.

SECTION 3. Each clerk of the court shall prepare and forward information for each order issued on or after September 1, 1999, to the Department of Public Safety as required by Section 411.0521, Government Code, as added by this Act. Not later than September 1, 2010, each clerk of the court shall prepare and forward information for any court orders issued on or after September 1, 1999, and before September 1, 2009.

SECTION 4. This Act takes effect September 1, 2009.

By: Corte H.B. No. 4336

AN ACT relating to the civil and criminal consequences of engaging in certain conduct creating the offense of firearm smuggling; providing penalties.

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

SECTION 1. Title 10, Penal Code, is amended by adding Section 46.14 to read as follows:

Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an offense if the person knowingly:

- (1) possesses or transports a firearm knowing that the firearm was acquired in violation of the laws of any state or of the United States; or
- (2) transfers a firearm to another person knowing that the firearm was previously acquired in violation of the laws of any state or of the United States.

(b) An offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) Notwithstanding Subsection (b), the punishment prescribed for an offense under this section is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the actor, at the time of the offense,

was engaged in the business of possessing, transporting, or transferring firearms acquired in violation of the laws of any state or of the United States. For purposes of this subsection, a person is considered to have engaged in business if, on more than one occasion, the person engaged in the applicable conduct for profit or any other form of remuneration.

(d) This section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

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

SECTION 2. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person ~~he~~ commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A; ~~or~~

(13) any offense under Section 37.10; or

(14) any felony offense under Section 46.06 or 46.14.

SECTION 3. Article 59, Code of Criminal Procedure is amended by amending Section 59.01, subsection (2), to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, ~~or~~ 35, or 46, Penal Code.

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances

- Act);
- (ii) any felony under Chapter 483, Health and Safety Code;
 - (iii) a felony under Chapter 153, Finance Code;
 - (iv) any felony under Chapter 34 or 46, Penal Code;
 - (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
 - (vi) any felony under Chapter 152, Finance Code;
 - (vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
 - (viii) a Class B misdemeanor under Section 35.60, Business & Commerce Code; or
 - (ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code;
- (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence;
- (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence; or
- (E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. The change in law made by this Act in amending Article 59.01(2), Code of Criminal Procedure, applies only to the forfeiture of property in relation to an offense committed on or after the effective date of this Act. Forfeiture of property in relation to an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. This Act takes effect September 1, 2009.

By: Driver H.B. No. 4456

AN ACT relating to the definition of a switchblade knife for purposes of the offense of prohibited weapons.

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

SECTION 1. Section 46.01(11), Penal Code, is amended to read as follows:

(11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath[;] and that[;]

~~[(A)]~~ opens automatically by pressure applied to a button or other device located on the handle[;] or

~~[(B)]~~ opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force. The term does not include a knife that has a spring, detent, or other mechanism designed to create a bias toward closure and that requires exertion applied to the blade by hand, wrist, or arm to overcome resistance and open the knife.

SECTION 2. The change in law made by this Act applies only to an offense committed on

or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was occurred before that date.

SECTION 3. This Act takes effect September 1, 2009.

81R2750 PEP-D

By: Hinojosa S.B. No. 838

AN ACT relating to the requirement under certain circumstances that a license holder display their license to carry a concealed handgun.

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

SECTION 1. Section 411.205, Government Code, is repealed.

SECTION 2. Sections 411.187(a) and (c), Government Code, are amended to read as follows:

(a) A license may be suspended under this section if the license holder:

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

(2) ~~fails to display a license as required by Section 411.205;~~

~~(3)~~ fails to notify the department of a change of address or name as required by Section 411.181;

~~(3)~~ ~~(4)~~ carries a concealed handgun under the authority of this subchapter of a different category than the license holder is licensed to carry;

~~(4)~~ ~~(5)~~ fails to return a previously issued license after a license is modified as required by Section 411.184(d);

~~(5)~~ ~~(6)~~ commits an act of family violence and is the subject of an active protective order rendered under Title 4, Family Code; or

~~(6)~~ ~~(7)~~ is arrested for an offense involving family violence or an offense under Section 42.072, Penal Code, and is the subject of an order for emergency protection issued under Article 17.292, Code of Criminal Procedure.

(c) A license may be suspended under this section:

(1) for 30 days, if the person's license is subject to suspension for a reason listed in Subsection ~~(a)(2), (3)~~ ~~[(a)(3)]~~, or (4), ~~[(a)(5)]~~; except as provided by Subdivision ~~(2)~~ ~~[(3)]~~;

~~(2)~~ ~~[(3)]~~ ~~for 90 days, if the person's license is subject to suspension for a reason listed in Subsection (a)(2), except as provided by Subdivision (3);~~

~~(3)~~ for not less than one year and not more than three years if the person's license is subject to suspension for a reason listed in Subsection (a), other than the reason listed in Subsection (a)(1), and the person's license has been previously suspended for the same reason;

~~(3)~~ ~~(4)~~ until dismissal of the charges if the person's license is subject to suspension for the reason listed in Subsection (a)(1); or

~~(4)~~ ~~(5)~~ for the duration of or the period specified by:

(A) the protective order issued under Title 4, Family Code, if the person's license is subject to suspension for the reason listed in Subsection ~~(a)(5)~~ ~~[(a)(6)]~~; or

(B) the order for emergency protection issued under Article 17.292, Code of Criminal Procedure, if the person's license is subject to suspension for the reason listed in Subsection ~~(a)(6)~~ ~~[(a)(7)]~~.

SECTION 3. An offense under Section 411.205, Government Code, may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a

criminal action is pending for an offense under Section 411.205, the action is dismissed on that date. However, a final conviction for an offense under Section 411.205 that exists on the effective date of this Act is unaffected by this Act.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

81R1890 GCB-D

By: Estes S.B. No. 1188

AN ACT relating to the interstate purchase of certain firearms.

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

SECTION 1. Section 46.07, Penal Code, is amended to read as follows:

Sec. 46.07. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in another state [~~contiguous states~~]. This authorization is enacted in conformance with 18 U.S.C. Section 922(b)(3)(A) [~~Public Law 90-618, 90th Congress~~].

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

81R5182 SJM-D

By: Seliger S.B. No. 1236

AN ACT relating to admonishments given to a person charged with a misdemeanor.

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

SECTION 1. Article 14.06(b), Code of Criminal Procedure, is amended to read as follows:

(b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, ~~and~~ the offense charged, and the following admonishment, in boldfaced or underlined type or in capital letters:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

SECTION 2. Article 26.13(a), Code of Criminal Procedure, is amended to read as follows:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

- (1) the range of the punishment attached to the offense;
- (2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that

such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere;

- (3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;
- (4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; and
- (5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter~~;~~ and
- ~~(6) the fact that it is unlawful for the defendant to possess or transfer a firearm or ammunition if the defendant is convicted of a misdemeanor involving family violence, as defined by Section 71.004, Family Code].~~

SECTION 3. Article 27.14, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e)(1) Before accepting a plea of guilty or a plea of nolo contendere by a defendant charged with a misdemeanor involving family violence, as defined by Section 71.004, Family Code, the court shall admonish the defendant by using the following statement:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

(2) The court may provide the admonishment under Subdivision (1) orally or in writing, except that if the defendant is charged with a misdemeanor punishable by fine only, the statement printed on a citation issued under Article 14.06(b) may serve as the court admonishment required by this subsection.

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. This Act takes effect September 1, 2009.

S.B. No. 1742

AN ACT

relating to the regulation of the discharge of firearms and certain other weapons by certain municipalities.

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

SECTION 1. Chapter 229, Local Government Code, is amended by adding Section 229.003 to read as follows:

Sec. 229.003. REGULATION OF DISCHARGE OF WEAPON BY CERTAIN

MUNICIPALITIES. (a) This section applies only to a municipality located wholly or partly in a county:

(1) with a population of 450,000 or more;

(2) in which all or part of a municipality with a population of one million or more is located; and

(3) that is located adjacent to a county with a population of two million or more.

(b) Notwithstanding Section 229.002, a municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality after September 1, 1981, if the firearm or other weapon is:

(1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

(A) on a tract of land of 10 acres or more and:

(i) more than 1,000 feet from:

(a) the property line of a public tract of land, generally accessible by the public, that is routinely used for organized sporting or recreational activities or that has permanent recreational facilities or equipment; and

(b) the property line of a school, hospital, or commercial day-care facility;

(ii) more than 600 feet from:

(a) the property line of a residential subdivision; and

(b) the property line of a multifamily residential complex; and

(iii) more than 150 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract;

(2) a center fire or rim fire rifle or pistol of any caliber discharged:

(A) on a tract of land of 50 acres or more and:

(i) more than 1,000 feet from:

(a) the property line of a public tract of land, generally accessible by the public, that is routinely used for organized sporting or recreational activities or that has permanent recreational facilities or equipment; and

(b) the property line of a school, hospital, or commercial day-care facility;

(ii) more than 600 feet from:

(a) the property line of a residential subdivision; and

(b) the property line of a multifamily residential complex; and

(iii) more than 300 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(3) discharged at a sport shooting range, as defined by Section 250.001, in a manner not reasonably expected to cause a projectile to cross the boundary of a tract of land.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

By: Carona S.B. No. 2225

AN ACT relating to the civil and criminal consequences of engaging in certain conduct involving the possession or transfer of a firearm and to creating the offense of firearm

smuggling; providing penalties.

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

SECTION 1. Chapter 46, Penal Code, is amended by adding Section 46.14 to read as follows:

Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an offense if the person knowingly:

(1) possesses or transports a firearm knowing that the firearm was acquired in violation of the laws of any state or of the United States; or

(2) transfers a firearm to another person knowing that the firearm was previously acquired in violation of the laws of any state or of the United States.

(b) An offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) Notwithstanding Subsection (b), the punishment prescribed for an offense under this section is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the actor, at the time of the offense, was engaged in the business of possessing, transporting, or transferring firearms acquired in violation of the laws of any state or of the United States. For purposes of this subsection, a person is considered to have engaged in business if, on more than one occasion, the person engaged in the applicable conduct for profit or any other form of remuneration.

(d) This section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

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

SECTION 2. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person [~~he~~] commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A; [~~or~~]

- (13) any offense under Section 37.10; or
(14) any felony offense under Section 46.06 or 46.14.

SECTION 3. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

- (2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:
- (A) used in the commission of:
 - (i) any first or second degree felony under the Penal Code;
 - (ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, ~~35~~, or 46, Penal Code;
 - (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
 - (iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;
 - (B) used or intended to be used in the commission of:
 - (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
 - (ii) any felony under Chapter 483, Health and Safety Code;
 - (iii) a felony under Chapter 153, Finance Code;
 - (iv) any felony under Chapter 34 or 46, Penal Code;
 - (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
 - (vi) any felony under Chapter 152, Finance Code;
 - (vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
 - (viii) a Class B misdemeanor under Section 35.60, Business & Commerce Code; or
 - (ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code;
 - (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence;
 - (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence; or
 - (E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. The change in law made by this Act in amending Article 59.01(2), Code of Criminal Procedure, applies only to the forfeiture of property in relation to an offense committed on or after the effective date of this Act. Forfeiture of property in relation to an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. This Act takes effect September 1, 2009.

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