

## **BILL ANALYSIS**

C.S.H.B. 2655  
By: Nevárez  
Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised that state law criminalizing the transfer of a weapon to certain persons does not currently address individuals with certain adjudicated mental health conditions. C.S.H.B. 2655 seeks to address these concerns by expanding the conduct that constitutes an unlawful weapons transfer to include knowingly transferring a firearm to an individual the actor knows or has reasonable cause to believe has been acquitted of a crime by reason of insanity or lack of mental responsibility or deemed incompetent to stand trial, among others, and by providing for a defense to prosecution.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2655 amends the Penal Code to expand the conduct that constitutes an unlawful transfer of certain weapons offense to include knowingly selling, renting, leasing, loaning, or giving a firearm to a person who the actor knows or has reasonable cause to believe is a person receiving inpatient mental health services by order of a court under certain Health and Safety Code provisions, a person who has been acquitted in a criminal case by reason of insanity or lack of mental responsibility, a person who has been determined to have an intellectual disability and committed by a court for long-term placement in a residential care facility under certain Health and Safety Code provisions, an incapacitated adult for whom a court has appointed a guardian of the person under certain Estates Code provisions based on a determination that the person lacks the mental capacity to manage the person's affairs, or a person determined to be incompetent to stand trial under certain Code of Criminal Procedure provisions. The bill establishes as a defense to prosecution for an unlawful weapons transfer involving such conduct that the transfer is to a person who is the subject of a judicial order or finding that the person is no longer an incapacitated adult or is entitled to relief from disabilities under state law, or who has obtained notice of relief from disabilities under federal law.

### **EFFECTIVE DATE**

September 1, 2017.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2655 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Section 46.06(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm, club, or illegal knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; ~~or~~

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor; or

(7) knowingly sells, rents, leases, loans, or gives a firearm to:

(A) a person receiving inpatient mental health services by order of a court under Chapter 574, Health and Safety Code;

(B) a person who has been acquitted in a criminal case by reason of insanity or lack of mental responsibility, regardless of

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 46.06, Penal Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm, club, or illegal knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; ~~or~~

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor; or

(7) knowingly sells, rents, leases, loans, or gives a firearm to a person who the actor knows, or has reasonable cause to believe, is:

(A) a person receiving inpatient mental health services by order of a court under Chapter 574, Health and Safety Code;

(B) a person who has been acquitted in a criminal case by reason of insanity or lack of mental responsibility, regardless of

whether the person was ordered by a court to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;

(C) a person who has been determined to have an intellectual disability and committed by a court for long-term placement in a residential care facility under Chapter 593, Health and Safety Code;

(D) an incapacitated adult for whom a court has appointed a guardian of the person under Title 3, Estates Code, based on a determination that the person lacks the mental capacity to manage the person's affairs; or

(E) a person determined to be incompetent to stand trial under Chapter 46B, Code of Criminal Procedure.

whether the person was ordered by a court to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;

(C) a person who has been determined to have an intellectual disability and committed by a court for long-term placement in a residential care facility under Chapter 593, Health and Safety Code;

(D) an incapacitated adult for whom a court has appointed a guardian of the person under Title 3, Estates Code, based on a determination that the person lacks the mental capacity to manage the person's affairs; or

(E) a person determined to be incompetent to stand trial under Chapter 46B, Code of Criminal Procedure.

(e) It is a defense to prosecution under Subsection (a)(7) that the transfer is to a person who:

(1) is the subject of a judicial order or finding that the person is no longer an incapacitated adult or is entitled to relief from disabilities under Section 574.088, Health and Safety Code; or

(2) has obtained notice of relief from disabilities under 18 U.S.C. Section 925.

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 on the date 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 2. Same as introduced version.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 3. Same as introduced version.