

By: Naishtat

H.B. No. 3352

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the collection, dissemination, and correction of  
3 certain judicial determinations for a federal firearm background  
4 check.

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

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

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

11 (1) a person ordered by a court to receive inpatient  
12 mental health services under Chapter 574, Health and Safety Code;

13 (2) a person acquitted in a criminal case by reason of  
14 insanity or lack of mental responsibility, regardless of whether  
15 the person is ordered by a court to receive inpatient treatment or  
16 residential care under Chapter 46C, Code of Criminal Procedure;

17 (3) a person determined to have mental retardation and  
18 committed by a court for long-term placement in a residential care  
19 facility or state developmental center under Chapter 593, Health  
20 and Safety Code;

21 (4) an incapacitated adult individual for whom a court  
22 has appointed a guardian of the individual under Chapter XIII,  
23 Probate Code, based on the determination that the person lacks the  
24 mental capacity to manage the person's affairs; or

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

3           (b) The department by rule shall establish a procedure to  
4 provide federal prohibited person information to the Federal Bureau  
5 of Investigation for use with the National Instant Criminal  
6 Background Check System. Except as otherwise provided by state  
7 law, the department may disseminate federal prohibited person  
8 information under this subsection only to the extent necessary to  
9 allow the Federal Bureau of Investigation to collect and maintain a  
10 list of persons who are prohibited under federal law from engaging  
11 in certain activities with respect to a firearm.

12           (c) The department shall grant access to federal prohibited  
13 person information to the person who is the subject of the  
14 information.

15           (d) Federal prohibited person information maintained by the  
16 department is confidential information for the use of the  
17 department and, except as otherwise provided by this section and  
18 other state law, may not be disseminated by the department.

19           (e) The department by rule shall establish a procedure to  
20 correct department records and transmit those corrected records to  
21 the Federal Bureau of Investigation when a person provides:

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

25                   (2) proof that the person has obtained notice of  
26 relief from disabilities under 18 U.S.C. Section 925.

27           Sec. 411.0521. REPORT TO DEPARTMENT CONCERNING CERTAIN

1 PERSONS' ACCESS TO FIREARMS. (a) The clerk of the court shall  
2 prepare and forward to the department the information described by  
3 Subsection (b) not later than the 30th day after the date the court:

4 (1) orders a person to receive inpatient mental health  
5 services under Chapter 574, Health and Safety Code;

6 (2) acquits a person in a criminal case by reason of  
7 insanity or lack of mental responsibility, regardless of whether  
8 the person is ordered to receive inpatient treatment or residential  
9 care under Chapter 46C, Code of Criminal Procedure;

10 (3) commits a person determined to have mental  
11 retardation for long-term placement in a residential care facility  
12 or state developmental center under Chapter 593, Health and Safety  
13 Code;

14 (4) appoints a guardian of the incapacitated adult  
15 individual under Chapter XIII, Probate Code, based on the  
16 determination that the person lacks the mental capacity to manage  
17 the person's affairs;

18 (5) determines a person is incompetent to stand trial  
19 under Chapter 46B, Code of Criminal Procedure; or

20 (6) finds a person is entitled to relief from  
21 disabilities under Section 574.088, Health and Safety Code.

22 (b) The clerk of the court shall prepare and forward the  
23 following information under Subsection (a):

24 (1) the complete name, race, and sex of the person;

25 (2) any known identifying number of the person,  
26 including social security number, driver's license number, or state  
27 identification number;

1           (3) the person's date of birth; and

2           (4) a copy of or an electronic transmission of  
3 information continued in:

4                   (A) the order for inpatient mental health  
5 services;

6                   (B) the order for inpatient treatment or  
7 residential care;

8                   (C) the order committing the person to a  
9 residential care facility;

10                   (D) the order appointing a guardian;

11                   (E) the judgment specifying that the person was  
12 found not guilty of a criminal offense by reason of insanity or lack  
13 of mental responsibility;

14                   (F) the order determining that the person is  
15 incompetent to stand trial; or

16                   (G) the order stating that the person is no  
17 longer an incapacitated adult or is entitled to relief under  
18 Section 574.088, Health and Safety Code.

19           (c) If practicable, the clerk of the court shall forward to  
20 the department the information described by Subsection (b) in an  
21 electronic format prescribed by the department.

22           (d) If an order previously reported to the department under  
23 Subsection (a) is reversed by order of any court, the clerk shall  
24 notify the department of the reversal not later than 30 days after  
25 the clerk receives the mandate from the appellate court.

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

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

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

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

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

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

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

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

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

1 2010, each clerk of the court shall prepare and forward information  
2 for any court orders issued on or after September 1, 1999, and  
3 before September 1, 2009.

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