

SENATE BILL NO. 231

BY SENATOR MORRELL

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AN ACT

To amend and reenact R.S. 14:95.1.3(D) and 95.10(B) and the introductory paragraph of R.S. 46:2136.3(A), to enact R.S. 14:79(A)(4), 95.1.3(E), and 95.1.4, R.S. 46:2136.3(C), and Title XXXV of the Code of Criminal Procedure, to be comprised of Arts. 1000 through 1003, and to repeal R.S. 46:2137, relative to firearms; to provide penalties for the violation of a protective order; to provide penalties for fraudulent firearms purchases; to prohibit the illegal transfer of a firearm to a prohibited possessor; to require certain reporting; to create a firearm transfer program; to designate sheriffs as repository for firearms; to provide procedure for storage and return of firearms; to require the development of forms, policies, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:95.1.3(D) and 95.10(B) are hereby amended and reenacted and R.S. 14:79(A)(4), 95.1.3(E), and 95.1.4 are hereby enacted to read as follows:

§79. Violation of protective orders

A.(1)(a) * * *

(4) Violation of protective orders shall also include the possession of a firearm or carrying a concealed weapon in violation of R.S. 46:2136.3, the purchase or attempted purchase of a firearm, and the carrying of a concealed weapon in violation of R.S. 14:95.1, 95.1.3, or 95.10.

* * *

§95.1.3. Fraudulent firearm and ammunition purchase; **mandatory reporting**

* * *

D. Whoever violates the provisions of this **Subsection A of this** Section shall be fined not less than one thousand dollars or more than five thousand dollars, or imprisoned, with or without hard labor, for not ~~less than one year~~ or more than ~~five~~ **twenty** years, or both. ~~At least one year of the~~ **The** sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

1 E.(1) If a person is reported ineligible to purchase firearms by the
2 National Instant Criminal Background Check System (NICS), the licensed
3 dealer shall report the NICS denial to the sheriff of the parish in which the
4 attempted purchase occurred and to the Louisiana Automated Victim
5 Notification System.

6 (2) If at any time a law enforcement agency discovers that a licensed
7 dealer knew or should have known that a purchaser or attempted purchaser of
8 a firearm was prohibited from possessing a firearm and the licensed dealer
9 failed to report as required by this Section, the sheriff or law enforcement
10 agency shall notify all state and federal licensing agencies of the licensed
11 dealer's failure to report.

12 §95.1.4. Illegal transfer of a firearm to a prohibited possessor

13 A. Illegal transfer of a firearm to a prohibited possessor is the
14 intentional giving, selling, donating, lending, delivering, or otherwise
15 transferring a firearm to any person known to the offender to be a person
16 prohibited from possessing a firearm under state or federal law.

17 B. Whoever commits the crime of illegal transfer of a firearm to a
18 prohibited possessor may be fined not more than two thousand five hundred
19 dollars, imprisoned for not more than one year, or both.

20 * * *

21 §95.10. Possession of a firearm or carrying of a concealed weapon by a person
22 convicted of domestic abuse battery and certain offenses of battery
23 of a dating partner

24 * * *

25 B. Whoever is found guilty of violating the provisions of this Section shall
26 be imprisoned with or without hard labor for not less than one year nor more than
27 five ~~twenty~~ years without the benefit of probation, parole, or suspension of
28 sentence, and shall be fined not less than ~~five hundred~~ one thousand dollars nor
29 more than ~~one~~ five thousand dollars.

30 * * *

1 Section 2. The introductory paragraph of R.S. 46:2136.3(A) is hereby amended and
2 reenacted and R.S. 46:2136.3(C) is hereby enacted to read as follows:

3 §2136.3. Prohibition on the possession of firearms by a person against whom a
4 protective order is issued

5 A. Any person against whom the court has issued a permanent injunction or
6 a protective order pursuant to a court-approved consent agreement or pursuant to the
7 provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's
8 Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of Criminal
9 Procedure Articles 30, 320, or 871.1 shall be prohibited from possessing a firearm
10 **or carrying a concealed weapon** for the duration of the injunction or protective
11 order if both of the following occur:

12 * * *

13 **C. Whoever violates the provisions of this Section shall be in violation of**
14 **and subject to the penalties set forth in R.S. 14:79.**

15 Section 3. Title XXXV of the Code of Criminal Procedure, comprised of Arts. 1000
16 through 1003, is hereby enacted to read as follows:

17 **TITLE XXXV. DOMESTIC VIOLENCE PREVENTION FIREARM**

18 **TRANSFER**

19 **Art. 1000. Definitions**

20 **As used in this Title:**

21 **(1) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun,**
22 **submachine gun, black powder weapon, or assault rifle which is designed to fire**
23 **or is capable of firing fixed cartridge ammunition or from which a shot or**
24 **projectile is discharged by an explosive.**

25 **(2) "Sheriff" means the sheriff of the jurisdiction in which the order was**
26 **issued, unless the person resides outside of the jurisdiction in which the order**
27 **is issued. If the person resides outside of the jurisdiction in which the order is**
28 **issued, "sheriff" means the sheriff of the parish in which the person resides.**

29 **Art. 1001. Transfer of firearms**

30 **A.(1) When a person is convicted of any of the following, the judge shall**

1 order the transfer of all firearms and the suspension of a concealed handgun
2 permit of the person:

3 (a) A conviction of domestic abuse battery (R.S. 14:35.3).

4 (b) A second or subsequent conviction of battery of a dating partner
5 (R.S. 14:34.9).

6 (c) A conviction of battery of a dating partner that involves strangulation
7 (R.S. 14:34.9(K)).

8 (d) A conviction of battery of a dating partner when the offense involves
9 burning (R.S. 14:34.9(L)).

10 (e) A conviction of possession of a firearm or carrying a concealed
11 weapon by a person convicted of domestic abuse battery and certain offenses of
12 battery of a dating partner (R.S. 14:95.10).

13 (2) Upon issuance of an injunction or order under any of the following
14 circumstances, the judge shall order the transfer of all firearms and the
15 suspension of a concealed handgun permit of the person who is subject to the
16 injunction or order:

17 (a) The issuance of a permanent injunction or a protective order
18 pursuant to a court-approved consent agreement or pursuant to the provisions
19 of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code
20 Article 1570, Code of Civil Procedure Article 3607.1, or Articles 30, 320, or
21 871.1 of this Code.

22 (b) The issuance of a Uniform Abuse Prevention Order that includes
23 terms that prohibit the person from possessing a firearm or carrying a
24 concealed weapon.

25 B.(1) The order to transfer firearms and suspend a concealed handgun
26 permit shall be issued by the court at the time of conviction for any of the
27 offenses listed in Subparagraph (A)(1) of this Article or at the time the court
28 issues an injunction or order under any of the circumstances listed in
29 Subparagraph (A)(2) of this Article.

30 (2) In the order to transfer firearms and suspend a concealed handgun

1 permit the court shall inform the person subject to the order that he is
2 prohibited from possessing a firearm and carrying a concealed weapon
3 pursuant to the provisions of 18 U.S.C. 922(g)(8) and Louisiana law.

4 C. At the same time an order to prohibit a person from possessing a
5 firearm or carrying a concealed weapon is issued, the court shall also cause all
6 of the following to occur:

7 (1) Require the person to state in open court or complete an affidavit
8 stating the number of firearms in his possession and the location of all firearms
9 in his possession.

10 (2) Require the person to complete a firearm information form that
11 states the number of firearms in the person's possession, the serial number of
12 each firearm, and the location of each firearm.

13 (3) Transmit a copy of the order to transfer firearms and a copy of the
14 firearm information form to the sheriff of the parish or the sheriff of the parish
15 of the person's residence.

16 D.(1) The court shall, on the record and in open court, order the person
17 to transfer all firearms in his possession to the sheriff no later than forty-eight
18 hours, exclusive of legal holidays, after the order is issued and a copy of the
19 order and firearm information form required by Paragraph C of this Article is
20 sent to the sheriff. If the person is incarcerated at the time the order is issued,
21 he shall transfer his firearms no later than forty-eight hours after his release
22 from incarceration, exclusive of legal holidays. At the time of transfer, the
23 sheriff and the person shall complete a proof of transfer form. The proof of
24 transfer form shall not contain the quantity of firearms transferred or any
25 identifying information about any firearm transferred. The sheriff shall retain
26 a copy of the form and provide the person with a copy.

27 (2) Within five days of transferring his firearms, exclusive of legal
28 holidays, the person shall file the proof of transfer form with the clerk of court
29 of the parish in which the order was issued.

30 E.(1) If the person subject to the order to transfer firearms and suspend

1 a concealed handgun permit issued pursuant to Paragraph A of this Article does
 2 not possess or own firearms, at the time the order is issued, the person shall
 3 complete a declaration of nonpossession form which shall be filed in the court
 4 record and a copy shall be provided to the sheriff.

5 (2) Within five days of the issuance of the order pursuant to Paragraph
 6 A of this Article, exclusive of legal holidays, the person shall file the declaration
 7 of nonpossession with the clerk of court of the parish in which the order was
 8 issued.

9 F. The failure to provide the information required by this Title may be
 10 punished by contempt of court. Information required to be provided in order
 11 to comply with the provisions of this Title cannot be used as evidence against
 12 that person in a future criminal proceeding, except as provided by the laws on
 13 perjury or false swearing.

14 Art. 1002. Transfer or storage of transferred firearms

15 A.(1) The sheriff of each parish shall be responsible for oversight of
 16 firearm transfers in his parish. For each firearm transferred pursuant to this
 17 Title, the sheriff shall offer all of the following options to the transferor:

18 (a)(i) Allow a third party to receive and hold the transferred firearms.
 19 The third party shall complete a firearms acknowledgment form that, at a
 20 minimum, informs the third party of the relevant state and federal laws, lists
 21 the consequences for noncompliance, and asks if the third party is able to
 22 lawfully possess a firearm. No firearm shall be transferred to a third party
 23 living in the same residence as the transferor at the time of transfer. The sheriff
 24 shall prescribe the manner in which firearms are transferred to a third party.

25 (ii) If a firearm is transferred to a third party pursuant to the provisions
 26 of this Subparagraph, the sheriff shall advise the third party that return of the
 27 firearm to the person before the person is able to lawfully possess the firearms
 28 pursuant to state or federal law may result in the third party being charged
 29 with a crime.

30 (b) Store the transferred firearms in a storage facility with which the

1 sheriff has contracted for the storage of transferred firearms. The sheriff may
2 charge a reasonable fee for the storage of such firearms.

3 (c) Oversee the legal sale of the transferred firearms to a third party. The
4 sheriff may contract with a licensed firearms dealer for such purpose. The
5 sheriff may charge a reasonable fee to oversee the sale of firearms.

6 (2) The sheriff may also accept and store the transferred firearms. The
7 sheriff may charge a reasonable fee for the storage of such firearms.

8 B. The sheriff shall prepare a receipt for each firearm transferred and
9 provide a copy to the person transferring the firearms. The receipt shall include
10 the date the firearm was transferred, the firearm manufacturer, and firearm
11 serial number. The receipt shall be signed by the officer accepting the firearms
12 and the person transferring the firearms. The sheriff may require the receipt
13 to be presented before returning a transferred firearm.

14 C. The sheriff shall keep a record of all transferred firearms including
15 but not limited to the name of the person transferring the firearm, date of the
16 transfer, the manufacturer, model, serial number, and the manner in which the
17 firearm is stored.

18 D.(1) When the person is no longer prohibited from possessing a firearm
19 under state or federal law, the person whose firearms were transferred
20 pursuant to the provisions of this Title may file a motion with the court seeking
21 an order for the return of the transferred firearms.

22 (2) Upon reviewing the motion, if the court determines that the person
23 is no longer prohibited from possessing a firearm under state or federal law, the
24 court shall issue an order stating that the firearms transferred pursuant to the
25 provisions of this Title shall be returned to the person. The order shall include
26 the date on which the person is no longer prohibited from possessing a firearm
27 and a copy of the order shall be sent to the sheriff.

28 (3) No sheriff or third party to whom the firearms were transferred
29 pursuant to the provisions of this Title, shall return a transferred firearm prior
30 to receiving the order issued by the court pursuant to the provisions of this

1 Paragraph.

2 (4) After a firearm is returned pursuant to the provisions of this
3 Paragraph, the sheriff shall destroy the records pertaining to the returned
4 firearms and instruct the clerk of court of that parish to destroy the pertinent
5 records.

6 E. The sheriff shall exercise due care to preserve the quality and function
7 of all firearms transferred under the provisions of this Title. However, the
8 sheriff shall not be liable for damage to firearms except for cases of willful or
9 wanton misconduct or gross negligence. In addition, the sheriff shall not be
10 liable for damage caused by the third party to whom the firearms were
11 transferred pursuant to the provisions of this Title.

12 Art. 1003. Implementation

13 The sheriff, clerk of court, and district attorney of each parish shall
14 develop forms, policies, and procedures no later than January 1, 2019,
15 regarding the communication of convictions and orders issued between
16 agencies, procedures for the acceptance of transferred firearms, procedures for
17 the storage of transferred firearms, return of transferred firearms, the proof of
18 transfer form, the declaration of nonpossession form, and any other form,
19 policy, or procedure necessary to effectuate the provisions of this Title.

20 Section 4. R.S. 46:2137 is hereby repealed in its entirety.

21 Section 5. If any provision or item of this Act, or the application thereof, is held
22 invalid, such invalidity shall not affect other provisions, items, or applications of the Act
23 which can be given effect without the invalid provision, item, or application and to this end
24 the provisions of this Act are hereby declared severable.

25 Section 6. This Act shall become effective on October 1, 2018.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____