

(3) That the minor was in the presence of a licensed or accredited gun safety instructor; or

(4) That the pistol was being used for farming, ranching, hunting, trapping, target shooting, or gun safety instruction.

23-7-46. Prohibited transfer of firearms and ammunition to juveniles - Felony. No person may sell, transfer, give, loan, furnish, or deliver a firearm or firearm ammunition to any person under the age of eighteen years if such person knows or reasonably believes that the minor recipient of the transfer intended, at the time of transfer, to use the firearm or ammunition in the commission or attempted commission of a crime of violence as defined in subdivision 22-1-2 (9).

The affirmative defenses contained in chapter 23-7 do not apply to a prosecution under this section. A violation of this section is a Class 5 felony.

Title 37. Trade Regulation

Chapter 17. Sale Of Serially Numbered Appliances And Equipment

37-17-1. Sale after removal or alteration of serial number as misdemeanor or felony. Any person who knowingly sells or offers for sale any ... firearm ... or any mechanical or electrical de-

vice, appliance, contrivance, material, piece of apparatus or equipment, which is identified by a serial number placed thereon by the manufacturer, the original serial number of which has been destroyed, removed, altered, covered, or defaced, is guilty of a Class 2 misdemeanor if the value of the property is two hundred dollars or less. If the value of the property is more than two hundred dollars, such person is guilty of a Class 4 felony.

[Current through 2000 Regular Session]

TENNESSEE

TENN. CODE

Title 39. Criminal Offenses

Chapter 17. Offenses Against Public Health, Safety and Welfare

Part 13. Weapons

39-17-1301. Definitions. As used in this part, unless the context otherwise requires:

(1) "Club" means any instrument that is specially designed, made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument;

(2) "Crime of violence" includes any degree of murder, voluntary manslaughter, aggravated rape, rape, especially aggravated robbery, aggravated robbery, burglary, aggravated assault or aggravated kidnapping;

(3) "**Explosive weapon**" means any explosive, incendiary or poisonous gas:

(A) Bomb;

(B) Grenade;

(C) Rocket;

(D) Mine; or

(E) Shell, missile or projectile that is designed, made or adapted for the purpose of inflicting serious bodily injury, death or substantial property damage;

(4) "**Firearm silencer**" means any device designed, made or adapted to muffle the report of a firearm;

(5) "Immediate vicinity" refers to the area within the person's immediate control within which the person has ready access to the ammunition; ...

(8) "**Machine gun**" means any firearm that is capable of shooting more than two (2) shots automatically, without manual reloading, by a single function of the trigger;

(9) "**Restricted firearm ammunition**" means any cartridge containing a bullet coated with a plastic substance with other than a lead or lead alloy core or a jacketed bullet with other than a lead or lead alloy core or a cartridge of which the bullet itself is wholly composed of a metal or metal alloy other than lead. "Restricted firearm ammunition" does not include shotgun shells or solid plastic bullets;

(10) "**Rifle**" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger;

(11) "**Short barrel**" means a barrel length of less than sixteen inches (16") for a rifle and eighteen inches (18") for a shotgun, or an overall firearm length of less than twenty-six inches (26");

(12) "**Shotgun**" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire through a smooth-bore barrel either a number of ball shot or a single projectile by a single function of the trigger; ...

(14) "**Unloaded**" means the rifle, shotgun or handgun does not have ammunition in the chamber, cylinder, clip or magazine, and no clip or magazine is in the immediate vicinity of the weapon.

39-17-1302. Prohibited weapons.

(a) A person commits an offense who intentionally or knowingly possesses, manufactures, transports, repairs or sells:

(1) An explosive or an explosive weapon;

(2) A device principally designed, made or adapted for delivering or shooting an explosive weapon;

(3) A machine gun;

(4) A short-barrel rifle or shotgun;

(5) A firearm silencer;

(6) A switchblade knife or knuckles; or

(7) Any other implement for infliction of serious bodily injury or death which has no common lawful purpose.

(b) It is a defense to prosecution under this section that the person's conduct:

(1) Was incident to the performance of official duty and pursuant to military regulations in the army, navy, air force, coast guard or marine service of the United States or the Tennessee national guard, or was incident to the performance of official duty in a governmental law enforcement agency or a penal institution;

(2) Was incident to engaging in a lawful commercial or business transaction with an organization identified in subdivision (b)(1);

(3) Was incident to using an explosive or an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise;

(4) Was incident to using the weapon in a manner reasonably related to a lawful dramatic performance or scientific research;

(5) Was incident to displaying the weapon in a public museum or exhibition;

(6) Was licensed by the state of Tennessee as a manufacturer, importer or dealer in weapons; provided, that the manufacture, import, purchase, possession, sale or disposition of weapons is authorized and incident to carrying on the business for which licensed and is for scientific or research purposes or sale or disposition to the organization designated in subdivision (b)(1); or

(7) Involved acquisition or possession of a sawed-off shotgun, sawed-off rifle, machine gun

or firearm silencer which is validly registered to the person under federal law in the National Firearms Registration and Transfer Records. A person who acquires or possesses a firearm registered as required by this subdivision shall retain proof of registration.

(c) It is an affirmative defense to prosecution under this section which the person must prove by a preponderance of the evidence that:

(1) The person's conduct was relative to dealing with the weapon solely as a curio, ornament or keepsake, and if the weapon is a type described in subdivisions (a)(1)-(5), that it was in a nonfunctioning condition and could not readily be made operable; or

(2) The possession was brief and occurred as a consequence of having found the weapon or taken it from an aggressor.

(d) (1) An offense under subdivisions (a)(1)-(5) is a Class E felony.

(2) An offense under subdivision (a)(6) or (7) is a Class A misdemeanor.

39-17-1303. Unlawful sale, loan or gift of firearm.

(a) A person commits an offense who:

(1) Intentionally, knowingly or recklessly sells, loans or makes a gift of a firearm or switchblade knife to a minor;

(2) Intentionally, knowingly or recklessly sells a firearm or ammunition for a firearm to a person who is intoxicated; or

(3) Intentionally, knowingly, recklessly or with criminal negligence violates the provisions of § 39-17-1316.

(b) It is a defense to prosecution under subdivision (a)(1) that:

(1) A firearm was loaned or given to a minor for the purposes of hunting, trapping, fishing, camping, sport shooting or any other lawful sporting activity; and

(2) The person is not required to obtain a license under § 39-17-1316.

(c) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(d) An offense under this section is a Class A misdemeanor.

39-17-1304. Restrictions on firearm ammunition.

(a) It is an offense for any person to possess, use or attempt to use restricted firearm ammunition while committing or attempting to commit a crime of violence. A violation of this section constitutes a separate and distinct felony.

(b) It is an offense for any person or corporation to manufacture, sell, offer for sale, display for sale or use in this state any ammunition cart-

ridge, metallic or otherwise, containing a bullet with a hollow-nose cavity which is filled with an explosive material and designed to detonate upon impact; provided, that the provisions of this section shall not apply to any state or federal military unit or personnel for use in the performance of its duties.

(c)(1) A violation of subsection (a) by possession of restricted firearm ammunition is a Class E felony.

(2) A violation of subsection (a) by use or attempted use of restricted firearm ammunition is a Class D felony.

(3) A violation of subsection (b) is a Class E felony.

39-17-1307. Unlawful carrying or possession of a weapon.

(a) (1) A person commits an offense who carries with the intent to go armed a firearm, a knife with a blade length exceeding four inches (4"), or a club.

(2) An offense under subdivision (a)(1) is a Class C misdemeanor, except it is a Class A misdemeanor if the person's carrying of a handgun occurred at a place open to the public where one (1) or more persons were present.

(b) (1) A person commits an offense who possesses a handgun and:

(A) Has been convicted of a felony involving the use or attempted use of force, violence or a deadly weapon; or

(B) Has been convicted of a felony drug offense.

(2) An offense under subdivision (b)(1) is a Class E felony.

(c) (1) A person commits an offense who possesses any deadly weapon with intent to employ it in the commission of or escape from an offense.

(2) An offense under subdivision (c)(1) is a Class E felony.

39-17-1308. Defenses to unlawful possession or carrying of a weapon.

(a) It is a defense to the application of § 39-17-1307 if the possession or carrying was:

(1) Of an unloaded rifle, shotgun or handgun not concealed on or about the person and the ammunition for the weapon was not in the immediate vicinity of the person or weapon;

(2) By a person authorized to possess or carry a firearm pursuant to § 39-17-1315 or § 39-17-1351;

(3) At the person's:

(A) Place of residence;

(B) Place of business; or

(C) Premises;

(4) Incident to lawful hunting, trapping, fishing, camping, sport shooting or other lawful activity;

(5) By a person possessing a rifle or shotgun while engaged in the lawful protection of livestock from predatory animals;

(6) By a Tennessee valley authority officer who holds a valid commission from the commissioner of safety pursuant to this part while such officer is in the performance of the officer's official duties;

(7) By a state, county or municipal judge or any federal judge or magistrate;

(8) By a person possessing a club/baton who holds a valid state security officer/guard registration card as a private security officer/guard, issued by the commissioner, and who also has certification that such officer has had training in the use of club/baton which is valid and issued by a person certified to give training in the use of clubs/batons;

(9) By any person possessing a club/baton who holds a certificate that the person has had training in the use of a club/baton for self-

defense which is valid and issued by a certified person authorized to give training in the use of clubs/batons, and is not prohibited from purchasing a firearm under any local, state or federal laws; or

(10) By any out-of-state, full-time, commissioned law enforcement officer who holds a valid commission card from the appropriate out-of-state law enforcement agency and a photo identification; provided, that if no such valid commission card and photo identification are retained, then it shall be unlawful for such officer to carry firearms in this state and the provisions of this section shall not apply. The defense provided by this subpart shall only be applicable if the state where the out-of-state officer is employed has entered into a reciprocity agreement with this state that allows a full-time, commissioned law enforcement officer in Tennessee to lawfully carry or possess a weapon in such other state.

(b) The defenses described in this section are not available to persons described in § 39-17-1307(b)(1).

39-17-1309. Carrying weapons on school property.

(a) As used in this section, "weapon of like kind" includes razors and razor blades, except those used solely for personal shaving, and any sharp pointed or edged instrument, except unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance.

(b)(1) It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, used or operated by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

(2) A violation of this subsection is a Class E felony.

(c)(1) It is an offense for any person to possess or carry, whether openly or concealed, any firearm, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, used or operated by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution. It is not an offense under this subsection for a nonstudent adult to possess a firearm, if such firearm is contained within a private vehicle operated by the adult and is not handled by such adult, or by any other person acting with the expressed or implied consent of such adult, while such vehicle is on school property.

(2) A violation of this subsection is a Class B misdemeanor.

(d) (1) Each chief administrator of a public or private school shall display in prominent locations about the school a sign, at least six inches (6") high and fourteen inches (14") wide, stating: FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF SIX (6) YEARS IMPRISONMENT AND A FINE NOT TO EXCEED THREE THOUSAND DOLLARS (\$3,000) FOR

CARRYING WEAPONS ON SCHOOL PROPERTY.

(2) As used in this subsection, "prominent locations" about a school includes, but is not limited to, sports arenas, gymnasiums, stadiums and cafeterias.

(e) The provisions of subsections (b) and (c) do not apply to the following persons:

(1) Persons employed in the army, air force, navy, coast guard or marine service of the United States or any member of the Tennessee national guard when in discharge of their official duties and acting under orders requiring them to carry arms or weapons;

(2) Civil officers of the United States in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, when in the discharge of their official duties;

(5) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a club or team, and who are required to carry arms or weapons in the discharge of their official class or team duties;

(6) Any private police employed by the administration or board of trustees of any public or private institution of higher education in the discharge of their duties; and

(7) Any registered security officer/guard who meets the requirements of title 62, chapter 35, and who is discharging such officer's official duties.

39-17-1310. Affirmative defense to carrying weapons on school property. It is an affirmative defense to prosecution under § 39-17-1309(a)-(d) that the person's behavior was in strict compliance with the requirements of one (1) of the following classifications:

(1) A person hunting during the lawful hunting season on lands owned by any public or private educational institution and designated as open to hunting by the administrator of the educational institution;

(2) A person possessing unloaded hunting weapons while transversing the grounds of any public or private educational institution for the purpose of gaining access to public or private lands open to hunting with the intent to hunt on such public or private lands unless the lands of the educational institution are posted prohibiting such entry;

(3) A person possessing guns or knives when conducting or attending "gun and knife shows" and such program has been approved by the administrator of the educational institution; or

(4) A person entering the property for the sole purpose of delivering or picking up passengers and who does not remove, utilize or allow to be removed or utilized any weapon from the vehicle.

39-17-1312. Inaction by persons eighteen (18) years of age or older, including parents or guardians, knowing a minor or student illegally possessing a firearm.

(a) It is an offense if a person eighteen (18) years of age or older, including a parent or other legal guardian, knows that a minor or student is in illegal possession of a firearm in or upon the premises of a public or private school, in or on such school's athletic stadium or other facility or building where school sponsored athletic events are conducted, or public park, playground or civic center, and such person, parent or guardian fails to prevent such possession or fails

to report it to the appropriate school or law enforcement officials.

(b) A violation of this section is a Class A misdemeanor.

39-17-1314. Local regulation of firearms and ammunition preempted by state regulation - Actions against firearms or ammunition manufacturers, trade associations or dealers.

(a) No city, county, or urban-county government shall occupy any part of the field of regulation of the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms or combinations thereof; provided, that the provisions of this section shall be prospective only and shall not affect the validity of any ordinance or resolution lawfully enacted before April 8, 1986.

(b) The general assembly declares that the lawful design, marketing, manufacture and sale of firearms and ammunition to the public are not an unreasonably dangerous activities and do not constitute a nuisance per se.

(c)(1) The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association or dealer by or on behalf of any state entity, county, municipality or metropolitan government for damages, abatement or injunctive relief resulting from or relating to the lawful design, manufacture, marketing or sale of firearms or ammunition to the public shall be reserved exclusively to the state.

(2) Nothing in this subsection shall be construed to prohibit a county, municipality, or metropolitan government from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by such county, municipality, or metropolitan government.

(3) Nothing in this subsection shall preclude an individual from bringing a cause of action for breach of a written contract, breach of an express warranty, or for injuries resulting from defects in the materials or workmanship in the manufacture of the firearm.

(d) The provisions of subsections (b) and (c) shall not apply in any litigation brought by an individual against a firearms or ammunition manufacturer, trade association or dealer.

39-17-1316. Sales of dangerous weapons - Certification of purchaser - Exceptions - Licensing of dealers - Definitions.

(a) (1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring them; however, sales to persons who are addicted to alcohol and sales to persons ineligible to receive them under 18 U.S.C. § 922 are prohibited.

(2) The provisions of this subsection prohibiting the sale of a firearm to a person convicted of a felony shall not apply if:

(A) Such person was pardoned for the offense;

(B) The conviction has been expunged or set aside; or

(C) The person's civil rights have been restored pursuant to title 40, chapter 29; and

(D) The person is not prohibited from possessing a firearm by the provisions of § 39-17-1307.

(b) (1) As used in this section, "firearm" has the meaning as defined in § 39-11-106, including handguns, long guns, and all other weapons which meet the definition except "antique firearms" as defined in 18 U.S.C. § 921.

(2) As used in this section, "gun dealer" means a person engaged in the business, as defined in 18 U.S.C. § 921, of selling, leasing, or

otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker, or otherwise.

(c) Except with respect to transactions between persons licensed as dealers under 18 U.S.C. § 923, a gun dealer shall comply with the following before a firearm is delivered to a purchaser:

(1) The purchaser shall present to the dealer current identification meeting the requirements of subsection (f).

(2) The gun dealer shall complete a firearms transaction record as required by 18 U.S.C. §§ 921 to 929, and obtain the signature of the purchaser on the record.

(3) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be filed with that copy.

(4) The gun dealer shall request by telephone that the Tennessee bureau of investigation conduct a criminal history record check on the purchaser and shall provide the following information to the bureau:

(A) The federal firearms license number of the gun dealer;

(B) The business name of the gun dealer;

(C) The place of transfer;

(D) The name of the person making the transfer;

(E) The make, model, caliber and manufacturer's number of the firearm being transferred;

(F) The name, gender, race, and date of birth of the purchaser;

(G) The social security number of the purchaser, if one has been assigned; and

(H) The type, issuer and identification number of the identification presented by the purchaser.

(5) The gun dealer shall receive a unique approval number for the transfer from the bureau and record the approval number on the firearms transaction record and on the firearms transaction thumbprint form.

(6) The gun dealer may destroy the firearms transaction thumbprint form one (1) year after the completion of the firearms transaction thumbprint form.

(d) Upon receipt of a request of the gun dealer for a criminal history record check, the Tennessee bureau of investigation shall immediately, during the gun dealer's telephone call or by return call:

(1) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under the provisions of subdivision (a)(1) from completing the purchase; and

(2) Notify the dealer when a purchaser is disqualified from completing the transfer or provide the dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(e) (1) The Tennessee bureau of investigation may charge a reasonable fee, not to exceed ten dollars (\$10.00), for conducting background checks and other costs incurred under the provisions of this section, and shall be empowered to bill gun dealers for checks run. ...

(f) (1) Identification required of the purchaser under subsection (c) shall include one (1) piece of current, valid identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an inter-

national governmental organization or an international quasi-governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(2) If the identification presented by the purchaser under subdivision (f)(1)(A) does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser.

(g) The Tennessee bureau of investigation may require that the dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the bureau.

(h) The Tennessee bureau of investigation shall establish a telephone number that shall be operational seven (7) days a week between the hours of eight o'clock a.m. and ten o'clock p.m. Central Standard Time (8:00 a.m.-10:00 p.m. (CST)), except Christmas Day, Thanksgiving Day, and Independence Day, for the purpose of responding to inquiries from dealers for a criminal history record check under this section.

(i) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section; provided the employee, official or agency acts in good faith and without malice.

(j) Upon the determination that receipt of a firearm by a particular individual would not violate this section, and after the issuance of a unique identifying number for the transaction, the Tennessee bureau of investigation shall destroy all records (except the unique identifying number and the date that it was assigned) associating a particular individual with a particular purchase of firearms.

(k) A law enforcement agency may inspect the records of a gun dealer relating to transfers of firearms in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(l) The Tennessee bureau of investigation shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(m) (1) The background check does not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, or licensed collectors who meet the requirements of subsection (b) and certify prior to the transaction the legal and licensed status of both parties. The burden shall fall upon the transferor to determine the legality of the transaction in progress.

(2) The background check does not apply to transactions or transfers between a licensed importer, licensed manufacturer, or licensed dealer and a bona fide law enforcement agency or such agency's personnel. However, all other provisions and requirements of subsection (b) must be observed. The burden of proof of the legality of such transactions or transfers shall rest upon the transferor.

(3) The background check does not apply to any person eligible to purchase a firearm as set out above who wishes to make an occasional sale of a used or second-hand firearm legally purchased by the seller.

(n) The director of the Tennessee bureau of investigation is hereby authorized to make and issue all rules and regulations necessary to carry out the provisions of this section.

39-17-1319. Handgun possession prohibited - Exceptions.

(a) As used in this section and § 39-17-1320, unless the context otherwise requires:

(1) **"Handgun"** means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable, or magazine breech, does not exceed twelve inches (12"); and

(2) **"Juvenile"** means any person less than eighteen (18) years of age.

(b) Except as provided in this section, it is an offense for a juvenile to knowingly possess a handgun.

(c)(1) Illegal possession of a handgun by a juvenile is a delinquent act and, in addition to any other disposition authorized by law, such juvenile may be required to perform not more than one hundred (100) hours of community service work to be specified by the judge, and such juvenile's driving privileges shall be suspended for a period of one (1) year in accordance with the procedure set out in title 55, chapter 10, part 7.

(2) A second or subsequent violation of this section is a delinquent act and, in addition to any other disposition authorized by law, such juvenile may be required to perform not less than one hundred (100) nor more than two hundred (200) hours of community service work to be specified by the judge, and such juvenile's driving privileges shall be suspended for a period of two (2) years in accordance with the procedure set out in title 55, chapter 10, part 7.

(3) Any handgun illegally possessed in violation of this section shall be confiscated and disposed of in accordance with the provisions of § 39-17-1317.

(d) (1) It is a defense to prosecution under this section that the juvenile is:

(A) In attendance at a hunter's safety course or a firearms safety course;

(B) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(C) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group which is exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), as amended, and which uses firearms as part of such performance;

(D) Hunting or trapping pursuant to a valid license issued to such juvenile pursuant to title 70;

(E) Accompanied by such juvenile's parent or guardian and is being instructed by such adult or guardian in the use of the handgun possessed by the juvenile;

(F) On real property which is under the control of an adult and has the permission of that adult and the juvenile's parent or legal guardian to possess a handgun;

(G) Traveling to or from any activity described in subsection (d)(1) with an unloaded gun; or

(H) At the juvenile's residence and with the permission of the juvenile's parent or legal guardian, possesses a handgun and is justified in using physical force or deadly force.

(2) For purposes of subsection (d)(1)(G), a handgun is "unloaded" if:

(A) There is not a cartridge in the chamber of the handgun;

(B) There is not a cartridge in the cylinder of the handgun if the handgun is a revolver; or

(C) The handgun, and the ammunition for such handgun, are not carried on the person of a juvenile or are not in such close proximity to such juvenile that the juvenile could readily gain access to the handgun and the ammunition and load the handgun.

(e) Notwithstanding any other provision of this part to the contrary, the provisions of this section shall govern a juvenile who possesses a handgun.

39-17-1320. Providing handguns to juveniles - Penalties.

(a) It is an offense for a person intentionally, knowingly or recklessly to provide a handgun with or without remuneration to any person that the person providing the handgun knows or has reason to believe is a juvenile in violation of § 39-17-1319.

(b) It is an offense for a parent or guardian intentionally, knowingly or recklessly to provide a handgun to a juvenile or permit a juvenile to possess a handgun, if such parent or guardian knows of a substantial risk that such juvenile will use a handgun to commit a felony.

(c) Unlawfully providing or permitting a juvenile to possess a handgun in violation of subsection (a) is a Class A misdemeanor and in violation of subsection (b) is a Class D felony.

39-17-1321. Possession of handgun while under influence - Penalty.

(a) Notwithstanding whether a person has a permit issued pursuant to § 39-17-1315 or § 39-17-1351, it is an offense for a person to possess a handgun while under the influence of alcohol or any controlled substance.

(b) A violation of this section is a Class A misdemeanor.

39-17-1351. Handgun carry permits.

(a) The citizens of this state have a right to keep and bear arms for their common defense; but the general assembly has the power, by law, to regulate the wearing of arms with a view to prevent crime.

(b) Any resident of Tennessee who has reached twenty-one (21) years of age may apply to the department of safety for a handgun carry permit. If the applicant is not prohibited from purchasing or possessing a firearm in this state pursuant to § 39-17-1316 or § 39-17-1307(b), 18 U.S.C. § 922(g) or any other state or federal law and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

(c) The application for a permit shall be on a standard form developed by the department. The application shall clearly state in bold face type directly above the signature line that an applicant who, with intent to deceive, makes any false statement on such application commits the felony offense of perjury pursuant to § 39-16-702. The following are eligibility requirements for obtaining a handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:

(1) Full legal name and any aliases;

(2) Addresses for the last five (5) years;

(3) Date of birth;

(4) Social security number;

(5) Physical description (height, weight, race, sex, hair color and eye color);

(6) That the applicant has not been convicted of a criminal offense punishable for a term exceeding one (1) year which does not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses

relating to the regulations of business practices, or;

(7) That the applicant is not currently under indictment or information for any criminal offense punishable by a term exceeding one (1) year which does not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices;

(8) That the applicant is not currently subject to any order of protection and, if so, the applicant shall provide a copy of such order;

(9) That the applicant is not a fugitive from justice;

(10) That the applicant is not an unlawful user of or addicted to alcohol or any controlled substance and the applicant has not been a patient in a rehabilitation program or hospitalized for alcohol or controlled substance abuse or addiction within ten (10) years from the date of application;

(11) That the applicant has not been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application and that none of such convictions has occurred within five (5) years from the date of application or renewal;

(12) That the applicant has not been adjudicated as a mental defective; has not been committed to or hospitalized in a mental institution; has not had a court appoint a conservator for the applicant by reason of a mental defect; has not been judicially determined to be disabled by reason of mental illness, developmental disability or other mental incapacity; and has not, within seven (7) years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in § 33-6-104, because of mental illness;

(13) That the applicant is not an alien and is not illegally or unlawfully in the United States;

(14) That the applicant has not been discharged from the Armed Forces under dishonorable conditions;

(15) That the applicant has not renounced such applicant's United States citizenship;

(16) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(33);

(17) That the applicant is not receiving social security disability benefits by reason of alcohol dependence, drug dependence or mental disability; and

(18) That the applicant has not been convicted of the offense of stalking.

(d) (1) In addition to the information required under subsection (c), the applicant shall be required provide two (2) full sets of classifiable fingerprints at the time the application is filed with the department. Such fingerprints may be taken by the department at the time the application is submitted or the applicant may have such fingerprints taken at any sheriff's office and submit such fingerprints to the department along with the application and other supporting documents. The sheriff may charge a fee not to exceed five dollars (\$ 5.00) for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, such applicant shall be required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff shall refuse to take such fingerprints. The department shall also be

required to photograph the applicant in a manner that is suitable for use on the permit.

(2) An applicant shall also be required to present a photo identification to the department at the time of filing the application. If the name on the photo identification, name on the application and name on the fingerprint card, if taken by a sheriff, are not the same, the department shall refuse to accept the application. If the person whose picture appears on the photo identification is not the same as the applicant, the department shall refuse to accept the application.

(e) The department shall also require an applicant to submit proof of the successful completion of a department approved handgun safety course. Such course shall include both classroom hours and firing range hours. An applicant shall not be required to comply with the firing range provisions of this subsection if such applicant submits proof to the department that within five (5) years from the date the application for a handgun carry permit is filed the applicant has:

(1) Been certified by the peace officer standards and training commission; or

(2) Successfully completed training at the law enforcement training academy; or

(3) Successfully completed the firearms training course required for armed security officer/guard registration, pursuant to § 62-35-118(b); or

(4) Successfully completed all handgun training of not less than four (4) hours as required by any branch of the military.

(f) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.

(g) (1) Upon receipt of a permit application, the department shall:

(A) Forward two (2) full sets of fingerprints of the applicant to the Tennessee bureau of investigation; and

(B) Send a copy of the application to the sheriff of the county in which the applicant resides.

(2) Within thirty (30) days of receiving an application, the sheriff shall provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements of subsection (c) that is within the knowledge of such sheriff.

(h) Upon receipt of the fingerprints from the department, the Tennessee bureau of investigation shall:

(1) Within thirty (30) days from receipt of the fingerprints, conduct such computer searches to determine the applicant's eligibility for a permit under subsection (c) as are available to the bureau based solely upon the applicant's name, date of birth and social security number and send the results of such searches to the department;

(2) Conduct a criminal history record check based upon one (1) set of the fingerprints received and send the results to the department; and

(3) Send one (1) set of the fingerprints received from the department to the federal bureau of investigation, request a federal criminal history record check based upon such fingerprints, as long as such service is available, and send the results of such check to the department.

(i) The department shall deny a permit application if it determines from information contained in the criminal history record checks conducted by the Tennessee and federal bureaus of

investigation pursuant to subsection (h), or from other information that comes to the attention of the department, that the applicant does not meet the eligibility requirements of this section. The department shall not be required to confirm the applicant's eligibility for a permit beyond the information received from the Tennessee and federal bureaus of investigation and the sheriffs, if any.

(j) The department shall not deny a permit application if:

(1) The existence of any arrest or other records concerning the applicant for any indictment, charge or warrant have been judicially or administratively expunged; or

(2) An applicant's conviction has been set aside by a court of competent jurisdiction; or

(3) The applicant, who was rendered infamous or deprived of the rights of citizenship by judgment of any state or federal court, has had his or her full rights of citizenship duly restored pursuant to procedures set forth within title 40, chapter 29, or other federal or state law; provided, however, the provisions of this subdivision shall not apply to any person who has been convicted of burglary, any felony offense involving violence or use of a firearm or any felony drug offense involving a Schedule I, II, III, IV or V controlled substance. If the applicant has been convicted of a felony drug offense involving a Schedule VI controlled substance, the provisions of this subdivision shall not apply if such offense occurred within ten (10) years of the date of application or renewal.

(k) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of such denial. The written notice shall state the specific factual basis for the denial. It shall include a copy of any reports, records and/or inquiries reviewed or relied upon by the department.

(l) The department shall issue a permit to an applicant not prohibited from obtaining a permit under this section no later than ninety (90) days after the date the department receives the application. A permit issued prior to the department's receipt of the Tennessee and federal bureaus of investigation's criminal history record checks based upon the applicant's fingerprints shall be subject to immediate revocation if either such record check reveals that the applicant is not eligible for a permit pursuant to the provisions of this section.

(m) A permit holder shall not be required to complete a handgun safety course to maintain or renew a handgun carry permit. No permit holder shall be required to complete any additional handgun safety course after obtaining a handgun carry permit.

(n) A permit issued pursuant to this section shall be good for four (4) years and shall entitle the permit holder to carry any handgun(s) which the permit holder legally owns or possesses. The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.

(o) The permit shall be issued on a wallet-sized laminated card of the same approximate size as is used by the State of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

(1) The permit holder's name, address, date of birth and social security number;

(2) A description of the permit holder by sex, height, weight and eye color;

(3) A color photograph of the permit holder; and

(4) The permit number and expiration date.

(p)(1) The department shall charge an application and processing fee of one hundred fifteen dollars (\$115). Such fee shall cover all aspects of processing the application and issuing a permit. In addition to any other portion of the permit application fee that goes to the Tennessee bureau of investigation, fifteen dollars (\$15.00) of such fee shall go to the bureau for the sole purpose of updating and maintaining its fingerprint criminal history data base. On an annual basis, the comptroller of the treasury shall audit the bureau to ensure that such extra fifteen dollars (\$15.00) received from each handgun permit application fee is being used exclusively for the purpose set forth in this subsection. By February 1 of each year the bureau shall provide documentation to the senate and house judiciary committees that such extra fifteen dollars (\$15.00) is being used exclusively for the intended purposes. Such documentation shall state in detail how the money earmarked for fingerprint data base updating and maintenance was spent, the number and job descriptions of any employees hired and the type and purpose of any equipment purchased.

(2) The provisions of subdivision (p)(1) increasing each permit application fee by fifteen dollars (\$15.00) for the purpose of fingerprint data base updating and maintenance shall not take effect if the general appropriation act provides a specific appropriation in the amount of two hundred fifty thousand dollars (\$250,000), to defray the expenses contemplated in subdivision (p)(1). If such appropriation is not included in the general appropriations act, such fifteen dollar (\$15.00) permit fee increase imposed by subdivision (p)(1) shall take effect on July 1, 1997, the public welfare requiring it.

(q) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of such permit by submitting, under oath, a renewal application with a renewal fee of fifty dollars (\$50.00). The renewal application shall be on a standard form developed by the department of safety and shall require the applicant to disclose, under oath, the information concerning the applicant as set forth in subsection (c), and shall require the applicant to certify that such applicant still satisfies all the eligibility requirements of this section for the issuance of a permit. In the event the permit expires prior to the department's approval or issuance of notice of denial regarding such renewal application, the permit holder shall be entitled to continue to use the expired permit; provided, that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit.

(r) (1) A handgun permit or license issued in another state shall be valid in this state according to its terms if:

(A) The statute establishing the permit or licensing procedure in the issuing state specifically provides that permits or licenses issued in other states are valid in such issuing state; and

(B) The eligibility requirements for obtaining a handgun permit or license in such issuing state are substantially similar to the eligibility requirements in this state.

(2)(A) The commissioner of safety shall be the sole judge of whether the eligibility requirements in another state are substantially similar to the requirements in this state. The department shall maintain a list of the states that

meet the reciprocity requirements of this subsection. Such list shall be available to anyone upon request.

(B) If a person with a gun permit from another state decides to become a resident of Tennessee, such person must obtain a Tennessee gun permit. Such permit may be issued based on the person having a permit from another state provided such other state meets the criteria of subdivisions (r)(1) and (2).

(s) (1) The department shall make available, on request and payment of a reasonable fee to cover the costs of copying, a statistical report that includes the number of permits issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender and zip code of the applicant or permit holder and the reason for any permit revocation or suspension. By January 1 of each year, a copy of such statistical reports for the preceding calendar year shall be provided to each member of the general assembly.

(2) (A) The department shall maintain statistics related to responses by law enforcement agencies to incidents in which a person who has a permit to carry a handgun under this section is arrested and booked for any offense.

(B) The department by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5

shall adopt procedures for state and local law enforcement officials to report the information required by subdivision (s)(2)(A) to the department.

(t) Any law enforcement officer of this state or of any county or municipality may, within the realm of the officer's lawful jurisdiction and when the officer is acting in the lawful discharge of the officer's official duties, disarm a permit holder at any time when the officer reasonably believes it is necessary for the protection of the permit holder, officer or other individual(s). The officer shall return the handgun to the permit holder before discharging the permit holder from the scene when the officer has determined that the permit holder is not a threat to the officer, to the permit holder, or other individual(s) provided that the permit holder has not violated any provision of this section and provided the permit holder has not committed any other violation that results in the arrest of the permit holder.

(u) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

(v) All handgun carry permit applications properly filed according to the procedure in effect immediately prior to June 13, 1997, shall be acted upon by the department in accordance with the procedure established by this subsec-

tion. By July 13, 1997, the department shall issue a handgun carry permit, subject to later suspension or revocation as provided in § 39-17-1352, to all applicants whose:

(1) Applications were properly filed under the permit procedure in effect immediately prior to June 13, 1997;

(2) Applications have been pending for at least ninety (90) days; and

(3) Criminal history record check results conducted by the Tennessee bureau of investigation based solely upon the applicant's name, date of birth and social security number have been returned to and are in the possession of the department.

(w) Any permit issued pursuant to this section shall be deemed a "license" within the meaning of title 36, chapter 5, part 7, dealing with the enforcement of child support obligations through license denial and revocation.

39-17-1360. Rules and regulations. The department of safety is authorized to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement the provisions of §§ 39-17-1351 - 39-17-1360.

[Current through 2000 Regular Session]

TEXAS TEX. CODE

Texas Government Code

Title 4. Executive Branch

Chapter 411. Department of Public Safety of the State of Texas

Subchapter H. License To Carry A Concealed Handgun

411.171. Definitions. In this subchapter:

(1) "**Action**" means single action, revolver, or semi-automatic action.

(2) "**Chemically dependent person**" means a person who frequently or repeatedly becomes intoxicated by excessive indulgence in alcohol or uses controlled substances or dangerous drugs so as to acquire a fixed habit and an involuntary tendency to become intoxicated or use those substances as often as the opportunity is presented.

(3) "**Concealed handgun**" means a handgun, the presence of which is not openly discernible to the ordinary observation of a reasonable person.

(4) "**Convicted**" means an adjudication of guilt or 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.

(5) "**Handgun**" has the meaning assigned by Section 46.01, Penal Code.

(6) "**Intoxicated**" has the meaning assigned by Section 49.01, Penal Code.

(7) "**Qualified handgun instructor**" means a person who is certified to instruct in the use of handguns by the department.

(8) [Repealed]

411.172. Eligibility

(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 an offense under Section 42.01, Penal Code, 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;

(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 an offense under Section 42.01, Penal Code;

(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;

(14) 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

(15) 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) a felony if the offense is so designated by law or if confinement for one year or more in a penitentiary is affixed to the offense as a possible punishment; 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.

(c) An individual who has been convicted two times within the 10-year period preceding the date on which the person applies for a license of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense is a chemically dependent person for purposes of this section and is not qualified to receive a license under this subchapter. This subsection does not preclude the disqualification of an individual for being a chemically dependent person if other evidence exists to show that the person is a chemically dependent person.

(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