

2016 Regular Session

SENATE BILL NO. 304

BY SENATOR RISER

WEAPONS. Provides for the Domestic Violence Prevention and Lawful Transfer of Firearms Act. (8/1/16)

AN ACT

To enact Title XXXV of the Code of Criminal Procedure, comprised of Articles 1001 through 1010, relative to firearms; to provide for concealed handgun permits; to authorize the temporary carrying of a concealed handgun without a permit for persons who have obtained a domestic abuse protective order; to provide for applicability; to provide for civil penalties; to provide for the transferring of firearms by persons prohibited from possessing firearms due to convictions or restraining orders regarding domestic violence; to provide for time periods for the transfer of firearms; to provide definitions; to provide for a transfer of firearms hearing; to provide for designated law enforcement agencies to serve as repository for transferred firearms; to provide for procedures for the return of firearms which have been transferred; to provide for applicability; to provide for exceptions; to provide for the adoption of policies by law enforcement agencies; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Title XXXV of the Code of Criminal Procedure, comprised of Articles 1001 through 1010, is hereby enacted to read as follows:

TITLE XXXV. DOMESTIC VIOLENCE PREVENTION AND LAWFUL
TRANSFER OF FIREARMS ACT

Art. 1001. Short Title

This Title shall be known and cited as the Domestic Violence Prevention and Lawful Transfer of Firearms Act.

Art. 1002. Definitions

(1) "Designated law enforcement agency" means the Department of Public Safety and Corrections, office of state police, the sheriff of any parish, or the police department of any municipality selected by the court to be the agency to receive transferred firearms pursuant to the provisions of this Title.

(2) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, or assault rifle, which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

(3) "Third party" means a citizen of the United States who has not had their right to keep or bear arms terminated by a court.

Art. 1003. Carrying a concealed handgun without a permit with valid protective order; time limitations

A. Any person on whose behalf the court has issued a permanent injunction or a protective order pursuant to a court-approved consent agreement or pursuant to the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.1, 335.2, or 871.1 to bring about the cessation of abuse, which pursuant to R.S. 46:2136.3 prohibits the person subject to the order from possessing a firearm, shall be authorized to carry a concealed handgun without a permit if the person is twenty-one years of age or older and is not prohibited from purchasing or possessing a firearm under state or federal law. The person is authorized to carry a concealed handgun without a permit for a period of ninety days after

1 the permanent injunction or the protective order is issued or upon the
2 expiration of the injunction or order, whichever is greater.

3 B. If during the period provided for in Paragraph A of this Article, the
4 person upon whose behalf the court has issued the permanent injunction or
5 protective order applies for a concealed handgun permit, the person shall be
6 authorized to continue to carry a concealed handgun without a permit pending
7 final action regarding the issuance of the permit regardless of whether this time
8 exceeds the time period provided in Paragraph A of this Article.

9 C.(1) The person upon whose behalf the court has issued the permanent
10 injunction or protective order shall have the order in their possession at all
11 times while they are carrying the concealed handgun.

12 (2) Failure to carry the protective order at all times the person is
13 carrying the concealed handgun shall be subject to a civil penalty not to exceed
14 five hundred dollars.

15 D. Any person who is qualified to carry a firearm without a permit
16 pursuant to this Article may object to the transfer of firearms which are
17 provided for in Code of Criminal Procedure Article 1006 by claiming title to
18 any transferred firearm. If an objection is made, the court shall order a firearm
19 transfer hearing as provided for in Code of Criminal Procedure Article 1006.
20 If the court determines that the person qualified to carry a firearm without a
21 permit pursuant to this Article has title to any firearms required to be
22 transferred pursuant to Code of Criminal Procedure Article 1006, then the
23 court shall order that the firearm be transferred to the person who is qualified
24 to carry a firearm without a permit pursuant to this Article.

25 Art. 1004. Transfer of firearms; order for persons prohibited from possessing
26 firearms

27 A. Upon a conviction of an offense or court order issued against a person
28 pursuant to the provisions of this Paragraph, a judge shall order the transfer
29 of all firearms pursuant to the provisions of this Title owned or possessed by

1 any person who is prohibited from possessing a firearm pursuant to the laws of
2 this state by reason of any of the following:

3 (1) Any person convicted of domestic abuse battery R.S. 14:35.3.

4 (2) Any person convicted of possession of a firearm or carrying a
5 concealed weapon by a person convicted of domestic abuse battery R.S.
6 14:95.10.

7 (3) Any person against whom the court has issued a permanent
8 injunction or a protective order pursuant to a court-approved consent
9 agreement or pursuant to the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S.
10 46:2136, 2151, or 2173, Children's Code Article 1570, Code of Civil Procedure
11 Article 3607.1, or Articles 30, 327.1, 335.1, 335.2, or 871.1 of this Code is
12 prohibited from possessing a firearm for the duration of the injunction or
13 protective order if both of the following occur:

14 (i) The permanent injunction or protective order includes a finding that
15 the person subject to the permanent injunction or protective order represents
16 a credible threat to the physical safety of a family member or household
17 member.

18 (ii) The permanent injunction or protective order informs the person
19 subject to the permanent injunction or protective order that the person is
20 prohibited from possessing a firearm pursuant to the provisions of 18 U.S.C.
21 922(g)(8) and R.S. 46:2136.3.

22 (4) Any person prohibited from possessing a firearm pursuant to a
23 Uniform Abuse Prevention Order.

24 B. The order transferring the firearms shall be issued at time of
25 conviction or at the same time the court prohibits the person from possessing
26 a firearm as enumerated in Paragraph A of this Article.

27 C. The order to transfer firearms shall inform the person subject to the
28 order that he is prohibited from possessing a firearm pursuant to the provisions
29 of 18 U.S.C. 922(g)(8) and the relevant provisions of Louisiana law.

1 D. The court shall also order that if the defendant possesses a concealed
2 handgun permit, the permit shall be suspended.

3 Art. 1005. Designated law enforcement agency

4 The court may designate the law enforcement agency within the judicial
5 district of the court to serve as the agency to retain firearms transferred by the
6 provisions of this Title. If the law enforcement agency elects not to be the
7 repository of transferred firearms as provided for in this Title, the court shall
8 designate another law enforcement agency to retain firearms transferred by the
9 provisions of this Title.

10 Art. 1006. Transfer of firearms hearing; time period to transfer

11 A. The owner of a firearm who has been ordered to transfer all firearms
12 in his possession pursuant to the provisions of this Title shall transfer those
13 firearms immediately but not later than forty-eight hours of the issuance of the
14 order to either of the following as ordered by the court:

15 (1) To the designated law enforcement agency as provided for in Article
16 1005 of the Code of Criminal Procedure.

17 (2) A third party, as provided for in Paragraph C of this Article.

18 B. If the offender is incarcerated at the time the order is issued, he shall
19 transfer his firearms immediately but not later than forty-eight hours of release
20 from incarceration.

21 C. The owner of the firearm ordered by the court to transfer his firearms
22 may request that the court approve a third party other than the designated law
23 enforcement agency to receive and hold the firearms. If the owner of the
24 firearm requests that a third party receive and hold the firearms, the court shall
25 schedule a firearms transfer hearing within a week of issuing the order
26 directing the person to transfer his firearms.

27 D. The court may schedule a firearms transfer hearing for any reason
28 the court deems relevant to the transfer of firearms. The court shall consider all
29 relevant factors and any input from the petitioner in determining whether to

1 approve the transfer of firearms.

2 E. The court shall dismiss the hearing to transfer firearms if the
3 respondent transfers his firearms in one of the following manners:

4 (1) The owner transfers his firearms to the law enforcement officer as
5 ordered by the court immediately but not later than forty-eight hours after the
6 hearing ordering the person to transfer his firearms and provides a copy of the
7 receipt to the clerk of court. If the offender is incarcerated at the time the order
8 is issued, he shall transfer his firearms immediately, but not later than forty-
9 eight hours of release from incarceration and provide a copy of the receipt to
10 the clerk of court.

11 (2) The owner transfers his firearms to another person and all of the
12 following apply:

13 (a) The owner and the third party to whom the owner is transferring the
14 firearms appear at the hearing ordering the transfer of firearms.

15 (b) At the hearing, the court determines that the third party receiving the
16 firearms is not prohibited from possessing a firearm.

17 (c) The court informs the third party to whom firearms are transferred
18 of the requirements and penalties under state and federal laws.

19 F.(1) Unless the court dismisses the hearing to transfer firearms, the
20 court shall serve notice on the owner of the firearm of the time and place of the
21 transfer hearing in order that the owner of the firearm shall attend the hearing
22 to transfer firearms.

23 (2) If the owner fails to attend the hearing to transfer firearms after
24 being served with notice of the time and place of the hearing, the court may
25 order that the weapon be transferred to law enforcement agency and order the
26 sheriff to seize the weapon.

27 G. At the hearing, if the owner claims to have transferred his firearms
28 to the law enforcement officer in accordance with the provisions of this Title,
29 the court shall verify that the respondent has transferred all such firearms.

1 H. If the owner has not transferred his firearms in accordance with the
2 provisions of this Title, the court shall order him to transfer any firearms that
3 the court finds he owns or possesses to the law enforcement officer as authorized
4 by the provisions of this Title. If the person has not provided to the court, within
5 forty-eight hours of the hearing to transfer firearms, a receipt confirming the
6 transfer of all of the firearms that were subject to the order, the court shall
7 presume the respondent is violating the order and may do either of the
8 following:

9 (1) Notify the law enforcement officer of the violation for investigation
10 and appropriate action.

11 (2) Issue a warrant to the sheriff ordering that the respondent be
12 brought before the court to show cause why the respondent should not be held
13 in contempt.

14 I. If the person states that he does not possess a firearm, and the court,
15 after an inquiry, is satisfied that the respondent does not possess a firearm, the
16 court shall dismiss the order of transfer of firearms.

17 Art. 1007. Designated law enforcement agency duties

18 A. Any firearm transferred under the provisions of this Title shall be
19 inventoried and retained, with due care to preserve its quality and function, by
20 the designated law enforcement agency, and must be returned to the person
21 upon dismissal of the protective order or a finding pursuant to a rule to show
22 cause that a protective order not be issued upon the person's acquittal, when
23 charges are dismissed, or if no charges are filed unless otherwise prohibited by
24 federal or state law.

25 B. When a person transfers a firearm pursuant to the provisions of this
26 Title to a law enforcement officer employed by the designated law enforcement
27 agency, the officer shall prepare a receipt for each firearm transferred to him.
28 The receipt shall include the date on which the firearm was transferred and the
29 manufacturer, model, and serial number of the firearm transferred to the

1 sheriff and shall be signed by the respondent and by the law enforcement officer
2 to whom the firearm is transferred.

3 C. The designated law enforcement agency shall maintain possession of
4 the firearms until the court issues an order directing that the firearms be
5 relinquished and specifying the person to whom the firearms will be
6 relinquished.

7 D. Upon expiration of the Uniform Abuse Prevention Order, or
8 completion of any sentence, if the court has not previously ordered the firearm
9 be relinquished to another party and if the owner may lawfully possess the
10 transferred firearm, the law enforcement agency shall return the transferred
11 firearm to the owner.

12 Art. 1008. Transfer of firearms; exception for antique firearms

13 A. The provisions of this Title providing for the transfer of firearms shall
14 not include the transfer or seizure of antique firearms.

15 B. For the purposes of this Article, "antique firearm" means a firearm
16 or replica of a firearm not designed or redesigned for using rim fire or
17 conventional center fire ignition with fixed ammunition and manufactured in
18 or before 1898, including any matchlock, flintlock, percussion cap, or similar
19 type of ignition system and also any firearm using fixed ammunition
20 manufactured in or before 1898, for which ammunition is no longer
21 manufactured in the United States and is not readily available in the ordinary
22 channels of commercial trade.

23 Art. 1009. Procedures for storage and return of firearms

24 A. All designated law enforcement agencies shall develop policies and
25 procedures by January 1, 2017, regarding the acceptance, storage, and return
26 of firearms transferred pursuant to the provisions of this Title.

27 B. By January 1, 2017, the Louisiana Judicial Administrator's Office
28 shall develop a proof of transfer and receipt pattern form to be used to
29 document that a respondent has complied with a requirement to transfer

firearms and his concealed carry permit as ordered by a court. The office shall also develop a declaration of transfer pattern form to document compliance when the respondent has no firearms or a concealed carry permit.

C. Should the court order the return of a firearm to the owner, the law enforcement agency shall have forty-eight hours to return the firearm.

§1010. Law enforcement option to participate

Any law enforcement agency in the state may elect not to participate in the holding of court-ordered transferred firearms. If the law enforcement agencies in a judicial district choose not to participate in the storage of firearms which are transferred pursuant to this Title, the court shall determine an appropriate repository for the firearms and order the firearms be maintained until the court orders their return.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 304 Original

2016 Regular Session

Riser

Proposed law provides for the "Domestic Violence Prevention and Lawful Transfer of Firearms Act".

Proposed law provides for definitions as follows:

- (1) "Designated law enforcement agency" means the Department of Public Safety and Corrections, office of state police, the sheriff of any parish, or the police department of any municipality selected by the court to be the agency to receive transferred firearms pursuant to the provisions of proposed law.
- (2) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, or assault rifle, which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.
- (3) "Third party" means a citizen of the United States who has not had their right to keep or bear arms terminated by a court.

Proposed law provides that any victim on whose behalf the court has issued a permanent injunction or a protective order pursuant to a court-approved consent agreement in cases of domestic violence in order to bring about the cessation of abuse shall be authorized to carry a concealed handgun without a permit if the person is 21 years of age or older, has a credible threat to the victim's safety, and is not prohibited from purchasing or possessing a firearm under state or federal law.

Proposed law further provides that the victim is authorized to carry a concealed handgun without a permit for a period of 90 days after the permanent injunction or the protective order is issued or upon the expiration of the injunction or order, whichever is greater.

Proposed law provides that during the period provided for which the victim is under the protection of a permanent injunction or protective order and the victim applies for a concealed handgun permit, the victim shall be authorized to continue to carry a concealed handgun without a permit pending final action regarding the issuance of the permit.

Proposed law provides that the victim upon whose behalf the court has issued the permanent injunction or protective order shall have the order in their possession at all times while they are carrying the concealed handgun.

Proposed law provides that failure to carry the protective order at all times the victim is carrying the concealed handgun shall be subject to a civil penalty not to exceed \$500.

Proposed law provides that any victim who is qualified to carry a firearm without a permit pursuant to proposed law may object to the transfer of firearms which are provided for in proposed law by claiming title to any transferred firearm. Proposed law further provides that, if an objection is made, the court shall order a firearm transfer hearing as provided for in proposed law. If the court determines that the victim is qualified to carry a firearm without a permit pursuant to proposed law and that the victim has title to any firearm required to be transferred pursuant to proposed law, then the court shall order that the firearm be transferred to the person who is qualified to carry a firearm without a permit pursuant to proposed law.

Proposed law provides that, upon a conviction of an offense or court order issued against a person, a judge shall order the transfer of all firearms pursuant to the provisions of proposed law which is owned or possessed by any person who is prohibited from possessing a firearm pursuant to the laws of this state by reason of any of the following:

- (1) Any person convicted of domestic abuse battery (R.S. 14:35.3).
- (2) Any person convicted of possession of a firearm or carrying a concealed weapon by a person convicted of domestic abuse battery (R.S. 14:95.10).
- (3) Any person against whom the court has issued a permanent injunction or a protective order pursuant to a court-approved consent agreement or pursuant to the provisions of domestic violence or family violence shall be prohibited from possessing a firearm for the duration of the injunction or protective order.
- (4) Any person prohibited from possessing a firearm pursuant to a Uniform Abuse Prevention Order.

Proposed law provides that the order transferring the firearms shall be issued at time of conviction or at the same time the court prohibits the person from possessing a firearm.

Proposed law provides that the order to transfer firearms shall inform the person subject to the order that he is prohibited from possessing a firearm pursuant to the provisions of 18 U.S.C. 922(g)(8) and the relevant provisions of Louisiana law.

Proposed law provides that the court shall also order that if the defendant possesses a concealed handgun permit, the permit shall be suspended.

Proposed law provides that the court may designate the law enforcement agency within the judicial district of the court to serve as the agency to retain firearms transferred by the provisions of proposed law. Proposed law further provides that, if the law enforcement agency elects not to be the repository of transferred firearms, the court shall designate another law enforcement agency to retain firearms transferred by the provisions of proposed law.

Proposed law provides that the owner of a firearm who has been ordered to transfer all

firearms in his possession shall transfer those firearms immediately but not later than 48 hours of the issuance of the order to either of the following as ordered by the court:

- (1) To the designated law enforcement agency as provided for in proposed law.
- (2) A third party, as provided for in proposed law.

Proposed law provides that, if the offender is incarcerated at the time the order is issued, he shall transfer his firearms immediately but not later than 48 hours of release from incarceration.

Proposed law provides that the owner of the firearm ordered by the court to transfer his firearms may request that the court approve a third party other than the designated law enforcement agency to receive and hold the firearms. Proposed law further provides that if the owner of the firearm requests that a third party receive and hold the firearms, the court shall schedule a firearms transfer hearing within a week of issuing the order directing the person to transfer his firearms.

Proposed law provides that the court may schedule a firearms transfer hearing for any reason the court deems relevant to the transfer of firearms. Proposed law further provides that the court shall consider all relevant factors and any input from the petitioner in determining whether to approve the transfer of firearms.

Proposed law provides that the court shall dismiss the hearing to transfer firearms if the respondent transfers his firearms in one of the following manners:

- (1) The owner transfers his firearms to the law enforcement officer as ordered by the court immediately but not later than 48 hours after the hearing ordering the person to transfer his firearms and provides a copy of the receipt to the clerk of court. If the offender is incarcerated at the time the order is issued, he shall transfer his firearms immediately, but not later than 48 hours of release from incarceration and provide a copy of the receipt to the clerk of court.
- (2) The owner transfers his firearms to another person and all of the following apply:
 - (a) The owner and the third party to whom the owner is transferring the firearms appear at the hearing ordering the transfer of firearms.
 - (b) At the hearing, the court determines that the third party receiving the firearms is not prohibited from possessing a firearm.
 - (c) The court informs the third party to whom firearms are transferred of the requirements and penalties under state and federal laws.

Proposed law provides that, unless the court dismisses the hearing to transfer firearms, the court shall serve notice on the owner of the firearm of the time and place of the transfer hearing in order that the owner of the firearm shall attend the hearing to transfer firearms. Proposed law further provides that, if the owner fails to attend the hearing to transfer firearms after being served with notice of the time and place of the hearing, the court may order that the weapon be transferred to law enforcement agency and order the sheriff to seize the weapon.

Proposed law provides that, at the hearing, if the owner claims to have transferred his firearms to the law enforcement officer in accordance with the provisions of proposed law, the court shall verify that the respondent has transferred all such firearms.

Proposed law provides that if the owner has not transferred his firearms in accordance with the provisions of proposed law, the court shall order him to transfer any firearms that the

court finds he owns or possesses to the law enforcement officer as authorized by the provisions of proposed law. If the person has not provided to the court, within 48 hours of the hearing to transfer firearms, a receipt confirming the transfer of all of the firearms that were subject to the order, the court shall presume the respondent is violating the order and may do either of the following:

- (1) Notify the law enforcement officer of the violation for investigation and appropriate action.
- (2) Issue a warrant to the sheriff ordering that the respondent be brought before the court to show cause why the respondent should not be held in contempt.

Proposed law provides that, if the person states that he does not possess a firearm, and the court, after an inquiry, is satisfied that the respondent does not possess a firearm, the court shall dismiss the order of transfer of firearms.

Proposed law provides that any firearm transferred under proposed law shall be inventoried and retained, with due care to preserve its quality and function, by the designated law enforcement agency, and must be returned to the person upon dismissal of the protective order or a finding pursuant to a rule to show cause that a protective order not be issued upon the person's acquittal, when charges are dismissed, or if no charges are filed unless otherwise prohibited by federal or state law.

Proposed law provides that when a person transfers a firearm pursuant to the provisions of proposed law to a law enforcement officer employed by the designated law enforcement agency, the officer shall prepare a receipt for each firearm transferred to him. Proposed law further provides that the receipt shall include the date on which the firearm was transferred and the manufacturer, model, and serial number of the firearm transferred to the sheriff and shall be signed by the respondent and by the law enforcement officer to whom the firearm is transferred.

Proposed law provides that the designated law enforcement agency shall maintain possession of the firearms until the court issues an order directing that the firearms be relinquished and specifying the person to whom the firearms will be relinquished.

Proposed law provides that, upon expiration of the Uniform Abuse Prevention Order, or completion of any sentence, if the court has not previously ordered the firearm be relinquished to another party and if the owner may lawfully possess the transferred firearm, the law enforcement agency shall return the transferred firearm to the owner.

Proposed law provides that the provisions of proposed law provides that the transfer of firearms shall not include the transfer or seizure of antique firearms.

Proposed law provides that "antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Proposed law provides for procedures for the storage and return of firearms.

Proposed law provides that all designated law enforcement agencies shall develop policies and procedures by Jan. 1, 2017, regarding the acceptance, storage, and return of firearms transferred pursuant to proposed law.

Proposed law provides that, by Jan. 1, 2017, the Louisiana Judicial Administrator's Office

shall develop a proof of transfer and receipt pattern form to be used to document that a respondent has complied with a requirement to transfer firearms and his concealed carry permit as ordered by a court. Proposed law further provides that the office shall also develop a declaration of transfer pattern form to document compliance when the respondent has no firearms or a concealed carry permit.

Proposed law provides that, should the court order the return of a firearm to the owner, the law enforcement agency shall have 48 hours to return the firearm.

Proposed law provides that any law enforcement agency in the state may elect not to participate in the holding of court-ordered transferred firearms. If the law enforcement agencies in a judicial district choose not to participate in the storage of firearms which are transferred pursuant to proposed law, the court shall determine an appropriate repository for the firearms and order the firearms be maintained until the court orders their return.

Effective August 1, 2016.

(Adds C.Cr.P. Art. 1001 - 1010)