

SENATE BILL 314

By Black

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3, Part 6; Title 39, Chapter 13, Part 1 and Title 39, Chapter 17, Part 13, relative to domestic abuse, stalking, sexual assault and firearms.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-3-604, is amended by deleting the section in its entirety, including all forms, and substituting the following

(a)

(1) The office of the clerk of court shall provide forms that may be necessary to seek a protection order under this part. These forms shall be limited to use in causes filed under this part and they shall be made available to all who request assistance in filing a petition. The clerk may obtain the most current forms by printing them from the web site of the administrative office of the courts.

(2) The petitioner is not limited to the use of these forms and may present to the court any legally sufficient petition in whatever form. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other such assistance as is necessary for the filing of the petition. All such petitions that are filed pro se shall be liberally construed in favor of the petitioner.

(b) The administrative office of the courts, in consultation with the domestic violence coordinating council, shall develop a "petition for orders of protection" form, an "amended order of protection" form, an "ex parte order of protection" form and such

other forms as are found to be necessary and advisable. These forms shall be revised as the laws relative to orders of protection and ex parte orders of protection are amended by the general assembly. To the extent possible, the forms shall be uniform with those promulgated by surrounding states so that Tennessee forms may be afforded full faith and credit.

(c) These forms shall be used exclusively in all courts exercising jurisdiction over orders of protection.

(d) The administrative office of the courts shall revise the petition for an order of protection form to advise the respondent of the provisions of this act in language substantially similar to the following:

(1) If the order is granted, the respondent is required to surrender all firearms that the respondent owns, possesses or has control over to the sheriff or a local law enforcement agency in the county in which the respondent lives within twenty-four (24) hours of the granting of the order;

(2) The respondent is required to bring to the hearing on the order of protection a written description of all firearms the respondent owns, possesses or has control over, including the make, model, manufacturer and serial number of each such firearm; and

(3) It is a criminal offense for a person subject to an order of protection, to possess, own, carry, receive or purchase a firearm while that order is in effect.

SECTION 2. Tennessee Code Annotated, Section 36-3-606, is amended by adding the following new subsection (g):

(g) An order of protection issued pursuant to this part shall contain a provision:

(1) Stating that it is a criminal offense and a violation of an order of protection to own, possess, transport, carry or receive a firearm during the time

an order of protection granted under this part to protect the petitioner from domestic abuse, stalking or sexual assault is in effect; and

(2) Directing the respondent to surrender all firearms that the respondent owns, possesses or has control over pursuant to the procedure set out in § 36-3-625 and stating that it is a criminal offense to fail to surrender all firearms after being ordered to do so.

SECTION 3. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following new section:

Section 36-3-625.

(a) If the order of protection is granted, the respondent shall provide the judge with a written description of the make, model, manufacturer and serial number of each firearm the respondent owns, possesses or has control over as stated in the petition for an order of protection served on the respondent and this information shall be made a part of the court's order.

(b) Upon issuance of the order of protection, the court shall inform the respondent and the petitioner of the terms of the firearm surrender and include the terms on the face of the order, including that the respondent is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the order of protection or any successive order of protection is in effect. The terms of the order shall include instructions as to how the respondent may request retrieval of any firearms surrendered to the sheriff or local law enforcement officials when the order of protection is no longer in effect. The terms shall also include notice of the penalty for any violation of this section and § 39-17-1307(d).

(c) The court shall then order the respondent to immediately surrender the firearms in the respondent's custody, possession, or control to the sheriff or local law enforcement agency in the county where the respondent resides within twenty-four (24) hours of entry of the order.

(d) Upon issuance of the order of protection, its provisions and date and time of issuance shall be transmitted to the sheriff and all local law enforcement agencies in the county where the respondent resides.

(e)

(1) If the respondent surrenders the firearms as required by this section within twenty-four (24) hours the sheriff or law enforcement official to whom they are surrendered shall notify the court of the date and time the firearms were surrendered and shall provide the respondent with a signed and dated written receipt which shall include a description of each firearm indicating the make, model, manufacturer and serial number of each firearm, and the condition of each firearm.

(2) The sheriff or local law enforcement agency may charge the respondent a reasonable fee for the storage of any firearms received pursuant to this section. The fees are payable directly to the sheriff or local law enforcement agency for the purpose of administering this section and for other law enforcement purposes. The respondent must remit all fees owed prior to the authorized return of any firearms.

(3) The surrendered firearms shall be stored in a location that is safe and will preserve the condition of the firearms. However, the sheriff or law enforcement officer to whom the firearms are surrendered shall not

incur any civil or criminal liability for alleged or actual damage or deterioration due to storage or transportation of the firearms.

(f) If the respondent fails to surrender all firearms to the sheriff or law enforcement agency where the respondent resides within twenty-four (24) hours as ordered required by the order of protection, the sheriff or law enforcement agency shall so notify the court of the respondent's failure to timely surrender firearms.

(g)

(1) Upon being notified by the sheriff or law enforcement agency that the respondent has failed to surrender all firearms within the required twenty-four hour time period, the court shall summons the respondent to appear in court to show cause why the respondent should not be charged with a violation of this section. The show cause hearing on such summons shall be scheduled as soon as possible after issuance but in no event no later than seventy-two (72) hours after the summons is issued.

(2) Following the hearing, if the court finds probable cause to believe that the respondent knowingly failed to surrender firearms as ordered, the court shall issue a warrant for the arrest of the respondent for a violation of this section.

(h) A respondent may request the return of any firearms surrendered in the following manner:

(1) The respondent may petition the court not later than sixty (60) days after the expiration of the order of protection or restraining order resulting in the surrender. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the respondent who shall

have the right to appear and be heard and to the sheriff or local law enforcement agency who has control of the firearms.

(2) At the hearing, the court shall determine:

(A) Whether the respondent is subject to any state or federal law or court order that precludes the respondent from owning or possessing a firearm;

(B) Whether the order of protection resulting in the surrender has been renewed;

(C) Whether the respondent is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. 922, § 39-17-1307 or § 39-13-113; and

(D) Whether the respondent has failed to remit fees owed for storage of the firearm.

(3) The court shall deny the petition for the return of the respondents firearms if the court finds that the respondent:

(A) Is precluded from owning or possessing a firearm pursuant to state or federal law; or

(B) Has failed to remit fees owed for the storage of the firearms.

(i) A third-party owner of firearms surrendered pursuant to this section who is otherwise eligible to possess such items may petition the court requesting the return to the third party of any firearms in the possession of the sheriff or law enforcement agency that were surrendered or seized as a result of the order of protection.

(1) The petition must be filed not later than sixty (60) days after the surrender or seizure of the items claimed to belong to the third party. Upon receipt of the third party's petition, the court shall schedule a hearing and provide written notice to all parties and the sheriff or law enforcement agency in possession of the firearm.

(2) Upon a proper showing by the third party of ownership of the firearms, the court shall order return of the firearms to the third party unless the court determines that the third party is disqualified from owning or possessing the firearms under state or federal law. If the court denies the return of the firearms to the third party, the items shall be disposed of in accordance with subsection (j).

(3) The third-party owner is responsible to the storing sheriff or law enforcement agency for any storage fees owed to the sheriff or local law enforcement agency for the storage of the firearms.

(j)

(1) After notice to the respondent and any third party claiming an interest in the firearms, and a hearing conducted on the appropriate disposition of the stored firearms, the court may order the sheriff or local law enforcement agency storing the firearms to dispose of them as provided in § 39-17-1317, if:

(A) The respondent or a third party does not file a petition requesting the return of the firearms;

(B) The court determines the respondent is precluded from regaining possession of the firearms; or

(C) The respondent or third-party owner fails to remit all fees owed for the storage of the firearms within thirty (30) days of the entry of the order granting the return of the firearms.

(2) If the court orders that the firearms are to be sold as provided in § 39-17-1317, any proceeds derived from the sale shall be distributed in accordance with § 39-17-1317(c)(2).

(k)

(1) It is an offense for a person subject to an order of protection to knowingly:

(A) Fail to surrender all firearms owned, possessed or that the respondent has control over to the sheriff or local law enforcement agency as required by this section; or

(B) Fail to disclose all information or provide false information pertaining to any firearm owned, possessed or that the respondent has control over as required by this section or requested by the court.

(2) A violation of subdivision (k)(1) is a Class A misdemeanor and each violation shall be considered a separate offense.

(3) If the violation of subdivision (k)(1) also constitutes a violation of § 39-13-113(h) or § 39-17-1307(e), the respondent may be charged and convicted under any or all such sections.

(l) This section shall not be construed to prohibit a law enforcement officer or member of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only, if permitted by 18 U.S.C. § 925.

SECTION 4. Tennessee Code Annotated, Section 39-13-111, is amended by adding the following new subdivision (c)(3):

(3) A person convicted of a violation of this section shall be required to surrender, upon conviction, all firearms that the person owns, possesses or has control over pursuant to the procedure set out in § 36-3-625. However, a person convicted under this section shall not be eligible to petition for the return of any firearm surrendered under § 36-3-625(h).

SECTION 5. Tennessee Code Annotated, Section 39-13-113, is amended by adding the following as a new subsection (h):

(h)

(1) It is an offense and a violation of an order of protection for a person to knowingly own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm while an order of protection or any successive order of protection containing the language of § 36-3-606(g) entered against that person is in effect.

(2) A violation of this subsection (h) is a Class A misdemeanor and each violation constitutes a separate offense.

(3) If a violation of subsection (h) also constitutes a violation of § 36-3-625(k), or § 39-17-1307(e), the respondent may be charged and convicted under any or all such sections.

SECTION 6. Tennessee Code Annotated, Section 39-17-1307, is amended by adding the following new subsection (e):

(e)

(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106(a), and:

(A) Has been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921;

(B) Is subject to an order of protection and is prohibited from possessing a firearm under the provisions of 18 U.S.C. § 922, or § 36-3-606(g); or

(C) Is prohibited from owning, carrying, possessing, receiving, or purchasing a firearm under any other provision of state or federal law.

(2) A violation of subdivision (e)(1) is a Class A misdemeanor and each violation constitutes a separate offense.

(3) If a violation of subdivision (e)(1) also constitutes a violation of § 36-3-625(k) or § 39-13-113(h), the respondent may be charged and convicted under any or all such sections.

SECTION 7. Tennessee Code Annotated, Section 39-17-1352, is amended by adding the following new subdivisions to subsection (a):

() Has been convicted of domestic assault as defined in § 39-13-111, or any other misdemeanor crime of domestic violence;

() Is subject to a current order of protection.

SECTION 8. This act shall take effect July 1, 2009, the public welfare requiring it.