

2022 Regular Session

HOUSE BILL NO. 464

BY REPRESENTATIVE SEABAUGH

WEAPONS/FIREARMS: Provides relative to the transfer of firearms

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 1002(A)(2) and R.S.
3 46:2136.3(A), relative to the transfer of firearms; to provide for a burden of proof;
4 to provide for evidentiary standards; to provide for due process; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Article 1002(A)(2) is hereby amended and
8 reenacted to read as follows:

9 Art. 1002. Transfer of firearms

10 A.

11 * * *

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

16 (a) The issuance of a permanent injunction or a protective order pursuant to
17 a court-approved consent agreement or pursuant to the provisions of R.S. 9:361 et
18 seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code Article 1570, Code
19 of Civil Procedure Article 3607.1, or Articles 30, 320, or 871.1 of this Code: that
20 meets the standards of proof and due process set forth in R.S. 46:2136.3.

1 (b) The issuance of a Uniform Abuse Prevention Order that includes terms
2 that prohibit the person from possessing a firearm or carrying a concealed weapon:
3 that meets the standards of proof and due process set forth in R.S. 46:2136.3.

4 * * *

5 Section 2. R.S. 46:2136.3(A) is hereby amended and reenacted to read as follows:
6 §2136.3. Prohibition on the possession of firearms by a person against whom a
7 protective order is issued

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

15 (1) The permanent injunction or protective order includes a finding by clear
16 and convincing evidence that the person subject to the permanent injunction or
17 protective order represents a credible threat to the physical safety of a family
18 member, household member, or dating partner.

19 * * *

20 (3) The permanent injunction or protective order was issued either after a
21 consent agreement between the parties or after reasonable notice and opportunity to
22 be heard was given to the person against whom the order was sought sufficient to
23 protect that person's right to due process.

24 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 464 Original

2022 Regular Session

Seabaugh

Abstract: Establishes evidentiary and due process standards for permanent injunctions or protective orders that affect firearm transfers.

Present law (C.Cr.P. Art. 1002) provides that a judge shall order the transfer of all firearms and the suspension of a concealed handgun permit of a person when a person has any of the following:

- (1) A conviction of domestic abuse battery (R.S. 14:35.3).
- (2) A second or subsequent conviction of battery of a dating partner (R.S. 14:34.9).
- (3) A conviction of battery of a dating partner that involves strangulation (R.S. 14:34.9(K)).
- (4) A conviction of battery of a dating partner when the offense involves burning (R.S. 14:34.9(L)).
- (5) A conviction of possession of a firearm or carrying a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner (R.S. 14:95.10).
- (6) A conviction of domestic abuse aggravated assault (R.S. 14:37.7).
- (7) A conviction of aggravated assault upon a dating partner (R.S. 14:34.9.1).
- (8) A conviction of any felony crime of violence enumerated or defined in R.S. 14:2(B), for which a person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1, and which has as an element of the crime that the victim was a family member, household member, or dating partner.
- (9) A conviction of any felony crime of violence enumerated or defined in R.S. 14:2(B), for which a person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1, and in which the victim of the crime was determined to be a family member, household member, or dating partner.

Proposed law retains present law.

Present law (C.Cr.P. Art. 1002) provides that a judge, upon issuance of an injunction or order, shall order the transfer of all firearms and the suspension of a concealed handgun permit of the person who is subject to the injunction or order under any of the following circumstances:

- (1) The issuance of a permanent injunction or a protective order pursuant to a court-approved consent agreement or pursuant to the provisions of present law (R.S. 9:361 et seq., 9:372), (R.S. 46:2136, 2151, or 2173), (Ch.C. Art. 1570), (C.C.P. Art. 3607.1), or (C.Cr.P. Arts. 30, 320, or 871.1)
- (2) The issuance of a Uniform Abuse Prevention Order that includes terms that prohibit the person from possessing a firearm or carrying a concealed weapon.

Proposed law amends present law to provide for standards of proof and due process in a permanent injunction, a protective order, or a Uniform Abuse Prevention Order.

Present law (R.S. 46:2136.3) prohibits the possession of firearms by persons with a protective order issued against them.

Present law provides that any person against whom the court has issued a permanent injunction or a protective order pursuant to a court-approved consent agreement shall be prohibited from possessing a firearm or carrying a concealed weapon for the duration of the injunction or protective order if both of the following occur:

- (1) The permanent injunction or protective order includes a finding that the person subject to the permanent injunction or protective order represents a credible threat to the physical safety of a family member, household member, or dating partner.
- (2) The permanent injunction or protective order informs the person subject to the permanent injunction or protective order that the person is prohibited from possessing a firearm pursuant to the provisions of federal law and present law.

Proposed law amends present law to establish a standard of clear and convincing evidence that the person subject to the permanent injunction or protective order represents a credible threat to the physical safety of a family member, household member, or dating partner.

Proposed law provides for an additional requirement involving notice, an opportunity to be heard, and due process that shall be considered in prohibiting a person from possessing a firearm or carrying a concealed weapon for the duration of the injunction or protective order.

(Amends C.Cr.P. Art. 1002(A)(2) and R.S. 46:2136.3(A))