

Regular Session, 2013

ACT No. 403

HOUSE BILL NO. 717 (Substitute for House Bill No. 21 by Representative Henry Burns)

BY REPRESENTATIVES HENRY BURNS, BADON, BROADWATER, BROWN, CARMODY, GREENE, HOFFMANN, IVEY, JONES, MORENO, JAY MORRIS, RICHARD, SCHRODER, SEABAUGH, THIBAUT, AND WHITNEY AND SENATOR THOMPSON

1 AN ACT

2 To amend and reenact R.S. 28:54(B) and R.S. 40:1379.3(C)(13) and to enact R.S. 13:752
3 and 753 and R.S. 28:57, relative to firearms; to require clerks of court to provide
4 certain information to the Louisiana Supreme Court; to provide for mandatory
5 reporting of convictions of certain offenses and judicial determinations which would
6 prohibit persons from possessing, shipping, transporting, or receiving firearms
7 pursuant to state and federal law; to provide relative to permits to carry a concealed
8 weapon; to provide procedures by which such information shall be reported to the
9 Louisiana Supreme Court and to the National Instant Criminal Background Check
10 System database; to provide procedures by which certain persons may file a civil
11 petition seeking adjudicated restoration of certain rights relative to the possession
12 and carrying of certain firearms; to provide procedures by which such petitions shall
13 be filed, heard, recorded, and reported to the Louisiana Supreme Court and to the
14 National Instant Criminal Background Check System; to provide for the effects of
15 judgments in such proceedings; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 13:752 and 753 are hereby enacted to read as follows:

18 §752. Legislative findings

19 (1) The Second Amendment of the United States Constitution provides that,
20 "[a] well regulated Militia, being necessary to the security of a free State, the right
21 of the people to keep and bear Arms, shall not be infringed".

1 (2) Article I, Section 11 of the Louisiana Constitution provides that "The
2 right of each citizen to keep and bear arms is fundamental and shall not be infringed.
3 Any restriction on this right shall be subject to strict scrutiny."

4 (3) Federal law (18 U.S.C. 922(g)) prohibits a person who has been
5 convicted of a crime punishable by imprisonment exceeding one year from
6 purchasing a firearm.

7 (4) Federal law (18 U.S.C. 922(g)) further prohibits any person who the
8 court has determined to have certain mental conditions from purchasing a firearm.

9 (5) Based upon the successful interfacing of state law enforcement agencies
10 with the Federal Bureau of Investigation criminal databases, information regarding
11 a person's criminal convictions is available at the point of sale.

12 (6) However, the reporting of judicial decisions which would, in effect,
13 prohibit a person from being eligible to purchase a firearm under federal law has not
14 been consistent nor has the information been uniformly reported to the Federal
15 Bureau of Investigation.

16 (7) The state of Louisiana has a compelling interest in protecting and
17 preserving the fundamental rights of its citizens to keep and bear arms while also
18 ensuring the timely reporting of information to the Federal Bureau of Investigation
19 regarding court decisions which would prohibit the purchase of a firearm.

20 (8) It is the express intention of the legislature that the provisions of this
21 Section and R.S. 13:753 are enacted to provide for the collection of information and
22 to facilitate the reporting of information which would prohibit the purchasing of
23 firearms while preserving the constitutional rights of Louisiana citizens to keep and
24 bear arms.

25 §753. Reporting of information to Louisiana Supreme Court for NICS database;
26 possession of a firearm

27 A. Each district clerk of court shall report to the Louisiana Supreme Court
28 for reporting to the National Instant Criminal Background Check System database
29 the name and other identifying information of any adult who is prohibited from
30 possessing a firearm pursuant to the laws of this state or 18 U.S.C. 922(d)(4) and

(g)(4), by reason of a conviction or adjudication in a court of that district for any of the following:

(1) A conviction of a crime listed in R.S. 14:95.1(A).

(2) A verdict of an acquittal of a crime listed in R.S. 14:95.1(A) by reason of insanity pursuant to the provisions of Chapter 2 of Title XXI of the Code of Criminal Procedure.

(3) A court determination that a person does not have the mental capacity to proceed with a criminal trial for a crime listed in R.S. 14:95.1(A) pursuant to the provisions of Chapter 1 of Title XXI of the Code of Criminal Procedure.

(4) A court order requiring that a person be involuntarily committed to an inpatient mental health treatment facility pursuant to R.S. 28:54.

(5) A court order prohibiting a person from possessing a firearm or restricting a person in the use of a firearm.

B. The report shall be submitted to the Louisiana Supreme Court, in the manner and form as directed by the Supreme Court, within ten business days of the date of conviction, adjudication, or order of involuntary commitment.

C. The Louisiana Supreme Court shall, within fifteen business days of receipt of the report, submit the information in the report to the National Instant Criminal Background Check System database.

D. Except in the case of willful or wanton misconduct or gross negligence, no district clerk of court shall be held civilly or criminally liable on the basis of the accuracy, availability, or unavailability of any information reported or required to be reported pursuant to this Section.

Section 2. R.S. 28:54(B) is hereby amended and reenacted and R.S. 28:57 is hereby enacted to read as follows:

§54. Judicial commitment; procedure

* * *

B.(1) The petition shall contain the facts which are the basis of the assertion and provide the respondent with adequate notice and knowledge relative to the nature of the proceedings.

1 (2)(a) In addition, the petition shall contain the following information
2 regarding the respondent:

3 (i) Name.

4 (ii) Date of birth.

5 (iii) Alias names, if any.

6 (iv) Social security number.

7 (v) Sex.

8 (vi) Race.

9 (b) If the petitioner is unable to provide any of the information listed in this
10 Subparagraph, the petitioner shall include in the petition the reasons why that
11 information cannot be provided.

12 * * *

13 §57. Petition for restoration of right to possess a firearm and to apply for permit for
14 concealed handgun; procedures

15 A. A person who is prohibited from possessing a firearm or is ineligible to
16 be issued a concealed handgun permit pursuant to the provisions of 18 U.S.C.
17 922(d)(4) and (g)(4) or of R.S. 40:1379.3(C)(13) because of an adjudication or
18 commitment that occurred under the laws of this state may, upon release from
19 involuntary commitment, file a civil petition seeking judgment ordering the removal
20 of that prohibition.

21 B. The petition for restoration shall be filed in the form of a rule to show
22 cause and shall be filed in the district in which the adjudication or order of
23 commitment occurred.

24 C. The hearing on the petition shall be a contradictory proceeding with the
25 attorney who represented the state in the original proceedings, or the attorney's
26 successor, who shall represent the interests of the state and be served with a copy of
27 the petition and citation to answer same not less than thirty days prior to the hearing.

28 D. The hearing shall be in chambers, unless the court determines that it is in
29 the best interest of the public that the hearing be in open court.

1 E. At the hearing, the court shall consider evidence concerning all of the
2 following:

3 (1) The circumstances which prohibit the person from possessing a firearm
4 or which render the person ineligible to receive a concealed handgun permit.

5 (2) The petitioner's mental health and criminal history records, if any.

6 (3) The petitioner's reputation, developed at a minimum through character
7 witness statements, testimony, or other character evidence.

8 (4) Changes in the petitioner's condition or circumstances since the original
9 adjudication or commitment relevant to the relief sought. If the court determines the
10 hearing should be open to the public, upon motion by the petitioner for restoration,
11 the court may allow for in camera inspection of any mental health records.

12 F. The court shall grant the relief requested if it finds, by a preponderance
13 of the evidence, that the petitioner's record and reputation are such that he will not
14 be likely to act in a manner dangerous to public safety and that the granting of the
15 relief requested would not be contrary to the public interest. A record of the
16 proceedings shall be maintained.

17 G. In the event of a closed hearing, the record of the proceedings shall
18 remain under seal and be disclosed only to an appellate court or the parties. The
19 district court order may be reviewed on appeal to the court of appeal under a *de novo*
20 standard of review. The appellate court shall maintain the confidentiality of the
21 records.

22 H. The petitioner for restoration in all cases shall pay the costs of the
23 proceedings.

24 I. After a judgment granting restoration of rights pursuant to the provisions
25 of this Section has become final and definitive, the clerk of court in the district where
26 the judgment was rendered shall, as soon as is practicable, but in no case later than
27 ten business days after receipt of the final and definitive judgment, forward a copy
28 of the judgment to the Louisiana Supreme Court. The Louisiana Supreme Court
29 shall, within fifteen business days after receipt of the judgment, revise the person's
30 record in any information database that the Louisiana Supreme Court makes

1 available to the National Instant Criminal Background Check System, and shall
2 notify the United States Attorney General for the purpose of reporting to the National
3 Instant Criminal Background Check System that the basis for the prohibitions
4 imposed by 18 U.S.C. 922(d)(4) and (g)(4) no longer applies.

5 Section 3. R.S. 40:1379.3(C)(13) is hereby amended and reenacted to read as
6 follows:

7 §1379.3. Statewide permits for concealed handguns; application procedures;
8 definitions

9 * * *

10 C. To qualify for a concealed handgun permit, a Louisiana resident shall:

11 * * *

12 (13) Not have been adjudicated to be mentally deficient or been committed
13 to a mental institution, unless the resident's right to possess a firearm has been
14 restored pursuant to R.S. 28:57.

15 * * *

16 Section 4. This Act shall become effective on January 1, 2014.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____