

SUBJECT: Restricting confiscation of firearms and ammunition in state of emergency

COMMITTEE: Defense Affairs and State-Federal Relations — committee substitute recommended

VOTE: 8 ayes — Corte, Escobar, Noriega, Herrero, Hodge, Merritt, Moreno, Raymond

0 nays

1 absent — Garcia

WITNESSES: For — Alice Tripp, Texas State Rifle Association; (*Registered, but did not testify*: Cris Andersen, San Antonio Police Officers' Association; Laura Andersen, San Antonio Police Department; W.M. “Bill” Elkin, Houston Police Retired Officers Association)

Against — None

BACKGROUND: Government Code, sec. 418.003 specifies types of activities that are not limited under emergency management powers granted by the Texas Disaster Act of 1975. These include the governor's ability to seek and spend aid to prepare or respond to a disaster, the duties and jurisdiction of local law enforcement entities, and the authority of the governor to declare martial law and use other powers afforded by law.

Government Code, sec. 433.001 allows the governor to declare a state of emergency and designate affected areas due to a natural or man-made disaster, a clear and present danger of violence, and/or a riot or unlawful assembly of at least three people using force or violence.

Government Code, sec. 433.002 allows the governor to issue directives to protect life and property under a state of emergency. Among the issues that may be covered under a directive are the establishment of a curfew and the control of transportation, movement of people, and sale, use and transportation of alcohol, weapons and ammunition.

Local Government Code, sec. 229.001 prohibits a municipality from regulating transfer, ownership, transportation, and licensing of firearms,

ammunition, and related supplies. It specifies that the prohibition does not extend to the municipality's authority to regulate use of firearms in the event of a riot or natural disaster to protect public health and safety.

DIGEST:

CSHB 258 would create Government Code, sec. 418.184 and Government Code, 433.0045 to allow an officer, under a state of emergency, to disarm an individual if the officer reasonably believed it was immediately necessary to protect the safety of the officer or other individuals. The officer would be required to return any firearms or ammunition seized or confiscated unless the officer arrested the person for criminal activity or the weapons were to be used as evidence in a criminal investigation.

The bill also would amend Local Government Code, sec. 229.001 to prohibit a municipality in a riot or natural disaster from seizing or confiscating firearms and ammunition that were carried lawfully.

The bill would amend Government Code, secs. 418.003 and 433.002 to apply the new provisions regarding weapon confiscation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 258 would protect citizens' rights during a state of disaster by requiring police officers to ensure someone was a real threat before impounding that person's weapon. An officer still could disarm a suspect, but simply would have to determine whether the person had violated a law before taking the person's weapon. The bill also would not prohibit police from securing firearms abandoned in businesses or homes because it only would prohibit confiscating weapons from individuals.

Law-abiding citizens should not be needlessly stripped of their rights during a time of emergency, which is when they most need the right to bear arms guaranteed under the Second Amendment. With police resources stretched thin, people should have the right and ability to protect themselves.

The response of law enforcement in New Orleans after Hurricane Katrina demonstrated what can happen when government goes too far in violating people's fundamental rights. After Hurricane Katrina, the New Orleans Police Department superintendent announced that he would be taking

weapons of citizens, an activity that was documented in calls and reports to the National Rifle Association (NRA). A federal judge approved an indefinite temporary restraining order sought by the NRA, ordering that gun seizures stop and weapons be returned to any law-abiding individual who could produce a receipt of sale and proper identification. After protracted negotiations with the city that prompted the NRA to file a motion of contempt against the city and top officials, city officials confirmed they had 700 confiscated weapons and agreed to establish procedures to return them to their owners. The most recent news reports documented that more than half of those weapons remain with the city.

Those who stayed in New Orleans in the aftermath of Hurricane Katrina needed their weapons to protect themselves against the lawlessness that ensued. They could not count on law enforcement for protection and wanted to protect their property and families. Instead, many saw their weapons confiscated without reason or compensation. The Louisiana Legislature recognized the problem and approved a bill prohibiting the seizure of weapons from law-abiding citizens during an emergency or disaster. CSHB 258 would use the language from the Louisiana legislation, which was the result of negotiations between advocates for the Second Amendment and Louisiana law enforcement. At least a dozen other states have passed similar legislation.

**OPPONENTS
SAY:**

This bill would strip the discretion of law enforcement in a state of emergency to determine how to keep the peace. By requiring an arrest or criminal investigation before an officer could seize a firearm, the bill would fail to recognize the scarce time and resources of law enforcement in a state of emergency or that violations of the law that would be subject to arrest under normal conditions would not be pursued in such dire circumstances. The bill is an overreaction to an extreme scenario and would hamstring the ability of law enforcement to prevent further chaos.

Arrests during states of emergency are rare because law enforcement is focused on saving lives and ensuring people reach safety. Time spent citing someone and bringing that offender to the police station for booking is time that could have been spent getting people to safety. Although not ideal – and few options are in a disaster – confiscating the weapon of a person who is using it to endanger people's safety or otherwise violate the law is often the best choice. In some circumstances, arresting an individual is impossible because of weather conditions. For example, in Orange County during Hurricane Rita, the jail was flooded. Under this bill, an

officer during that hurricane who witnessed a serious crime involving an armed offender would have had no recourse because there was no place to put the violator. Despite what happened in New Orleans, Texas has had no such comparable experience, and there is little reason to think officers would waste their time needlessly stripping people of their weapons in lieu of evacuation and rescue efforts.

Many rights and liberties granted to citizens under normal conditions are temporarily relinquished in an emergency. People are ordered to leave their property and evacuate their homes and are told the routes they must use. In these instances, individual rights sometimes are temporarily sacrificed for the collective good of the community. As evidenced during Hurricane Katrina, the burden on health and safety resources in rescuing and treating all those who stayed behind was massive. Police officers do their best to maintain the balance between individual rights and their duty to protect citizens. If they have reached a judgment that seizing a weapon would serve that goal, they should be able to do that in a time of emergency.

NOTES:

SB 112 by Carona, the companion to HB 258, passed the Senate by 30-0 on March 6 and was reported favorably, without amendment, by the House Defense Affairs and State-Federal Relations Committee on April 3, making it eligible to be considered in lieu of HB 258.

The original version of the bill would not have required a peace officer to return ammunition to a person detained when the officer did not arrest the person or the weapon was not evidence for an investigation. The committee substitute also added the new provisions regarding seizure and confiscation to Government Code Chapter 433, detailing the governor's powers under a state of emergency.