

# TEXAS HOUSE OF REPRESENTATIVES

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By Opinion Committee at 3:17 pm, Apr 14, 2020



**BRISCOE CAIN**  
District 128

**RQ-0346-KP**

**FILE# ML-48761-20**

**I.D.# 48761**

April 14, 2020

The Honorable Ken Paxton  
Office of the Attorney General  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, TX 78711-2548

***Re: Extension of driver's license expiration dates and its effect on firearm purchases.***

Dear General Paxton,

This letter is a formal request seeking your office's opinion on how the Governor's executive order extending the expiration date of a Texas driver's license that expired on or after March 13, 2020 affects a federally licensed firearm dealer in the transfer/sale of a firearm to a Texas resident who attempts to use a Texas driver's license that expired on or after March 13, 2020 in order to purchase a firearm.

## **BACKGROUND**

On March 18, 2020, Governor Abbott directed the Department of Public Safety (DPS) to temporarily waive expiration dates for Driver Licenses, Commercial Driver Licenses, and other identification forms.<sup>1</sup>

In response to the Governor's directive, DPS issued a press release on March 19, 2020, the relevant part of which provided that:

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<sup>1</sup> See Office of the Texas Governor, Press Release: Governor Abbott, DPS Waive Expiration Dates for Driver Licenses (March 18, 2020), <https://gov.texas.gov/news/post/governor-abbott-dps-waive-expiration-dates-for-driver-licenses>.



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### DRIVER LICENSE EXTENSION

In accordance with section 418.016 of the Texas Government Code, the Office of the Governor approved DPS' request to suspend provisions of the Texas Transportation Code to the extent necessary to delay the expiration of Texas DL/CDL/ID/EIC cards. ***This means that if your Texas DL/CDL/ID/EIC card expires on or after March 13, 2020, it falls under the period that encompasses the State of Disaster Declaration related to COVID-19 and will remain valid for 60 days after which time DPS issues public notice that the extension period for this disaster declaration has been lifted.***

***It's important to note that this extension applies to the expiration date only.*** A person who is not eligible to drive due to an active enforcement action (suspension, revocation or denial) may use the card for identity purposes only.

DPS is communicating with law enforcement agencies across the state to notify and inform them about the changes and what the extension means for their interactions with the public.<sup>2</sup>

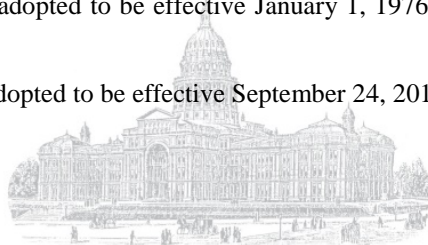
As to which code provisions have been suspended, upon inquiry my office was advised that the provisions related to expired driver licenses are contained in Chapter 37 of the Texas Administrative Code; specifically: 37 Tex. Admin. Code § 15.32 (Expiration Date on Expired License)<sup>3</sup> and 37 Tex. Admin. Code § 15.34 (Renewal Period Prior to Expiration).<sup>4</sup>

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<sup>2</sup> Tex. Dep't of Pub. Safety, *News Release: Driver License (DL) Expiration Dates Extended, DL Offices Closed in Light of COVID-19 Outbreak* (March 19, 2020), [https://www.dps.texas.gov/director\\_staff/media\\_and\\_communications/pr/2020/0319a](https://www.dps.texas.gov/director_staff/media_and_communications/pr/2020/0319a) (emphasis added).

<sup>3</sup> *N.b.*, the provisions of this § 15.32 adopted to be effective January 1, 1976; amended to be effective January 29, 1985, 10 TexReg 173.

<sup>4</sup> *N.b.*, the provisions of this § 15.34 adopted to be effective September 24, 2018, 43 TexReg 6334.



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### The Issue

I have heard from several Texas gun stores that are being prevented from selling firearms to Texas residents whose only form of government issued identification containing their name, date of birth, and photograph is driver license that expired on or since March 13, 2020. According to federal law, the seller/transferor must, in relevant part hereto, complete Section B of ATF Form 4473. Specifically, “after the transferee has executed ATF Form 4473, Firearm Transaction Record, the licensee shall verify the identity of the transferee by examining the identification document (as defined in [27 CFR] 478.11) presented and shall note on the Form 4473 the type of identification used.” *Hetherton v. Sears, Roebuck & Co.*, 445 F. Supp. 294, 299 n.11 (D. Del. 1978).

The issue comes with the seller’s ability to comply with the requirements of Section B of ATF Form 4473. Specifically with Question 18.a., which requires the seller to record the expiration date of the government identification document.

Below is an image of Question 18.a. as it appears on the form:<sup>5</sup>

18.a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 18.a.)				
Issuing Authority and Type of Identification	Number on Identification	Expiration Date of Identification (if any)		
		Month	Day	Year

The type of *identification* required to be used in completing Question 18.a. may be found in 27 CFR § 478.11 which defines the term “identification document” for purposes of federal regulations related to the commerce in firearms and ammunition.<sup>6</sup> In short, according to the ATF:

<sup>5</sup> A copy of ATF Form 4473 is available online at: <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009>

<sup>6</sup> 27 CFR § 478.11 (defining “Identification document” as “A document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United State Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.”); *see also Hetherton v. Sears, Roebuck & Co.*, 445 F. Supp. 294, 299 n.11 (D. Del. 1978) (“Before transferring the firearm described in the form, the licensee (1) shall cause the transferee to identify himself in any manner customarily used in commercial transactions, for example, a driver's license, and shall



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[T]he identification document presented by the transferee must have a photograph of the transferee, as well as the transferee's name, residence address, and date of birth. The identification document must also be valid (e.g., **unexpired**) and have been issued by a governmental entity for the purpose of identification of individuals. An example of an acceptable identification document is a current driver's license.

A combination of government issued documents may be used to meet the requirements of an identification document. For example, a passport which contains the name, date of birth, and photograph of the holder may be combined with a voter or vehicle registration card containing the residence address of the transferee in order to comply with the identification document requirements. A passport issued by a foreign government is also acceptable so long as it has all of the required information.<sup>7</sup>

Sellers must provide the identification document's expiration date, if any, in order to properly complete the form.<sup>8</sup> But, because driver licenses (and Texas identification cards, commercial DLs, and election identification certificates) that expired on or after March 13, 2020 have been extended for 60 days after DPS provides further public notice that normal Driver License operations have resumed, there is currently no exact date on which an identification document that fits this criteria *expires*. If this is so, I also ask for an opinion on whether Question 18.a. of ATF Form 4473 could be properly completed, if for example, 60 days were added to the expiration date printed on the face of the identification document?<sup>9</sup> Or, considering that the Form reads: "Expiration Date of

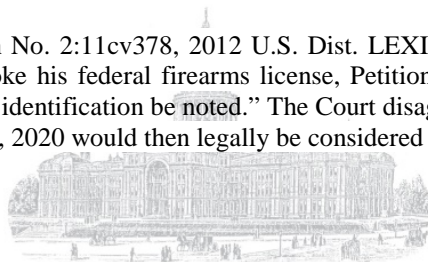
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note on the form the method used, and (2) if satisfied that the transferee is lawfully entitled to receive the firearm, shall sign and date the form.").

<sup>7</sup> See Bureau of Alcohol, Tobacco, Firearms and Explosives, *What form of identification must a licensee obtain from a transferee of a firearm?*, <https://www.atf.gov/firearms/qa/what-form-identification-must-licensee-obtain-transferee-firearm> (emphasis added).

<sup>8</sup> See *Gladden v. Bangs*, Civil Action No. 2:11cv378, 2012 U.S. Dist. LEXIS 23304, at \*6-7 (E.D. Va. 2012) (In appealing the ATF's decision to revoke his federal firearms license, Petitioner claimed that "Form 4473 does not require that the expiration date for the identification be noted." The Court disagreed.).

<sup>9</sup> E.g., a license that expired March 13, 2020 would then legally be considered to expire on May 12, 2020.



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Identification (if any),” whether a driver license could, for the time being, be legally treated as having no expiration date and thus a seller may be able to comply with the Form’s “if any” expiration date language?

## Request

The directive from Governor Greg Abbott is clear that identification cards provided by the State of Texas are valid until 60 days after DPS issues public notice that the extension period for this disaster declaration has been lifted.<sup>10</sup> However, there is a problem—one that affects firearm merchants and more importantly prevents many Texans from exercising their constitutional right to purchase firearms. How can a Texan whose only form of government issued identification containing their name, date of birth, and photograph is a driver license that expired on or after March 13, 2020, purchase a firearm from a seller required to use ATF form 4473?

I ask that your office give an opinion on what if anything the State of Texas can do to cure the issues presented herein.

I respectfully ask that you treat this opinion request as an expedited request as it is an issue that prevents many Texans from exercising a constitutional right.

Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "B. Cain".

Briscoe Cain

State Representative, Texas House District 128

Chairman, Select Committee on Driver's License Issuance & Renewal

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<sup>10</sup> See supra note 1.

