

By: Stickland

H.B. No. 375

A BILL TO BE ENTITLED

AN ACT

relating to providing for the carrying of handguns without a license and to related offenses and penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Texas Constitutional Carry Act of 2017.

SECTION 2. Section 46.02, Penal Code, is amended by amending Subsection (a) to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person an an [~~handgun~~₇] illegal knife[₇] or club if the person is not:

(1) on the person's own premises or premises under the

person's control; or

(2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

SECTION 3. Section 46.03, Penal Code, is amended by amending Subsections (e-1) and (e-2) to read as follows:

(e-1) It is a defense to prosecution under Subsection (a) (5) that the actor:

(1) possessed, at the screening checkpoint for the secured area, a concealed handgun that the actor was not otherwise prohibited by law from possessing [~~licensed to carry under Subchapter H, Chapter 411, Government Code~~]; and

(2) exited the screening checkpoint for the secured area immediately upon completion of the required screening processes and notification that the actor possessed the handgun.

(e-2) A peace officer investigating conduct that may constitute an offense under Subsection (a)(5) and that consists only of an actor's possession of a concealed handgun that the actor was not otherwise prohibited by law from possessing [~~is licensed to carry under Subchapter H, Chapter 411, Government Code~~], may not arrest the actor for the offense unless:

(1) the officer advises the actor of the defense available under Subsection (e-1) and gives the actor an opportunity to exit the screening checkpoint for the secured area; and

(2) the actor does not immediately exit the checkpoint upon completion of the required screening processes.

SECTION 4. The heading to Section 46.035, Penal Code, is amended to read as follows:

Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN [~~BY LICENSE~~
HOLDER].

SECTION 5. Section 46.035, Penal Code, is amended by amending Subsections (a), (a-2), (a-3), (b), and (f) to read as follows:

(a) A person [~~license holder~~] commits an offense if the person [~~license holder~~] carries a handgun on or about his or her [~~the license holder's~~] person [~~under the authority of Subchapter H, Chapter 411, Government Code,~~] and intentionally displays the handgun in plain view of another person in a public place, unless [~~. It is an exception to the application of this subsection that~~] the handgun was partially or wholly visible but was carried in a [~~shoulder or belt~~] holster [~~by the license holder~~].

(a-2) Notwithstanding Subsection (a) or Section 46.03(a), a person [~~license holder~~] commits an offense if the person [~~license holder~~] carries a handgun on the campus of a private or independent institution of higher education in this state that has established rules, regulations, or other provisions prohibiting persons

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[~~license holders~~] from carrying handguns pursuant to Section 411.2031(e), Government Code, or on the grounds or building on which an activity sponsored by such an institution is being conducted, or in a passenger transportation vehicle of such an institution, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06.

(a-3) Notwithstanding Subsection (a) or Section 46.03(a), a person [~~license holder~~] commits an offense if the person [~~license holder~~] intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with

respect to that portion.

(b) A person [~~license holder~~] commits an offense if the person [~~the license holder~~] intentionally, knowingly, or recklessly carries a handgun [~~under the authority of Subchapter H, Chapter 411, Government Code~~], regardless of whether the handgun is concealed or carried in a [~~shoulder or belt~~] holster, on or about his or her [~~the license holder's~~] person:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking

place, unless the person [~~license holder~~] is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing facility licensed under Chapter 242, Health and Safety Code, unless the person [~~license holder~~] has written authorization of the hospital or nursing facility administration, as appropriate;

(5) in an amusement park; [~~or~~]

(6) on the premises of a church, synagogue, or other established place of religious worship; [~~or~~]

(7) in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter;

(8) while intoxicated;

(9) while engaged in criminal activity, other than a Class C misdemeanor; or

(10) while otherwise prohibited by law from possessing a firearm.

(f) In this section:

(1) "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

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(1-a) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(2) "Intoxicated" has the meaning assigned by Section 49.01 [~~"License holder" means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code~~].

(3) "Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

SECTION 6. Section 46.035(a-1), Penal Code, as added by Chapter 437 (H.B. 910), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(a-1) Notwithstanding Subsection (a), a person [~~license holder~~] commits an offense if the person [~~license holder~~] carries a

partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about his or her [~~the license holder's~~] person [~~under the authority of Subchapter H, Chapter 411, Government Code~~], and intentionally displays the handgun in plain view of another person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education.

SECTION 7. Section 46.035(h-1), Penal Code, as added by Chapter 1214 (H.B. 1889), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(h-1) It is a defense to prosecution under Subsections

(b) (1) - (7) [~~(b) and (c)~~] that the actor, at the time of the commission of the offense, was:

(1) an active judicial officer, as defined by Section 411.201, Government Code; [~~or~~]

(2) a bailiff designated by the active judicial officer and engaged in escorting the officer[~~er~~];

(3) a judge or justice of a federal court; or

(4) a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

SECTION 8. Section 46.035(i), Penal Code, is amended to read as follows:

(i) Subsections (b) (4) - (7) [~~(b) (4), (b) (5), (b) (6), and (c)~~] do not apply if the actor was not given effective notice under Section 30.06 or 30.07.

SECTION 9. Section 46.15(a), Penal Code, is amended to read as follows:

(a) Sections 46.02, ~~and 46.03~~, and 46.035(b)(1)-(7) do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer, qualified

retired law enforcement officer, federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is:

(A) an honorably retired peace officer;

(B) a qualified retired law enforcement officer;

(C) a federal criminal investigator; or

(D) a former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies;

(6) a district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

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(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code.

SECTION 10. Section 46.15, Penal Code, is amended by adding Subsection (k) to read as follows:

(k) Notwithstanding any other law to the contrary, a person who is not otherwise prohibited by law from possessing a firearm shall not be required to obtain any license to carry a handgun as a

condition for carrying a handgun.

SECTION 11. Section 229.001(b), Local Government Code, is amended to read as follows:

(b) Subsection (a) does not affect the authority a municipality has under another law to:

(1) require residents or public employees to be armed for personal or national defense, law enforcement, or another lawful purpose;

(2) regulate the discharge of firearms or air guns within the limits of the municipality, other than at a sport shooting range;

(3) regulate the use of property, the location of a business, or uses at a business under the municipality's fire code, zoning ordinance, or land-use regulations as long as the code, ordinance, or regulations are not used to circumvent the intent of

Subsection (a) or Subdivision (5) of this subsection;

(4) regulate the use of firearms, air guns, or knives in the case of an insurrection, riot, or natural disaster if the municipality finds the regulations necessary to protect public health and safety;

(5) regulate the storage or transportation of explosives to protect public health and safety, except that 25 pounds or less of black powder for each private residence and 50 pounds or less of black powder for each retail dealer are not subject to regulation;

(6) regulate the carrying of a firearm or air gun by a person other than a person licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, at a:

(A) [~~public park;~~

~~(B)]~~ public meeting of a municipality, county, or other governmental body; or

~~[(C) political rally, parade, or official political meeting; or~~

(B) ~~[(D)]~~ nonfirearms-related school, college, or professional athletic event;

(7) regulate the hours of operation of a sport shooting range, except that the hours of operation may not be more limited than the least limited hours of operation of any other business in the municipality other than a business permitted or licensed to sell or serve alcoholic beverages for on-premises consumption; or

(8) regulate the carrying of an air gun by a minor on:

(A) public property; or

(B) private property without consent of the property owner.

SECTION 12. Section 411.2031, Government Code, is amended to read as follows:

Sec. 411.2031. CARRYING OF HANDGUNS [~~BY LICENSE HOLDERS~~] ON CERTAIN CAMPUSES. (a) For purposes of this section:

(1) "Campus" means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education.

(2) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(3) "Premises" has the meaning assigned by Section 46.035, Penal Code.

(b) A person [~~license holder~~] may carry a concealed handgun on or about his or her [~~the license holder's~~] person while the person [~~license holder~~] is on the campus of an institution of higher education or private or independent institution of higher education in this state.

(c) Except as provided by Subsection (d), (d-1), or (e), an institution of higher education or private or independent institution of higher education in this state may not adopt any rule, regulation, or other provision prohibiting persons [~~license holders~~] from carrying handguns on the campus of the institution.

(d) An institution of higher education or private or independent institution of higher education in this state may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution.

(d-1) After consulting with students, staff, and faculty of the institution regarding the nature of the student population, specific safety considerations, and the uniqueness of the campus environment, the president or other chief executive officer of an

institution of higher education in this state shall establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by persons [~~license holders~~] on the campus of the institution or on premises located on the campus of the institution. The president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting persons [~~license holders~~] from carrying concealed handguns on the campus of the institution. The president or officer may amend the provisions as necessary for campus safety. The provisions take effect as determined by the president or officer unless subsequently amended by the board of regents or other governing board under Subsection (d-2). The institution must give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which persons [~~license holders~~] may not carry.

(d-2) Not later than the 90th day after the date that the rules, regulations, or other provisions are established as described by Subsection (d-1), the board of regents or other governing board of the institution of higher education shall review the provisions. The board of regents or other governing board may, by a vote of not less than two-thirds of the board, amend wholly or partly the provisions established under Subsection (d-1). If amended under this subsection, the provisions are considered to be those of the institution as established under Subsection (d-1).

(d-3) An institution of higher education shall widely distribute the rules, regulations, or other provisions described by Subsection (d-1) to the institution's students, staff, and faculty, including by prominently publishing the provisions on the institution's Internet website.

(d-4) Not later than September 1 of each even-numbered year,

each institution of higher education in this state shall submit a report to the legislature and to the standing committees of the legislature with jurisdiction over the implementation and continuation of this section that:

(1) describes its rules, regulations, or other provisions regarding the carrying of concealed handguns on the campus of the institution; and

(2) explains the reasons the institution has established those provisions.

(e) A private or independent institution of higher education in this state, after consulting with students, staff, and faculty of the institution, may establish rules, regulations, or other provisions prohibiting persons [~~license holders~~] from carrying handguns on the campus of the institution, any grounds or building on which an activity sponsored by the institution is being

conducted, or a passenger transportation vehicle owned by the institution.

SECTION 13. Section 411.2032, Government Code, is amended to read as follows:

Sec. 411.2032. TRANSPORTATION AND STORAGE OF FIREARMS AND AMMUNITION [~~BY LICENSE HOLDERS~~] IN PRIVATE VEHICLES ON CERTAIN CAMPUSES. (a) For purposes of this section:

(1) "Campus" means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education.

(2) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(b) An institution of higher education or private or independent institution of higher education in this state may not

adopt or enforce any rule, regulation, or other provision or take any other action, including posting notice under Section 30.06 or 30.07, Penal Code, prohibiting or placing restrictions on the storage or transportation of a firearm or ammunition in a locked, privately owned or leased motor vehicle by a person, including a student enrolled at that institution, who [~~holds a license to carry a handgun under this subchapter and~~] lawfully possesses the firearm or ammunition:

(1) on a street or driveway located on the campus of the institution; or

(2) in a parking lot, parking garage, or other parking area located on the campus of the institution.

SECTION 14. Section 411.207, Government Code, is amended by amending Subsections (a)-(c) to read as follows:

(a) A peace officer who is acting in the lawful discharge of

the officer's official duties may disarm a person [~~license holder~~] at any time the officer reasonably believes it is necessary for the protection of the person [~~license holder~~], officer, or another individual. The peace officer shall return the handgun to the person [~~license holder~~] before discharging the person [~~license holder~~] from the scene if the officer determines that the person [~~license holder~~] is not a threat to himself or herself, the officer, [~~license holder~~], or another individual and if the person [~~license holder~~] has not [~~violated any provision of this subchapter or~~] committed any other violation that results in the arrest of the person [~~license holder~~]. The mere possession or carrying of a handgun, openly or concealed, with or without a license issued under this subchapter, shall not constitute reasonable belief for a peace officer to disarm or detain an otherwise law-abiding person.

(b) A peace officer who is acting in the lawful discharge of

the officer's official duties may temporarily disarm a person [~~license holder~~] when a person [~~license holder~~] enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the person's [~~license holder's~~] handgun. The peace officer shall secure the handgun in the locker and shall return the handgun to the person [~~license holder~~] immediately after the person [~~license holder~~] leaves the nonpublic, secure portion of the law enforcement facility.

(c) A law enforcement facility shall prominently display at each entrance to a nonpublic, secure portion of the facility a sign that gives notice in both English and Spanish that, under this section, a peace officer may temporarily disarm a person [~~license holder~~] when the person [~~license holder~~] enters the nonpublic, secure portion of the facility. The sign must appear in contrasting

colors with block letters at least one inch in height. The sign shall be displayed in a clearly visible and conspicuous manner.

SECTION 15. Section 30.05(f), Penal Code, is amended to read as follows:

(f) It is a defense to prosecution under this section that[+] [~~1~~] the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden[; and

~~(2) the person was carrying:~~

~~(A) a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; and~~

~~(B) a handgun:~~

~~—— (i) in a concealed manner; or~~

~~—— (ii) in a shoulder or belt holster].~~

SECTION 16. Section 30.06, Penal Code, is amended to read as

follows:

Sec. 30.06. TRESPASS BY PERSON IN POSSESSION OF A [~~LICENSE HOLDER WITH A~~] CONCEALED HANDGUN. (a) A person [~~license holder~~] commits an offense if the person [~~license holder~~]:

(1) carries a concealed handgun [~~under the authority of Subchapter H, Chapter 411, Government Code,~~] on property of another without effective consent; and

(2) received notice that entry on the property by a person [~~license holder~~] with a concealed handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section

30.05 (b) .

(2) [~~"License holder" has the meaning assigned by Section 46.035(f).~~

[~~(3)~~] "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by person in possession of [~~license holder with~~] a concealed handgun), a person [~~licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law),~~] may not enter this property while in possession of [~~with~~] a concealed handgun"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block

letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the person [~~license holder~~] was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the person [~~license holder~~] carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the person [~~license holder~~] is prohibited from carrying the handgun under Section 46.03 or 46.035.

SECTION 17. Section 30.07, Penal Code, is amended to read as

follows:

Sec. 30.07. TRESPASS BY PERSON IN POSSESSION OF [~~LICENSE HOLDER WITH~~] AN OPENLY CARRIED HANDGUN. (a) A person [~~license holder~~] commits an offense if the person [~~license holder~~]:

(1) openly carries a handgun [~~under the authority of Subchapter H, Chapter 411, Government Code,~~] on property of another without effective consent; and

(2) received notice that entry on the property by a person [~~license holder~~] openly carrying a handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section

30.05 (b) .

(2) ~~["License holder" has the meaning assigned by Section 46.035 (f)].~~

~~[(3)]~~ "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.07, Penal Code (trespass by person in possession of ~~[license holder with]~~ an openly carried handgun), a person ~~[licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law),]~~ may not enter this property with a handgun that is carried openly"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block

letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the person [~~license holder~~] was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the person [~~license holder~~] openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the person [~~license holder~~] is prohibited from carrying the handgun under Section 46.03 or 46.035.

(f) It is not a defense to prosecution under this section that the handgun was carried in a [~~shoulder or belt~~] holster.

SECTION 18. The following provisions are repealed:

- (1) Section 11.041, Alcoholic Beverage Code;
- (2) Section 11.61(e), Alcoholic Beverage Code;
- (3) Section 61.11, Alcoholic Beverage Code;
- (4) Section 61.71(f), Alcoholic Beverage Code;
- (5) Section 411.204(d), Government Code;
- (6) Section 411.205, Government Code;
- (7) Section 46.02(a-1), Penal Code;
- (8) Section 46.03(f), Penal Code, as amended by Chapter 1001 (H.B. 554), Acts of the 84th Legislature, Regular Session, 2015;
- (9) Section 46.035(a-1), Penal Code, as added by Chapter 438 (S.B. 11), Acts of the 84th Legislature, Regular Session, 2015;

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(10) Sections 46.035 (c) and (d), Penal Code; and

(11) Section 46.035(h-1), Penal Code, as added by Chapter 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007.

SECTION 19. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.