

## BILL ANALYSIS

Senate Research Center  
78R589 JTS-D

H.B. 819  
By: Isett (Williams)  
Criminal Justice  
5/22/2003  
Engrossed

### DIGEST AND PURPOSE

The 75th Legislature amended Section 46.15 of the Penal Code, adding a variety of persons to whom Section 46.02 of the Penal Code (Unlawful Carrying Weapons) "does not apply." According to Section 2.02 of the Penal Code, an exception to an offense that would result in the placement of the burden of proof on the prosecutor is labeled by the phrase "it is an exception to the application of..." Section 2.03(e) of the Penal Code states that "a ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense." Because the provisions of Section 46.15 are not labeled using the specific phrase required by the Penal Code as *exception(s) to the application of* Section 46.02, instead using the phrase "Section 46.02 *does not apply to...*", the grounds of defense included in Section 46.15 have the procedural and evidentiary consequences of a defense, according to the default rule contained in Section 2.03(e) (emphasis added). The result is that any person to whom Section 46.02 of the Penal Code does not apply, if charged with a violation of Section 46.02, bears the burden of proving the defense that the person was hunting, traveling, engaged in the actual discharge of military duty or duties as a commissioned private security officer, or engaged in any of the situations to which Section 46.15 provides that the prohibition against carrying weapons provided by Section 46.02 "does not apply."

H.B. 819 changes the language of Section 46.15 of the Penal Code so that, if someone is arrested for the offense of unlawful carrying of a weapon, the prosecutor retains the burden to disprove the defendant's claim of an exception under Section 46.15, rather than the defendant having to prove the applicability of the exception to him or herself.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 46.15(b), Penal Code, as amended by Chapters 1221 and 1261, Acts of the 75th Legislature, Regular Session, 1997, as follows:

(b) Provides an exception to the application of Section 46.02. Replaces a reference to Article 4413(29cc), Revised Statutes) with Subchapter H, Chapter 411, Government Code and replaces "the Private Investigators and Private Security Agencies Act (Article 4413 (29bb), Vernon's Texas Civil Statutes" with Chapter 1702, Occupations Code.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2003.