

BILL ANALYSIS

H.B. 819
By: Isett
Law Enforcement
Committee Report (Unamended)

BACKGROUND AND PURPOSE

During the 75th legislative session, House Bill 311 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.”

One possible result of this situation is that defendants who are unwilling or unable to invest in their defense will accept a prosecutor’s offer of a penalty and/or fine reduction in exchange for a guilty plea because it will cost them less overall. Those defendants who are both willing and able to invest in their defense and pursue an acquittal will have to spend their own time and money on what could be an expensive trial process. Putting the burden back on the prosecutor could curb arrests of persons who are legitimately carrying weapons under the authorization of Section 46.15 of the Penal Code.

House Bill 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

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 819 amends Section 46.15(b) of the Penal Code by changing the language regarding the applicability of Section 46.02 of the Penal Code. The bill replaces language that states “Section 46.02 does not apply to a person...” with “It is an exception to the application of Section 46.02 that the person...”.

EFFECTIVE DATE

This Act takes effect September 1, 2003.

