

By: Allen

H.B. No. 1257

A BILL TO BE ENTITLED

AN ACT

1
2 relating to laws regulating the carrying of weapons and the places
3 where weapons are prohibited and to the organization of those laws
4 in the statutes.

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

6 SECTION 1. Section 46.01, Penal Code, is amended to read as
7 follows:

8 Sec. 46.01. DEFINITIONS. In this chapter:

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

18 (2) "Armor-piercing ammunition" means handgun
19 ammunition that is designed primarily for the purpose of
20 penetrating metal or body armor and to be used principally in
21 pistols and revolvers.

22 (3) "Chemical dispensing device" means a device, other
23 than a small chemical dispenser sold commercially for personal
24 protection, that is designed, made, or adapted for the purpose of

1 dispensing a substance capable of causing an adverse psychological
2 or physiological effect on a human being.

3 (4) "Club" means an instrument that is specially
4 designed, made, or adapted for the purpose of inflicting serious
5 bodily injury or death by striking a person with the instrument, and
6 includes but is not limited to the following:

7 (A) blackjack;

8 (B) nightstick;

9 (C) mace;

10 (D) tomahawk.

11 (5) [~~(2)~~] "Explosive weapon" means any explosive or
12 incendiary bomb, grenade, rocket, or mine, that is designed, made,
13 or adapted for the purpose of inflicting serious bodily injury,
14 death, or substantial property damage, or for the principal purpose
15 of causing such a loud report as to cause undue public alarm or
16 terror, and includes a device designed, made, or adapted for
17 delivery or shooting an explosive weapon.

18 (6) [~~(3)~~] "Firearm" means any device designed, made,
19 or adapted to expel a projectile through a barrel by using the
20 energy generated by an explosion or burning substance or any device
21 readily convertible to that use. Firearm does not include a firearm
22 that may have, as an integral part, a folding knife blade or other
23 characteristics of weapons made illegal by this chapter and that
24 is:

25 (A) an antique or curio firearm manufactured
26 before 1899; or

27 (B) a replica of an antique or curio firearm

1 manufactured before 1899, but only if the replica does not use rim
2 fire or center fire ammunition.

3 (7) [~~(4)~~] "Firearm silencer" means any device
4 designed, made, or adapted to muffle the report of a firearm.

5 (8) [~~(5)~~] "Handgun" means any firearm that is
6 designed, made, or adapted to be fired with one hand.

7 (9) "Hoax bomb" means a device that:

8 (A) reasonably appears to be an explosive or
9 incendiary device; or

10 (B) by its design causes alarm or reaction of any
11 type by an official of a public safety agency or a volunteer agency
12 organized to deal with emergencies.

13 (10) [~~(6)~~] "Illegal knife" means a:

14 (A) knife with a blade over five and one-half
15 inches;

16 (B) hand instrument designed to cut or stab
17 another by being thrown;

18 (C) dagger, including but not limited to a dirk,
19 stiletto, and poniard;

20 (D) bowie knife;

21 (E) sword; or

22 (F) spear.

23 (11) [~~(7)~~] "Knife" means any bladed hand instrument
24 that is capable of inflicting serious bodily injury or death by
25 cutting or stabbing a person with the instrument.

26 (12) [~~(8)~~] "Knuckles" means any instrument that
27 consists of finger rings or guards made of a hard substance and that

1 is designed, made, or adapted for the purpose of inflicting serious
2 bodily injury or death by striking a person with a fist enclosed in
3 the knuckles.

4 (13) "License holder" means a person licensed to carry
5 a handgun under Subchapter H, Chapter 411, Government Code.

6 (14) [~~(9)~~] "Machine gun" means any firearm that is
7 capable of shooting more than two shots automatically, without
8 manual reloading, by a single function of the trigger.

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

13 (16) "Racetrack" has the meaning assigned that term by
14 the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

15 (17) "Secured area" means an area of an airport
16 terminal building to which access is controlled by the inspection
17 of persons and property under federal law.

18 (18) [~~(10)~~] "Short-barrel firearm" means a rifle with
19 a barrel length of less than 16 inches or a shotgun with a barrel
20 length of less than 18 inches, or any weapon made from a shotgun or
21 rifle if, as altered, it has an overall length of less than 26
22 inches.

23 (19) [~~(11)~~] "Switchblade knife" means any knife that
24 has a blade that folds, closes, or retracts into the handle or
25 sheath, and that:

26 (A) opens automatically by pressure applied to a
27 button or other device located on the handle; or

1 (B) opens or releases a blade from the handle or
2 sheath by the force of gravity or by the application of centrifugal
3 force.

4 (20) [~~(12)~~] "~~Armor-piercing ammunition~~" means handgun
5 ~~ammunition that is designed primarily for the purpose of~~
6 ~~penetrating metal or body armor and to be used principally in~~
7 ~~pistols and revolvers.~~

8 [~~(13)~~] "~~Hoax bomb~~" means a device that:

9 [~~(A)~~] ~~reasonably appears to be an explosive or~~
10 ~~incendiary device; or~~

11 [~~(B)~~] ~~by its design causes alarm or reaction of~~
12 ~~any type by an official of a public safety agency or a volunteer~~
13 ~~agency organized to deal with emergencies.~~

14 [~~(14)~~] "~~Chemical dispensing device~~" means a device,
15 ~~other than a small chemical dispenser sold commercially for~~
16 ~~personal protection, that is designed, made, or adapted for the~~
17 ~~purpose of dispensing a substance capable of causing an adverse~~
18 ~~psychological or physiological effect on a human being.~~

19 [~~(15)~~] "~~Racetrack~~" has the meaning assigned that term
20 ~~by the Texas Racing Act (Article 179e, Vernon's Texas Civil~~
21 ~~Statutes).~~

22 [~~(16)~~] "Zip gun" means a device or combination of
23 devices that was not originally a firearm and is adapted to expel a
24 projectile through a smooth-bore or rifled-bore barrel by using the
25 energy generated by an explosion or burning substance.

26 SECTION 2. Section 46.02, Penal Code, is amended to read as
27 follows:

1 Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person
2 commits an offense if the person [~~he~~] intentionally, knowingly, or
3 recklessly carries on or about his person a handgun, illegal knife,
4 or club.

5 (b) Except as provided by Subsection (c), an offense under
6 this section is a Class A misdemeanor.

7 (c) An offense under this section is a felony of the third
8 degree if the offense is committed on any premises licensed or
9 issued a permit by this state for the sale of alcoholic beverages.

10 SECTION 3. Chapter 46, Penal Code, is amended by adding
11 Section 46.021 to read as follows:

12 Sec. 46.021. APPLICABILITY OF UNLAWFUL CARRYING TO LAW
13 ENFORCEMENT AND CERTAIN OTHER PERSONS. (a) Section 46.02 does not
14 apply to:

15 (1) peace officers and does not prohibit a peace
16 officer from carrying a weapon in this state, regardless of whether
17 the officer is engaged in the actual discharge of the officer's
18 duties while carrying the weapon;

19 (2) parole officers and does not prohibit an officer
20 from carrying a weapon in this state if the officer is:

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

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

26 (3) community supervision and corrections department
27 officers appointed or employed under Section 76.004, Government

1 Code, and does not prohibit an officer from carrying a weapon in
2 this state if the officer is:

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

5 (B) authorized to carry a weapon under Section
6 76.0051, Government Code; or

7 (4) a judge or justice of the supreme court, the court
8 of criminal appeals, a court of appeals, a district court, a
9 criminal district court, a constitutional county court, a statutory
10 county court, a justice court, or a municipal court who is licensed
11 to carry a concealed handgun under Subchapter H, Chapter 411,
12 Government Code.

13 (b) Section 46.02 does not apply to a person who:

14 (1) is engaged in the actual discharge of duties as:

15 (A) a member of the armed forces or state
16 military forces as defined by Section 431.001, Government Code; or

17 (B) an employee of a penal institution who is
18 performing a security function;

19 (2) holds a security officer commission and a personal
20 protection officer authorization issued by the Texas Commission on
21 Private Security and who is providing personal protection under
22 Chapter 1702, Occupations Code;

23 (3) holds a security officer commission issued by the
24 Texas Commission on Private Security, if:

25 (A) the person is engaged in the actual discharge
26 of the person's duties as a security officer or is traveling to or
27 from the person's place of assignment;

1 (B) the person is wearing a distinctive uniform;

2 and

3 (C) the weapon is in plain view; or

4 (4) holds an alcoholic beverage permit or license or
5 is an employee of the holder of an alcoholic beverage permit or
6 license if the person is supervising the operation of the permitted
7 or licensed premises.

8 (c) Section 46.02 does not apply to a person who:

9 (1) is carrying a concealed handgun and a valid
10 license issued under Subchapter H, Chapter 411, Government Code, to
11 carry a concealed handgun of the same category as the handgun the
12 person is carrying;

13 (2) is on the person's own premises or premises under
14 the person's control unless the person is an employee or agent of
15 the owner of the premises and the person's primary responsibility
16 is to act in the capacity of a security guard to protect persons or
17 property, in which event the person must comply with Subsection
18 (b)(3);

19 (3) is traveling; or

20 (4) is engaging in lawful hunting, fishing, or other
21 sporting activity on the immediate premises where the activity is
22 conducted, or is en route between the premises and the person's
23 residence, if the weapon is a type commonly used in the activity.

24 (d) The provisions of Section 46.02 prohibiting the
25 carrying of a firearm or club do not apply to a public security
26 officer employed by the adjutant general under Section 431.029,
27 Government Code, who is engaged in the actual discharge of the

1 person's duties or is traveling to or from a place of assignment.

2 (e) The provision of Section 46.02 prohibiting the carrying
3 of a club does not apply to a noncommissioned security guard at an
4 institution of higher education who carries a nightstick or similar
5 club and who has undergone 15 hours of training in the proper use of
6 the club, including at least seven hours of training in the use of
7 the club for nonviolent restraint. For the purposes of this
8 subsection, "nonviolent restraint" means the use of reasonable
9 force not intended and not likely to inflict bodily injury.

10 (f) The provision of Section 46.02 prohibiting the carrying
11 of an illegal knife does not apply to a person carrying a bowie
12 knife or a sword used in a historical demonstration or in a ceremony
13 in which the knife or sword is significant to the performance of the
14 ceremony.

15 SECTION 4. Section 46.03, Penal Code, is amended to read as
16 follows:

17 Sec. 46.03. PLACES WEAPONS PROHIBITED. (a) A person
18 commits an offense if the person intentionally, knowingly, or
19 recklessly possesses or goes with a firearm, illegal knife, club,
20 or prohibited weapon listed in Section 46.05(a):

21 (1) on the physical premises of a school or
22 educational institution, any grounds or building on which an
23 activity sponsored by a school or educational institution is being
24 conducted, or a passenger transportation vehicle of a school or
25 educational institution, whether the school or educational
26 institution is public or private, unless pursuant to written
27 regulations or written authorization of the institution;

1 (2) on the premises of a polling place on the day of an
2 election or while early voting is in progress;

3 (3) in any government court or offices utilized by the
4 court, unless pursuant to written regulations or written
5 authorization of the court;

6 (4) on the premises of a racetrack;

7 (5) in or into a secured area of an airport; or

8 (6) within 1,000 feet of premises the location of
9 which is designated by the Texas Department of Criminal Justice as a
10 place of execution under Article 43.19, Code of Criminal Procedure,
11 on a day that a sentence of death is set to be imposed on the
12 designated premises and the person received notice that:

13 (A) going within 1,000 feet of the premises with
14 a weapon listed under this subsection was prohibited; or

15 (B) possessing a weapon listed under this
16 subsection within 1,000 feet of the premises was prohibited.

17 (b) ~~[It is a defense to prosecution under Subsections~~
18 ~~(a)(1)-(4) that the actor possessed a firearm while in the actual~~
19 ~~discharge of his official duties as a member of the armed forces or~~
20 ~~national guard or a guard employed by a penal institution, or an~~
21 ~~officer of the court.~~

22 ~~[(c) In this section:~~

23 ~~[(1) "Premises" has the meaning assigned by Section~~
24 ~~46.035.~~

25 ~~[(2) "Secured area" means an area of an airport~~
26 ~~terminal building to which access is controlled by the inspection~~
27 ~~of persons and property under federal law.~~

1 ~~[(d) It is a defense to prosecution under Subsection (a)(5)~~
2 ~~that the actor possessed a firearm or club while traveling to or~~
3 ~~from the actor's place of assignment or in the actual discharge of~~
4 ~~duties as:~~

5 ~~[(1) a member of the armed forces or national guard;~~

6 ~~[(2) a guard employed by a penal institution; or~~

7 ~~[(3) a security officer commissioned by the Texas~~
8 ~~Board of Private Investigators and Private Security Agencies if:~~

9 ~~[(A) the actor is wearing a distinctive uniform;~~
10 ~~and~~

11 ~~[(B) the firearm or club is in plain view; or~~

12 ~~[(5) a security officer who holds a personal~~
13 ~~protection authorization under the Private Investigators and~~
14 ~~Private Security Agencies Act (Article 4413(29bb), Vernon's Texas~~
15 ~~Civil Statutes).~~

16 ~~[(e) It is a defense to prosecution under Subsection (a)(5)~~
17 ~~that the actor checked all firearms as baggage in accordance with~~
18 ~~federal or state law or regulations before entering a secured area.~~

19 ~~[(f) It is not a defense to prosecution under this section~~
20 ~~that the actor possessed a handgun and was licensed to carry a~~
21 ~~concealed handgun under Subchapter H, Chapter 411, Government Code.~~

22 ~~[(g)] An offense under this section is a third degree~~
23 ~~felony.~~

24 ~~[(h) It is a defense to prosecution under Subsection (a)(4)~~
25 ~~that the actor possessed a firearm or club while traveling to or~~
26 ~~from the actor's place of assignment or in the actual discharge of~~
27 ~~duties as a security officer commissioned by the Texas Board of~~

1 ~~Private Investigators and Private Security Agencies, if:~~

2 ~~[(1) the actor is wearing a distinctive uniform; and~~

3 ~~[(2) the firearm or club is in plain view.~~

4 ~~[(i) It is an exception to the application of Subsection~~
5 ~~(a)(6) that the actor possessed a firearm or club:~~

6 ~~[(1) while in a vehicle being driven on a public road;~~

7 ~~or~~

8 ~~[(2) at the actor's residence or place of employment.]~~

9 SECTION 5. Chapter 46, Penal Code, is amended by adding
10 Section 46.031 to read as follows:

11 Sec. 46.031. APPLICABILITY OF PROHIBITED PLACES TO LAW
12 ENFORCEMENT AND CERTAIN OTHER PERSONS. (a) Section 46.03 does not
13 apply to a person if, under the terms of Section 46.021(a), Section
14 46.02 does not apply to that person.

15 (b) It is a defense to prosecution under Sections
16 46.03(a)(1)-(4) that the person possessed a firearm while engaged
17 in the actual discharge of the person's duties as:

18 (1) a member of the armed forces or national guard;

19 (2) a guard employed by a penal institution; or

20 (3) an officer of the court.

21 (c) It is a defense to prosecution under Sections
22 46.03(a)(4) and (5) that the person possessed a firearm or club
23 while engaged in the actual discharge of the person's duties, or
24 while traveling to or from the person's place of assignment, as a
25 security officer commissioned by the Texas Commission on Private
26 Security, if:

27 (1) the person was wearing a distinctive uniform; and

1 (2) the firearm or club was in plain view.

2 (d) It is a defense to prosecution under Section 46.03(a)(5)
3 that the person:

4 (1) checked all firearms as baggage in accordance with
5 federal or state law or regulations before entering a secured area;
6 or

7 (2) possessed a firearm or club while engaged in the
8 actual discharge of duties, or while traveling to or from the
9 person's place of assignment, as:

10 (A) a member of the armed forces or national
11 guard;

12 (B) a guard employed by a penal institution; or

13 (C) a security officer who holds a personal
14 protection officer authorization under Chapter 1702, Occupations
15 Code.

16 (e) Section 46.03(a)(6) does not apply to a person who
17 possesses a firearm or club while the person is:

18 (1) in a vehicle being driven on a public road;

19 (2) at the person's residence or place of employment;

20 or

21 (3) engaged in the actual discharge of duties as:

22 (A) a member of the armed forces or state
23 military forces as defined by Section 431.001, Government Code; or

24 (B) an employee of a penal institution.

25 SECTION 6. Section 46.035, Penal Code, is amended to read as
26 follows:

27 Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE

1 HOLDER. (a) A license holder commits an offense if the license
2 holder carries a handgun on or about the license holder's person
3 under the authority of Subchapter H, Chapter 411, Government Code,
4 and intentionally fails to conceal the handgun.

5 (b) ~~[A license holder commits an offense if the license~~
6 ~~holder intentionally, knowingly, or recklessly carries a handgun~~
7 ~~under the authority of Subchapter H, Chapter 411, Government Code,~~
8 ~~regardless of whether the handgun is concealed, on or about the~~
9 ~~license holder's person:~~

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

16 ~~[(2) on the premises where a high school, collegiate,~~
17 ~~or professional sporting event or interscholastic event is taking~~
18 ~~place, unless the license holder is a participant in the event and a~~
19 ~~handgun is used in the event,~~

20 ~~[(3) on the premises of a correctional facility,~~

21 ~~[(4) on the premises of a hospital licensed under~~
22 ~~Chapter 241, Health and Safety Code, or on the premises of a nursing~~
23 ~~home licensed under Chapter 242, Health and Safety Code, unless the~~
24 ~~license holder has written authorization of the hospital or nursing~~
25 ~~home administration, as appropriate,~~

26 ~~[(5) in an amusement park, or~~

27 ~~[(6) on the premises of a church, synagogue, or other~~

1 ~~established place of religious worship.~~

2 ~~[(c) A license holder commits an offense if the license~~
3 ~~holder intentionally, knowingly, or recklessly carries a handgun~~
4 ~~under the authority of Subchapter H, Chapter 411, Government Code,~~
5 ~~regardless of whether the handgun is concealed, at any meeting of a~~
6 ~~governmental entity.~~

7 ~~[(d)]~~ A license holder commits an offense if, while
8 intoxicated, the license holder carries a handgun under the
9 authority of Subchapter H, Chapter 411, Government Code, regardless
10 of whether the handgun is concealed.

11 (c) ~~[(e)]~~ A license holder who holds ~~[is licensed as]~~ a
12 security officer commission under Chapter 1702, Occupations Code,
13 and is employed as a security officer commits an offense if, while
14 in the course and scope of the security officer's employment, the
15 security officer violates a provision of Subchapter H, Chapter 411,
16 Government Code.

17 (d) ~~[(f) In this section:~~

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

27 ~~[(2) "License holder" means a person licensed to carry~~

1 ~~a handgun under Subchapter H, Chapter 411, Government Code.~~

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

6 ~~[(g)] An offense under this section [Subsection (a), (b),~~
7 ~~(c), (d), or (e)] is a Class A misdemeanor[, unless the offense is~~
8 ~~committed under Subsection (b)(1) or (b)(3), in which event the~~
9 ~~offense is a felony of the third degree].~~

10 (e) ~~[(h)]~~ It is a defense to prosecution under Subsection
11 (a) that the license holder ~~[actor]~~, at the time of the commission
12 of the offense, displayed the handgun under circumstances in which
13 the license holder ~~[actor]~~ would have been justified in the use of
14 deadly force under Chapter 9.

15 ~~[(i) Subsections (b)(4), (b)(5), (b)(6), and (c) do not~~
16 ~~apply if the actor was not given effective notice under Section~~
17 ~~30.06.]~~

18 SECTION 7. Chapter 46, Penal Code, is amended by adding
19 Section 46.036 to read as follows:

20 Sec. 46.036. PLACES LICENSE HOLDERS MAY NOT CARRY HANDGUN.

21 (a) A license holder commits an offense if the license holder
22 intentionally, knowingly, or recklessly carries a handgun under the
23 authority of Subchapter H, Chapter 411, Government Code, regardless
24 of whether the handgun is concealed, on or about the license
25 holder's person:

26 (1) in any area or on any premises described by Section
27 46.03;

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

7 (3) on the premises where a high school, collegiate,
8 or professional sporting event or interscholastic event is taking
9 place, unless the license holder is a participant in the event and a
10 handgun is used in the event;

11 (4) at any meeting of a governmental entity, if the
12 license holder was given effective notice under Section 30.06;

13 (5) on the premises of a correctional facility;

14 (6) on the premises of a hospital licensed under
15 Chapter 241, Health and Safety Code, or on the premises of a nursing
16 home licensed under Chapter 242, Health and Safety Code, if the
17 license holder was given effective notice under Section 30.06,
18 unless the license holder has written authorization of the hospital
19 or nursing home administration, as appropriate;

20 (7) on the premises of a church, synagogue, or other
21 established place of religious worship, if the license holder was
22 given effective notice under Section 30.06; or

23 (8) in an amusement park, if the license holder was
24 given effective notice under Section 30.06.

25 (b) An offense under this section is:

26 (1) a felony of the third degree if the offense is
27 committed under Subsection (a)(1), (2), or (5); or

1 (2) a Class A misdemeanor if the offense is committed
2 under Subsection (a)(3), (4), (6), (7), or (8).

3 (c) Section 46.031 applies to the prosecution of an offense
4 under Subsection (a)(1) in the same manner as that section applies
5 to the prosecution of an offense under Section 46.03.

6 SECTION 8. Section 30.06(c)(2), Penal Code, is amended to
7 read as follows:

8 (2) "License holder" has the meaning assigned by
9 Section 46.01 [~~46.035(f)~~].

10 SECTION 9. Section 46.15, Penal Code, is repealed.

11 SECTION 10. (a) This Act takes effect September 1, 2003.

12 (b) The change in law made by this Act applies only to an
13 offense committed on or after September 1, 2003. An offense
14 committed before September 1, 2003, is covered by the law in effect
15 when the offense was committed, and the former law is continued in
16 effect for that purpose. For purposes of this subsection, an
17 offense was committed before September 1, 2003, if any element of
18 the offense was committed before that date.