

## **BILL ANALYSIS**

C.S.H.B. 823

By: Keel

Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

§46.15(b) sets out the nonapplicability provisions to §46.02 (Unlawful Carrying Weapons). Section 46.02 does not apply to a person who is traveling [§46.15(b)(3)]. The word "traveling" has been given various appellate interpretations but it has never been defined in statute. As a result, persons who are traveling and therefore lawfully in possession of a firearm are frequently arrested and must later "prove their innocence" by asserting before a magistrate or jury the particular facts that constituted "traveling."

C.S.H.B. 823 amends §46.15 to clarify that a person is presumed to be traveling if the person is in a private motor vehicle, not otherwise engaged in criminal activity, and not otherwise prohibited by law from possessing a firearm. The bill further amends Section 2.05 of the Penal Code to provide proper evidentiary instruction on the presumption.

### **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**

C.S.H.B. 823 amends the Penal Code to clarify that a person is presumed to be traveling if the person is in a private motor vehicle, not otherwise engaged in criminal activity, and not otherwise prohibited by law from possessing a firearm. The bill further amends Section 2.05 of the Penal Code to provide proper evidentiary instruction on the presumption.

### **EFFECTIVE DATE**

September 1, 2005.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute differs from the original in that it restructures the language to create a new presumption in favor of the defendant with regarding to traveling. This differs from the original which created an exception to the prohibition of carrying a weapon. The change does not substantively change the outcome but rather is intended to clarify the language.