

## **BILL ANALYSIS**

C.S.H.B. 1037  
By: Isett  
Law Enforcement  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

During the 78th legislative session, the provisions of Section 46.15 of the Penal Code were enacted to exclude certain persons, including peace officers, members of the armed forces, travelers and hunters, from the prohibition found in Section 46.02 of the Penal Code against carrying or possessing weapons. However, the statutory construction of the exception unintentionally made membership in a category of persons intended to be excepted a defense available at trial, only after such a person is arrested for an offense.

C.S.H.B. 1037 alters the wording of the statute to execute its intended purpose: to allow certain persons to carry or possess firearms and, if questioned by a peace officer, to offer evidence of the applicability of the exception to him or herself and avoid arrest.

### **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. 1037 amends Section 46.02, Penal Code, by adding subsection (d) to provide that it is an exception to the application of the section that the actor was in a privately owned motor vehicle at the time the actor committed the offense, and:

- (1) the handgun is not in plain view;
- (2) when a magistrate or peace officer demands identification, the person shall display proper identification and inform the magistrate or officer that the person has a handgun in the vehicle; and
- (3) the person is not otherwise prohibited by law from possessing a weapon.

The bill further amends Section 46.02 to define "motor vehicle" by reference to Section 32.34(a)(2).

C.S.H.B. 1037 amends Section 46.15, Penal Code, by changing the words "Section 46.02 does not apply to a person who..." to "It is an exception to the application of Section 46.02 that the person...".

The bill also amends the section to replace outdated code references with the appropriate citations to current codes.

### **EFFECTIVE DATE**

September 1, 2005

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

C.S.H.B. 1037 amends Section 46.02, Penal Code, by adding subsection (d) to provide that it is an exception to the application of that section that the actor was in a privately owned motor vehicle at the time the actor committed the offense, and:

- (1) the handgun is not in plain view;

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(2) when a magistrate or peace officer demands identification, the person shall display proper identification and inform the magistrate or officer that the person has a handgun in the vehicle; and

(3) the person is not otherwise prohibited by law from possessing a weapon.

The substitute also amends Section 46.02 to define "motor vehicle" by reference to Section 32.34(a)(2). The original bill did not amend Section 46.02.