

BILL ANALYSIS

Senate Research Center
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H.B. 1815
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 79th Legislature, Regular Session, 2005, passed a law that was intended to legalize the carrying of handguns in private motor vehicles by persons not licensed by the Texas Department of Public Safety (DPS) to carry concealed handguns. Prior to that, the law had established a defense to prosecution against a charge of unlawful carrying of a weapon (UCW) if the person was traveling.

The 2005 law established a legal presumption in Section 46.15, Penal Code, that a person was traveling if he or she was in a private motor vehicle; was not engaged in criminal activity other than a Class C misdemeanor or other traffic regulation; was not prohibited by law from possessing a firearm; was not a member of a criminal street gang; and was not carrying a handgun in plain view.

However, some district attorneys instructed police departments to continue making UCW arrests of motorists who would qualify for the traveling presumption despite the clear intent of the legislature to establish protection for such motorists from such arrests in state code. Unsuspecting motorists who believe they are complying with the intent and spirit of the law could still face arrest and UCW charges – and then be forced to spend time and resources hiring an attorney to submit evidence that they qualify for the traveling presumption under the law.

H.B. 1815 clarifies that a person has a right to carry a handgun, club or certain knives on the person's own premises or premises under his control, or inside of, or en route, to a motor vehicle under the person's control. It would redefine the UCW offense in Penal Code Section 46.02 and specify that the same criteria a person has to meet in order to qualify for the traveling presumption under current law would need to be met under Section 46.02, Penal Code, to avoid committing a UCW offense.

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 46.02, Penal Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun, illegal knife, or club if the person is not on the person's own premises or premises under the person's control, or the person is inside or directly en route to a motor vehicle that is owned by the person or under the person's control.

(a-1) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle that is owned by the person or under the person's control at any time in which the handgun is in plain view, or the person is engaged in criminal activity, other than a Class C misdemeanor that is in violation of a law or ordinance regulating traffic; the person is prohibited by law from possessing a firearm; or is a member of a criminal street gang, as defined by Section 17.01.

(a-2) Defines "premises" and "recreational vehicle."

SECTION 2. Reenacts and 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) Deletes existing text providing that Section 46.02 does not apply to a person who is on the person's own premises or premises under the person's control unless the person is an employee or agent of the owner of the premises and the person is a security guard. Provides that Section 46.02 does not apply to a person who is carrying a concealed handgun and a valid license issued under Subchapter H, Chapter 411, Government Code, rather than Article 4413(29cc), to carry a concealed handgun of the same category as the handgun the person is carrying. Provides that Section 46.02 does not apply to a person who holds a security officer commission and personal protection officer authorization issued by the Texas Private Security Board, rather than the Board of Private Investigators and Private Security, and is providing personal protection under Chapter 1702, Occupations Code, rather than the Private Investigators and Private Security Agencies Act.

SECTION 3. Repealer: Section 46.15(h) (defines "premises" and "recreational vehicle"), Penal Code.

Repealer: Section 46.15(i) (relating to the presumption of a person to be traveling), Penal Code.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2007.