

BILL ANALYSIS

C.S.H.B. 1815
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Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the 79th session, the Legislature 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 you were “traveling.”

The 2005 law established a legal “presumption” in Penal Code Section 46.15 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.

C.S.H.B.1815 would make it clear 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 to avoid committing a UCW offense.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 46.02, Penal Code by defining the offense of unlawfully carrying a handgun, club or certain knives if the person is not on their own premises or premises under his or her control; or if the person is not inside of, or directly on their way to, a motor vehicle owned by that person or under his or her control. Section (a-1) is added to define the offense of carrying a handgun in a motor vehicle when the weapon is in plain view, or the person is engaged in criminal activity or prohibited from possessing a firearm, or a member of a criminal street gang as defined by Section 71.01. Added Section (a-2) provides definitions of "premises and "recreational vehicle".

SECTION 2. Makes conforming and nonsubstantive changes.

SECTION 3. Repeals Penal Code Sections 46.15(h), and 46.15(i).

SECTION 4. Applies the changes made by the bill to offenses committed after the effective date of the bill and continues current law for offenses committed prior to that date.

SECTION 5. Effective date is September 1, 2007.

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EFFECTIVE DATE

The effective date of this bill is September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

Section 3 of the original bill amended the definition of “premises” in Section 46.15(h), Penal Code. The substitute repeals that Section and Section 46.15(i), Penal Code as added by Chapter 288, Acts of the 79th Legislature, Regular Session which defines “traveling”; to conform to changes made in Section 2 of the substitute. The definition of premises is in Section 2 of the substitute.