

BILL ANALYSIS

C.S.S.B. 534
By: Hegar
Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, an employee licensed to carry a concealed handgun may be prohibited by an employer from storing a handgun in the employee's locked vehicle in the employer's parking lot. An employee may also be penalized by an employer for applying for or possessing such a license. Such penalties by an employer can compromise an employee's right to personal defense in the employee's travels to and from a place of employment.

C.S.S.B. 534 prohibits an employer from penalizing an employee for applying for or holding a license to carry a concealed handgun or for transporting or storing a handgun the employee is licensed to carry in the employee's locked vehicle in the employer's parking lot if the employee follows certain procedures.

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 Chapter 52, Labor Code, by adding Subchapter G, as follows:

SUBCHAPTER G. RESTRICTIONS ON PENALIZING EMPLOYEE FOR ACCESS TO OR STORAGE OF CONCEALED HANDGUN

Sec. 52.061. PENALIZING EMPLOYEE FOR ACCESS TO OR STORAGE OF CONCEALED HANDGUN. (a) Prohibits a public or private employer from discharging, disciplining, or penalizing an employee due to actions set forth in this subsection relating to the employee's application for or possession of a concealed handgun license, or for the storage of a handgun in a locked vehicle, if the handgun is hidden from plain view in the vehicle's glove compartment, or console or within a locked gun case or other locked container within the vehicle, in an employer's parking lot under certain conditions.

(b) Provides that Subsection (a)(3) (regarding the transportation or storage of a handgun in the employee's locked motor vehicle in an area provided for parking by the employer) does not apply to an employer of an employee who transports or stores a handgun in a motor vehicle that the employee is actively using in the course and scope of employment. Provides that for the purposes of this subsection, the course and scope of employment does not include travel between the employee's home and place of employment.

(c) Entitles an employee who is discharged in violation of this section to reinstatement in the same position the employee was employed immediately before the discharge.

(d) Authorizes an employee who is discharged, disciplined, or otherwise penalized in violation of this section to bring civil action against the employer to enforce the rights protected by this subchapter. Sets forth the entitlements of an employee who prevails in such an action.

(e) Provides that an employee's failure to store the handgun in an alternative location provided by the employer to securely store the handgun while on the employer's property is a defense usable by an employer against an action brought by an employee alleging a violation of Subsection (a)(3).

(f) Provides that this section does not prohibit an employer from discharging, disciplining, or penalizing an employee who does not satisfy the requirements of Subsection (a)(3) (regarding the requirement on an employee to submit a written statement and proof of license to the employer regarding the transportation or storage of a handgun in the employee's locked motor vehicle in an area provided for parking by the employer).

(g) Provides that this section does not prohibit an employer from prohibiting an employee licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code from carrying a firearm on the business premises of the employer. Defines "premises."

(h) Provides that a person licensed under Subchapter H, Chapter 411, Government Code, is not authorized to carry a concealed handgun on any property where it is prohibited by state or federal law.

(i) Provides that this section does not apply to a school district, an open-enrollment charter school as defined by Section 5.001 of the Education Code, or a private school, as defined by Section 22.081 of the Education Code.

(j) Provides that this section does not apply to property owned or leased by an employer who is required to submit a risk management plan under the specified section of the federal Clean Air Act and on which the primary business conducted is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials regulated under state or federal law.

(k) Allows employers to prohibit an employee from transporting or storing a handgun in the employee's locked motor vehicle in a parking area the employer provides employees if the parking area is completely surrounded by a fence and is not open to the public, the ingress to and egress from the parking area are constantly monitored by security personnel, and an alternative parking area is provided immediately adjacent to or adjoining the main parking lot, parking garage, or other parking area the employer provides for employees, in which the employee may transport or store a handgun in the employee's locked motor vehicle in accordance with Subsection (a) (3).

SECTION 2. Amends Section 411.203, Government Code, as follows:

Sec. 411.203. New Heading: RIGHTS OF EMPLOYERS; LIMITATION ON LIABILITY. (a) Creates this subsection from existing text. Defines "premises."

(b) Provides that in a civil action, a public or private employer is not liable for personal injury, death, property damage or any other damages resulting from the use of a concealed handgun authorized to be transported or stored in a parking area of the employer under Section 52.061 of the Labor Code, including an action for damages arising from theft of the handgun or use of the handgun by a person other than the license holder. The presence of a concealed handgun in a location described by Section 52.061(a)(3) of the Labor Code does not by itself constitute a failure by the employer to provide a safe workplace.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1 of the substitute specifies that the provisions apply to motor vehicles that are “owned or leased by the employee” and expands the requirements that the handguns stored according to these provisions must not only be hidden from plain view, but also stored in the vehicle’s glove compartment or console or within a locked gun case or other locked container within the vehicle.

A new subsection (i) is added by the substitute to provide that the section does not apply to school districts, charter schools or private schools.

A new subsection (j) is added by the substitute to provide that the section does not apply to property owned or leased by an employer who is required to submit a risk management plan under the specified section of the federal Clean Air Act and on which the primary business conducted is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials regulated under state or federal law. A similar subsection in the engrossed bill providing that the section did not apply to parking areas on any property owned or leased by an employer required to submit a risk management plan under the specified section of the Department of Homeland Security Appropriations Act who contracts with the National Aeronautics and Space Administration (NASA) and whose employees work at a NASA facility in a county with a population of over 3.3 million was deleted.

Subsection (k)(3) expands the description of the location of alternative parking from “close proximity” to “immediately adjacent to or adjoining the main parking lot, parking garage, or other parking area the employer provides for employees”.

SECTION 2 of the substitute further delineates the description of damages to include “personal injury, death, property damage or any other damages” resulting from the “use of a concealed handgun authorized to be transported or stored under Section 52.061, Labor Code, in a parking area of the employer, including an action for damages arising from the theft or use of the handgun or the use of the handgun by a person other than the person licensed to carry the handgun under this subchapter”. The engrossed bill referred to an “occurrence involving storage in a parking area of the employer of a concealed handgun”. The substitute also states that the presence of a concealed handgun in a location described by Section 52.061(a)(3), Labor Code, does not by itself constitute a failure by the employer to provide a safe workplace.