

BILL ANALYSIS

C.S.S.B. 1424
By: Seliger
Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain provisions of the concealed handgun licensing laws provide little or no benefit to the public or to licensees, yet interfere with the efficient administration of the statute.

C.S.S.B. 1424 modifies eligibility requirements for a license to carry a concealed handgun, including provisions relating to felonies and other offenses, handgun proficiency and competency requirements, and application requirements. The bill requires the Department of Public Safety to suspend or revoke a license under certain circumstances and repeals provisions relating to a request for application materials and handgun proficiency certification.

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.S.B. 1424 amends the Government Code to provide that a person against whom an order of deferred adjudication was entered not less than 10 years preceding the date of application for a license to carry a concealed handgun is not exempt from being considered convicted for purposes of eligibility to obtain such a license if the deferred adjudication was for a felony level offense under Penal Code provisions on a violation of a certain court order or condition of bond in a family violence case, offenses against the person, robbery, or burglary of a habitation, or a substantially similar provision under the laws of any other state. The bill includes an offense under the laws of another state that contains elements that are substantially similar to the elements of those aforementioned Texas offenses among the offenses for which a deferred adjudication is considered a conviction for purposes of eligibility to obtain a license to carry a concealed handgun. The bill specifies that the term "convicted," for such eligibility purposes, does not include an adjudication of guilt or an order of deferred adjudication that has been subsequently otherwise vacated, set aside, annulled, invalidated, voided, or sealed under any state or federal law. The bill includes among the requirements a person must meet to be eligible for such a license the condition that the person has not been convicted of a Class A or Class B misdemeanor offense under a provision in another state equivalent to Texas provisions regarding an offense of disorderly conduct in the five years preceding the date of application for the license. The bill removes from the eligibility requirements the condition that a person has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller of public accounts, the tax collector of a political subdivision of Texas, or an agency or subdivision of Texas and the condition that a person has not been finally determined to be in default on a guaranteed student loan.

C.S.S.B. 1424 provides that an offense under the laws of Texas, another state, or the United States, for purposes of eligibility for a license to carry a concealed handgun, is considered a felony if the offense meets certain criteria at the time it is committed, rather than at the time of a person's application for a license. The bill establishes that an offense is not considered a felony for purposes of eligibility for a license to carry a concealed handgun if, at the time of a person's

application for the license, the offense is designated by state law as a misdemeanor or does not contain all of the elements of any offense designated by state law as a felony.

C.S.S.B. 1424 provides that, if a person is determined by a review board or similar authority, as an alternative to being diagnosed by a licensed physician or declared by a court, to be incompetent to manage the person's own affairs, the person is considered to be incapable of exercising sound judgment with respect to the proper use and storage of a handgun for the purposes of license eligibility. The bill provides that an involuntary psychiatric hospitalization or a psychiatric hospitalization constitutes evidence that a person has a psychiatric disorder or condition that would prevent the person from using sound judgment with respect to the proper use and storage of a handgun, for purposes of license eligibility, regardless of when the hospitalization occurred.

C.S.S.B. 1424 requires an applicant for a concealed handgun license to submit to the public safety director's designee one or more photographs of the applicant that meet the requirements of the Department of Public Safety (DPS), rather than two recent color passport photographs of the applicant, and removes the requirement that an applicant who is younger than 21 years of age submit two recent passport photographs in profile of the applicant. The bill repeals provisions requiring DPS to develop a handgun proficiency certificate to be endorsed by qualified handgun instructors who administer handgun proficiency examinations required of applicants for a concealed handgun license and makes conforming changes to reflect the repeal in provisions relating to the issuance of such a license. The bill requires an applicant to submit evidence of handgun proficiency, in the form and manner required by DPS. The bill requires an applicant to submit information regarding any treatment received by, commitment to, or residence in a psychiatric hospital regardless of when the treatment, commitment, or residence occurred.

C.S.S.B. 1424 authorizes the public safety director's designee, for purposes of review of concealed handgun license application materials, to be a noncommissioned employee of DPS and authorizes the designee to access any records necessary for purposes of the review. The bill authorizes DPS to issue a license to carry handguns only of the categories for which the applicant has demonstrated proficiency in the form and manner required by DPS. The bill requires a license holder, for the purpose of modifying a license to allow a license holder to carry a handgun of a different category than the license indicates or renewing a license to carry a concealed handgun, to submit to DPS in addition to other requirements evidence of handgun proficiency in the form and manner required by DPS and one or more photographs of the license holder that meet the requirements of DPS, rather than two recent color passport photographs.

C.S.S.B. 1424 requires, rather than authorizes, DPS to revoke or suspend a license to carry a concealed handgun under certain circumstances prescribed by law. The bill clarifies that DPS is required to revoke a license if the license holder made a material misrepresentation or failed to disclose a material fact on application, rather than gave false information on the application, and if the license holder submits an application fee that is dishonored or reversed and fails to submit a cashier's check or money order payable to the "Texas Department of Public Safety" in the amount of the dishonored application fee, plus \$25, within 30 days of being notified by DPS that the application fee had been dishonored or reversed.

C.S.S.B. 1424 requires DPS to ensure that a handgun instructor applicant may renew certification from any county in Texas by using an online format to complete the required retraining courses if the applicant is renewing certification for the first time or the applicant completed the required retraining courses in person the previous time the applicant renewed the certificate. The bill includes an individual's phone number, email, and website address in the information on an individual licensed to carry a concealed handgun that DPS is required to disclose to a criminal justice agency. The bill requires DPS to make and distribute to the public at no cost a list of individuals who are certified as qualified handgun instructors by DPS. The bill requires the list of certified handgun instructors to include the individual's name, phone number, email, and website, and requires the list to be made available on DPS' website on or before June

1, 2010. The bill requires DPS to remove all or part of the information of an individual from the list whose information is subject to disclosure if the individual submits a written request to DPS that all or part of his or her information not be made available to the public.

C.S.S.B. 1424 requires an active or retired judicial officer applying for a license to carry a concealed handgun to include all required affidavits in the completed application the applicant submits to DPS. The bill requires such an applicant to submit to DPS one or more photographs of the applicant that meet the requirements of DPS, rather than two recent color passport photographs. The bill applies the requirement for a retired judicial officer applicant to submit two complete sets of legible and classifiable fingerprints of the applicant, including one set taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints to an active judicial officer applicant. The bill provides that the immunities from liability for certain damages granted to a qualified handgun instructor do not apply to a cause of action for fraud or a deceptive trade practice.

C.S.S.B. 1424 repeals provisions establishing the requirement that an applicant for a concealed handgun license apply for the license by obtaining a request for application materials from a handgun dealer, DPS, or any other person or entity approved by DPS and makes conforming changes.

C.S.S.B. 1424 amends the Code of Criminal Procedure to require, rather than authorize, a magistrate to suspend a defendant's license to carry a concealed handgun in an order for emergency protection resulting from certain family violence, sexual assault, or stalking offenses and provides that this requirement applies to a license issued under all Government Code provisions relating to the issuance of a concealed handgun license.

C.S.S.B. 1424 amends the Education Code to remove the requirement that the Texas Guaranteed Student Loan Corporation maintain a system of communication among the appropriate state agencies and entities to reduce loan default claims.

C.S.S.B. 1424 amends the Family Code to require, rather than authorize, a court issuing a protective order to suspend the license to carry a concealed handgun held by a person found to have committed family violence and provides that this requirement applies to a license issued under all Government Code provisions relating to the issuance of a concealed handgun license.

C.S.S.B. 1424 amends the Health and Safety Code to provide that a person who conducts a medical or other examination on behalf of a panel of the medical advisory board and at the request of DPS to assess a concealed handgun license applicant's ability to exercise sound judgment with respect to the proper use and storage of a handgun may be compelled to testify before the panel and in any subsequent proceedings under any Government Code provisions relating to the issuance of a concealed handgun license and authorizes the disclosure of certain medical reports and records relating to an applicant or license holder in such subsequent proceedings.

C.S.S.B. 1424 amends the Penal Code to provide that an offense of unlawful possession of a firearm under the laws of Texas, another state, or the United States is a felony for purposes of state law if, at the time it is committed, the offense is designated by state law as a felony, contains all the elements of an offense designated by state law as a felony, or is punishable by confinement for one year or more in a penitentiary. The bill provides that an offense is not considered a felony for that purpose if, at the time the person possesses the firearm, the offense is designated by state law as a misdemeanor or does not contain all the elements of any offense designated by state law as a felony.

C.S.S.B. 1424 repeals Sections 411.175 and 411.189, Government Code.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1424 adds provisions not included in the original providing that deferred adjudications for certain felony offenses are not exempt from being considered convictions for purposes of eligibility to obtain a license to carry a concealed handgun, removing certain conditions regarding payment of a tax or other money to a state entity and default on a guaranteed student loan from eligibility requirements, and relating to a determination that a person is considered to be incapable of exercising sound judgment with respect to the proper use and storage of a handgun for the purposes of license eligibility. The substitute adds provisions not included in the original regarding the documents and photographs required to be submitted to the public safety director's designee by an applicant for an issuance, modification, or renewal of a license to carry a concealed handgun, authorizing the public safety director's designee to be a noncommissioned employee of the Department of Public Safety (DPS) and to access any records necessary for purposes of the review of an application, requiring DPS to revoke a license because of a material misrepresentation, failure to disclose material information on an application, or failure to pay a dishonored or reversed application fee and requiring DPS to suspend a license under certain circumstances prescribed by law.

C.S.S.B. 1424 differs from the original by repealing provisions requiring DPS to develop a handgun proficiency certificate to be endorsed by qualified handgun instructors who administer handgun proficiency examinations required of applicants for a concealed handgun license and making conforming changes to reflect the repeal in provisions relating to the issuance of such a license. The substitute differs from the original by repealing provisions establishing the requirement that an applicant for a concealed handgun license apply for the license by obtaining a request for application materials from a handgun dealer, DPS, or any other person or entity approved by DPS and by making conforming changes. The substitute adds provisions not included in the original requiring DPS to ensure that a handgun instructor may renew certification from any county in Texas by using an online format, adding to the information on an individual licensed to carry a concealed handgun that DPS is required to disclose to a criminal justice agency, requiring DPS to distribute to the public a list of certified handgun instructors, and establishing requirements for such list. The substitute adds provisions not included in the original modifying the documents and photographs required to be submitted to DPS by an active or retired judicial officer applying for a license to carry a concealed handgun, and providing for the inapplicability of immunities from liability for certain damages granted to a qualified handgun instructor to a cause of action for fraud or a deceptive trade practice.

C.S.S.B. 1424 adds provisions not included in the original requiring a magistrate to suspend a license to carry a concealed handgun in certain orders for emergency protection, removing the requirement that the Texas Guaranteed Student Loan Corporation maintain a system of communication among the appropriate state agencies and entities to reduce loan default claims, and requiring a court to suspend a license to carry a concealed handgun held by a person found to have committed family violence. The substitute adds provisions not included in the original relating to the testimony of a person on behalf of a panel of the medical advisory board and the disclosure of medical records for the purposes of proceedings under any Government Code provisions regarding the issuance of a concealed handgun license. The substitute adds prospective clauses not included in the original conforming to the addition of provisions by the substitute.