

BILL ANALYSIS

S.B. 299

By: Estes

Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law prohibits the intentional failure to conceal a handgun by a person licensed to carry a concealed handgun. Many concealed-carry licensees fear that this language is too broad, and that it could lead to prosecutions in situations where the display of the weapon is inadvertent or where the display of a handgun takes place in a private place in an unthreatening manner, like the home of a friend. These individuals point out that similar occurrences have resulted in criminal charges against concealed-carry licensees in other states.

Additionally, a recent opinion from the Dallas Court of Appeals has many concerned that courts interpret the current wording of the affirmative defense to the crime of failing to conceal too narrowly. The Dallas Court of Appeals held that this affirmative defense allowed a concealed handgun licensee to draw a handgun only when use of deadly force is authorized. These individuals argue that this holding conflicts with Section 9.04 (Threats as Justifiable Force) of the Texas Penal Code, which provides that a weapon may be displayed legally in situations where deadly force is not yet justified "when the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary. . . ."

The committee substitute to this bill would fix both issues by clearly stating that failure to conceal a handgun is only illegal when the gun is displayed in plain view of another person in a public place and clarifying that it is an affirmative defense to this offense that the weapon was displayed pursuant to a justified use of force, as well as deadly force, under Chapter 9 (Justification Excluding Criminal Responsibility) of the Texas Penal Code.

S.B. 299 amends current law relating to the intentional display of a handgun by a person licensed to carry a concealed handgun.

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

SECTION 1. Amends Sections 46.035(a) and (h), Penal Code, as follows:

(a) Provides that a license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H (License to Carry a Concealed Handgun), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, and intentionally displays the handgun in plain view of another person in a public place, rather than intentionally fails to conceal the handgun.

(h) Provides that it is a defense to prosecution under Subsection (a) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of force or deadly force under Chapter 9 (Justification Excluding Criminal Responsibility).

SECTION 2. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

EFFECTIVE DATE

September 1, 2013.