

## **BILL ANALYSIS**

Senate Research Center  
84R28637 JSC-D

C.S.H.B. 910  
By: Phillips et al. (Estes)  
State Affairs  
5/18/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas is one of only six states that do not permit their citizens to openly carry modern handguns under any circumstances. The other five states are California, Florida, Illinois, New York, and South Carolina. Forty-four states allow open carry in some form.

H.B. 910 would authorize open carry of modern handguns in Texas by anyone with a license, so long as the handguns are carried in shoulder or belt holsters. The new license to carry created by this bill would replace the existing concealed handgun license. Applicants would have to meet the same requirements that they currently do to get a concealed handgun license.

The committee substitute to H.B. 910 removes language from the House's engrossed version providing that the police cannot stop someone who is openly carrying and demand to see identification simply because the person is openly carrying. This language was redundant, because basic principles of constitutional law already establish that the fact that a person is engaged in an activity that is only legal with a license is not sufficient cause for the police to stop the person. All police detentions require reasonable suspicion of criminal activity at a minimum, and that will remain the case for people who openly carry in Texas after this bill becomes law.

C.S.H.B. 910 amends current law relating to the authority of a person who is licensed to carry a handgun to openly carry a holstered handgun and creates criminal offenses.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Department of Public Safety of the State of Texas (DPS) is modified in SECTION 15 (Section 411.0625, Government Code) of this bill.

Rulemaking authority previously granted to the public safety director of DPS is modified in SECTION 21 (Section 411.185, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 11.041(a), Alcoholic Beverage Code, to change a reference to a concealed handgun to a handgun.

SECTION 2. Amends Section 11.61(e), Alcoholic Beverage Code, to make a conforming change.

SECTION 3. Amends Section 61.11(a), Alcoholic Beverage Code, to make a conforming change.

SECTION 4. Amends Section 61.71(f), Alcoholic Beverage Code, to make a conforming change.

SECTION 5. Amends Article 7A.05(c), Code of Criminal Procedure, to change a reference to a concealed handgun to a handgun.

SECTION 6. Amends Article 17.292(l), Code of Criminal Procedure, to make a conforming change.

SECTION 7. Amends Article 17.293, Code of Criminal Procedure, to make a conforming change.

SECTION 8. Amends Section 37.0811(f), Education Code, to change a reference to a concealed handgun to a handgun.

SECTION 9. Amends Section 63.0101, Election Code, to change a reference to a concealed handgun to a handgun.

SECTION 10. Amends Section 2.005(b), Family Code, to change a reference to a concealed handgun to a handgun.

SECTION 11. Amends Section 58.003(m), Family Code, to make a conforming change.

SECTION 12. Amends Section 85.022(d), Family Code, to make a conforming change.

SECTION 13. Amends Section 85.042(e), Family Code, to make a conforming change.

SECTION 14. Amends the heading to Section 411.047, Government Code, to read as follows:

Sec. 411.047. REPORTING RELATED TO CERTAIN HANDGUN INCIDENTS INVOLVING LICENSE HOLDERS.

SECTION 15. Amends Section 411.0625, Government Code, as follows:

Sec. 411.0625. PASS FOR EXPEDITED ACCESS TO CAPITOL. (a) Requires the Department of Public Safety of the State of Texas (DPS) to allow a person to enter the Capitol and the Capitol Extension, including any public space in the Capitol or Capitol Extension, in the same manner as DPS allows entry to a person who presents a license to carry a handgun, rather than presents a concealed handgun license, under Subchapter H if the person meets certain requirements.

(b) Changes a reference to a concealed handgun to a handgun.

(c) Requires DPS to adopt rules to establish a procedure by which a resident of the state may apply for and be issued a Capitol access pass. Requires that rules adopted under this section include provisions for eligibility, application, approval, issuance, and renewal that:

(1) require DPS to conduct the same background check on an applicant for a Capitol access pass that is conducted on an applicant for a license to carry a handgun, rather than a concealed handgun license, under Subchapter H;

(2) enable DPS to conduct the background check described by Subdivision (1); and

(3) establish application and renewal fees in amounts sufficient to cover the cost of administering this section, not to exceed the amounts of similar fees required under Section 411.174 (Application) for a license to carry a handgun, rather than for a concealed handgun license. Makes a nonsubstantive change.

SECTION 16. Amends the heading to Subchapter H, Chapter 411, Government Code, to read as follows:

SUBCHAPTER H. LICENSE TO CARRY A HANDGUN

SECTION 17. Amends Sections 411.172(a), (b-1), (g), and (h), Government Code, to change references to a concealed handgun to a handgun.

SECTION 18. Amends Section 411.173(b), Government Code, to make a conforming change.

SECTION 19. Amends Section 411.174(a), Government Code, to make a conforming change.

SECTION 20. Amends Section 411.177(a), Government Code, to make a conforming change.

SECTION 21. Amends Section 411.185(c), Government Code, as follows:

(c) Requires the public safety director of the Department of Public Safety of the State of Texas (director) by rule to adopt an informational form that describes state law regarding the use of deadly force and the places where it is unlawful for the holder of a license issued under this subchapter to carry a handgun, rather than a concealed handgun. Requires an applicant for a renewed license to sign and return the informational form to DPS by mail or acknowledge the form electronically on the Internet according to the procedure adopted under Subsection (f) (relating to submitting renewal materials).

SECTION 22. Amends Sections 411.188(b) and (g), Government Code, as follows:

(b) Requires that the classroom instruction part of the handgun proficiency course include not less than four hours and not more than six hours of instruction on:

(1) Makes no change to this subdivision;

(2) handgun use and safety, including use of restraint holsters and methods to ensure the secure carrying of openly carried handguns;

(3) and (4) Makes no change to these subdivisions.

(g) Changes a reference to a concealed handgun to a handgun.

SECTION 23. Amend Sections 411.190(b), (c), and (f), Government Code, as follows:

(b) Requires a qualified handgun instructor, in addition to the qualifications described by Subsection (a) (authorizing the public safety director to certify as a qualified handgun instructor a person who meets certain requirements set forth), to be qualified to instruct a person in:

(1) Makes no change to this subdivision;

(2) handgun use, proficiency, and safety, including use of restraint holsters and methods to ensure the secure carrying of openly carried handguns;

(3) and (4) Makes no change to these subdivisions.

(c) and (f) Changes references to a concealed handgun to a handgun.

SECTION 24. Amends Section 411.1901(c), Government Code, to make a conforming change.

SECTION 25. Amends Section 411.198(a), Government Code, to make a conforming change.

SECTION 26. Amends Sections 411.201(c), (d), (e), and (h), Government Code, to make conforming changes.

SECTION 27. Amends Section 411.203, Government Code, to make a conforming change.

SECTION 28. Amends Section 411.2032(b), Government Code, as follows:

(b) Prohibits an institution of higher education or private or independent institution of higher education in this state from adopting or enforcing any rule, regulation, or other provision or taking any other action, including posting notice under Section 30.06 or 30.07 (Trespass by License Holder With an Openly Carried Handgun), Penal Code, prohibiting or placing restrictions on the storage or transportation of a firearm or ammunition in a locked, privately owned or leased motor vehicle by a person, including a student enrolled at that institution, who holds a license to carry a handgun, rather than a concealed handgun, under this subchapter and lawfully possesses the firearm or ammunition in certain locations.

SECTION 29. Amends Section 12.092(b), Health and Safety Code, to change a reference to a concealed handgun to a handgun.

SECTION 30. Amends Sections 52.061 and 52.062, Labor Code, to change references to a concealed handgun to a handgun.

SECTION 31. (a) Amends Section 118.011(b), Local Government Code, as effective until September 1, 2019, to change a reference to a concealed weapon to a handgun.

(b) Effective date of this section: September 1, 2015.

SECTION 32. (a) Amends Section 118.011(b), Local Government Code, as effective September 1, 2019, to change a reference to a concealed weapon to a handgun.

(b) Effective date of this section: September 1, 2019.

SECTION 33. Amends Section 118.0217(a), Local Government Code, to change a reference to a concealed weapon to a handgun and to change a reference to a concealed handgun to a handgun.

SECTION 34. Amends Section 229.001(b), Local Government Code, to change a reference to a concealed handgun to a handgun.

SECTION 35. Amends the heading to Section 1701.260, Occupations Code, to read as follows:

Sec. 1701.260. TRAINING FOR HOLDERS OF LICENSE TO CARRY A HANDGUN;  
CERTIFICATION OF ELIGIBILITY FOR APPOINTMENT AS SCHOOL MARSHAL.

SECTION 36. Amends Sections 1701.260(a) and (i), Occupations Code, to change references to a concealed handgun to handgun.

SECTION 37. Amends Section 1702.206(b), Occupations Code, to require an individual who is acting as a personal protection officer and is not wearing the uniform of a security officer to conceal the firearm, regardless of whether the individual is authorized to openly carry the firearm under any other law.

SECTION 38. Amends Sections 62.082(d) and (e), Parks and Wildlife Code, to change references to a concealed handgun to a handgun.

SECTION 39. Amends Section 284.001(e), Parks and Wildlife Code, to make a conforming change.

SECTION 40. Amends Section 30.05(f), Penal Code, as follows:

(f) Provides that it is a defense to prosecution under this section that the person was carrying a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun and was carrying a handgun in a concealed manner or in a shoulder or belt holster, rather than the person was carrying a concealed handgun and a license issued under Subchapter H, Chapter 411, Government Code, to carry a concealed handgun.

SECTION 41. Amends the heading to Section 30.06, Penal Code, to read as follows:

Sec. 30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN.

SECTION 42. Amends Sections 30.06(a) and (d), Penal Code, as follows:

(a) Provides that a license holder commits an offense if the license holder carries a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent, and received notice that entry on the property by a license holder with a concealed handgun was forbidden. Deletes existing text providing that a license holder commits an offense if the license holder carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent, and received notice that remaining on the property with a concealed handgun was forbidden and failed to depart.

(d) Provides that an offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) (provides that, for purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication) and subsequently failed to depart.

SECTION 43. Amends Section 30.06(c)(3), Penal Code, to redefine "written communication."

SECTION 44. Amends Chapter 30, Penal Code, by adding Section 30.07, as follows:

Sec. 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN. (a) Provides that a license holder commits an offense if the license holder:

(1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

(b) Provides that, for purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) Defines in this section "entry," "license holder," and "written communication."

(d) Provides that an offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) Provides that it is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035.

(f) Provides that it is not a defense to prosecution under this section that the handgun was carried in a shoulder or belt holster.

SECTION 45. Amends Section 46.02(a-1), Penal Code, as follows:

(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 or watercraft that is owned by the person or under the person's control at any time in which the handgun is in plain view, unless the person is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, and the handgun is carried in a shoulder or belt holster.

SECTION 46. Amends Section 46.03(f), Penal Code, to change a reference to concealed handgun to handgun.

SECTION 47. Amends Section 46.035, Penal Code, by amending Subsections (a), (b), (c), (d), (g), (h), (i), and (j) and adding Subsection (a-1), 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, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place. Provides that it is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder.

(a-1) Provides that, notwithstanding Subsection (a), a license holder commits an offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education.

(b) Provides that a license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on or about the license holder's person:

(1)-(3) Makes no change to these subdivisions;

(4) Changes references to nursing home to nursing facility;

(5) and (6) Makes no change to these subdivisions.

(c) Provides that a license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, at any meeting of a governmental entity.

(d) Provides that a license holder commits an offense if, while intoxicated, the license holder carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster.

(g) Provides that an offense under this section, rather than under Subsection (a), (b), (c), (d), or (e), is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) Adds a reference to Subsection (a-1).

(i) Provides that Subsections (b)(4), (b)(5), (b)(6), and (c) do not apply if the actor was not given effective notice under Section 30.06 or 30.07.

(j) Adds a reference to Subsection (a-1).

SECTION 48. Amends Section 46.035(f), Penal Code, by adding Subdivision (1-a), to define "institution of higher education" and "private or independent institution of higher education."

SECTION 49. Amends Sections 46.15(a) and (b), Penal Code, as follows:

(a) Makes conforming and nonsubstantive changes.

(b) Provides that Section 46.02 does not apply to certain persons as set forth, including to a person who is carrying a license, rather than a concealed handgun and a valid license, issued under Subchapter H, Chapter 411, Government Code, to carry a handgun, rather than a concealed handgun, and a handgun in a concealed manner, or in a shoulder or belt holster.

SECTION 50. Repealer: Section 411.171(3) (defining "concealed handgun"), Government Code.

SECTION 51. Provides that the change in law made by this Act relating to the authority of a license holder to openly carry a holstered handgun applies to the carrying of a handgun on or after the effective date of this Act by any person who holds a license issued under Subchapter H, Chapter 411, Government Code, regardless of whether the person's license was issued before, on, or after the effective date of this Act, or who applies for the issuance of a license under that subchapter, regardless of whether the person applied for the license before, on, or after the effective date of this Act.

SECTION 52. Makes application of Sections 62.082 and 284.001, Parks and Wildlife Code, and Sections 30.05, 30.06, 46.02, 46.03, 46.035, and 46.15, Penal Code, as amended by this Act, prospective.

SECTION 53. Effective date, except as otherwise provided by this Act: January 1, 2016.