

By: Huffines

S.B. No. 342

A BILL TO BE ENTITLED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

AN ACT

relating to providing for the open and concealed carrying of handguns without a license and to related offenses and penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Texas Constitutional Carry Act of 2015.

SECTION 2. Section 46.02(a-1), Penal Code, is amended to read as follows:

(a-1) 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 person is:

(1) ~~[the handgun is in plain view; or~~

~~[(2) the person is:~~

~~[(A)]~~ engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating;

(2) ~~[(B)]~~ prohibited by law from possessing a firearm;

or

(3) ~~[(C)]~~ a member of a criminal street gang, as defined by Section 71.01.

SECTION 3. The heading to Section 46.035, Penal Code, is amended to read as follows:

1           Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN [~~BY LICENSE~~  
2 ~~HOLDER~~].

3           SECTION 4. Sections 46.035(b), (e), (f), and (g), Penal  
4 Code, are amended to read as follows:

5           (b) A person [~~license holder~~] commits an offense if he or  
6 she [~~the license holder~~] intentionally, knowingly, or recklessly  
7 carries a handgun [~~under the authority of Subchapter H, Chapter~~  
8 ~~411, Government Code, regardless of whether the handgun is~~  
9 ~~concealed,~~] on or about his or her [~~the license holder's~~] person:

10           (1) on the premises of a business that has a permit or  
11 license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic  
12 Beverage Code, if the business derives 51 percent or more of its  
13 income from the sale or service of alcoholic beverages for  
14 on-premises consumption, as determined by the Texas Alcoholic  
15 Beverage Commission under Section 104.06, Alcoholic Beverage Code;

16           (2) on the premises where a high school, collegiate,  
17 or professional sporting event or interscholastic event is taking  
18 place, unless the person [~~license holder~~] is a participant in the  
19 event and a handgun is used in the event;

20           (3) on the premises of a correctional facility;

21           (4) on the premises of a hospital licensed under  
22 Chapter 241, Health and Safety Code, or on the premises of a nursing  
23 home licensed under Chapter 242, Health and Safety Code, unless the  
24 person [~~license holder~~] has written authorization of the hospital  
25 or nursing home administration, as appropriate;

26           (5) in an amusement park; [~~or~~]

27           (6) on the premises of a church, synagogue, or other

1 established place of religious worship;

2 (7) at any meeting of a governmental entity; or

3 (8) while intoxicated.

4 (e) A person [~~license holder~~] who is licensed as a security  
5 officer under Chapter 1702, Occupations Code, and employed as a  
6 security officer commits an offense if, while in the course and  
7 scope of the security officer's employment, the security officer  
8 violates a provision of Subchapter H, Chapter 411, Government Code.

9 (f) In this section:

10 (1) "Amusement park" means a permanent indoor or  
11 outdoor facility or park where amusement rides are available for  
12 use by the public that is located in a county with a population of  
13 more than one million, encompasses at least 75 acres in surface  
14 area, is enclosed with access only through controlled entries, is  
15 open for operation more than 120 days in each calendar year, and has  
16 security guards on the premises at all times. The term does not  
17 include any public or private driveway, street, sidewalk or  
18 walkway, parking lot, parking garage, or other parking area.

19 (2) "Intoxicated" has the meaning assigned by Section  
20 49.01 [~~"License holder" means a person licensed to carry a handgun~~  
21 ~~under Subchapter H, Chapter 411, Government Code~~].

22 (3) "Premises" means a building or a portion of a  
23 building. The term does not include any public or private driveway,  
24 street, sidewalk or walkway, parking lot, parking garage, or other  
25 parking area.

26 (g) An offense under [~~Subsection (a), (b), (c), (d), or (e)~~  
27 ~~is a Class A misdemeanor, unless the offense is committed under~~]

1 Subsection (b)(1) or (b)(3) [~~in which event the offense~~] is a  
2 felony of the third degree. An offense under Subsection (b)(2) or  
3 (b)(7) is a Class A misdemeanor. An offense under Subsection  
4 (b)(4), (b)(5), or (b)(6) is a Class C misdemeanor.

5 SECTION 5. Section 46.035(h-1), Penal Code, as added by  
6 Chapter 1214 (H.B. 1889), Acts of the 80th Legislature, Regular  
7 Session, 2007, is amended to read as follows:

8 (h-1) It is a defense to prosecution under Subsections  
9 (b)(1)-(7) [~~(b) and (c)~~] that the actor, at the time of the  
10 commission of the offense, was:

11 (1) an active judicial officer, as defined by Section  
12 411.201, Government Code; or

13 (2) a bailiff designated by the active judicial  
14 officer and engaged in escorting the officer.

15 SECTION 6. Section 46.035(h-1), Penal Code, as added by  
16 Chapter 1222 (H.B. 2300), Acts of the 80th Legislature, Regular  
17 Session, 2007, is amended to read as follows:

18 (h-1) It is a defense to prosecution under Subsections  
19 (b)(1), (2), and (4)-(7) [~~(4)-(6), and (c)~~] that at the time of the  
20 commission of the offense, the actor was:

21 (1) a judge or justice of a federal court;

22 (2) an active judicial officer, as defined by Section  
23 411.201, Government Code; or

24 (3) a district attorney, assistant district attorney,  
25 criminal district attorney, assistant criminal district attorney,  
26 county attorney, or assistant county attorney.

27 SECTION 7. Sections 46.035(i) and (j), Penal Code, are

1 amended to read as follows:

2 (i) Subsections (b)(4)-(7) [~~(b)(4), (b)(5), (b)(6), and~~  
3 ~~(c)~~] do not apply if the actor was not given effective notice under  
4 Section 30.06.

5 (j) Subsection [~~Subsections (a) and~~] (b)(1) does [~~do~~] not  
6 apply to a historical reenactment performed in compliance with the  
7 rules of the Texas Alcoholic Beverage Commission.

8 SECTION 8. Section 46.15, Penal Code, is amended by adding  
9 Subsection (k) to read as follows:

10 (k) Notwithstanding any other law to the contrary, no person  
11 shall be required to obtain any license to carry a handgun as a  
12 condition for carrying a handgun openly or in a concealed manner  
13 except a person who is prohibited from possessing a handgun under 18  
14 U.S.C. Section 922.

15 SECTION 9. Section 411.207(a), Government Code, is amended  
16 to read as follows:

17 (a) A peace officer who is acting in the lawful discharge of  
18 the officer's official duties may disarm a person in possession of a  
19 handgun [~~license holder~~] at any time the officer has probable cause  
20 to believe that the person poses an imminent threat to himself or  
21 herself, the [~~reasonably believes it is necessary for the~~  
22 ~~protection of the license holder,~~] officer, or another individual.  
23 The peace officer shall return the handgun to the person [~~license~~  
24 ~~holder~~] before discharging the person [~~license holder~~] from the  
25 scene if the officer determines that the person [~~license holder~~] is  
26 not a threat to himself or herself, the officer, [~~license holder,~~]  
27 or another individual and if the person [~~license holder~~] has not

1 ~~[violated any provision of this subchapter or]~~ committed any other  
2 violation that results in the arrest of the person ~~[license~~  
3 ~~holder]~~. The mere possession or carrying of a handgun, openly or  
4 concealed, with or without a license issued under this subchapter,  
5 shall not constitute probable cause for a peace officer to disarm or  
6 detain an otherwise law-abiding person.

7 SECTION 10. Section 30.05(f), Penal Code, is amended to  
8 read as follows:

9 (f) It is a defense to prosecution under this section that~~[+~~  
10 ~~[(1)]~~ the basis on which entry on the property or land  
11 or in the building was forbidden is that entry with a handgun was  
12 forbidden~~[, and~~  
13 ~~[(2) the person was carrying a concealed handgun and a~~  
14 ~~license issued under Subchapter H, Chapter 411, Government Code, to~~  
15 ~~carry a concealed handgun].~~

16 SECTION 11. Section 30.06, Penal Code, is amended to read as  
17 follows:

18 Sec. 30.06. TRESPASS BY PERSON IN POSSESSION OF ~~[HOLDER OF~~  
19 ~~LICENSE TO CARRY CONCEALED]~~ HANDGUN. (a) A person ~~[license~~  
20 ~~holder]~~ commits an offense if the person ~~[license holder]:~~

21 (1) carries a handgun ~~[under the authority of~~  
22 ~~Subchapter H, Chapter 411, Government Code,]~~ on property of another  
23 without effective consent; and

24 (2) received notice that:

25 (A) ~~[entry on the property by a license holder~~  
26 ~~with a concealed handgun was forbidden, or]~~

27 ~~[(B)]~~ remaining on the property with a

1 ~~[concealed]~~ handgun was forbidden and failed to depart.

2 (b) For purposes of this section, a person receives notice  
3 if the owner of the property or someone with apparent authority to  
4 act for the owner provides notice to the person by oral and ~~[or]~~  
5 written communication, or by oral communication alone.

6 (c) In this section:

7 (1) "Entry" has the meaning assigned by Section  
8 30.05(b).

9 (2) ~~["License holder" has the meaning assigned by  
10 Section 46.035(f)].~~

11 ~~[(3)]~~ "Written communication" means:

12 (A) a card or other document on which is written  
13 language identical to the following: "Pursuant to Section 30.06,  
14 Penal Code (trespass by person in possession of ~~[holder of license  
15 to carry a concealed]~~ handgun), a person ~~[licensed under Subchapter  
16 H, Chapter 411, Government Code (concealed handgun law),]~~ may not  
17 enter this property while in possession of a ~~[with a concealed]~~  
18 handgun"; or

19 (B) a sign posted on the property that:

20 (i) includes the language described by  
21 Paragraph (A) in both English and Spanish;

22 (ii) appears in contrasting colors with  
23 block letters at least one inch in height; and

24 (iii) is displayed in a conspicuous manner  
25 clearly visible to the public.

26 (d) An offense under this section is a Class C ~~[A]~~  
27 misdemeanor.

1           (e) It is an exception to the application of this section  
2 that the property on which the person [~~license holder~~] carries a  
3 handgun is owned or leased by a governmental entity and is not a  
4 premises or other place on which the person [~~license holder~~] is  
5 prohibited from carrying the handgun under Section 46.03 or 46.035.

6           SECTION 12. The following provisions are repealed:

- 7           (1) Section 411.205, Government Code;
- 8           (2) Section 46.02(a), Penal Code;
- 9           (3) Section 46.03(f), Penal Code; and
- 10          (4) Sections 46.035(a), (c), (d), and (h), Penal Code.

11          SECTION 13. This Act takes effect immediately if it  
12 receives a vote of two-thirds of all the members elected to each  
13 house, as provided by Section 39, Article III, Texas Constitution.  
14 If this Act does not receive the vote necessary for immediate  
15 effect, this Act takes effect on the 91st day after the last day of  
16 the legislative session.