

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: King of Hemphill, Bailes, Springer,  
Flynn, Bonnen of Brazoria

H.B. No. 435

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the application of certain weapons laws to and  
3 liability for certain actions of volunteer emergency services  
4 personnel licensed to carry a handgun.

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

6 SECTION 1. Title 5, Civil Practice and Remedies Code, is  
7 amended by adding Chapter 112 to read as follows:

8 CHAPTER 112. LIMITATION OF LIABILITY FOR GOVERNMENTAL UNITS

9 Sec. 112.001. CERTAIN ACTIONS OF VOLUNTEER EMERGENCY  
10 SERVICES PERSONNEL. (a) In this section:

11 (1) "Governmental unit" has the meaning assigned by  
12 Section 101.001.

13 (2) "Volunteer emergency services personnel" has the  
14 meaning assigned by Section 46.01, Penal Code.

15 (b) A governmental unit is not liable in a civil action  
16 arising from the discharge of a handgun by an individual who is  
17 volunteer emergency services personnel and licensed to carry the  
18 handgun under Subchapter H, Chapter 411, Government Code.

19 (c) The discharge of a handgun by an individual who is  
20 volunteer emergency services personnel and licensed to carry the  
21 handgun under Subchapter H, Chapter 411, Government Code, is  
22 outside the course and scope of the individual's duties as  
23 volunteer emergency services personnel.

24 (d) This section may not be construed to waive the immunity

1 from suit or liability of a governmental unit under Chapter 101 or  
2 any other law.

3 SECTION 2. Section 30.06, Penal Code, is amended by adding  
4 Subsection (f) to read as follows:

5 (f) It is a defense to prosecution under this section that  
6 the license holder is volunteer emergency services personnel, as  
7 defined by Section 46.01.

8 SECTION 3. Section 30.07, Penal Code, is amended by adding  
9 Subsection (g) to read as follows:

10 (g) It is a defense to prosecution under this section that  
11 the license holder is volunteer emergency services personnel, as  
12 defined by Section 46.01.

13 SECTION 4. Section 46.01, Penal Code, is amended by adding  
14 Subdivision (18) to read as follows:

15 (18) "Volunteer emergency services personnel"  
16 includes a volunteer firefighter, an emergency medical services  
17 volunteer as defined by Section 773.003, Health and Safety Code,  
18 and any individual who, as a volunteer, provides services for the  
19 benefit of the general public during emergency situations. The  
20 term does not include a peace officer or reserve law enforcement  
21 officer, as those terms are defined by Section 1701.001,  
22 Occupations Code, who is performing law enforcement duties.

23 SECTION 5. Section 46.035, Penal Code, is amended by adding  
24 Subsection (m) to read as follows:

25 (m) It is a defense to prosecution under Subsections (b) and  
26 (c) that the actor is volunteer emergency services personnel  
27 engaged in providing emergency services.

1 SECTION 6. Section 46.15(a), Penal Code, is amended to read  
2 as follows:

3 (a) Sections 46.02 and 46.03 do not apply to:

4 (1) peace officers or special investigators under  
5 Article 2.122, Code of Criminal Procedure, and neither section  
6 prohibits a peace officer or special investigator from carrying a  
7 weapon in this state, including in an establishment in this state  
8 serving the public, regardless of whether the peace officer or  
9 special investigator is engaged in the actual discharge of the  
10 officer's or investigator's duties while carrying the weapon;

11 (2) parole officers and neither section prohibits an  
12 officer from carrying a weapon in this state if the officer is:

13 (A) engaged in the actual discharge of the  
14 officer's duties while carrying the weapon; and

15 (B) in compliance with policies and procedures  
16 adopted by the Texas Department of Criminal Justice regarding the  
17 possession of a weapon by an officer while on duty;

18 (3) community supervision and corrections department  
19 officers appointed or employed under Section 76.004, Government  
20 Code, and neither section prohibits an officer from carrying a  
21 weapon in this state if the officer is:

22 (A) engaged in the actual discharge of the  
23 officer's duties while carrying the weapon; and

24 (B) authorized to carry a weapon under Section  
25 76.0051, Government Code;

26 (4) an active judicial officer as defined by Section  
27 411.201, Government Code, who is licensed to carry a handgun under

1 Subchapter H, Chapter 411, Government Code;

2 (5) an honorably retired peace officer, qualified  
3 retired law enforcement officer, federal criminal investigator, or  
4 former reserve law enforcement officer who holds a certificate of  
5 proficiency issued under Section 1701.357, Occupations Code, and is  
6 carrying a photo identification that is issued by a federal, state,  
7 or local law enforcement agency, as applicable, and that verifies  
8 that the officer is:

9 (A) an honorably retired peace officer;

10 (B) a qualified retired law enforcement officer;

11 (C) a federal criminal investigator; or

12 (D) a former reserve law enforcement officer who  
13 has served in that capacity not less than a total of 15 years with  
14 one or more state or local law enforcement agencies;

15 (6) a district attorney, criminal district attorney,  
16 county attorney, or municipal attorney who is licensed to carry a  
17 handgun under Subchapter H, Chapter 411, Government Code;

18 (7) an assistant district attorney, assistant  
19 criminal district attorney, or assistant county attorney who is  
20 licensed to carry a handgun under Subchapter H, Chapter 411,  
21 Government Code;

22 (8) a bailiff designated by an active judicial officer  
23 as defined by Section 411.201, Government Code, who is:

24 (A) licensed to carry a handgun under Subchapter  
25 H, Chapter 411, Government Code; and

26 (B) engaged in escorting the judicial officer;

27 [~~or~~]

1           (9) a juvenile probation officer who is authorized to  
2 carry a firearm under Section 142.006, Human Resources Code; or

3           (10) a person who is volunteer emergency services  
4 personnel if the person is:

5                   (A) carrying a handgun under the authority of  
6 Subchapter H, Chapter 411, Government Code; and

7                   (B) engaged in providing emergency services.

8           SECTION 7. The changes in law made by this Act to Sections  
9 30.06 and 30.07 and Chapter 46, Penal Code, apply only to an offense  
10 committed on or after the effective date of this Act. An offense  
11 committed before the effective date of this Act is governed by the  
12 law in effect when the offense was committed, and the former law is  
13 continued in effect for that purpose. For purposes of this section,  
14 an offense was committed before the effective date of this Act if  
15 any element of the offense occurred before that date.

16           SECTION 8. This Act takes effect September 1, 2017.

ADOPTED

MAY 24 2017

*Haley Spaw*  
Secretary of the Senate

BY: *Joan Huffman*

FLOOR AMENDMENT NO. 1

1 Amend H.B. No. 435 (senate committee printing) as follows:

2 (1) In SECTION 6 of the bill, in amended Section  
3 46.15(a)(6), Penal Code (page 2, line 49), strike "a district  
4 attorney" and substitute "the attorney general or a United  
5 States attorney, district attorney".

6 (2) In SECTION 6 of the bill, in amended Section  
7 46.15(a)(7), Penal Code (page 2, line 52), strike "an assistant  
8 district attorney" and substitute "an assistant United States  
9 attorney, assistant attorney general, assistant district  
10 attorney".

11 (3) Add the following appropriately numbered SECTIONS to  
12 the bill and renumber subsequent SECTIONS of the bill  
13 accordingly:

14 SECTION \_\_. Section 411.179(c), Government Code, is  
15 amended to read as follows:

16 (c) In adopting the form of the license under Subsection  
17 (a), the department shall establish a procedure for the license  
18 of a qualified handgun instructor or of the attorney general or  
19 a judge, justice, United States attorney, assistant United  
20 States attorney, assistant attorney general, prosecuting  
21 attorney, or assistant prosecuting attorney, as described by  
22 Section 46.15(a)(4), ~~(6)~~, or (7), Penal Code, to indicate  
23 on the license the license holder's status as a qualified  
24 handgun instructor or as the attorney general or a judge,  
25 justice, United States attorney, assistant United States  
26 attorney, assistant attorney general, district attorney,  
27 criminal district attorney, or county attorney. In establishing  
28 the procedure, the department shall require sufficient  
29 documentary evidence to establish the license holder's status

1 under this subsection.

2 SECTION \_\_. Section 411.1882(a), Government Code, is  
3 amended to read as follows:

4 (a) A person who is serving in this state as the attorney  
5 general or as a judge or justice of a federal court, as an  
6 active judicial officer as defined by Section 411.201, as a  
7 United States attorney, assistant United States attorney,  
8 assistant attorney general, district attorney, assistant  
9 district attorney, criminal district attorney, assistant  
10 criminal district attorney, county attorney, or assistant county  
11 attorney, as a supervision officer as defined by [~~Section 27,~~  
12 Article 42A.001 [~~42.12~~], Code of Criminal Procedure, or as a  
13 juvenile probation officer may establish handgun proficiency for  
14 the purposes of this subchapter by obtaining from a handgun  
15 proficiency instructor approved by the Texas Commission on Law  
16 Enforcement for purposes of Section 1702.1675, Occupations Code,  
17 a sworn statement that indicates that the person, during the 12-  
18 month period preceding the date of the person's application to  
19 the department, demonstrated to the instructor proficiency in  
20 the use of handguns.

21 SECTION \_\_. Section 411.201(h), Government Code, is  
22 amended to read as follows:

23 (h) The department shall issue a license to carry a  
24 handgun under the authority of this subchapter to a United  
25 States attorney or an assistant United States attorney, or to an  
26 [~~elected~~] attorney elected or employed to represent  
27 [~~representing~~] the state in the prosecution of felony cases, who  
28 meets the requirements of this section for an active judicial  
29 officer. The department shall waive any fee required for the  
30 issuance of an original, duplicate, or renewed license under  
31 this subchapter for an applicant who is a United States attorney

1 or an assistant United States attorney or who is an attorney  
2 elected or employed to represent the state in the prosecution of  
3 felony cases.

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

7 (h-1) It is a defense to prosecution under Subsections  
8 (b)(1), (2), (4), (5), and (6) [~~(4)-(6),~~] and (c) that at the  
9 time of the commission of the offense, the actor was:

- 10 (1) a judge or justice of a federal court;  
11 (2) an active judicial officer, as defined by Section  
12 411.201, Government Code; or  
13 (3) the attorney general or a United States attorney,  
14 assistant United States attorney, assistant attorney general,  
15 district attorney, assistant district attorney, criminal  
16 district attorney, assistant criminal district attorney, county  
17 attorney, or assistant county attorney.

18 SECTION \_\_. To the extent of any conflict, this Act  
19 prevails over another Act of the 85th Legislature, Regular  
20 Session, 2017, relating to nonsubstantive additions to and  
21 corrections in enacted codes.

ADOPTED

MAY 24 2017

Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: Theresa J. Patton

1 Amend H.B. 435 by Perry (senate committee report) by  
2 inserting the following appropriately numbered sections:

3 SECTION \_\_\_\_\_. The heading to Section 411.209, Government  
4 Code, is amended to read as follows:

5 Sec. 411.209. WRONGFUL EXCLUSION OF [~~CONCEALED~~] HANDGUN  
6 LICENSE HOLDER.

7 SECTION \_\_\_\_\_. Section 411.209, Government Code, is amended  
8 by amending Subsections (a) and (d) and adding Subsection (i) to  
9 read as follows:

10 (a) Except as provided by Subsection (i), a [A] state  
11 agency or a political subdivision of the state may not provide  
12 notice by a communication described by Section 30.06, Penal  
13 Code, or by any sign expressly referring to that law or to a  
14 [concealed-handgun] license to carry a handgun, that a license  
15 holder carrying a handgun under the authority of this subchapter  
16 is prohibited from entering or remaining on a premises or other  
17 place owned or leased by the governmental entity unless license  
18 holders are prohibited from carrying a handgun on the premises  
19 or other place by Section 46.03 or 46.035, Penal Code.

20 (d) A resident [~~citizen~~] of this state or a person  
21 licensed to carry a [~~concealed~~] handgun under this subchapter  
22 may file a complaint with the attorney general that a state  
23 agency or political subdivision is in violation of Subsection  
24 (a) if the resident [~~citizen~~] or person provides the agency or  
25 subdivision a written notice that describes the violation and  
26 specific location of the sign found to be in violation and the  
27 agency or subdivision does not cure the violation before the end  
28 of the third business day after the date of receiving the  
29 written notice. A complaint filed under this subsection must

1 include evidence of the violation and a copy of the written  
2 notice.

3 (i) Subsection (a) does not apply to a written notice  
4 provided by a state hospital under Section 552.002, Health and  
5 Safety Code.

6 SECTION \_\_\_\_ . Subchapter A, Chapter 552, Health and Safety  
7 Code, is amended by adding Section 552.002 to read as follows:

8 Sec. 552.002. CARRYING OF HANDGUN BY LICENSE HOLDER IN  
9 STATE HOSPITAL. (a) In this section:

10 (1) "License holder" has the meaning assigned by  
11 Section 46.035(f), Penal Code.

12 (2) "State hospital" means the following facilities:

13 (A) the Austin State Hospital;

14 (B) the Big Spring State Hospital;

15 (C) the El Paso Psychiatric Center;

16 (D) the Kerrville State Hospital;

17 (E) the North Texas State Hospital;

18 (F) the Rio Grande State Center;

19 (G) the Rusk State Hospital;

20 (H) the San Antonio State Hospital;

21 (I) the Terrell State Hospital; and

22 (J) the Waco Center for Youth.

23 (3) "Written notice" means a sign that is posted on  
24 property and that:

25 (A) includes in both English and Spanish written  
26 language identical to the following: "Pursuant to Section  
27 552.002, Health and Safety Code (carrying of handgun by license  
28 holder in state hospital), a person licensed under Subchapter H,  
29 Chapter 411, Government Code (handgun licensing law), may not  
30 enter this property with a handgun";

31 (B) appears in contrasting colors with block

1 letters at least one inch in height; and

2 (C) is displayed in a conspicuous manner clearly  
3 visible to the public at each entrance to the property.

4 (b) A state hospital may prohibit a license holder from  
5 carrying a handgun under the authority of Subchapter H, Chapter  
6 411, Government Code, on the property of the hospital by  
7 providing written notice.

8 (c) A license holder who carries a handgun under the  
9 authority of Subchapter H, Chapter 411, Government Code, on the  
10 property of a state hospital at which written notice is provided  
11 is liable for a civil penalty in the amount of:

12 (1) \$100 for the first violation; or

13 (2) \$500 for the second or subsequent violation.

14 (d) The attorney general or an appropriate prosecuting  
15 attorney may sue to collect a civil penalty under this section.

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 25, 2017**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB435** by King, Ken (Relating to the application of certain weapons laws to and liability for certain actions of volunteer emergency services personnel licensed to carry a handgun.), **As Passed 2nd House**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Penal Code and Civil Practice and Remedies Code relating to the application of certain weapon laws to volunteer emergency services personnel licensed to carry a concealed handgun. The bill would specify a governmental unit is not liable in a civil action arising from the discharge of a handgun by a volunteer emergency services personnel licensed to carry a concealed handgun. The bill specifies the discharge of a handgun is outside the course and scope of an individual's duties as a volunteer emergency services personnel. The bill would create a defense to prosecution for volunteer emergency services personnel for certain offenses relating to the carrying of a handgun on certain premises. The bill would add certain volunteer emergency personnel to a list of individuals that Section 46.02 and 46.03, Penal Code, does not apply.

The bill would prohibit a person from carrying a handgun on the property of a state hospital. Violating the provisions of the bill would result in a \$100 civil penalty for a first offense and a \$500 penalty for each subsequent offense.

Creating a defense for prosecution for any criminal offense is expected to decrease demands on state and/or county correctional agency resources due to fewer persons on community supervision, in county jail confinement, state correctional institution confinement, and/or parole. However, in the case of this bill, it is assumed that any reduction in the number of offenders supervised or incarcerated under this statute would not significantly impact state correctional agencies' workload and programs.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** UP, FR, GG, BM, AG, SD, EK, KJo, JPo, KKR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 16, 2017**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB435** by King, Ken (Relating to the application of certain weapons laws to and liability for certain actions of volunteer emergency services personnel licensed to carry a handgun.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Penal Code and Civil Practice and Remedies Code relating to the application of certain weapon laws to volunteer emergency services personnel licensed to carry a concealed handgun. The bill would specify a governmental unit is not liable in a civil action arising from the discharge of a handgun by a volunteer emergency services personnel licensed to carry a concealed handgun. The bill specifies the discharge of a handgun is outside the course and scope of an individual's duties as a volunteer emergency services personnel. The bill would create a defense to prosecution for volunteer emergency services personnel for certain offenses relating to the carrying of a handgun on certain premises. The bill would add certain volunteer emergency personnel to a list of individuals that Section 46.02 and 46.03, Penal Code, does not apply.

Creating a defense for prosecution for any criminal offense is expected to decrease demands on state and/or county correctional agency resources due to fewer persons on community supervision, in county jail confinement, state correctional institution confinement, and/or parole. However, in the case of this bill, it is assumed that any reduction in the number of offenders supervised or incarcerated under this statute would not significantly impact state correctional agencies' workload and programs.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** UP, FR, GG, BM, AG, SD, EK, KJo, JPo, KKR

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**March 11, 2017**

**TO:** Honorable Phil King, Chair, House Committee on Homeland Security & Public Safety

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB435** by King, Ken (Relating to the application of certain weapons laws to and liability for certain actions of volunteer emergency services personnel licensed to carry a handgun.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Penal Code and Civil Practice and Remedies Code relating to the application of certain weapon laws to volunteer emergency services personnel licensed to carry a concealed handgun. The bill would specify a governmental unit is not liable in a civil action arising from the discharge of a handgun by a volunteer emergency services personnel licensed to carry a concealed handgun. The bill specifies the discharge of a handgun is outside the course and scope of an individual's duties as a volunteer emergency services personnel. The bill would create a defense to prosecution for volunteer emergency services personnel for certain offenses relating to the carrying of a handgun on certain premises. The bill would add certain volunteer emergency personnel to a list of individuals that Section 46.02 and 46.03, Penal Code, does not apply.

Creating a defense for prosecution for any criminal offense is expected to decrease demands on state and/or county correctional agency resources due to fewer persons on community supervision, in county jail confinement, state correctional institution confinement, and/or parole. However, in the case of this bill, it is assumed that any reduction in the number of offenders supervised or incarcerated under this statute would not significantly impact state correctional agencies' workload and programs.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** UP, FR, GG, BM, AG, SD, EK, KJo, JPo, KKR