

BILL ANALYSIS

H.B. 1911
By: White
Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Second Amendment enshrined the right to bear arms in the U.S. Constitution. There are concerns that state law infringes on the free exercise of that right, namely by requiring a license, which takes time and money to obtain, to legally be able to carry a handgun. H.B. 1911 seeks to reduce barriers to the free exercise of Texans' constitutional right to bear arms and defend their lives and property by making it legal for certain individuals who would otherwise be eligible for a handgun license to carry a handgun without obtaining such a license. The bill retains the handgun license in statute as optional to allow reciprocity with states that have not yet passed similar legislation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 1911 amends the Penal Code to make it legal for a person who meets the eligibility requirements for obtaining a handgun license but is not a license holder to carry a handgun in a concealed manner or in a holster if the following conditions are satisfied:

- the person is not a member of a criminal street gang;
- the person is not engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating; and
- the person is not in a location in which carrying a handgun or other firearm is prohibited under the law.

Accordingly, the bill updates provisions relating to the offense of unlawful carrying of weapons, the offense of possessing or going with a weapon in certain places where weapons are prohibited, and the offense of unlawful carrying of a handgun. The bill removes language limiting the type of holster in which a handgun may be openly carried to shoulder or belt holsters.

H.B. 1911 amends the Human Resources Code, Labor Code, Local Government Code, Parks and Wildlife Code, and Penal Code to make the following provisions formerly applicable only to handgun license holders applicable more broadly to any person who is not prohibited under state or federal law from carrying a handgun or possessing a firearm or ammunition, as appropriate, to reflect the changes made by the bill legalizing the carrying of a handgun by qualifying individuals without a license:

- provisions relating to a foster parent's possession of a handgun in a vehicle;

- provisions relating to employee access to or storage of a firearm or ammunition in a locked, privately owned motor vehicle in a parking area;
- provisions excluding handguns carried by a license holder from a municipality's authority to regulate the carrying of firearms at certain locations or events;
- provisions relating to the carrying of a handgun on Lower Colorado River Authority land; and
- provisions relating to the defense to prosecution for accidental possession of a handgun at an airport screening checkpoint.

H.B. 1911 amends the Parks and Wildlife Code to clarify that provisions relating to the discharge of firearms near certain rivers or streams do not limit any person's ability to carry a handgun.

H.B. 1911 amends the Penal Code to make the defense to prosecution for accidental possession of a handgun at an airport screening checkpoint applicable to any handgun, whether carried openly or concealed. The bill includes a judge or justice of a federal court who is a handgun license holder among the judicial, law enforcement, correctional, and volunteer emergency services personnel who are excepted from the application of the offense of possessing or going with a weapon in certain places where weapons are prohibited and the offense of unlawful carrying of weapons. The bill also excepts such personnel from the application of certain offenses that involve the unlawful carrying of a handgun in prohibited places.

H.B. 1911 decreases the penalty for criminal trespass involving a deadly weapon from a Class A misdemeanor to a Class C misdemeanor punishable by a fine capped at \$200 if the sole basis on which entry on the property or land or in the building was forbidden is that entry with a firearm was forbidden and the person was carrying in a concealed manner or in a holster a handgun that the person was not prohibited by state or federal law from carrying at the time of the offense. However, the penalty remains a Class A misdemeanor if it is shown on the trial of the offense that the actor failed to depart the property, land, or building after being personally given notice by oral communication that entry with a firearm was forbidden.

H.B. 1911 amends the Civil Practice and Remedies Code, Education Code, and Penal Code to include among the conduct to which the following provisions apply carrying a firearm in certain places where weapons are prohibited or in a manner that constitutes an offense of unlawfully carrying a handgun:

- the provision establishing that a person maintains a common nuisance if they maintain a place to which persons habitually go to engage in the applicable conduct and they knowingly tolerate the activity and furthermore fail to make reasonable attempts to abate the activity;
- provisions authorizing a student who is enrolled in a grade level below grade three to be placed in out-of-school suspension, and requiring a student who is 10 years of age or older to be expelled, if the student engages in the applicable conduct on school property or while attending a school-sponsored or school-related activity on or off of school property; and
- provisions establishing that the use of force against another is not justified if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was engaged in the applicable conduct.

H.B. 1911 amends the Government Code to clarify that specified provisions relating to handgun licenses and the carrying of firearms do not prevent or otherwise limit the right of a public or private employer to prohibit any person from carrying any firearm on the business's premises.

H.B. 1911 requires a person carrying a handgun when a magistrate or a peace officer demands that the person display identification to display proof of identity. If the person is a handgun license holder and is carrying the license, they must display the license along with the proof of identity.

H.B. 1911 changes the persons to whom the following provisions apply from a handgun license holder to any person carrying a handgun:

- the requirement for a peace officer to seize a handgun from a person the officer arrests and takes into custody; and
- provisions relating to the authority of a peace officer who is acting in the lawful discharge of their official duties to disarm a person under certain circumstances.

The bill conditions the return of a handgun to a person who was disarmed to protect the person, the officer, or another individual on the person being lawfully allowed to carry a handgun.

H.B. 1911 amends the Business & Commerce Code, Family Code, and Health and Safety Code to make nonsubstantive and conforming changes.

H.B. 1911 repeals the following provisions:

- Section 11.041, Alcoholic Beverage Code;
- Section 11.61(e), Alcoholic Beverage Code;
- Section 61.11, Alcoholic Beverage Code;
- Section 61.71(f), Alcoholic Beverage Code;
- Section 411.204(d), Government Code;
- Section 46.035(h-1), Penal Code, as added by Chapter 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007; and
- Section 46.035(h-1), Penal Code, as added by Chapter 1214 (H.B. 1889), Acts of the 80th Legislature, Regular Session, 2007.

EFFECTIVE DATE

September 1, 2021.