

BILL ANALYSIS

C.S.H.B. 4639
By: Thimesch
Community Safety, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In February 2023, a constituent in House District 65 who is a police officer responded to a reckless driver. After arriving on scene, the officer observed said vehicle backed into a parking stall with temporary tags that turned out to be fake. He created a consensual encounter with the two male occupants who were between the ages of 19 and 22. Upon walking up, he noticed a strong odor of marihuana coming from the vehicle as well as drug paraphernalia in plain view. When the officer asked if there were firearms or marihuana inside the vehicle, both individuals said no. A short time later, the passenger said he had a firearm inside of a backpack which was located on the floorboard near his feet. Both denied having narcotics in the vehicle, but were asked to exit the vehicle and detained for a narcotics investigation. The occupants complied and during a probable cause search of the vehicle, the passenger was found to be in possession of a handgun and approximately one ounce of marihuana. Other paraphernalia found within the backpack was a scale, several small baggies and a straw. Both the baggies and the straw contained trace amounts of what the officers believed to be cocaine.

Currently, to commit the offense of unlawful carry of a weapon, an individual has to intentionally, knowingly, or recklessly carry 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 21 years or older or is licensed to carry, or in which the person is engaged in criminal activity, other than a Class C misdemeanor, or is prohibited from possessing the a firearm by law. In the situation mentioned above, the officer was unable to arrest the passenger on the weapons charge because of the verbiage which says "owned by or under the person's control." This language creates this potentially dangerous loophole in which a passenger can get away with unlawfully carrying a weapon simply because they do not own or control the vehicle. C.S.H.B. 4639 seeks to close this potential loophole and make clear that a police officer can arrest an individual for unlawfully carrying a weapon in a motor vehicle or a watercraft, regardless of whether the motor vehicle or watercraft is owned by the person or under the person's control.

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

C.S.H.B. 4639 amends the Penal Code to remove language limiting the motor vehicle or watercraft in which carrying a handgun under certain circumstances constitutes an offense to a

motor vehicle or watercraft owned by the person engaging in the conduct or under their control. The bill applies only to an offense committed on or after the bill's effective date and provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4639 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions not in the introduced establishing that the bill's provisions apply only to an offense on or after the bill's effective date and providing for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

Whereas the introduced provided for the possible immediate effect of the bill's provisions contingent on receiving the requisite constitutional vote, the substitute does not.