

BILL ANALYSIS

C.S.H.B. 226
By: Guillen
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that some governmental entities erroneously post in places where it is legal to carry a concealed handgun certain signs stating that entry on the property with a concealed handgun is forbidden or that remaining on the property with a concealed handgun is forbidden. These parties are concerned that the confusion arising from these types of mistaken postings may result in a concealed handgun license holder being wrongfully penalized for lawful actions. The parties assert that the law should be clarified to eliminate any confusion regarding where it is legal to carry a concealed handgun. C.S.H.B. 226 seeks to address this issue.

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. 226 amends the Government Code to prohibit a state agency or a political subdivision of the state from providing notice by oral or written communication, or by any sign expressly referring to the offense of trespass by a concealed handgun license holder or to a concealed handgun license, that a license holder carrying a handgun is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by statutory provisions regarding the unlawful carrying of a handgun by a license holder or regarding the places where weapons are prohibited.

C.S.H.B. 226 makes a state agency or a political subdivision of the state that violates that prohibition liable for a civil penalty of not less than \$1,000 and not more than \$1,500 for the first violation and not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation. The bill establishes that each day of a continuing violation constitutes a separate violation. The bill authorizes a citizen of the state or a concealed handgun license holder to file a complaint with the attorney general that a state agency or political subdivision is in violation of the prohibition if the citizen or person provides the agency or subdivision a written notice that describes the violation and specific location of the sign found to be in violation and the agency or subdivision does not cure the violation before the end of the third business day after the date of receiving the written notice. The bill requires the complaint to include evidence of the violation and a copy of the written notice. The bill requires the civil penalty collected by the attorney general to be deposited to the credit of the compensation to victims of crime fund established under the Crime Victims' Compensation Act.

C.S.H.B. 226 requires the attorney general to investigate the complaint to determine whether legal action is warranted before a suit may be brought against a state agency or a political subdivision for a violation and requires the attorney general, if legal action is warranted, to give the chief administrative officer of the agency or political subdivision charged with the violation a written notice that describes the violation and specific location of the sign found to be in violation, states the amount of the proposed penalty for the violation, and gives the agency or political subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the penalty, unless the agency or political subdivision was found liable by a court for a previous violation. The bill authorizes the attorney general or the appropriate county or district attorney, if the attorney general determines that legal action is warranted and that the state agency or political subdivision has not cured the violation within the 15-day period, to sue to collect the civil penalty. The bill authorizes the attorney general to also file a petition for a writ of mandamus or apply for other appropriate equitable relief and to recover reasonable expenses incurred in obtaining the relief. The bill establishes venue for filing such a suit or petition in Travis County or in a county in which the principal office of the state agency or political subdivision is located. The bill waives and abolishes sovereign immunity to suit to the extent of the liability created by the bill's provisions.

C.S.H.B. 226 amends the Penal Code to restrict the conduct constituting the offense of unlawful carrying of a handgun by a license holder at any meeting of a governmental entity to only the room or rooms where a meeting of a governmental entity is held and to condition the conduct on the meeting being an open meeting for which the entity provided the notice required by the state open meetings law.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 226 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter H, Chapter 411, Government Code, is amended by adding Section 411.209 to read as follows:

Sec. 411.209. WRONGFUL EXCLUSION OF CONCEALED HANDGUN LICENSE HOLDER. (a) A state agency or a political subdivision of the state may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter H, Chapter 411, Government Code, is amended by adding Section 411.209 to read as follows:

Sec. 411.209. WRONGFUL EXCLUSION OF CONCEALED HANDGUN LICENSE HOLDER. (a) A state agency or a political subdivision of the state may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03

or 46.035, Penal Code.

(b) A state agency or a political subdivision of the state that violates Subsection (a) is liable for a civil penalty of:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

(c) Each day of a continuing violation of Subsection (a) constitutes a separate violation.

(d) A citizen of this state or a person licensed to carry a concealed handgun under this subchapter may file a complaint with the attorney general that a state agency or political subdivision is in violation of Subsection (a).

A complaint filed under this subsection must include evidence of the violation.

(e) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure.

(f) Before a suit may be brought against a state agency or a political subdivision of the state for a violation of Subsection (a), the attorney general must investigate the complaint to determine whether legal action is warranted. If legal action is warranted, the attorney general must give the chief administrative officer of the agency or political subdivision charged with the violation a written notice that:

(1) describes the violation and specific location of the sign found to be in violation;

(2) states the amount of the proposed penalty for the violation; and

(3) gives the agency or political subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the penalty, unless the agency or political subdivision was found liable by a court for previously violating Subsection (a).

(g) If the attorney general determines that legal action is warranted and that the state

or 46.035, Penal Code.

(b) A state agency or a political subdivision of the state that violates Subsection (a) is liable for a civil penalty of:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

(c) Each day of a continuing violation of Subsection (a) constitutes a separate violation.

(d) A citizen of this state or a person licensed to carry a concealed handgun under this subchapter may file a complaint with the attorney general that a state agency or political subdivision is in violation of Subsection (a) if the citizen or person provides the agency or subdivision a written notice that describes the violation and specific location of the sign found to be in violation and the agency or subdivision does not cure the violation before the end of the third business day after the date of receiving the written notice.

A complaint filed under this subsection must include evidence of the violation and a copy of the written notice.

(e) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure.

(f) Before a suit may be brought against a state agency or a political subdivision of the state for a violation of Subsection (a), the attorney general must investigate the complaint to determine whether legal action is warranted. If legal action is warranted, the attorney general must give the chief administrative officer of the agency or political subdivision charged with the violation a written notice that:

(1) describes the violation and specific location of the sign found to be in violation;

(2) states the amount of the proposed penalty for the violation; and

(3) gives the agency or political subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the penalty, unless the agency or political subdivision was found liable by a court for previously violating Subsection (a).

(g) If the attorney general determines that legal action is warranted and that the state

agency or political subdivision has not cured the violation within the 15-day period provided by Subsection (f)(3), the attorney general or the appropriate county or district attorney may sue to collect the civil penalty provided by Subsection (b). The attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief. A suit or petition under this subsection may be filed in a district court in Travis County or in a county in which the principal office of the state agency or political subdivision is located. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.
(h) Sovereign immunity to suit is waived and abolished to the extent of liability created by this section.

SECTION 2. Section 46.035(c), Penal Code, is amended.

SECTION 3. The change in law made by this Act in amending Section 46.035(c), Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2015.

agency or political subdivision has not cured the violation within the 15-day period provided by Subsection (f)(3), the attorney general or the appropriate county or district attorney may sue to collect the civil penalty provided by Subsection (b). The attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief. A suit or petition under this subsection may be filed in a district court in Travis County or in a county in which the principal office of the state agency or political subdivision is located. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.
(h) Sovereign immunity to suit is waived and abolished to the extent of liability created by this section.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.