

BILL ANALYSIS

C.S.H.B. 910
By: Phillips
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that Texas is one of only a few states that completely prohibit the open carry of a handgun and that many surrounding states allow for the open carry of a handgun in some form. These parties assert that Texas law should allow the open carry of a handgun because concealed handgun license holders in Texas have a long-established record of law-abiding and responsible behavior. C.S.H.B. 910 seeks to provide for the open carry of a holstered handgun.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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. 910 amends the Government Code to expand the scope of a license to carry a concealed handgun to include authorization to carry a handgun, regardless of concealment, and to make statutory provisions regulating license holders and the carrying of a concealed handgun also applicable to the carrying of a handgun, regardless of concealment. The bill includes instruction on the use of restraint holsters and methods to ensure the secure carrying of openly carried handguns in the handgun use and safety portion of the classroom instruction part of the handgun proficiency course required to obtain or renew a license and among the topics on which a qualified handgun instructor must be qualified to instruct persons.

C.S.H.B. 910 amends the Penal Code to clarify that the defense to prosecution for criminal trespass on property, land, or a building on or in which entry with a handgun was forbidden applies if the actor was carrying a license to carry a handgun and carrying a handgun in a concealed manner or in a shoulder or belt holster. The bill restricts the application of the offense of trespass by a license holder to a license holder who carries a concealed handgun, rather than any handgun, on the property of another without effective consent after receiving certain notice.

C.S.H.B. 910 creates the Class A misdemeanor offense of trespass by a license holder with an openly carried handgun for a handgun license holder who openly carries a handgun on property of another without effective consent and who received notice that entry on the property by a license holder openly carrying a handgun was forbidden or that remaining on the property while openly carrying a handgun was forbidden and failed to depart. The bill establishes that a person receives such notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by a specific written communication or by oral

communication. The bill creates an exception to the application of the offense of trespass that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under statutory provisions relating to places where weapons are prohibited and to the offense of unlawful carrying of a handgun by a license holder. The bill establishes that it is not a defense to prosecution for the offense of trespass by a license holder with an openly carried handgun that the handgun was carried in a shoulder or belt holster.

C.S.H.B. 910 creates an exception to the application of the offense of unlawful carrying of a weapon involving the intentional, knowing, or reckless carrying of a handgun in plain view in a motor vehicle or watercraft for a license holder who carries a handgun in a shoulder or belt holster. The bill creates an exception to the application of the offense involving the intentional display of a handgun by a license holder in plain view of another person in a public place for a license holder who carries a handgun that is partially or wholly visible in a shoulder or belt holster. The bill makes it a Class A misdemeanor unlawful carrying of a handgun by a license holder offense for a license holder who carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person and intentionally displays the handgun in plain view of another person on the premises of an institution of higher education or private or independent institution of higher education or on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of such an institution. The bill establishes a defense to prosecution for that specific offense that the actor displayed the handgun under circumstances in which the actor would have been statutorily justified in the use of force or deadly force and makes that specific offense inapplicable to a certain compliant historical reenactment. The bill makes the exemption from the offense of unlawful carrying of weapons for a person who is carrying a handgun license and a handgun in a concealed manner applicable also to a person who is carrying a handgun license and a handgun in a shoulder or belt holster.

C.S.H.B. 910 amends the Alcoholic Beverage Code, Code of Criminal Procedure, Education Code, Election Code, Family Code, Health and Safety Code, Labor Code, Local Government Code, Occupations Code, and Parks and Wildlife Code to make conforming changes. The bill amends a Local Government Code provision that is effective until September 1, 2019, to make a conforming change that will take effect on September 1, 2015, and a Local Government Code provision that is to be effective on September 1, 2019, to make a conforming change that will take effect on that date.

C.S.H.B. 910 repeals Section 411.171(3), Government Code.

EFFECTIVE DATE

Except as otherwise provided, January 1, 2016.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 910 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	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 11.041(a), Alcoholic Beverage Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 11.61(e), Alcoholic	SECTION 2. Same as introduced version.

Beverage Code, is amended.

SECTION 3. Section 61.11(a), Alcoholic Beverage Code, is amended.

SECTION 3. Same as introduced version.

SECTION 4. Section 61.71(f), Alcoholic Beverage Code, is amended.

SECTION 4. Same as introduced version.

SECTION 5. Article 7A.05(c), Code of Criminal Procedure, is amended.

SECTION 5. Same as introduced version.

SECTION 6. Article 17.292(l), Code of Criminal Procedure, is amended.

SECTION 6. Same as introduced version.

SECTION 7. Article 17.293, Code of Criminal Procedure, is amended.

SECTION 7. Same as introduced version.

SECTION 8. Sections 37.0811(d) and (f), Education Code, are amended to read as follows:

SECTION 8. Section 37.0811(f), Education Code, is amended to read as follows:

(d) Any written regulations adopted for purposes of Subsection (c) must provide that a school marshal may carry a ~~concealed~~ handgun as described by Subsection (c), except that if the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a ~~concealed~~ handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty. The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible ammunition designed to disintegrate on impact for maximum safety and minimal danger to others.

(f) A school district or charter school employee's status as a school marshal becomes inactive on:

- (1) expiration of the employee's school marshal license under Section 1701.260, Occupations Code;
- (2) suspension or revocation of the employee's license to carry a ~~concealed~~ handgun issued under Subchapter H, Chapter 411, Government Code;
- (3) termination of the employee's

- (1) expiration of the employee's school marshal license under Section 1701.260, Occupations Code;
- (2) suspension or revocation of the employee's license to carry a ~~concealed~~ handgun issued under Subchapter H, Chapter 411, Government Code;
- (3) termination of the employee's

employment with the district or charter school; or
(4) notice from the board of trustees of the district or the governing body of the charter school that the employee's services as school marshal are no longer required.

SECTION 9. Section 63.0101, Election Code, is amended.

SECTION 10. Section 2.005(b), Family Code, is amended.

SECTION 11. Section 58.003(m), Family Code, is amended.

SECTION 12. Section 85.022(d), Family Code, is amended.

SECTION 13. Section 85.042(e), Family Code, is amended.

SECTION 14. The heading to Section 411.047, Government Code, is amended.

SECTION 15. Section 411.0625, Government Code, is amended.

SECTION 16. The heading to Subchapter H, Chapter 411, Government Code, is amended.

SECTION 17. Sections 411.172(a), (b-1), (g), and (h), Government Code, are amended.

SECTION 18. Section 411.173(b), Government Code, is amended.

SECTION 19. Section 411.174(a), Government Code, is amended.

SECTION 20. Section 411.177(a), Government Code, is amended.

SECTION 21. Section 411.185(c), Government Code, is amended.

SECTION 22. Section 411.188(g), Government Code, is amended to read as follows:

employment with the district or charter school; or
(4) notice from the board of trustees of the district or the governing body of the charter school that the employee's services as school marshal are no longer required.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. Sections 411.188(b) and (g), Government Code, are amended to read as follows:

(b) Only qualified handgun instructors may administer the classroom instruction part or

(g) A person who wishes to obtain a license to carry a [concealed] handgun must apply in person to a qualified handgun instructor to take the appropriate course in handgun proficiency and demonstrate handgun proficiency as required by the department.

SECTION 23. Sections 411.190(c) and (f), Government Code, are amended to read as follows:

(c) In the manner applicable to a person who applies for a license to carry a [concealed] handgun, the department shall conduct a background check of a person who applies for certification as a qualified handgun instructor. If the background check indicates that the applicant for certification would not qualify to receive a handgun license, the department may not certify the applicant as a qualified handgun instructor. If the background check indicates that the applicant for certification would qualify to receive a handgun license, the department shall provide handgun instructor training to

the range instruction part of the handgun proficiency course. The classroom instruction part of the course must include not less than four hours and not more than six hours of instruction on:

- (1) the laws that relate to weapons and to the use of deadly force;
- (2) handgun use and safety, including use of restraint holsters and methods to ensure the secure carrying of openly carried handguns;
- (3) nonviolent dispute resolution; and
- (4) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

(g) A person who wishes to obtain a license to carry a [concealed] handgun must apply in person to a qualified handgun instructor to take the appropriate course in handgun proficiency and demonstrate handgun proficiency as required by the department.

SECTION 23. Sections 411.190(b), (c), and (f), Government Code, are amended to read as follows:

(b) In addition to the qualifications described by Subsection (a), a qualified handgun instructor must be qualified to instruct persons in:

- (1) the laws that relate to weapons and to the use of deadly force;
- (2) handgun use, proficiency, and safety, including use of restraint holsters and methods to ensure the secure carrying of openly carried handguns;
- (3) nonviolent dispute resolution; and
- (4) proper storage practices for handguns, including storage practices that eliminate the possibility of accidental injury to a child.

(c) In the manner applicable to a person who applies for a license to carry a [concealed] handgun, the department shall conduct a background check of a person who applies for certification as a qualified handgun instructor. If the background check indicates that the applicant for certification would not qualify to receive a handgun license, the department may not certify the applicant as a qualified handgun instructor. If the background check indicates that the applicant for certification would qualify to receive a handgun license, the department shall provide handgun instructor training to

the applicant. The applicant shall pay a fee of \$100 to the department for the training. The applicant must take and successfully complete the training offered by the department and pay the training fee before the department may certify the applicant as a qualified handgun instructor. The department shall issue a license to carry a [concealed] handgun under the authority of this subchapter to any person who is certified as a qualified handgun instructor and who pays to the department a fee of \$100 in addition to the training fee. The department by rule may prorate or waive the training fee for an employee of another governmental entity.

(f) If the department determines that a reason exists to revoke, suspend, or deny a license to carry a [concealed] handgun with respect to a person who is a qualified handgun instructor or an applicant for certification as a qualified handgun instructor, the department shall take that action against the person's:

(1) license to carry a [concealed] handgun if the person is an applicant for or the holder of a license issued under this subchapter; and

(2) certification as a qualified handgun instructor.

SECTION 24. Section 411.1901(c), Government Code, is amended.

SECTION 25. Section 411.198(a), Government Code, is amended.

SECTION 26. Sections 411.201(c), (d), (e), and (h), Government Code, are amended.

SECTION 27. Section 411.203, Government Code, is amended.

SECTION 28. Section 411.2032(b), Government Code, is amended.

SECTION 29. Section 12.092(b), Health and Safety Code, is amended.

the applicant. The applicant shall pay a fee of \$100 to the department for the training. The applicant must take and successfully complete the training offered by the department and pay the training fee before the department may certify the applicant as a qualified handgun instructor. The department shall issue a license to carry a [concealed] handgun under the authority of this subchapter to any person who is certified as a qualified handgun instructor and who pays to the department a fee of \$100 in addition to the training fee. The department by rule may prorate or waive the training fee for an employee of another governmental entity.

(f) If the department determines that a reason exists to revoke, suspend, or deny a license to carry a [concealed] handgun with respect to a person who is a qualified handgun instructor or an applicant for certification as a qualified handgun instructor, the department shall take that action against the person's:

(1) license to carry a [concealed] handgun if the person is an applicant for or the holder of a license issued under this subchapter; and

(2) certification as a qualified handgun instructor.

SECTION 24. Same as introduced version.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. Same as introduced version.

SECTION 29. Same as introduced version.

SECTION 30. Sections 52.061 and 52.062, Labor Code, are amended.

SECTION 30. Same as introduced version.

SECTION 31. (a) Section 118.011(b), Local Government Code, as effective until September 1, 2019, is amended.

SECTION 31. Same as introduced version.

SECTION 32. (a) Section 118.011(b), Local Government Code, as effective September 1, 2019, is amended.

SECTION 32. Same as introduced version.

SECTION 33. Section 118.0217(a), Local Government Code, is amended.

SECTION 33. Same as introduced version.

SECTION 34. Section 229.001(b), Local Government Code, is amended.

SECTION 34. Same as introduced version.

SECTION 35. The heading to Section 1701.260, Occupations Code, is amended.

SECTION 35. Same as introduced version.

SECTION 36. Sections 1701.260(a) and (i), Occupations Code, are amended.

SECTION 36. Same as introduced version.

SECTION 37. Section 1702.206(b), Occupations Code, is amended.

SECTION 37. Same as introduced version.

SECTION 38. Sections 62.082(d) and (e), Parks and Wildlife Code, are amended.

SECTION 38. Same as introduced version.

SECTION 39. Section 284.001(e), Parks and Wildlife Code, is amended.

SECTION 39. Same as introduced version.

SECTION 40. Section 30.05(f), Penal Code, is amended.

SECTION 40. Same as introduced version.

SECTION 41. The heading to Section 30.06, Penal Code, is amended.

SECTION 41. Same as introduced version.

SECTION 42. Section 30.06(a), Penal Code, is amended.

SECTION 42. Same as introduced version.

SECTION 43. Section 30.06(c)(3), Penal Code, is amended.

SECTION 43. Same as introduced version.

SECTION 44. Chapter 30, Penal Code, is amended.

SECTION 44. Same as introduced version.

SECTION 45. Section 46.02(a-1), Penal Code, is amended.

SECTION 45. Same as introduced version.

SECTION 46. Section 46.03(f), Penal Code, is amended.

SECTION 46. Same as introduced version.

SECTION 47. Sections 46.035(a), (b), (c), (d), and (i), Penal Code, are amended to read as follows:

SECTION 47. Section 46.035, Penal Code, is amended by amending Subsections (a), (b), (c), (d), (g), (h), (i), and (j) and adding Subsection (a-1) to read as follows:

(a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder.

(a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder.

(a-1) Notwithstanding Subsection (a), a license holder commits an offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person:

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on or about the license holder's person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education.

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on or about the license holder's person:

(1) on the premises of a business that has a

(1) on the premises of a business that has a

permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home administration, as appropriate;

(5) in an amusement park; or

(6) on the premises of a church, synagogue, or other established place of religious worship.

(c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, at any meeting of a governmental entity.

(d) A license holder commits an offense if, while intoxicated, the license holder carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster.

(i) Subsections (b)(4), (b)(5), (b)(6), and (c)

permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home administration, as appropriate;

(5) in an amusement park; or

(6) on the premises of a church, synagogue, or other established place of religious worship.

(c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, at any meeting of a governmental entity.

(d) A license holder commits an offense if, while intoxicated, the license holder carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster.

(g) An offense under this section [~~Subsection (a), (b), (c), (d), or (e)~~] is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) It is a defense to prosecution under Subsection (a) or (a-1) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of force or deadly force under Chapter 9.

(i) Subsections (b)(4), (b)(5), (b)(6), and (c)

do not apply if the actor was not given effective notice under Section 30.06 or 30.07.

No equivalent provision.

SECTION 48. Sections 46.15(a) and (b), Penal Code, are amended.

SECTION 49. Section 411.171(3), Government Code, is repealed.

SECTION 50. The change in law made by this Act relating to the authority of a license holder to openly carry a holstered handgun applies to the carrying of a handgun on or after the effective date of this Act by any person who:

(1) holds a license issued under Subchapter H, Chapter 411, Government Code, regardless of whether the person's license was issued before, on, or after the effective date of this Act; or

(2) applies for the issuance of a license under that subchapter, regardless of whether the person applied for the license before, on, or after the effective date of this Act.

SECTION 51. The changes in law made by this Act to Sections 62.082 and 284.001, Parks and Wildlife Code, and to Sections 30.05, 30.06, 46.02, 46.03, 46.035, and 46.15, Penal Code, apply 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

do not apply if the actor was not given effective notice under Section 30.06 or 30.07.

(j) Subsections (a), (a-1), and (b)(1) do not apply to a historical reenactment performed in compliance with the rules of the Texas Alcoholic Beverage Commission.

SECTION 48. Section 46.035(f), Penal Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

SECTION 49. Same as introduced version.

SECTION 50. Same as introduced version.

SECTION 51. Same as introduced version.

SECTION 52. Same as introduced version.

before the effective date of this Act if any element of the offense occurred before that date.

SECTION 52. Except as otherwise provided by this Act, this Act takes effect September 1, 2015.

SECTION 53. Except as otherwise provided by this Act, this Act takes effect January 1, 2016.