(The House considered SB 321 by Hegar, the Senate companion bill, in lieu of HB 681, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 321.)

HOUSE RESEARCH ORGANIZATION bill analysis 5/2/2011

HB 681
Kleinschmidt, et al.
(CSHB 681 by Orr)

SUBJECT: Allowing licensees to store handguns in vehicles in workplace parking lots

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Deshotel, Orr, Garza, Quintanilla, Solomons, Workman

0 nays

3 absent — Bohac, Giddings, S. Miller

WITNESSES: For — David Carter; Mike Cox; Tara Mica, National Rifle Association; David Robertson; T.J. Scott; Raymond Smith; Alice Tripp, Texas State Rifle Association; *(Registered, but did not testify*: Michael Taylor)

Against — Luke Bellsnyder, Texas Association of Manufacturers; Charles Carpenter; Jeffrey Clark, Technology Association of America (Tech America); Cathy DeWitt, Texas Association of Business; Michael Golden, Texas Employment Law Council; Steve Harrison, Texas Trial Lawyers Association; Lee Parsley, Texas Civil Justice League; Hector Rivero, Texas Chemical Council; *(Registered, but did not testify*: Marty Allday, Copano Energy and Enbridge Energy; Pamela Bratton, Career Consultants Staffing Services and Meador Staffing Services; Stephanie Gibson, Texas Retailers Association; Robert (Bo) Gilbert, USAA; Kimberly Hall, First Data Corporation; Debbie Hastings, Texas Oil & Gas Association; Dennis Kearns, Texas Railroad Association; Andrew Lindsey, United Parcel Service; Karen Reagan, Walgreen Company; Mary Ann Reid, Greater Port Arthur Chamber of Commerce; James Rich, Greater Beaumont Chamber of Commerce; Lindsay Sander, Kinder Morgan and Mark West; Gyl Switzer, Mental Health America of Texas; Kathy Tatmon)

BACKGROUND: Government Code, sec. 411.203 does not limit the right of a public or private employer to prohibit people with concealed handgun licenses from carrying their concealed handguns on the premises of the business.

Penal Code, sec. 46.035 (f)(3) defines "premises" as a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

DIGEST:

CSHB 681 would forbid an employer from prohibiting an employee who was legally authorized to have a firearm or ammunition from transporting or storing the firearm or ammunition in a locked, privately owned vehicle in an employer-provided parking lot.

Employers still could prohibit a concealed handgun licensee from carrying a weapon within the premises of the employer's business.

CSHB 681 would not authorize concealed handgun licensees to carry their weapons on property where it was prohibited by state or federal law. In addition, the bill would exclude:

- a vehicle owned or leased by the employer, unless carrying a weapon was part of the job description;
- a school district;
- an open-enrollment charter school or private school;
- property controlled by someone other than the employer that was subject to an oil, gas, or mineral lease executed before September 1, 2011, that prohibited possession of firearms on the property; and
- property owned or leased by a chemical manufacturer or oil and gas refiner whose business involved hazardous, combustible, or explosive materials, unless the parking area was outside of a secured and restricted area that contained the physical plant, was not open to the public, and was constantly monitored by security personnel.

The bill would provide immunity from liability to the employer for personal injury, death, property damage, or any other damages caused by an employee transporting or storing firearms or ammunition or by theft of the firearm or ammunition. The bill would apply only to legal actions occurring on or after it took effect on September 1, 2011.

SUPPORTERS SAY:

CSHB 681 would end an inconsistency in state law that prevents employees from storing their weapons in their vehicles in their employers' parking areas but does not prevent visitors or other nonemployees from doing so. Many companies in Texas have adopted "no firearms" policies

that extend beyond the workplace and into parking areas that often are accessible to the general public and not secured. These restrictions frequently originate in a headquarters located outside of Texas or even the United States and do not account for the state's firearm transportation laws and sporting culture. The bill would end this disparate treatment between employees and nonemployees who use the same parking areas.

Business concerns about potential violence should not be used to justify forcing employees to choose between protecting themselves and being disciplined or fired for violations of "no firearm" policies. Concerns about workplace safety should not end at the front door of a business. Workers have a right to protect themselves in the parking lot or during their daily commute. Some employers appear to be more concerned about their own liability than about the safety of their employees when they leave their offices. CSHB 681 would protect employers from liability while giving employees the right to self-defense.

CSHB 681 would protect the right to bear arms, which is guaranteed by both the U.S. and Texas constitutions. In February 2009, the U.S. Tenth Circuit Court of Appeals upheld similar Oklahoma legislation holding employers criminally liable for prohibiting employees from storing firearms in locked vehicles on company property (*Ramsey Winch Inc. v. Henry*, No. 07-5166, 10th Cir. 2009). The appeals court held that there were no specific Occupational Health and Safety Administration rules determining that storing firearms or ammunition in parking lots constituted a hazard. CSHB 681 would be similar to the Oklahoma statutes that have undergone close court scrutiny and would exceed the standards set in *Ramsey Winch Inc. v. Henry*.

CSHB 681 would reasonably exempt businesses that handled hazardous materials or areas that produced oil, gas, or other chemicals. The bill would provide an enforceable and uniform compromise for chemical manufacturers and oil and gas refiners as long as they permitted employees to store their weapons and ammunition in vehicles parked in secured and monitored areas. Legislators should not carve out special exceptions for other employers, regardless of their size or security procedures, to avoid a patchwork of regulation.

There is no empirical evidence that allowing firearms in vehicles leads to workplace violence. The bill would not interfere with business policies to forbid firearms inside the work areas or in company vehicles. Employers

would be immune from liability if an unthinkable, but extremely unlikely, event occurred.

OPPONENTS SAY:

CSHB 681 would infringe on the basic constitutional rights of employers to control their property. It should always be the prerogative of the property owner and business owner to make decisions about his or her property, such as whether or not to allow weapons. Employers have the right to set the terms of employment, and this should include whether employees may bring concealed handguns onto property outside of the business. This is a logical extension of the employers' rights to ban concealed handguns from their premises.

The current uncertain economic times translate into an unstable mix of job-related emotions. The presence of weapons in employer parking lots could increase the likelihood that a heated dispute between a worker and a supervisor or among co-workers would escalate into tragedy. The gun owner or passersby also could be endangered if the firearm discharged accidentally.

OTHER OPPONENTS SAY:

Large employers that maintain a high level of security within their parking lots and campuses should receive the same exception granted to plants that handle hazardous materials. They can easily meet the standard for an enclosed parking lot not accessible to the public and continually monitored.

NOTES:

The committee substitute differs from the original version of the bill by adding exemptions for chemical manufacturers or oil and gas refineries.

The companion bill, SB 321 by Hegar, passed the Senate by 30-1 (Rodriguez) on March 15 and was reported favorably, as substituted, by the House Business and Industry Committee on April 6, making it eligible to be considered by the House in lieu of HB 681.