

SUBJECT: Defenses to prosecution for trespass by handgun license holders

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Nevárez, Paul, Burns, Calanni, Clardy, Lang, Tinderholt
2 nays — Goodwin, Israel

WITNESSES: For — Rick Briscoe and CJ Grisham, Open Carry Texas; Michael Cargill, Texans for Accountable Government; Terry Holcomb, Texas Carry; Alice Tripp, Texas State Rifle Association; (*Registered, but did not testify:* Angela Smith, Fredericksburg Tea Party; Justin Delosh, Lone Star Gun Rights; Tara Mica, National Rifle Association; Mark Ramsey, Republican Party of Texas, SREC SD7; Tom Glass, Texas Constitutional Enforcement; and six individuals)

Against — Val Perkins, Texas Community Association Advocates; (*Registered, but did not testify:* Pamela Bixby, League of Women Voters Texas; Heather Kennedy, Elva Mendoza, Tracy Sowada, Moms Demand Action; Holly Hayes, Diane McMichael, Moms Demand Action for Gun Sense in America; Stacey Roberts, Precinct Chair Republican Party Reeves County; Anna Alkire; Becca Defelice; Kirsten Linebaugh; Maria Person; Ruth York;)

On — David Mintz, Texas Apartment Association; Joe Palmer; (*Registered, but did not testify:* Clint Brown, Texas Community Association Advocates; Sandra Crenshaw; Pete Geerlings)

BACKGROUND: Penal Code sec. 30.05(a) establishes an offense for criminal trespassing if a person enters or remains on someone else's property without consent and the person had notice that entry was forbidden or received notice to leave but failed to do so. Under Penal Code sec. 30.05(f) it is a defense to prosecution for the offense if the basis for forbidding entry on the property was that entry with a handgun was forbidden and the person had a license to carry a handgun and was either carrying it concealed or in an approved

holster. The penalty for the offense generally ranges from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), depending on where it was committed.

Penal Code secs. 30.06 and 30.07 establish a class C misdemeanor punishable by fine of up to \$200 for a handgun license holder to either conceal or openly carry a handgun on another's property without effective consent if the license holder received oral or written notice that entry on the property by a license holder was forbidden.

DIGEST:

CSHB 302 would establish Penal Code defenses to prosecution for trespassing offenses relating to carrying handguns in certain places and would establish Property Code prohibitions on certain restrictions on firearms being carried on parts of some properties.

Penal Code defenses to prosecution. CSHB 302 would add defenses to prosecution for trespassing related to legally carried handguns being carried, possessed, and stored on certain residential property by owners and tenants and their guests and on commercial property by tenants, employees, or agents. The defenses to prosecution would apply to the offenses of criminal trespass and trespass by a license holder with a concealed or open handgun. The defenses would apply to actions on the property of condominiums governed by Property Code chs. 81 and 82, leased premises governed by Property Code ch. 92, and commercial property governed by Property Code ch. 93.

Actions covered by the defenses would include carrying or storing the firearm or ammunition in the owner's condominium or in the unit of leased or commercial property, carrying a firearm directly to or from an owner's property or a rental unit, carrying a firearm directly to or from a vehicle in a provided parking area, and storing or carrying a firearm in a vehicle in a provided parking area. The defenses would not apply to certain properties listed in Penal Code sec. 46.035 on which it is unlawful for license holders to carry handguns.

Property Code prohibitions. Condominium owners and their tenants and guests could not be prohibited from lawfully possessing, carrying, transporting, or storing a firearm or ammunition in the condo unit, a vehicle in a provided parking area, or other common locations necessary to enter or exit the property or the unit or a vehicle.

CSHB 302 would establish a similar prohibition related to residential and commercial landlords. They could not prohibit a tenant or a tenant's guest or a commercial tenant or a tenant's employee from lawfully possessing, carrying, transporting, or storing a firearm or ammunition in the tenant's rental unit or leased premises, in a vehicle in a designated parking area, or in other locations controlled by the landlord that are necessary to enter or exit the unit or premises or to enter or exit a vehicle on the premises or in a designated parking area.

The bill would take effect September 1, 2019, and would apply to offenses that occur on or after that date.

**SUPPORTERS
SAY:**

CSHB 302 would protect the rights of owners and tenants of residential property and their guests and tenants of commercial property and their employees to possess guns on property they control and to move with them from their vehicles to that property. The bill would ensure that law-abiding Texans who choose to carry guns were not convicted of trespassing when going to their homes or offices.

CSHB 302 would clear up several points of confusion about individuals lawfully carrying their firearms to and from premises under their control. Currently, a landlord might post a sign prohibiting firearms at an apartment complex or a landlord or building owner might try to use a lease to prohibit firearms at a condo complex or a commercial building. Such prohibitions are confusing because they would effectively prohibit individuals who lawfully can carry guns from moving them between vehicles and their apartments, condos, and offices and would conflict with Penal Code sec. 46.02, which gives individuals the right to carry guns on their own premises or when directly in route to their own vehicles. CSHB 302 would clear up this confusion by giving gun owners who legally

possess and move their firearms a defense to prosecution for violating firearm trespass laws.

CSHB 302 would reflect and clarify current law and would not change the law on where Texans may and may not carry firearms. Landlords would continue to be able to prohibit firearms in common areas, such as gyms or pools, that are not used to travel directly between vehicles and residential units or commercial spaces. Tenants of commercial property would retain the ability to prohibit weapons on premises they control.

OPPONENTS
SAY:

CSHB 302 is unnecessary and could infringe on the rights of private property owners to prohibit concealed or open carry on their property. Because current law already allows individuals to transport firearms from vehicles to their own premises or premises under their control, it is unnecessary to create another defense to prosecution which could cause confusion. Commercial property owners should be able to continue to control their property without the accommodations they might have to make under the bill.