

SUBJECT: Allowing permitless carry of a firearm for persons 21 years and older

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 6 ayes — White, Harless, Hefner, Patterson, Schaefer, Tinderholt

3 nays — Bowers, Goodwin, E. Morales

WITNESSES: For — Rachel Malone, Gun Owners of America; Jason Bennett, Huckleberry Arms LLC; Tara Mica, National Rifle Association; Rick Briscoe, Open Carry Texas; Andi Turner, Texas State Rifle Association; and 18 individuals; (*Registered, but did not testify*: John Edeen, Doctors for Responsible Gun Ownership; Angela Smith, Fredericksburg Tea Party; Tamara Colbert, Paul Hodson, and Wesley Whisenhunt, Grassroots Gold; Thomas Anderson, Felisha Bull, and Destiny Hallman, Gun Owners of America; Tara Mica, National Rifle Association; Jeff LeBlanc, Republican Liberty Caucus of Texas; Ruth York, Tea Party Patriots of Eastland County; Tom Glass, Texas Constitutional Enforcement; Melissa Weakley and David Weakley, Texas Liberty Defenders; William Nance, Texas State Rifle Association; Jason Vaughn, Texas Young Republicans; Brandon Burkhart and Wayne Howell, This Is Texas Freedom Force; Shelia Franklin and Fran Rhodes, True Texas Project; Manfred Wendt, Young Conservatives of Texas; Jack Anderson, Mia Gradick, Megan Harris, Patrick Harris, Kaden Mattingly, Catherine Nolde, and Dayton Wright, Young Conservatives of Texas-Baylor Chapter; Jordan Clements, Young Conservatives of Texas-UT Chapter; Jake Neidert, Young Conservatives of Texas-State Board; and 97 individuals)

Against — (*Registered, but did not testify*: Stephanie Arthur, Everytown for Gun Safety and Moms Demand Action; Leesa Ross, Lock Arms for Life; Joe Burnes, LPTexas SLEC rep sd24; Molly Bursey, Rebecca Defelice, Mandy Gauld, Elizabeth Hanks, Mistie Hower, Laura Legett, and Leslie Morrison, Moms Demand Action for Gun Sense in America; Jon Brandt, Frances Schenkkan, Gyl Switzer, and Louis Wichers, Texas Gun Sense; Aimee Mobley Turney, The League of Women Voters of Texas;

and 16 individuals)

On — (*Registered, but did not testify*: John Lott, Crime Prevention Research Center; Chris McNutt, Texas Gun Rights; Eric Brakey, Young Americans for Liberty)

BACKGROUND: Penal Code sec. 30.05 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. The penalty for the offense generally is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Under Penal Code secs. 30.06 and 30.07, a handgun license holder may not carry a concealed handgun or openly carry a handgun on another's property without consent if the license holder receives oral or written notice that entry on the property by a license holder is forbidden. The offenses generally are class C misdemeanors punishable by a fine not to exceed \$200, except that they are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000) if the license holder failed to leave after being asked to do so.

Under sec. 46.02, it is a crime for a person to intentionally, knowingly, or recklessly carry a handgun on or about the person if not on the person's own premises or inside of or directly en route to the person's motor vehicle or watercraft. It also is a crime for a person to have a handgun in plain view in a motor vehicle or watercraft, unless the person is licensed to carry a handgun and carried it in a shoulder or belt holster. An offense under this section is a class A misdemeanor.

Sec. 46.03 makes it a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for a person to possess a weapon on certain prohibited premises. Sec. 46.035 creates offenses for carrying a handgun by a license holder on certain premises under certain conditions, including in plain view in a public place. An offense under this section is a class A misdemeanor, except if it occurred at certain locations, including a business deriving income from alcohol sales, it is a third-degree felony.

DIGEST: CSHB 1927 would create the Firearm Carry Act of 2021 and would make certain changes to the Penal Code relating to offenses concerning the possession of a firearm or other weapon on certain premises.

The bill would make it legal for a person who was at least 21 years old to carry a handgun while not on the person's own premises or premises the person controlled or while not inside of or directly en route to a motor vehicle or watercraft that was owned or controlled by the person.

A person would commit an offense if the person carried the handgun and intentionally displayed it in plain view of another person in a public place, except if the handgun was partially or wholly visible and carried in a holster. The bill would remove a requirement a person carry specifically in a shoulder or belt holster.

The bill would repeal the offense of unlawful carrying of a handgun by a license holder under Penal Code sec. 46.035 and expand the places where weapons are prohibited under Penal Code sec. 46.03. Under the bill, a person would commit an offense if the person possessed a firearm, location-restricted knife, club, or other prohibited weapon:

- on the premises of businesses that had an alcohol beverage permit or license and derived at least 51 percent of its income from the sale of alcoholic beverages;
- on the premises where an amateur or professional sporting event was taking place, except under certain circumstances;
- on the premises of a correctional facility;
- on the premises of a civil commitment facility;
- on the premises of a state hospital or nursing home or on the premises of a mental hospital, unless authorized; or
- in an amusement park.

A person no longer would commit an offense if the person went on the premises of a church, synagogue, or other established place of religious worship with a location-restricted knife.

The bill would remove the requirement that a license holder's handgun be concealed for the defense to prosecution of the offense for unlawfully carrying a prohibited weapon in or into a secured area of an airport.

CSHB 1927 would repeal provisions making it an offense for a handgun license holder to:

- carry a handgun in the room where an open meeting of a governmental entity was held;
- carry a handgun while intoxicated; and
- violate state law governing handgun licenses while in the course or scope of employment as a security officer.

The punishment enhancement for the offense of unlawful carrying of weapons under Penal Code sec. 46.02 if it was committed on any premises licensed or issued a permit for the sale of alcoholic beverages would be removed.

Under the bill, the offense of possessing a weapon on a prohibited premises would not apply to a person unless the person received oral communication from the property owner or another person with apparent authority that carrying a weapon on the property was prohibited and the person subsequently failed to depart.

The offense of criminal trespass under Penal Code sec. 30.05 would be a class C misdemeanor punishable by a fine not to exceed \$200 if the person entered the property, land, or building with a firearm or other weapon and the sole basis on which entry was forbidden was that entry with a firearm or other weapon was forbidden. The offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if it was shown that after entering the property, land, or building, the person received oral communication that such entry was forbidden and subsequently failed to leave. It would be a defense to prosecution if after receiving the oral communication, the person promptly departed.

The bill would make it a crime for a member of a criminal street gang to intentionally, knowingly, or recklessly carry on or about the member's person a handgun in any motor vehicle or watercraft, rather than only a motor vehicle or watercraft owned or controlled by the member. This offense would not apply under certain circumstances as specified in the bill.

A peace officer could disarm a person at any time the officer believed it was necessary for the protection of the person, officer, or another individual. The officer would have to return the weapon to the person before discharging the person from the scene if the officer determined that the person was not a threat and the person had not committed a violation that resulted in arrest.

A peace officer could temporarily disarm a person when the person entered a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provided a weapons locker where the officer could secure the weapon. The officer would have to return the weapon immediately after the person left that portion of the facility.

The bill would repeal provisions in the Alcoholic Beverage Code related to certain holders of alcoholic beverage permits or licenses, including:

- a requirement that establishments that hold permits or licenses display in a prominent place on their premises a sign giving notice that it is unlawful for a person to carry a weapon on the premises unless it is a handgun the person is licensed to carry;
- a requirement that the Texas Alcohol and Beverage Commission cancel an original or renewal permit or an original or renewal dealer's on-premises or off-premises license if it is found that the permittee or licensee knowingly allowed a person to possess a firearm in a building on the licensed premises, except if the person is a peace officer, a security officer under certain circumstances, or licensed to carry.

The bill would take effect September 1, 2021, and would apply only to an

offense committed on or after that date.

SUPPORTERS
SAY:

CSHB 1927 would protect the Second Amendment rights of law-abiding Texans and reduce barriers to the exercise of the right to bear arms and the right to defend oneself, one's family, and one's property by allowing those over 21 years old to lawfully carry a handgun without first having to obtain a license to carry.

The bill would not weaken the state's gun laws or dismantle Texas' license to carry, as it would not increase places guns would be allowed but rather would retain current gun-free zones. In addition, persons who are currently prohibited from possessing firearms under state and federal law would not gain the right to possess or carry a firearm under the bill.

Permitless carry. CSHB 1927 would ensure all Texans were afforded an equal opportunity to protect themselves, regardless of financial status and resources. The time and resources required to obtain a license to carry act as a barrier to some wanting to exercise their Second Amendment rights. Although the cost of a license has been reduced, it still takes time and money to attend the course and complete the application process.

The bill would not eliminate license to carry but would retain the handgun license in statute as an option for Texans, especially for travel and reciprocity with other states. Many law abiding gun owners recognize the benefits of instruction and voluntarily would continue to seek out training and handgun licenses. In some states that have enacted similar laws, they saw an increase both in people applying for handgun licenses and in people seeking firearms proficiency training.

Mistake provision. The bill would protect lawful gun owners by providing them a chance to leave a gun-free zone when notified that the possession of a handgun on the premises was prohibited before triggering a criminal offense. In instances where a person forgot he or she was carrying a handgun and entered premises where it was prohibited, a person should not be penalized and face a potential criminal record for genuinely making a mistake. The bill would provide the gun owner an

opportunity to leave but would retain the criminal offense in the event the person refused to depart. While some have argued that the bill instead should provide for a defense to prosecution, that would result in the person unnecessarily having to spend resources and time in the criminal justice system.

Signage. The bill would not create a burden for business and property owners who wish to prohibit the carrying of a handgun on their premises under the bill. As the bill simply would treat handguns in a manner similar to the manner that rifles and long guns are currently treated under state law, the notification provisions under the criminal trespass law would be sufficient to communicate that entry by a person carrying a handgun without permit was prohibited. For example, an effective sign could be as simple as a picture of a gun with a prohibition symbol over it.

CRITICS
SAY:

CSHB 1927 would remove safeguards currently in place under Texas law to ensure safe, responsible, and informed gun ownership.

Permitless carry. CSHB 1927 would erode Texas' effective license to carry system and increase the number of untrained individuals carrying guns in public. Through the license to carry process, existing law ensures responsible gun owners go through a background check, safety training, and proficiency tests before carrying a handgun in public. Permitless carry would eliminate these safeguards, allowing unvetted people to carry in public, which also could make it easy for people with dangerous histories to carry handguns in public places. This would make the job of law enforcement more difficult and more dangerous.

To legally drive a car, one has to pass a driving test and obtain a driver's license and so, too, should anyone who wanted to carry a handgun in public be required to first pass a basic proficiency test and obtain a license.

Mistake provision. By requiring that the owner of a property or their agent personally provide oral notice that carrying a weapon was prohibited and further requiring that the person refuse to leave before any

criminal liability was applied, the bill could result in more guns being carried in gun-free zones, including schools, bars, and polling places, as it would not be a crime until the person was asked to leave. This provision inappropriately would move the responsibility from the gun owner to the property or business owner, which could result in uncomfortable situations and possibly dangerous confrontations.

The bill also would not ensure that the person carrying a gun in violation left the premises immediately. Under the bill, the person would have to subsequently leave the premises to not commit an offense, but "subsequent" is too vague and conveys the person would not have to depart right away but could depart any time after notification to avoid committing a crime.

Signage. By expanding the ability for certain persons to carry without a license in public, the bill would impose burdens on businesses and other entities that wish to prohibit firearms on their premises. Under current law, a business that wants to prohibit handguns on their property is required to post two signs: one prohibiting concealed carry and one prohibiting open carry. However, these signs only apply to license holders. Under the bill, business owners would incur costs to create and obtain a third sign to prohibit permitless carry.

In addition, the bill does not specify what type of signage would be required to prohibit permitless carry on the property, which could lead to confusion for both property owners and gun owners.

OTHER
CRITICS
SAY:

CSHB 1927 would not go far enough to support the Second Amendment rights of Texans and instead should join many other states and eliminate any permit requirements to legally carry a handgun in public.