

BILL ANALYSIS

C.S.H.B. 937
By: Fletcher
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

To be eligible to obtain a license to carry a concealed handgun in Texas, an applicant must meet certain age, residency, and character requirements and be fully qualified under applicable federal and state law to purchase a handgun. Additionally, the applicant cannot have been convicted of certain offenses within a certain time frame and cannot be currently charged with the commission of those offenses, be chemically dependent, be delinquent in payments of state or local taxes or child support, or be subject to certain protective or restraining orders. Interested parties note that law-abiding concealed handgun license holders who have satisfied the background check process and successfully completed appropriate education and training courses should be able to protect themselves in the event of a situation that threatens innocent lives on certain educational campuses, and the parties raise concern that state law is not currently sufficient in this regard. C.S.H.B. 937 seeks to provide students, faculty, and visitors on certain educational campuses the protections that may be necessary in life-threatening situations.

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 rulemaking authority is expressly granted to a public institution of higher education in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 937 amends the Government Code to authorize a concealed handgun license holder to carry a concealed handgun on or about the license holder's person while on the campus of a public, private, or independent institution of higher education in Texas. The bill prohibits a public, private, or independent institution of higher education in Texas from adopting any rule, regulation, or other provision prohibiting license holders from carrying concealed handguns on the campus of the institution but authorizes such an institution to establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution. The bill authorizes a private or independent institution of higher education in Texas, after consulting with students, staff, and faculty of the institution, to establish rules, regulations, or other provisions, except as provided by statutory provisions relating to the transportation and storage of firearms and ammunition by concealed handgun license holders in private vehicles on certain campuses, prohibiting license holders from carrying handguns on the campus of the institution, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution.

C.S.H.B. 937 prohibits a court from holding a public institution of higher education or an officer or employee of such a public institution or a private or independent institution of higher education that has not adopted rules prohibiting a license holder from carrying a handgun on the institution's premises or an officer or employee of such a private or independent institution of higher education from carrying a handgun on the institution's premises liable for damages caused by an action authorized under statutory provisions relating to concealed handgun licensing, by a failure to perform a duty imposed by such provisions, or by the actions of a concealed handgun license holder or applicant that occur after the applicant has received or been denied a license. The bill prohibits the bringing of a cause of action in damages against such an institution, officer, or employee for any damage caused by the actions of a concealed handgun license applicant or license holder. The bill makes such immunities from liability for damages and from a cause of action in damages inapplicable if such an institution's, officer's, or employee's act or failure to act was capricious or arbitrary. The bill excludes from those immunities such an institution's officer or employee who possesses a handgun on the institution's campus and whose conduct with regard to the handgun is made the basis of a claim for personal injury or property damage.

C.S.H.B. 937 amends the Penal Code to create an exception to the offense of trespass by a concealed handgun license holder carrying a concealed handgun on the property of another without effective consent on property owned or leased by a governmental entity if the property on which the license holder carries the handgun is not the portion of the premises of a public, private, or independent institution of higher education that is in continuous use as a national biocontainment laboratory in which biological specimens are stored or used. The bill creates an exception to the offense of intentionally, knowingly, or recklessly possessing or going with a firearm, illegal knife, club, or other prohibited weapon on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, if the person possesses or goes with a concealed handgun that the person is licensed by the Department of Public Safety to carry and no other prohibited weapon on such premises, grounds, building, or a passenger transportation vehicle of a public, private, or independent institution of higher education.

C.S.H.B. 937 expands the conduct that constitutes the offense of unlawful carrying of a handgun by a concealed handgun license holder to include the carrying by a concealed handgun license holder of a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person and intentionally displaying the handgun in plain view of another person on the premises of a public, 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 such conduct if 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 and establishes that the conduct does not constitute an offense if it occurs during a historical reenactment performed in compliance with Texas Alcoholic Beverage Commission rules. The bill establishes that the offense involving a concealed handgun license holder intentionally, knowingly, or recklessly carrying a handgun on certain premises does not apply on the premises where a collegiate sporting event is taking place if the actor was not given effective notice under statutory provisions relating to trespass by a concealed handgun license holder that entering or remaining on the property with a concealed handgun was forbidden.

C.S.H.B. 937 amends the Government Code and Penal Code to establish that the bill's provisions do not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a hospital maintained or operated by, or on the premises of a preschool, elementary school, or secondary school that is located on the premises of, a public, private, or independent institution of higher education if the hospital or institution, as applicable, gives effective notice under statutory provisions relating to trespass by a concealed handgun license holder that entering or remaining on the property with a concealed handgun was forbidden. The bill's provisions do not permit a person to possess a concealed handgun, or go with a concealed

handgun, inside a building or portion of a building that is in continuous use as a national biocontainment laboratory in which biological specimens are stored or used and that is located on the premises of a public, private, or independent institution of higher education and maintained or operated by the institution if the institution gives effective notice under statutory provisions relating to trespass by a concealed handgun license holder that entering or remaining on the property with a concealed handgun was forbidden with respect to that building or portion of that building, but the bill excepts from the application of this provision any portion of a building to which students, faculty, staff, or the general public are granted unrestricted access.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 937 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 411.2031 to read as follows:

Sec. 411.2031. CARRYING OF HANDGUNS BY LICENSE HOLDERS ON CERTAIN CAMPUSES. (a) For purposes of this section:

(1) "Campus" means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education.

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

(3) "Premises" has the meaning assigned by Section 46.035, Penal Code.

(b) A license holder may carry a concealed handgun on or about the license holder's person while the license holder is on the campus of an institution of higher education or private or independent institution of higher education in this state.

(c) Except as provided by Subsection (d) or (e), an institution of higher education or private or independent institution of higher education in this state may not adopt any rule, regulation, or other provision prohibiting license holders from carrying handguns on the campus of the institution.

(d) An institution of higher education or private or independent institution of higher

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter H, Chapter 411, Government Code, is amended by adding Section 411.2031 to read as follows:

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(1) "Campus" means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education.

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

(3) "Premises" has the meaning assigned by Section 46.035, Penal Code.

(b) A license holder may carry a concealed handgun on or about the license holder's person while the license holder is on the campus of an institution of higher education or private or independent institution of higher education in this state.

(c) Except as provided by Subsection (d) or (e), an institution of higher education or private or independent institution of higher education in this state may not adopt any rule, regulation, or other provision prohibiting license holders from carrying **concealed** handguns on the campus of the institution.

(d) An institution of higher education or private or independent institution of higher

education in this state may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution.

(e) A private or independent institution of higher education in this state, after consulting with students, staff, and faculty of the institution, may establish rules, regulations, or other provisions prohibiting license holders from carrying handguns on premises that are owned or leased and operated by the institution and located on the campus of the institution.

(f) This section does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a hospital maintained or operated by an institution of higher education or private or independent institution of higher education if the hospital gives effective notice under Section 30.06, Penal Code. In this subsection, "hospital" has the meaning assigned by Section 241.003, Health and Safety Code.

(g) This section does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a preschool, elementary school, or secondary school that is located on the campus of an institution of higher education or private or independent institution of higher education if the institution gives effective notice under Section 30.06, Penal Code.

education in this state may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution.

(e) Except as provided by Section 411.2032, a private or independent institution of higher education in this state, after consulting with students, staff, and faculty of the institution, may establish rules, regulations, or other provisions prohibiting license holders from carrying handguns on the campus of the institution, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution.

(f) This section does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a hospital maintained or operated by an institution of higher education or private or independent institution of higher education if the hospital gives effective notice under Section 30.06, Penal Code. In this subsection, "hospital" has the meaning assigned by Section 241.003, Health and Safety Code.

(g) This section does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a preschool, elementary school, or secondary school that is located on the campus of an institution of higher education or private or independent institution of higher education if the institution gives effective notice under Section 30.06, Penal Code.

(h) This section does not permit a person to possess a concealed handgun, or go with a concealed handgun, inside a building or a portion of a building that is in continuous use as a national biocontainment laboratory in which biological specimens are stored or used and that is located on the premises of an institution of higher education or private or independent institution of higher education and maintained or operated by the institution, if the institution gives effective notice under Section 30.06, Penal Code, with respect to that building or portion of that building. This subsection does not

apply to any portion of a building to which students, faculty, staff, or the general public are granted unrestricted access.

SECTION 2. Section 411.208, Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (f) to read as follows:

(a) A court may not hold the state, an agency or subdivision of the state, an officer or employee of the state, an institution of higher education, an officer or employee of an institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), a peace officer, or a qualified handgun instructor liable for damages caused by:

- (1) an action authorized under this subchapter or a failure to perform a duty imposed by this subchapter; or
- (2) the actions of an applicant or license holder that occur after the applicant has received a license or been denied a license under this subchapter.

(b) A cause of action in damages may not be brought against the state, an agency or subdivision of the state, an officer or employee of the state, an institution of higher education, an officer or employee of an institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), a peace officer, or a qualified handgun instructor for any damage caused by the actions of an applicant or license holder under this subchapter.

(d) The immunities granted under Subsections (a), (b), and (c) do not apply to: (1) an act or a failure to act by the state, an agency or subdivision of the state, an officer of the state, an institution of higher education, an officer or employee of an

SECTION 2. Section 411.208, Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (f) to read as follows:

(a) A court may not hold the state, an agency or subdivision of the state, an officer or employee of the state, an institution of higher education, an officer or employee of an institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), a peace officer, or a qualified handgun instructor liable for damages caused by:

- (1) an action authorized under this subchapter or a failure to perform a duty imposed by this subchapter; or
- (2) the actions of an applicant or license holder that occur after the applicant has received a license or been denied a license under this subchapter.

(b) A cause of action in damages may not be brought against the state, an agency or subdivision of the state, an officer or employee of the state, an institution of higher education, an officer or employee of an institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), a peace officer, or a qualified handgun instructor for any damage caused by the actions of an applicant or license holder under this subchapter.

(d) The immunities granted under Subsections (a), (b), and (c) do not apply to: (1) an act or a failure to act by the state, an agency or subdivision of the state, an officer of the state, an institution of higher education, an officer or employee of an

institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), or a peace officer if the act or failure to act was capricious or arbitrary; or

(2) any officer or employee of an institution of higher education or a private or independent institution of higher education who possesses a handgun on the campus of that institution and whose conduct with regard to the handgun is made the basis of a claim for personal injury or property damage.

(f) For purposes of this section:

(1) "Campus" has the meaning assigned by Section 411.2031.

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

No equivalent provision.

SECTION 3. Section 46.03, Penal Code, is amended by amending Subsections (a) and (c) and adding Subsections (j) and (k) to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or

institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), or a peace officer if the act or failure to act was capricious or arbitrary; or

(2) any officer or employee of an institution of higher education or private or independent institution of higher education described by Subdivision (1) who possesses a handgun on the campus of that institution and whose conduct with regard to the handgun is made the basis of a claim for personal injury or property damage.

(f) For purposes of this section:

(1) "Campus" has the meaning assigned by Section 411.2031.

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

SECTION 3. Section 30.06(e), Penal Code, is amended to read as follows:

(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not:

(1) a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035; or

(2) the portion of the premises of an institution of higher education, as defined by Section 61.003, Education Code, that is described by Section 411.2031(h), Government Code.

SECTION 4. Section 46.03, Penal Code, is amended by amending Subsections (a) and (c) and adding Subsections (j), (k), and (l) to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or

building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless;

(A) pursuant to written regulations or written authorization of the institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(c) In this section:

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

(2) "Premises" has the meaning assigned by Section 46.035.

(3) [~~(2)~~] "Secured area" means an area of an airport terminal building to which access is

building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless;

(A) pursuant to written regulations or written authorization of the institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(c) In this section:

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

(2) "Premises" has the meaning assigned by Section 46.035.

(3) [~~(2)~~] "Secured area" means an area of an airport terminal building to which access is

controlled by the inspection of persons and property under federal law.

(j) Subsection (a)(1)(B) does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a hospital maintained or operated by an institution of higher education or private or independent institution of higher education if the hospital gives effective notice under Section 30.06. In this subsection, "hospital" has the meaning assigned by Section 241.003, Health and Safety Code.

(k) Subsection (a)(1)(B) does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a preschool, elementary school, or secondary school that is located on the premises of an institution of higher education or private or independent institution of higher education if the institution gives effective notice under Section 30.06.

SECTION 4. Section 46.035, Penal Code, is amended by adding Subsection (l) to read as follows:

controlled by the inspection of persons and property under federal law.

(j) Subsection (a)(1)(B) does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a hospital maintained or operated by an institution of higher education or private or independent institution of higher education if the hospital gives effective notice under Section 30.06. In this subsection, "hospital" has the meaning assigned by Section 241.003, Health and Safety Code.

(k) Subsection (a)(1)(B) does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a preschool, elementary school, or secondary school that is located on the premises of an institution of higher education or private or independent institution of higher education if the institution gives effective notice under Section 30.06.

(l) Subsection (a)(1)(B) does not permit a person to possess a concealed handgun, or go with a concealed handgun, inside a building or a portion of a building that is in continuous use as a national biocontainment laboratory in which biological specimens are stored or used and that is located on the premises of an institution of higher education or private or independent institution of higher education and maintained or operated by the institution, if the institution gives effective notice under Section 30.06 with respect to that building or portion of that building. This subsection does not apply to any portion of a building to which students, faculty, staff, or the general public are granted unrestricted access.

SECTION 5. Section 46.035, Penal Code, is amended by amending Subsections (g), (h), and (j) and adding Subsections (a-1) and (l) to read as follows:

(a-1) 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:

(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.

(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.

(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.

(1) Subsection (b)(2) does not apply on the premises where a collegiate sporting event is taking place if the actor was not given effective notice under Section 30.06.

(1) Subsection (b)(2) does not apply on the premises where a collegiate sporting event is taking place if the actor was not given effective notice under Section 30.06.

No equivalent provision.

SECTION 6. 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 5. Section 411.208, Government Code, as amended by this Act, applies only to a cause of action that accrues on or after September 1, 2016. A cause of action that accrued before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7. Section 411.208, Government Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 6. Sections 46.03(a) and (c), Penal Code, as amended by this Act, and Sections 46.03(j) and (k) and 46.035(l), Penal Code, as added by this Act, apply only to an offense committed on or after September 1, 2016. An offense committed before September 1, 2016, is governed by the law in effect when 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 September 1, 2016, if any element of the offense occurred before that date.

SECTION 7. This Act takes effect September 1, 2015.

SECTION 8. The change in law made by this Act 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 9. Same as introduced version.