

SUBJECT: Defining “traveling” for carrying weapons

COMMITTEE: Law Enforcement — committee substitute recommended

VOTE: 7 ayes — Driver, Latham, Allen, Frost, Ortiz, Vo, West  
0 nays

WITNESSES: For — Will Harrell, American Civil Liberties Union of Texas, Texas Criminal Justice Coalition; Tara Mica, National Rifle Association; Keith Patton; Tibor Prince; Alice Tripp, Texas State Rifle Association;  
(*Registered, but did not testify*: Pamela Prince)

Against — (*Registered, but did not testify*: Kym Olson, El Paso Corp.; Ben Sebree, Texas Oil & Gas Association)

On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify*: Jan Coffey, Texas Department of Public Safety)

BACKGROUND: Penal Code, sec. 46.02 makes it illegal to intentionally, knowingly, or recklessly carry on one’s person a handgun, illegal knife, or club. Sec. 46.15 states that sec. 46.02 does not apply to a person who is traveling.

During the 2005 regular session, the 79th Legislature enacted HB 823 by Keel, which added Penal Code, sec. 46.15(i) to include a definition for “traveling.” A person would be presumed to be traveling if the person was:

- in a private motor vehicle;
- not engaged in criminal activity, other than a Class C misdemeanor traffic offense;
- not prohibited by law from possessing a firearm;
- not a member of a criminal street gang; and
- not carrying a handgun in plain view.

HB 823 also amended Penal Code, sec. 2.05 to state the consequences of establishing a presumption in the defendant’s favor. If there is sufficient evidence of the facts giving rise to the presumption, the issue of the existence of the fact must be submitted to the jury unless the judge

finds that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact.

Penal Code, sec. 46.15 (h) defines “recreational vehicle” as a premise where a person could carry a handgun, illegal knife, or club.

**DIGEST:**

CSHB 1815 would amend Penal Code, sec. 46.02 to make it illegal to intentionally, knowingly, or recklessly carry on one’s person a handgun, illegal knife, or club if a person was not on the person’s own premises or premises under the person’s control or inside or directly en route to a motor vehicle owned by or under that person’s control.

The bill would make it illegal to intentionally, knowingly, or recklessly carry on one’s person a handgun in a motor vehicle owned by the person or under the person’s control if a person:

- had the handgun in plain view;
- was engaged in criminal activity other than a Class C misdemeanor traffic offense;
- was prohibited by law from possessing a firearm; or
- was a member of a criminal street gang.

The bill would define “premises” for application of Penal Code, sec. 46.02 as including real property and recreational vehicles being used temporarily or permanently as living quarters. A recreational vehicle would be defined as a motor vehicle that included temporary living quarters, including travel trailers, camping trailers, truck camper, motor home, and horse trailers with living trailers.

CSHB 1815 would repeal Penal Code, sec. 46.15 (h), which defines premises, and would repeal sec. 46.15 (i), the “traveling “ definition added by HB 823 by the 79th Legislature.

The bill would take effect on September 1, 2007, and would apply only to offenses occurring on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1815 would establish a straightforward and easily understandable standard that would protect the rights of law-abiding Texans to carry weapons legally while traveling. The bill would clarify unintended ambiguity created by enactment of HB 823 last session and create a bright line to tell law-abiding citizens what they could or could not do with their

firearms. It would end the continuing legislative saga of trying to define the traveling exemption and bring the law into line with the commonly accepted idea that Texans may provide for their personal safety when traveling, whether by horse or sport utility vehicle.

Some Texas prosecutors did not like HB 823 and reportedly directed local law enforcement agencies to ignore the statute. Prosecutors have been advised that the courts should determine whether a person is traveling and that law enforcement officers are still acting within their lawful discretion if they arrest someone who might qualify under the new traveling defense or for presumptions provided by the law passed last session. CSHB 1815 would remind prosecutors and police that they take an oath to uphold the laws enacted by the Legislature and signed by the governor.

Despite enactment of what was supposed to be a definitive definition of traveling last session, abuses continue to occur. One Houston man was arrested and held 27 hours in custody for transporting a handgun he had purchased that day from a co-worker. Another man was arrested after a traffic stop when a law enforcement officer noticed an empty holster when he was returning from a bow hunting trip and had a canoe on his pickup truck. Ultimately, the charges of unlawfully carrying a weapon were dropped, but it cost the man almost \$4,000 in legal fees and other expenses. Texans should not be unjustly arrested while exercising their constitutional right to bear arms.

**OPPONENTS  
SAY:**

CSHB 1815 would make it more difficult to prosecute the offense of unlawfully carrying a weapon because it would define “traveling” in a very broad way. The Legislature clearly has not intended to create a general right for people to carry weapons in their vehicles, yet this bill would come dangerously close to doing just that. Under the bill, anyone simply driving from one city block to the next legally would be “traveling.”

Prosecutors take their constitutional responsibility to enforce the law seriously, but the legislation enacted in 2005 did create an ambiguous standard. Law enforcement officers properly have been advised to exercise their own discretion in enforcing the statute on unlawfully carrying a

weapon. CSHB 1815 would rearrange sections of current law but still might not provide a clear standard.