

## **BILL ANALYSIS**

Senate Research Center

H.B. 311  
By: Place (Patterson)  
Criminal Justice  
5-2-97  
Committee Report (Amended)

### **DIGEST**

Currently, Section 46.02 of the Penal Code states that going with a handgun, illegal knife, or club onto certain premises is a Class A misdemeanor, and the long-recognized exceptions to the section are termed defenses to prosecution. This legislation would return the statute to pre-1993 status by reinstating the "non-applicable" language and providing exceptions to the offense of unlawful carrying a weapon, rather than making the same circumstances affirmative defenses to prosecution. H.B. 311 would also broaden the meaning of the offense of unlawful carrying a weapon to include a person who possesses a firearm, illegal knife, club or prohibited weapon on certain premises; and would establish new defenses to prosecution for the offense of unlawfully carrying a weapon in certain prohibited places.

### **PURPOSE**

As proposed, H.B. 311 establishes the prosecution of certain offenses involving firearms, illegal knives, clubs, or prohibited weapons.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 46.02, Penal Code, to delete existing Subsections (b)-(d), making it a defense to prosecution that the actor satisfied certain conditions. Makes a conforming change.

SECTION 2. Amends Section 46.03(a), Penal Code, to provide that 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) on certain premises or in certain areas, including in or into a secured area of an airport. Makes conforming changes.

SECTION 3. Amends Section 46.03(b), Penal Code, to delete the provision making it a defense to prosecution that the actor possessed a firearm while in the discharge of the actor's official duties as a peace officer.

SECTION 4. Amends Section 46.03, Penal Code, by adding a new Subsection (i), to provide that it is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a licensed concealed handgun; the handgun was in a secure position in a motor vehicle in which the actor was the driver or a passenger; and the vehicle was in a driveway, road, parking area, or other part of the premises that reasonably appeared as such.

SECTION 5. Amends Section 46.15, Penal Code, as follows:

Sec. 46.15. New heading: NONAPPLICABILITY. Sets forth the terms by which Section 46.02 does not apply to certain members of the armed forces or state military forces, or an employee of a penal institution who is performing a security function; a person on the person's own premises or premises under the person's control; a person who is traveling; a person engaged in lawful hunting, fishing, or other sporting activity; a person who holds a certain security officer commission; a person carrying a lawfully concealed handgun; a person holding

a certain security officer commission and personal protection authorization; and a person holding an alcoholic beverage permit or license, or an employee of the same, if the person is supervising the premises. Establishes that the provision of Section 46.02 prohibiting the carrying of a club does not apply to certain noncommissioned security guards. Defines "nonviolent restraint." Provides that the provisions of Section 46.02 prohibiting the carrying of a firearm or carrying a club do not apply to certain public security officers.

SECTION 6. Emergency clause.

Effective date: upon passage.

#### **SUMMARY OF COMMITTEE CHANGES**

Amendment 1.

Page 5, lines 2-3, amends Section 46.03, Penal Code, to establish the defenses to prosecution under Subsections (a)(1)-(4).

Amendment 2.

Page 4, line 19, amends Section 46.15, Penal Code, to provide that Section 46.02 does not apply to a person who is an employee of a penal institution who is performing a security function. Deletes proposed text regarding a guard employed by a penal institution.