

BILL ANALYSIS

Senate Research Center

S.B. 299
By: Estes
Criminal Justice
3/20/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law forbids the intentional failure to conceal a handgun by a person licensed to carry a concealed handgun. Many concealed-carry licensees fear that this language is too broad, and that it could lead to prosecutions in situations where the display of the weapon is inadvertent or where the display of a handgun takes place in a private place, like the home of a friend. These individuals point out that similar occurrences have resulted in criminal charges against concealed-carry licensees in other states.

Additionally, in a case where a concealed-carry licensee drew his handgun to ward off a potential attack, the Dallas Court of Appeals incorrectly held that a concealed handgun licensee could only draw a handgun where use of deadly force was authorized. The court ignored Section 9.04 (Threats as Justifiable Force) of the Texas Penal Code, which provides that a weapon may be displayed legally "when the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary..."

This bill would fix both issues by clearly stating that failure to conceal a handgun is only illegal when the gun is displayed in plain view of another person in a public place and not pursuant to a justified use of force or threat of force under Chapter 9 (Justification Excluding Criminal Responsibility) of the Texas Penal Code.

As proposed, S.B. 299 amends current law relating to the unintentional display of a weapon by a person licensed to carry a concealed handgun.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 46.035, Penal Code, as follows:

Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER. (a) Provides that a license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H (License to Carry a Concealed Handgun), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, and intentionally displays the handgun in plain view of another person in a public place in a manner calculated to cause alarm and not pursuant to a justified use of force or threat of force as described in Chapter 9 (Justification Excluding Criminal Responsibility), rather than intentionally fails to conceal the handgun.

(b)-(g) Makes no changes to these subsections.

Deletes existing Subsection (h), as added by Section 2, Chapter 1214, 80th Legislature, Regular Session, 2007, to provide that it is a defense to prosecution under Subsection (a) 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 deadly force under Chapter 9.

(h) Redesignates existing Subsection (h-1), as added by Section 5, Chapter 1222, 80th Legislature, Regular Session, 2007, as Subsection (h). Makes no further changes to this subsection.

(h-1)-(k) Makes no changes to these subsections.

SECTION 2. Effective date: September 1, 2003.