

## **BILL ANALYSIS**

Senate Research Center

H.B. 1927  
By: Schaefer et al. (Schwertner)  
Constitutional Issues, Special  
4/26/2021  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Second Amendment enshrined the right to bear arms in the United States Constitution. There are concerns that state law infringes on the free exercise of that right, namely by requiring a license, which takes time and money to obtain, to legally be able to carry a handgun. H.B. 1927 seeks to reduce barriers to the free exercise of Texans' constitutional right to bear arms and defend their lives and property by making it legal for individuals who are 21 years of age or older and who can legally possess a firearm to carry a handgun without first obtaining a license. H.B. 1927 retains the handgun license in statute as optional to allow reciprocity with states that have not yet passed similar legislation.

H.B. 1927 amends current law relating to provisions governing the carrying of a firearm by a person who is 21 years of age or older and not otherwise prohibited by state or federal law from possessing the firearm and to other provisions related to the carrying, possessing, transporting, or storing of a firearm or other weapon, and creates criminal offenses.

### **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. Requires that this Act be known as the Firearm Carry Act of 2021.

SECTION 2. Provides that the Legislature of the State of Texas finds that:

- (1) The Second Amendment of the United States Constitution protects an individual right to keep and bear arms, and to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home;
- (2) Section 23 (Right to Keep and Bear Arms), Article I (Bill of Rights), of the Texas Constitution secures for Texas citizens the right to keep and bear arms;
- (3) persons who are currently prohibited from possessing firearms under state and federal law will not gain the right to possess or carry a firearm under this legislation; and
- (4) persons who are currently prohibited from possessing a firearm include: persons convicted of a felony as described by the provisions of Section 46.04 (Unlawful Possession of Firearm), Penal Code, persons convicted of certain assault offenses under Section 22.01 (Assault), Penal Code, punishable as a Class A misdemeanor and involving a member of the person's family or household, certain persons who are the subject of a protective order under Section 46.04(c) (relating to providing that an offense is committed if a person possess a firearm after receiving a certain order), Penal Code, and persons meeting any of the criteria listed in 18 U.S.C. Section 922(g), including persons adjudicated to be mentally incompetent.

SECTION 3. Amends Article 14.03, Code of Criminal Procedure, by adding Subsection (h), as follows:

(h)(1) Authorizes a peace officer who is acting in the lawful discharge of the officer's official duties to disarm a person at any time the officer reasonably believes it is necessary for the protection of the person, officer, or another individual. Requires the peace officer to return the handgun to the person before discharging the person from the scene if the officer determines that the person is not a threat to the officer, person, or another individual and if the person has not committed a violation that results in the arrest of the person.

(2) Authorizes a peace officer who is acting in the lawful discharge of the officer's official duties to temporarily disarm a person when the person enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the person's handgun. Requires the peace officer to secure the handgun in the locker and to return the handgun to the person immediately after the person leaves the nonpublic, secure portion of the law enforcement facility.

(3) Defines "law enforcement facility" and "nonpublic, secure portion of a law enforcement facility."

SECTION 4. Amends Article 55.01(a), Code of Criminal Procedure, as follows:

(a) Provides that a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if the person is tried for the offense for which the person was arrested and is convicted and subsequently the statute prohibiting the conduct has been repealed and the offense of which the person was convicted is an offense related solely to the unlawful possession of a firearm. Makes nonsubstantive changes.

SECTION 5. Amends Section 37.0815(b), Education Code, to provide that Section 37.0815 (Transportation or Storage of Firearm and Ammunition by License Holder in School Parking Area) does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Section 37.125 (Exhibition, Use, or Threat of Exhibition or Use of Firearms), Education Code, Section 46.03 (Unlawful Carrying Weapons), or other law, rather than Section 37.125, Education Code, Section 46.03 or 46.05 (Prohibited Weapons), Penal Code, or other law.

SECTION 6. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.02096, as follows:

Sec. 411.02096. REPORT REGARDING CERTAIN FIREARM STATISTICS. (a) Requires the Department of Public Safety of the State of Texas (DPS), not later than January 31 of each year, to collect information for the preceding calendar year related to the carrying of firearms by persons in Texas, including:

(1) the number of persons who applied for a license to carry a handgun under Subchapter H (License to Carry a Handgun) compared to the yearly average number of people who applied for a license from 2010 through 2020; and

(2) any other relevant information related to the carrying of firearms by persons in Texas.

(b) Requires DPS to identify the entities that possess information required by Subsection (a) and require each entity to report the information to DPS in the manner prescribed by DPS.

(c) Requires DPS, not later than February 1 of each year, to prepare and submit to the governor, the lieutenant governor, and each member of the legislature a report that includes the information described by Subsection (a).

(d) Provides that this section expires September 1, 2028.

SECTION 7. Amends Sections 411.186(a), (c), and (d), Government Code, as follows:

(a) Deletes existing text requiring DPS to revoke a license under Section 411.186 (Revocation) if the license holder is convicted of an offense under Section 46.035, Penal Code. Makes nonsubstantive changes.

(c) and (d) Makes conforming changes to these subsections.

SECTION 8. Amends Section 411.203, Government Code, to provide that, for purposes of Section 411.203 (Rights of Employers), "premises" has the meaning assigned by Section 46.03 (Places Weapons Prohibited), rather than Section 46.035(f)(3) (relating to the definition of "premises"), Penal Code.

SECTION 9. Amends Section 411.2031(a)(3), Government Code, to make a conforming change.

SECTION 10. Amends Subchapter H, Chapter 411, Government Code, by adding Section 411.2049, as follows:

Sec. 411.2049. CERTAIN INVESTIGATORY STOPS AND INQUIRIES PROHIBITED. Prohibits a peace officer from making an investigatory stop or other temporary detention to inquire as to a person's possession of a handgun solely because the person is carrying a partially or wholly visible handgun in a holster.

SECTION 11. Amends Section 411.209(a) and (j), Government Code, to make conforming and nonsubstantive changes.

SECTION 12. Amends Section 552.002(a)(1), Health and Safety Code, to redefine, for purposes of Section 552.002 (Carrying of Handgun by License Holder in State Hospital), "license holder" to have the meaning assigned by Section 46.03, Penal Code, rather than Section 46.035(f) (relating to the definitions of certain terms), Penal Code.

SECTION 13. Amends Section 773.0145(a), Health and Safety Code, to make a conforming change.

SECTION 14. Amends Section 42.042(e-2), Human Resources Code, to prohibit the Department of Family and Protective Services from prohibiting the foster parent of a child who resides in the foster family's home from transporting the child in a vehicle where a handgun is present if the handgun is in the possession and control of the foster parent and the foster parent is not otherwise prohibited by law from carrying a handgun, rather than if the foster parent is licensed to carry the handgun under Subchapter H, Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

SECTION 15. Amends Section 52.052(b), Labor Code, to make a conforming change.

SECTION 16. Amends Section 229.001(b), Local Government Code, as follows:

(b) Provides that Subsection (a) (relating to prohibiting a municipality from adopting certain regulations) does not affect the authority a municipality has under another law to regulate the carrying of an air gun or firearm other than a handgun carried by a person not otherwise prohibited by law from carrying a handgun at certain places or events, or to, in accordance with Section 411.209 (Wrongful Exclusion of Handgun License Holder), Government Code, regulate the carrying of a firearm by any person. Deletes existing text providing that Subsection (a) does not affect the authority a municipality has under

another law to regulate the carrying of a firearm by a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

SECTION 17. Amends Section 30.05, Penal Code, by amending Subsections (d) and (f) and adding Subsections (d-3) and (f-4), as follows:

(d) Provides that, subject to Subsection (d-3), an offense under Section 30.05 (Criminal Trespass) carries certain penalties. Makes a nonsubstantive change.

(d-3) Provides that an offense under Section 30.05 is a Class C misdemeanor punishable by a fine not to exceed \$200 if the person enters the property, land, or building with a firearm or other weapon and the sole basis on which entry on the property or land or in the building was forbidden is that entry with a firearm or other weapon was forbidden, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, land, or building with the firearm or other weapon, the actor:

(1) personally received from the owner of the property or another person with apparent authority to act for the owner notice that entry with a firearm or other weapon was forbidden, as given through:

(A) notice under Subsection (b)(2)(A) (relating to the definition of "notice"), including oral or written communication; or

(B) if the actor is unable to reasonably understand the notice described by Paragraph (A), other personal notice that is reasonable under the circumstances; and

(2) subsequently failed to depart.

(f) Provides that it is a defense to prosecution under Section 30.05 that the person was carrying a handgun in a holster, rather than in a shoulder or belt holster.

(f-4) Provides that it is a defense to prosecution under Section 30.05 that:

(1) the sole basis on which entry on the property or land or in the building was forbidden is that entry with a firearm or other weapon was forbidden; and

(2) the actor:

(A) personally received from the owner of the property or another person with apparent authority to act for the owner notice that entry with a firearm or other weapon was forbidden, as given through:

(i) notice under Subsection (b)(2)(A), including oral or written communication; or

(ii) if the actor is unable to reasonably understand the notice described by Subparagraph (i), other personal notice that is reasonable under the circumstances; and

(B) promptly departed from the property.

SECTION 18. Amends Section 30.06(c)(2), Penal Code, to make a conforming change.

SECTION 19. Amends Section 30.06(e), Penal Code, to make a conforming change.

SECTION 20. Amends Section 30.07(c)(2), Penal Code, to make a conforming change.

SECTION 21. Amends Sections 30.07(e) and (f), Penal Code, to make conforming changes.

SECTION 22. Amends Section 46.02, Penal Code, by amending Subsections (a), (a-1), and (b) and adding Subsection (a-5), as follows:

(a) Provides that a person commits an offense of unlawfully carrying a gun if the person is younger than 21 years of age at the time of the offense. Makes nonsubstantive changes.

(a-1) Provides that a person younger than 21 years of age commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which certain conditions apply to the person. Deletes existing text providing that a person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which the person is a member of a criminal street gang, as defined by Section 71.01 (Definitions). Makes conforming and nonsubstantive changes.

(a-5) Provides that a person commits an offense if the person carries a handgun and intentionally displays the handgun in plain view of another person in a public place. Provides that it is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a holster.

(b) Deletes existing text providing that, except as provided by Subsection (c) (relating to providing that an offense is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages), an offense under Section 46.02 (Unlawful Carrying Weapons) is a Class A misdemeanor.

SECTION 23. Amends Section 46.03, Penal Code, by amending Subsections (a), (c), (e-1), (e-2), and (g) and adding Subsections (a-2), (a-3), (a-4), and (g-2), as follows:

(a) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a) (relating to providing that an offense is committed if a person intentionally or knowingly possesses, manufactures, transports, repairs, or sells certain weapons):

(1)-(4) makes no changes to these subdivisions;

(5) and (6) makes nonsubstantive changes to these subdivisions;

(7) on the premises of a business that has a permit or license issued under Chapter 25 (Wine and Beer Retailer's Permit), 28 (Mixed Beverage Permit), 32 (Private Club Registration Permit), 69 (Retail Dealer's On-Premise License), or 74 (Brewpub License), Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission (TABC) under Section 104.06 (Monitoring of Gross Receipts), Alcoholic Beverage Code;

(8) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a) is used in the event;

(9) on the premises of a correctional facility;

(10) on the premises of a civil commitment facility;

(11) on the premises of a hospital licensed under Chapter 241 (Hospitals), Health and Safety Code, or on the premises of a nursing facility licensed under Chapter

242 (Convalescent and Nursing Facilities and Related Institutions), Health and Safety Code, unless the person has written authorization of the hospital or nursing facility administration, as appropriate;

(12) on the premises of a mental hospital, as defined by Section 571.003 (Definitions), Health and Safety Code, unless the person has written authorization of the mental hospital administration;

(13) in an amusement park; or

(14) in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551 (Open Meetings), Government Code, and if the entity provided notice as required by that chapter.

(a-2) Provides that, notwithstanding Section 46.02(a-5), 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 or knowingly 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.

(a-3) Provides that, notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder carries a handgun on the campus of a private or independent institution of higher education in this state that has established rules, regulations, or other provisions prohibiting license holders from carrying handguns pursuant to Section 411.2031(e) (relating to authorizing a private or independent institution of higher education to establish rules, regulations, or other provisions prohibiting license holders from carrying handguns on the property of the institution), Government Code, or on the grounds or building on which an activity sponsored by such an institution is being conducted, or in a passenger transportation vehicle of such an institution, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06 (Trespass by License Holder with a Concealed Handgun).

(a-4) Provides that, notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1) (relating to requiring the president or other chief executive officer of an institution of higher education to establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders on the premises of the institution), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

(c) Defines "amusement park," "license holder," and "premises." Makes conforming and nonsubstantive changes to this subsection.

(e-1) Provides that it is a defense to prosecution under Subsection (a)(5) (relating to providing that an offense is committed if a person intentionally, knowingly, or recklessly possesses or goes with certain weapons in or into a secured area of an airport) that the actor possessed, at the screening checkpoint for the secured area, a handgun, rather than a concealed handgun, that the actor was licensed to carry under Subchapter H, Chapter 411, Government Code.

(e-2) Makes a conforming change to this subsection.

(g) Creates an exception under Subsection (g-2). Makes a nonsubstantive change to this subsection.

(g-2) Provides that an offense committed under Subsection (a)(8), (a)(10), (a)(11), (a)(13), (a-2), (a-3), or (a-4) is a Class A misdemeanor.

SECTION 24. Amends Section 46.04, Penal Code, by adding Subsection (a-1) and amending Subsection (e), as follows:

(a-1) Provides that a person who is a member of a criminal street gang, as defined by Section 71.01, commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft.

(e) Provides that an offense under certain subsections, including under Subsection (a-1), is a Class A misdemeanor. Makes a nonsubstantive change.

SECTION 25. Amends Section 46.15, Penal Code, by amending Subsections (b) and (l) and adding Subsection (m), as follows:

(b) Provides that Sections 46.02, 46.03(a)(14), and 46.04(a-1) do not apply to a person who meets certain criteria. Makes conforming and nonsubstantive changes.

(l) Deletes existing text providing that Sections 46.035(a) (relating to providing that an offense is committed if a license holder intentionally displays the handgun in plain view of another person in a public place), (a-1) (relating to providing that an offense is committed if a license holder carries a partially or wholly visible handgun and intentionally displays the handgun in plain view of another person in certain public locations), (a-2) (relating to providing that an offense is committed if a license holder carries a handgun on the campus of a private or independent institution of higher education in this state that has established certain rules), (a-3) (relating to providing that an offense is committed if a license holder intentionally carries a concealed handgun on a portion of the campus of an institution of higher education on which the carrying of a concealed handgun is prohibited by), (b)(1) (relating to providing that an offense is committed if a license holder intentionally carries a handgun on the premises of a business that derives 51 percent or more of its income from the sale or service of alcoholic beverages), (b)(5) (relating to providing that an offense is committed if a license holder intentionally carries a handgun in an amusement park), and (b)(6) (relating to providing that an offense is committed if a license holder intentionally carries a handgun on the premises of a civil commitment facility) do not apply to a person who carries a handgun if the person meets certain conditions. Makes nonsubstantive changes.

(m) Provides that Section 46.03 does not apply to a person unless the person:

(1) personally received from the owner of the property or another person with apparent authority to act for the owner notice that carrying a weapon on the property was prohibited, as given through:

(A) oral or written communication; or

(B) if the person is unable to reasonably understand the communication described by Paragraph (A), other personal notice that is reasonable under the circumstances; and

(2) subsequently failed to depart.

SECTION 26. (1) Repealer: Section 11.041 (Warning Sign Required), Alcoholic Beverage Code.

(2) Repealer: Section 11.61(e) (relating to requiring TABC or the administrator to cancel an original or renewal permit if it is found, after notice and hearing, that the permittee knowingly allowed a person to possess a firearm in a building on the licensed premises), Alcoholic Beverage Code.

(3) Repealer: Section 61.11 (Warning Sign Required), Alcoholic Beverage Code.

(4) Repealer: Section 61.71(f) (relating to requiring TABC or the administrator to cancel an original or renewal dealer's on-premises or off-premises license if it is found, after notice and hearing, that the licensee knowingly allowed a person to possess a firearm in a building on the licensed premises), Alcoholic Beverage Code.

(5) Repealer: Section 411.198(b) (relating to providing that it is a defense to prosecution that the actor, at the time of the commission of the offense, was the holder of an alias handgun license), Government Code.

(6) Repealer: Section 411.204(d) (relating to providing that a business that has a permit or license issued under the Alcoholic Beverage Code and that is not required to display a sign may be required to display a sign), Government Code.

(7) Repealer: Section 411.206(c) (relating to requiring that any judgment of conviction entered by any court for a certain offense contain the handgun license number of the convicted license holder), Government Code.

(8) Repealer: Section 46.02(c) (relating to providing that it is a felony of the third degree if the offense of unlawfully carrying weapons is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages), Penal Code.

(9) Repealer: Section 46.03(a-1) (relating to providing that an offense if committed if a person intentionally, knowingly, or recklessly possesses or goes with a location-restricted knife to certain locations), Penal Code.

(10) Repealer: Section 46.035 (Unlawful Carrying of Handgun by License Holder), Penal Code.

SECTION 27. Provides that, notwithstanding Section 411.02096, Government Code, as added by this Act, DPS is not required to submit the initial report required by that section before February 1, 2023.

SECTION 28. Makes application of this Act prospective.

SECTION 29. Effective date: September 1, 2021.