

BILL ANALYSIS

Senate Research Center

S.B. 11
By: Birdwell et al.
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 11 affects adult faculty, staff, students and visitors who are 21 years of age or older (unless in the military), who have passed state and federal criminal records checks, completed a firearms proficiency test, and completed Department of Public Safety-mandated training and education.

S.B. 11 removes criminal prohibitions in the Texas Penal Code on the possession of concealed handguns by concealed handgun licensees (CHLs) on the campuses of public or private institutions of higher education.

The bill states that public institutions of higher education may not circumvent the intent of the Act by imposing administrative bans and sanctions on CHLs on their campuses. Private or independent institutions of higher education may, after consulting with students, faculty and staff, establish rules or regulations prohibiting CHLs on their campuses. The structure of this bill tracks with how public and private property are generally treated elsewhere in the state under the concealed carry law.

S.B. 11 allows institutions of higher education to establish rules and regulations governing the storage of handguns by CHLs in dorms and residential facilities and to post athletic events and sporting venues as off-limits to CHLs. Locations that are off-limits under the Penal Code (bars, hospitals, and churches, for example) will remain off-limits to CHLs even if they happen to be located on a campus.

S.B. 11 provides institutions of higher education with immunity from liability for actions of CHLs on campus (except in cases where private or independent institutions of higher education have adopted administrative prohibitions for CHLs on campus).

S.B. 11 amends current law relating to the carrying of handguns on the campuses of and certain other locations associated with institutions of higher education and provides a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to an institution of higher education or private or independent institution of higher education in this state in SECTION 1 (Section 411.2031, Government Code) of this bill.

Rulemaking authority is expressly granted to the president or other chief executive officer of an institution of higher education, a private or independent institution, or a public junior college in SECTION 8 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter H, Chapter 411, Government Code, by adding Section 411.2031, as follows:

Section 411.2031. CARRYING OF HANDGUNS BY LICENSE HOLDERS ON CERTAIN CAMPUSES. (a) Defines "campus," "institution of higher education," "private or independent institution of higher education," and "premises" for purposes of this section.

(b) Authorizes a license holder to 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) Prohibits an institution of higher education or private or independent institution of higher education in this state from adopting any rule, regulation, or other provision prohibiting license holders from carrying handguns on the campus of the institution, except as provided by Subsection (d), (d-1), or (e).

(d) Authorizes an institution of higher education or private or independent institution of higher education in this state 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.

(d-1) Requires the president or other chief executive officer of an institution of higher education in this state, after consulting with students, staff, and faculty of the institution regarding the nature of the student population, specific safety considerations, and the uniqueness of the campus environment, to establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders on the campus of the institution or on premises located on the campus of the institution. Prohibits the president or officer from establishing provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution. Authorizes the president or officer to amend the provisions as necessary for campus safety. Provides that the provisions take effect as determined by the president or officer unless subsequently amended by the board of regents or other governing board under Subsection (d-2). Requires the institution to give effective notice under Section 30.06 (Trespass by Holder of License to Carry Concealed Handgun), Penal Code, with respect to any portion of a premises on which license holders may not carry.

(d-2) Requires the board of regents or other governing board of the institution of higher education, not later than the 90th day after the date that the rules, regulations, or other provisions are established as described by Subsection (d-1), to review the provisions. Authorizes the board of regents or other governing board to, by a vote of not less than two-thirds of the board, amend wholly or partly the provisions established under Subsection (d-1). Provides that, if amended under this subsection, the provisions are considered to be those of the institution as established under Subsection (d-1).

(d-3) Requires an institution of higher education to widely distribute the rules, regulations, or other provisions described by Subsection (d-1) to the institution's students, staff, and faculty, including by prominently publishing the provisions on the institution's Internet website.

(d-4) Requires each institution of higher education in this state, not later than September 1 of each even-numbered year, to submit a report to the legislature and to the standing committees of the legislature with jurisdiction over the implementation and continuation of this section that:

(1) describes its rules, regulations, or other provisions regarding the carrying of concealed handguns on the campus of the institution; and

(2) explains the reasons the institution has established those provisions.

(e) Authorizes a private or independent institution of higher education in this state, after consulting with students, staff, and faculty of the institution, to

establish rules, regulations, or other provisions prohibiting license holders from carrying handguns on the campus of the institution, any grounds or building on which an activity sponsored by the institution is being conducted, or a passenger transportation vehicle owned by the institution.

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

(a) Prohibits a court from holding 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 certain actions.

(b) Prohibits a cause of action in damages from being 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) Provides that 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) Defines "campus," "institution of higher education," and "private or independent institution of higher education" for purposes of this section.

SECTION 3. Amends Sections 46.03 (a) and (c), Penal Code, as follows:

(a) Provides 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) (relating to the commission of an offense by intentionally possessing certain prohibited weapons):

(1) on certain premises and grounds, 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 (License to Carry a Concealed Handgun), 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;

Makes a nonsubstantive change to this subdivision.

(2)-(6) Makes no change to these subdivisions.

(c) Defines "institution of higher education" and "private or independent institution of higher education." Makes nonsubstantive changes.

SECTION 4. Amends Section 46.035, Penal Code, by adding Subsection (a-1), (a-2), (a-3), and (l) and amending Subsections (g), (h), and (j), as follows:

(a-1) Provides that, notwithstanding Subsection (a), 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-2) Provides that, notwithstanding Subsection (a) or Section 46.03(a), 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), 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.

(a-3) Provides that, notwithstanding Subsection (a) or Section 46.03(a), 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), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

(g) Provides that an offense under Subsection (a), (a-1), (a-2), (a-3), (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) Provides that it is a defense to prosecution under Subsection (a), (a-1), (a-2), or (a-3) 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) Provides that Subsections (a), (a-1), (a-2), (a-3), and (b)(1) do not apply to a historical reenactment performed in compliance with the rules of the Texas Alcoholic Beverage Commission.

(l) Provides that 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.

SECTION 5. Amends Section 46.035(f), Penal Code, by adding Subdivision (1-a), as follows:

(1-a) Defines "institution of higher education" and "private or independent institution of higher education."

SECTION 6. Provides that 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. Makes application of this Act prospective.

SECTION 7. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 8. (a) Provides that, except as otherwise provided by this section, this Act takes effect August 1, 2016.

(b) Requires the president or other chief executive officer of an institution of higher education, as defined by Section 61.003, Education Code, other than a public junior college as defined by that section, to take any action necessary to adopt rules, regulations, or other provisions as required by Section 411.2031, Government Code, as added by this Act before August 1, 2016. Requires the president or other chief executive officer, notwithstanding any other law, to establish rules, regulations, or other provisions under Section 411.2031(d-1), Government Code, as added by this Act, that take effect August 1, 2016.

(c) Authorizes a private or independent institution of higher education, before August 1, 2016, as defined by Section 61.003, Education Code, to take any action necessary to adopt rules, regulations, or other provisions as authorized under Section 411.2031, Government Code, as added by this Act.

(d) Provides that this Act does not apply to a public junior college, as defined by Section 61.003, Education Code, before August 1, 2017. Requires the president or other chief executive officer of a public junior college, not later than August 1, 2017, to take any action necessary to adopt rules, regulations, or other provisions as required by Section 411.2031, Government Code, as added by this Act. Requires the president or other chief executive officer, notwithstanding any other law, to establish rules, regulations, or other provisions under Section 411.2031(d-1), Government Code, as added by this Act, that take effect August 1, 2017.