

BILL ANALYSIS

C.S.S.B. 1807
By: Huffman
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that certain professions are afforded certain protections and privileges under state law with respect to a handgun license and possessing a handgun and contend that the attorney general, assistant attorney general, U.S. attorneys, and assistant U.S. attorneys should enjoy similar protections and privileges. C.S.S.B. 1807 seeks to extend these protections and privileges to these individuals.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1807 amends the Government Code require the Department of Public Safety (DPS) to establish a procedure for indicating on the handgun license of the attorney general, an assistant attorney general, a U.S. attorney, or an assistant U.S. attorney the license holder's respective status as such and to authorize a person who is serving in Texas as the attorney general, an assistant attorney general, a U.S. attorney or an assistant U.S. attorney to establish handgun proficiency for purposes of obtaining a handgun license by obtaining from a handgun proficiency instructor approved by the Texas Commission on Law Enforcement a sworn statement that indicates that the person, during the 12-month period preceding the date of the person's application to DPS, demonstrated to the instructor proficiency in the use of handguns. The bill includes a U.S. attorney and an assistant U.S. attorney who meet the handgun license requirements applicable to active judicial officers among the attorneys to whom DPS is required to issue a handgun license and for whom DPS is required to waive any fee required for the issuance of an original, duplicate, or renewed handgun license.

C.S.S.B. 1807 amends the Penal Code to establish as a defense to the prosecution for certain conduct constituting the offense of unlawful carrying of a handgun by a handgun license holder that the actor was the attorney general, an assistant attorney general, a U.S. attorney, or an assistant U.S. attorney. The bill exempts such an actor who is licensed to carry a handgun from the offense of unlawful carrying of a weapon and the offense involving intentionally, knowingly, or recklessly possessing or going with a firearm, illegal knife, club, or prohibited weapon in a prohibited place.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1807 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 411.179(c), Government Code, is amended to read as follows:

(c) In adopting the form of the license under Subsection (a), the department shall establish a procedure for the license of a qualified handgun instructor or of a judge, justice, United States attorney, assistant United States attorney, prosecuting attorney, or assistant prosecuting attorney, as described by Section 46.15(a)(4), [Ø] (6), or (7), Penal Code, to indicate on the license the license holder's status as a qualified handgun instructor or as a judge, justice, United States attorney, assistant United States attorney, district attorney, criminal district attorney, or county attorney. In establishing the procedure, the department shall require sufficient documentary evidence to establish the license holder's status under this subsection.

SECTION 2. Section 411.1882(a), Government Code, is amended to read as follows:

(a) A person who is serving in this state as a judge or justice of a federal court, as an active judicial officer as defined by Section 411.201, as a United States attorney, assistant United States attorney, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney, as a supervision officer as defined by [Section 2,] Article 42A.001 [42.12], Code of Criminal Procedure, or as a juvenile probation officer may establish handgun proficiency for the purposes of this subchapter by obtaining from a handgun proficiency instructor approved by the Texas Commission on Law Enforcement for purposes of Section 1702.1675, Occupations Code, a sworn statement that indicates that the person, during the 12-month period

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 411.179(c), Government Code, is amended to read as follows:

(c) In adopting the form of the license under Subsection (a), the department shall establish a procedure for the license of a qualified handgun instructor or of the attorney general or a judge, justice, United States attorney, assistant United States attorney, assistant attorney general, prosecuting attorney, or assistant prosecuting attorney, as described by Section 46.15(a)(4), [Ø] (6), or (7), Penal Code, to indicate on the license the license holder's status as a qualified handgun instructor or as the attorney general or a judge, justice, United States attorney, assistant United States attorney, assistant attorney general, district attorney, criminal district attorney, or county attorney. In establishing the procedure, the department shall require sufficient documentary evidence to establish the license holder's status under this subsection.

SECTION 2. Section 411.1882(a), Government Code, is amended to read as follows:

(a) A person who is serving in this state as the attorney general or as a judge or justice of a federal court, as an active judicial officer as defined by Section 411.201, as a United States attorney, assistant United States attorney, assistant attorney general, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney, as a supervision officer as defined by [Section 2,] Article 42A.001 [42.12], Code of Criminal Procedure, or as a juvenile probation officer may establish handgun proficiency for the purposes of this subchapter by obtaining from a handgun proficiency instructor approved by the Texas Commission on Law Enforcement for purposes of Section 1702.1675, Occupations Code, a sworn

preceding the date of the person's application to the department, demonstrated to the instructor proficiency in the use of handguns.

SECTION 3. Section 411.201(h), Government Code, is amended.

SECTION 4. Section 46.035(h-1), Penal Code, as added by Chapter 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(h-1) It is a defense to prosecution under Subsections (b)(1), (2), ~~(4), (5), and (6)~~ [(4)-(6);] and (c) that at the time of the commission of the offense, the actor was:

- (1) a judge or justice of a federal court;
- (2) an active judicial officer, as defined by Section 411.201, Government Code; or
- (3) a United States attorney, assistant United States attorney, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

SECTION 5. Section 46.15(a), Penal Code, is amended to read as follows:

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections

statement that indicates that the person, during the 12-month period preceding the date of the person's application to the department, demonstrated to the instructor proficiency in the use of handguns.

SECTION 3. Same as engrossed version.

SECTION 4. Section 46.035(h-1), Penal Code, as added by Chapter 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(h-1) It is a defense to prosecution under Subsections (b)(1), (2), ~~(4), (5), and (6)~~ [(4)-(6);] and (c) that at the time of the commission of the offense, the actor was:

- (1) a judge or justice of a federal court;
- (2) an active judicial officer, as defined by Section 411.201, Government Code; or
- (3) the attorney general or a United States attorney, assistant United States attorney, assistant attorney general, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

SECTION 5. Section 46.15(a), Penal Code, is amended to read as follows:

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections

department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer, qualified retired law enforcement officer, federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is:

(A) an honorably retired peace officer;

(B) a qualified retired law enforcement officer;

(C) a federal criminal investigator; or

(D) a former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies;

(6) a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant United States attorney, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section

department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer, qualified retired law enforcement officer, federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is:

(A) an honorably retired peace officer;

(B) a qualified retired law enforcement officer;

(C) a federal criminal investigator; or

(D) a former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies;

(6) the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section

142.006, Human Resources Code.

SECTION 6. (a) To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

(b) The change in law made by this Act in amending Sections 46.035 and 46.15, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 7. This Act takes effect September 1, 2017.

142.006, Human Resources Code.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.