

SUBJECT: Concealed handgun license revisions

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 8 ayes — Oakley, Driver, Keel, Keffer, Madden, McClendon, Olivo, E. Reyna

0 nays

1 absent — Carter

WITNESSES: For — William H. Reid

Against — Deborah D. Tucker, Texans Against Gun Violence

BACKGROUND : In 1995 the Legislature enacted SB 60 by Patterson et al., which allowed persons to be licensed by the Department of Public Safety (DPS) to carry a concealed handgun in certain public places, set eligibility requirements for licenses and established application procedures.

DIGEST: CSHB 2909 would make various changes to the concealed handgun law, including authorizing DPS to negotiate reciprocal concealed handgun licensing agreements with other states; making changes relating to the psychiatric state of persons eligible for licenses; changing DPS authority relating to license suspension and revocation; amending statutes dealing with signs about concealed handguns in restaurants and bars; and making changes in the Penal Code provisions concerning unlawful carrying of weapons.

CSHB 2909 would take effect September 1, 1997.

Licenses for non-Texas residents. CSHB 2909 would eliminate current authorization for DPS to issue licenses to persons licensed to carry a concealed handgun in other states if it determined that the other state's eligibility requirements were at least as rigorous as Texas' and the other state provided reciprocal licensing to persons with Texas licenses.

DPS would be required to negotiate an agreement with any other state that

issues concealed handgun licenses so that the other state's license would be recognized in Texas if the eligibility requirements of the other state include background checks requirements that met or exceeded the background check requirements imposed by federal law as a condition of receiving a handgun and the other state recognized Texas' concealed handgun licenses.

DPS would be required to establish a procedure for non-Texas residents to obtain a license if they met all requirements for a license except for the Texas residency requirement.

DPS would have to establish these procedures and commence negotiations with other states by December 1, 1997.

Ineligibility for license for persons of unsound mind. CSHB 2909 would replace a prohibition on receiving a handgun for persons of "unsound mind" with a prohibition for persons who are "incapable of exercising sound judgment with respect to the proper use and storage of a handgun." CSHB 2909 would define this phrase to include, in part, being diagnosed as suffering from a psychiatric disorder or condition likely to cause substantial impairment in judgment, mood, perception, impulse control or intellectual ability. The bill also would give examples of evidences of a disqualifying psychiatric disorders.

The state's medical advisory board that assists DPS in determining capability to operate motor vehicles would be required to help DPS determine whether an applicant or licensee was capable of exercising sound judgment with respect to the proper use and storage of a handgun.

License revocations and suspension. DPS would not be able to revoke a license if a person became ineligible for a license based solely on being charged with a Class A or Class B misdemeanor, the offense of disorderly conduct, or a felony under formal charges. Persons who had their licenses revoked before the bill's effective date for one of these reasons would have until September 1, 1998, to apply for a change in the status of their license. DPS would be required to promptly place the person's license on suspension if charges were still pending or to reinstate the license if the charges had been dismissed.

DPS would be authorized to revoke a license if it determined that a person engaged in conduct that qualified for a license suspension after the person's license had been suspended twice for the same reason.

CSHB 2909 would eliminate current authorization for DPS to suspend licenses of persons convicted of disorderly conduct that is a Class C misdemeanor (disorderly conduct that does not involving a firearm or deadly weapon) and of persons charged by an indictment with commission of an offense that would make the licensee ineligible for a license upon conviction. DPS would be able to suspend licenses if persons were charged with the disorderly conduct that is a Class A or B misdemeanor (disorderly conduct involving a firearm or deadly weapon) or with a felony under formal charges.

The bill would establish categories for 30- or 90-day suspensions, allow for suspension until the dismissal of certain charges, and alter the criteria that can result in one- to three-year license suspensions, depending on the reason for the suspension.

Concealed handguns, warning signs in places with alcoholic beverage permits. Upon issuing or renewing a license or permit, the Texas Alcoholic Beverage Commission (TABC) would be required to determine whether the holder receives or is going to receive 51 percent or more of its gross receipts from the sale of on-premise alcoholic beverages. If a business fit this category, it would be required to display a sign stating that it is unlawful to carry a handgun on the premises. TABC would have to begin making these determinations by October 1, 1997.

The signs that would have to be displayed in establishments deriving at least 51 percent or more of their income from on-premises alcohol consumption would have to give notice that it is unlawful for persons licensed to carry a handgun to carry one on their premises and would have to include on the face of the sign the number "51" printed in solid red at least five inches high. CSHB 2909 would add brewpub licensees to the group of Alcoholic Beverage Code licensees that, if they derive at least 51 percent of their income from the sale of on-premise alcohol, must display a sign .

Holders of Alcoholic Beverage Code permits and licensees not required to

post the "51" sign would be required to post a sign saying that it was unlawful to carry a weapon on the premises unless the person is licensed to carry a concealed handgun. The bill would eliminate a current requirement that alcoholic beverage licensees post a sign saying that it is can be a felony to carry a weapon where alcoholic beverages are sold, served or consumed would be eliminated.

TABC would not have to cancel an alcoholic beverage permit or license if it found that the permittee or licensee knowingly allowed a holder of a concealed handgun licensee to have a handgun on the businesses' premises unless the business was one at which it was illegal to carry a concealed handgun.

Offenses. CSHB 2909 would eliminate the statutory *defenses to prosecution* under the Penal Code offense for unlawful carrying of weapons for certain persons carrying a handgun, illegal knife or club. The Penal Code instead would specify that the prohibitions on carrying these weapons *would not apply to* that same set of persons and situations. The bill would add a provisions making it a defense to prosecution under the unlawful carrying of a weapon statute for persons carrying a concealed handgun with a valid license.

The bill also would remove peace officers from a statute that gives certain persons a defense to prosecution for carrying a weapon in a prohibited place. A current provision stating that the prohibitions against carrying weapons in prohibited places does not apply to peace officers would remain.

CSHB 2909 would create a new criminal offense of trespass by holders of persons licensed to carry concealed handguns. It would be a Class A misdemeanor for licensees to carry a concealed handgun on another's property without effective consent if the person failed to depart after receiving notice that entry on the property by licensees with a concealed handgun was prohibited and that remaining on the property with a concealed handgun was forbidden. Notice could be provided by oral or written means.

Display of license. CSHB 2909 would remove a requirement that license holders display their handgun license and identification on the demand of a

magistrate or peace officer. The requirement would remain that license holders *who are carrying a handgun* display their license and identification when a magistrate or peace officer demands identification. Failing or refusing to display the license and identification when required to do so would result in suspension of the person's license. It would be a Class B misdemeanor for persons to fail to produce the required license and identification after previously having had their license suspended.

Miscellaneous. CSHB 2909 would make other changes in the statutes governing concealed handgun licences, including:

- allowing fingerprints necessary for a license to be taken by a private entity designated by a law enforcement agency;
- allowing DPS to use a recommendation from a handgun instructor as the basis to deny a license only if the department determined the recommendation was made in good faith and was supported by a preponderance of the evidence;
- requiring DPS to issue a license to persons certified as qualified handgun instructors if they paid \$100 in addition to their training fee instead of the current requirement that DPS waive only the requirement for a proficiency certificate for these persons;
- requiring the designee of DPS who is doing a local criminal background check on applicants to perform the check within 60 days of receiving the application and requiring DPS to conduct any further needed investigation and to complete the record check and investigation within 180 days of receiving the application; and
- requiring DPS to notify applicants if it was unable to make its decision on an applicant's license application within the required 60 days and requiring DPS to give the applicant an estimation of how long it would take to make the determination.

SUPPORTERS SAY: CSHB 2909 would fine-tune the concealed gun statute to address problems that have arisen since the law's enactment in 1995.

Licenses for non-Texas residents. CSHB 2909 would allow DPS to negotiate agreements with other states for the recognition of each state's concealed handgun licenses. This would be a reasonable policy that would allow persons from other states who have a license to carry a handgun from their state to have their license recognized in Texas and for Texans' licensees to be recognized in the other state. CSHB 2909 would give DPS guidelines to use in negotiating with other states and as a safeguard would require persons to have had background checks at least as rigorous as those required under the federal rules for handgun purchases.

Current law, which allows reciprocal agreements only if the other state's eligibility requirements are at least as rigorous as those of Texas, is too restrictive because it can be difficult to match up Texas requirements exactly with those of other states. In addition, it requires persons from another state to actually apply for a Texas license, instead of recognizing the license from the other state. CSHB 2909 would allow DPS to make this decision on a state-by-state basis. The bill also would require DPS to develop a system for long-term Texas visitors, such as winter Texans, to obtain a license.

Ineligibility for license due for persons of unsound mind. CSHB 2909 would make changes in the criteria that can disqualify a person from receiving a license so that the statutes better define persons of unsound mind. The bill would replace this language with more precise language prohibiting licensees for persons "incapable of exercising sound judgment with respect to the proper use and storage of a handgun." The bill would define and give examples of this criteria, helping to standardize the process of determining who is eligible for a license. In addition, by eliminating the current use and definition of unsound mind, the bill would eliminate depression as a criteria that can make a person ineligible for a license since depression is not debilitating and would not affect a person's sound judgment relating to use and storage of a handgun.

License revocations and suspension. CSHB 2909 would allow DPS to

only suspend, not revoke, licenses of persons who have been charged with Class A or B misdemeanors. Since these persons have not yet been found guilty of the crime, it would be inappropriate to revoke their licenses. However, DPS would retain authority to revoke these licenses later if a person were convicted.

Concealed handguns, warning signs in places with alcohol beverage permits. CSHB 2909 would ensure that the signs that some businesses are required to post stating that it is illegal to carry a concealed handgun on their premises would all have an easily recognized symbol, "51," so that licensees would know immediately whether or not concealed handguns are permitted.

Offenses. CSHB 2909 would make no substantive change in the statute that prohibits the carrying of weapons but would clarify that the prohibitions against carrying weapons would not apply to persons listed in Penal Code sec. 46.02. CSHB 2909 would say in plain English whom the law covers. Using the phrase "does not apply" would be especially helpful to police officers, security guards, game wardens, the public and others who are used to the term "does not apply" and understand its meaning. This could help prevent erroneous arrests of persons who are legally carrying a weapon and avoid making them prove that they were not breaking the law.

The bill would make no practical difference in the prosecution or defense of persons charged with illegally carrying a weapon. Under Penal Code sec. 2.03, a ground of defense that is not plainly labeled as such still has the procedural and evidentiary consequences of a defense to prosecution. Although the term "does not apply" is undefined in the code, its meaning is clear, and legally any of the listed exemptions would still be considered a defense, the same as under current law.

CSHB 2909 would create a new offense of trespassing if licensees were notified that they were carrying their handgun on a place where it was prohibited. This would help protect the public by ensuring that concealed handguns are not carried in prohibited places and would also ensure that licensees be given notice that they were violating the law.

Display of license. CSHB 2909 would eliminate a provision that requires

licensees to carry their license even if they are not carrying their handgun. This can result in an absurd situation where licensees are required to carry their concealed handgun licensees everywhere — including jogging.

Miscellaneous. The bill would allow law enforcement authorities to contract with private entities to take fingerprints necessary for a license application. This would relieve the workload of law enforcement authorities but would not cede any important responsibility to the private sector. This authority would be similar to that given to private companies to take photographs for passports.

OPPONENTS
SAY:

Licenses for non-Texas residents. CSHB 2909 would be an unwise lessening of the state's appropriately strict requirements on reciprocal licensing. Reciprocal licensing should occur only if another state's requirements are at least as rigorous as Texas'. Without this requirement, DPS could allow persons who have not undergone the same rigorous scrutiny that Texans undergo to carry handguns here. CSHB 2290 would give DPS too much leeway to decide on reciprocal agreements. This could result in unqualified or dangerous persons carrying handguns in Texas.

Offenses. CSHB 2909 would actually make the statutory exemptions from the prohibition against carrying weapons less clear. When the Penal Code was revised in 1993 the defenses to prosecution for illegally carrying a weapon were purposefully labeled as *defenses*, a term defined in Penal Code sec. 2.03. The term “does not apply,” however, is not defined, so its meaning must be inferred. Prosecutors, defense attorneys and the public all benefit when the same terms are used consistently throughout the Penal Code.

Miscellaneous. The private sector should not be involved at all in licensing persons to carry concealed handgun — even the fingerprinting.

NOTES:

The committee substitute made numerous changes in the original version of the bill, including: changing the descriptions of persons incapable of exercising sound judgment; requiring DPS to develop a procedure to license residents of other states if they met all Texas eligibility requirements except for residency; requiring DPS to negotiate reciprocal agreements with other states; requiring TABC to determine whether licensees and permittees

receive at least 51 percent of their revenue from on-premise alcohol consumption; and making changes relating to defenses to prosecution for unlawful carrying of weapons.

Rep. Carter plans to offer a floor amendment exempting holders of food and beverage certificates from the sign requirements for businesses that serve alcoholic beverages.