

SUBJECT: Defense to prosecution if a bar fails to post handgun ban warning sign

COMMITTEE: Public Safety — favorable, without amendment

VOTE: 5 ayes — Merritt, Frost, P. King, Lewis, Rodriguez

0 nays

4 absent — Burnam, Driver, Mallory Caraway, Vo

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2664:*)

For — (*Registered, but did not testify:* Thorton Burfine; Steven Johnson; Tara Mica, National Rifle Association; Raymond H. Smith; Alice Tripp, Texas State Rifle Association)

Against — None

BACKGROUND: Under Penal Code, sec. 46.035, concealed handgun license holders commit an offense if they intentionally, knowingly, or recklessly carry handguns, regardless of whether the handgun is concealed, on the premises of a business that has an Alcoholic Beverage Code permit for the sale or service of alcoholic beverages for on-premises consumption and derives 51 percent or more of its income from on-premise alcohol sales. A violation of this provision is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

Government Code, sec. 411.204 requires that a business that derives 51 of its income from on-premise sales or service of alcoholic beverages display a sign at its entrance warning that it is a crime to carry a handgun on the premises. The sign must give notice in both English and Spanish, and the warning must appear in contrasting colors with block letters at least one inch in height and must include the number "51" printed in solid red at least five inches in height.

DIGEST: SB 729 would amend Penal Code, sec. 46.035 to provide a defense to

prosecution of a concealed handgun license holder who carried a gun into a bar if the bar failed to display the warning sign required by Government Code, sec. 411.204.

The bill would apply to convictions on or after the bill's September 1, 2009, effective date.

**SUPPORTERS
SAY:**

SB 729 would provide a fair way to challenge the charge of unlawfully carrying a weapon where alcoholic beverages were served. A defense to prosecution is an intermediate step between an affirmative defense, when the defendant has to raise and prove the legal issue, and an exception to prosecution, when the prosecutor must raise and refute the issue even if the defense does not raise the objection.

Law-abiding handgun owners are accustomed to seeing warning notices posted at businesses where they cannot carry their weapon. Without these signs, concealed handgun license holders have no way to know whether the business derives 51 percent of its income from the on-premise sale of alcohol and could unwittingly become liable for severe penalties. They should be able to introduce into evidence that the sign was not posted properly and argue they did not violate the law.

SB 729 could provide some savings to the state by reducing the number of those facing time in prison. Prosecuting felonies and incarcerating those convicted of such offenses is expensive.

**OPPONENTS
SAY:**

A defense to prosecution would not necessarily assure that a concealed handgun license holder would escape punishment for carrying a handgun into a bar. It might be difficult to prove that at the time of offense the warning sign was not properly posted. Police still could arrest the person, and prosecutors could file charges on lesser offenses, such as disorderly conduct or public intoxication. While these other violations do not carry the same penalties as a third-degree felony, concealed handgun license holders still could face suspension of their permits for convictions of other offenses or have their handguns confiscated and not returned.

NOTES:

The House companion bill, HB 2664 by Ritter, passed the House by 143-0 on May 1 and was reported favorably, without amendment, by the Senate

Administration Committee on May 22 and has been set on the Local and Uncontested Calendar for May 27.

