

SUBJECT: Regulating carrying handguns on premises of a governmental entity

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray

0 nays

SENATE VOTE: On final passage, March 18 — 26-5 (Ellis, Garcia, Rodríguez, Watson, Whitmire)

WITNESSES: (*On House companion bill, HB 226*)
For — A.J. Louderback, Sheriffs' Association of Texas; Alice Tripp, Texas State Rifle Association; Terry Holcomb, Texas Carry; Judd Earley; (*Registered, but did not testify*: William Travis, Sheriffs' Association of Texas; Gina Holcomb, Texas Carry)

Against — John Dahill, Texas Conference of Urban Counties;
(*Registered, but did not testify*: Mark Mendez, Tarrant County Commissioners Court; Conrad John, Travis County Commissioners Court)

On — (*Registered, but did not testify*: Amanda Crawford, Office of Attorney General; Sherrie Zgabay and Oscar Ybarra, Texas Department of Public Safety)

BACKGROUND: Penal Code, sec. 30.06 prohibits concealed handgun license holders from carrying a handgun on another's property without effective consent. This provision does not apply if the property on which a license holder is carrying a handgun is owned or leased by a governmental entity and the premises is not one on which the license holder is prohibited from carrying a handgun by Penal Code, secs. 46.03 and 46.035.

Penal Code, sec. 46.03 prohibits individuals from carrying weapons in certain places, including the premises of any government court or offices

used by the court.

Penal Code, sec. 46.035 prohibits a license holder from carrying a handgun openly or in certain places, such as the premises of an establishment that derives 51 percent or more of its business from alcohol sales, even if open to the public.

DIGEST: SB 273 would prohibit a state agency or political subdivision from posting a sign or similar notice forbidding a concealed handgun license holder from carrying a handgun on a premises owned or leased by the governmental entity unless the license holder was prohibited from carrying a weapon on the premises under Penal Code, secs. 46.03 or 46.035.

The bill would make state agencies and political subdivisions that violated this section liable for civil penalties ranging from:

- \$1,000 up to \$1,500 for the first violation; and
- \$10,000 up to \$10,500 for a second or subsequent violation.

Each day of a continuing violation of improper notice would constitute a separate violation. The bill would require that the civil penalty collected by the attorney general be deposited to the credit of the compensation to victims of crime fund.

A citizen of Texas or a person licensed to carry a concealed handgun could file a complaint with the attorney general that a state agency or political subdivision was in violation of this bill if the citizen or licensee provided the agency or subdivision with written notice describing the violation and the specific location of the sign and if the agency or subdivision did not correct the violation within three business days after receiving the notice.

Before a suit could be brought against a state agency or political subdivision for a violation, the attorney general would be required to investigate the complaint to determine whether legal action was

warranted. If so, the attorney general would have to give the chief administrative officer of the agency or subdivision a written notice that:

- described the violation and the specific location of the sign;
- stated the amount of the proposed penalty; and
- gave the agency or subdivision 15 days to remove the sign and cure the violation to avoid the penalty.

If the attorney general found that legal action was necessary and the agency or subdivision did not cure the violation within the 15-day period, the attorney general or the appropriate county or district attorney could sue to collect the civil penalty. The attorney general also could file a petition seeking equitable relief and would be able to recover certain reasonable expenses incurred in the case.

A suit for improperly prohibiting the carrying of concealed weapons could be filed in a district court in Travis County or in a county where the principal office of the state agency or subdivision was located. Sovereign immunity to suit would be waived and abolished to the extent of liability created by the bill.

The bill also would establish that a license holder committed an offense if a license holder carried a handgun in the room where a meeting of a governmental entity was held if it was an open meeting and the entity provided notice as required for open meetings.

The bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.

SUPPORTERS
SAY:

SB 273 would reduce confusion among law-abiding licensed concealed handgun holders as to where they were allowed to carry their handguns. Improper posting of signs prevents license holders from carrying their handguns in places where they otherwise would be allowed to carry and may result in license holders being wrongfully subjected to criminal penalties for lawful actions. The bill would address this problem by creating a civil penalty for the wrongful posting of “no carry” signs.

This bill would remove the burden on licensed handgun holders who are trying to comply with the law while facing confusing and improperly posted signs. Students earning a concealed handgun license learn in the classroom where the carrying of handguns is prohibited, but many times improperly posted signs are inconsistent with what students learn.

The bill appropriately would enforce rights of concealed handgun license holders. Signs prohibiting the carrying of guns are being posted in places where license holders are allowed to carry, without the governmental entity being penalized for the mistake. If license holders are penalized for carrying handguns in places where they are not allowed to carry, governmental entities should similarly be penalized for prohibiting the carrying of handguns where it is allowed under law.

The bill would impose a reasonable civil penalty on governmental entities for violations, allowing the entity 15 days to cure any violation and avoid fines. This would be ample time for an entity acting in good faith to avoid a lawsuit.

The bill would not impose civil penalties for the posting of “no carry” signs on a premises where the carrying of handguns already is prohibited, such as a hospital. The exemption of carrying handguns on certain prohibited premises would still apply, regardless of whether government meetings were taking place there. Furthermore, for any facility or government premises that was not clearly defined as an area where the carrying of handguns would be prohibited at all times but may be prohibited on some occasions, the bill would provide for a three-day cure period to allow the entity to post a sign when carrying a handgun would be prohibited under the law, and take the sign down within three days of the end of the occasion or event.

The bill would not dictate where buildings with multiple functions could check for weapons or have metal detectors posted. It would penalize entities only for improperly posted signs. SB 273 also would not dictate where license holders were allowed to carry or were prohibited from

carrying their handguns. This regulation would be outside the scope of the bill, which would deal only with the wrongful posting of “no carry” signs.

OPPONENTS SAY: SB 273 could be difficult and costly to implement when there were multiple government meetings in a building in which handguns were otherwise allowed. This circumstance would require the placement of metal detectors at the door to each meeting instead of locating the metal detector and handgun monitoring at the building’s entrance. While the latter option would be the most sensible and cost-effective approach, it might be precluded by the bill.

The bill should not apply to teaching hospitals, which should maintain the authority to regulate handgun possession on their premises. This bill could prevent certain hospitals from being able to prohibit the carrying of handguns without worrying about paying hefty civil penalties. For instance, at some hospitals, such as MD Anderson, there is not a clear definition of whether the premises would be considered a state teaching facility or a hospital.

NOTES: The House companion bill, HB 226 by Guillen, was placed on May 12 General State Calendar, but was not considered.