

BILL ANALYSIS

Senate Research Center

H.B. 2909
By: Carter (Patterson)
Criminal Justice
5-17-97
Engrossed

DIGEST

In 1995, the Texas Legislature passed the Concealed Handgun Licensing bill giving law-abiding Texans a procedure by which to obtain a license themselves to carry a handgun. In the development of the original bill, some conforming language was omitted and experience over two years has indicated some changes necessary to orderly implementation of the law. This bill sets forth provisions regarding persons eligible for a license to carry a concealed handgun, to the rights and duties of license holders, and to certain offenses involving weapons.

PURPOSE

As proposed, H.B. 2909 set forth provisions regarding a person eligible for a license to carry a concealed handgun, to the rights and duties of license holders, and to certain offenses involving weapons.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Department of Public Safety in SECTION 12 (Sec. 35(a), Article 4413(29ee) and to the Alcoholic Beverage Commission in SECTION 17 (Sec. 104.069b), Alcoholic Beverage Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2(a), Article 4413(29ee), V.T.C.S., to provide that a person is eligible for a license to carry a concealed handgun if the person is a legal resident of this state for the six-month period preceding the date of application under this article or is otherwise eligible for a license under Section 35(a) of this article and is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun, rather than described as a person of unsound mind.

SECTION 2. Amends Section 2, Article 4413(29ee), by adding Subsection (d), to provide that a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun under certain conditions. Provides that a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subdivision (1) or listed in Subdivision (2) is not incapable of exercising sound judgment with respect to proper use of a handgun if the person provides the Department of Public Safety (department) with a certificate from a licensed physician stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop in the future.

SECTION 3. Amends Section 3(a), Article 4412(29ee), V.T.C.S., to require an applicant for a license to carry a concealed handgun to submit to the director's designee described by Section 5 of this article two complete sets of legible and classifiable fingerprints of the applicant taken by a person appropriately trained in recording fingerprints who is employed by a law enforcement agency or by a private entity designated by a law enforcement agency an an entity qualified to take fingerprints of an applicant of a license under this article.

SECTION 4. Amends Section 5(b), Article 4413(29ee), V.T.C.S., to provide that the scope of the record check and the investigation are at the sole discretion of the department, except that the director's designee shall complete the record check and investigation not later than 60 days after the date the department received the application materials. Requires the department to conduct further

record check or investigation the department determines is necessary in the event that the question exists with respect to the accuracy of the application materials or the eligibility of the applicant, except that the department shall complete the record check and investigation not later than 180 days after the date the department received the application materials from the applicant.

SECTION 5. Amends Section 6(b), Article 4413(29ee), V.T.C.S., to require the department to notify the applicant in writing that the department is unable to make a determination regarding the issuance or denial of a license to the applicant within the 60-day period prescribed by this subsection and include in that notification an explanation of the reason for the inability and an estimation of the amount of time the department will need to make the determination. Deletes a provision requiring the department to perform certain duties not later than the 90th day after the date of the receipt by the director's designee of the completed application materials.

SECTION 6. Amends Sections 6(g), (h), and (i), Article 4413(29ee), to delete a provision requiring the license holder to display both the license and the license holder's driver's license or identification certificate issued by the department on the demand by a magistrate or a peace officer. Provides that a person who fails or refuses to display the license and identification as required by this subsection is subject to suspension of the person's license as provided by Section 13 of this article. Provides that a person commits a Class B misdemeanor if the person fails or refuses to display the license and identification as required by Subsection (g) of this section after previously having had the person's license suspended for a violations of that subsection.

SECTION 7. Amends Section 12(a), Article 4413(29ee), V.T.C.S., to authorize a license to be revoked under this section if the license holder subsequently becomes ineligible for a license under Section 2 of this article unless the sole basis for the ineligibility is that the license holder is charged with the commission of a Class A or Class B misdemeanor or an offense under Section 42.01, Penal Code, of a felony under an information or indictment or is determined by the department to have engaged in certain conduct.

SECTION 8. Amends Sections 13(a) and (c), Article 4413(29ee), V.T.C.S., to provide that a license may be suspended under this section for certain time periods depending on the reasons for suspension listed in Subsection (a). Makes a conforming change.

SECTION 9. Amend Section 17(c), Article 4413(29ee), V.T.C.S., to set forth provisions regarding the department's determination for denial of a license.

SECTION 10. Amends Sections 18(c) and (f), to require the department to issue a license to carry a concealed handgun, rather than waive the requirements regarding a handgun proficiency certification under Section 17 of this article, under the authority of this article to any person who is certified as a qualified handgun instructor and who pays to the department a fee of \$100 in addition to the training fee, rather than takes and successfully completes training under this subsection. Requires the department to take certain action against a person's license to carry a concealed handgun if the person is an applicant for or holder of such a license and the person's certification as a qualified handgun instructor, rather than regardless of whether the person has a license issued under this article to carry a concealed handgun.

SECTION 11. Amends Section 31, Article 4413(29ee), V.T.C.S., by amending Subsections (a) and (b) and adding Subsections (d) and (e), to require a business that has a permit or licence issued under Chapter 74, Alcoholic Beverage Code and derives a certain percentage of its income from the sale of alcoholic beverages for on-premises consumption as determined by Texas Alcoholic Beverage Code, to prominently display certain signs under this subsection. Requires the signs to include on its face the number "51" printed in solid red at least five inches in height. Provides that a business that has permit or license issued under the Alcoholic Beverage Code and that is not required to display a sign under this section may be required to display a sign under Section 11.041 or Section 61.11, Alcoholic Beverage Code. Provides that this section does not apply to a business that has a food and beverage certificate issued under the Alcoholic Beverage Code.

SECTION 12. Amends Section 35, Article 4413(29ee), V.T.C.S., as follows:

Sec. 35. New heading: **NONRESIDENT LICENSE**. Deletes provisions regarding a reciprocal license. Sets forth provisions regarding a nonresident license.

SECTION 13. Amends Chapter 11, Alcoholic Beverage Code, by adding Section 11.041, as follows:

Sec. 11.041. **WARNING SIGN REQUIRED**. Sets forth provisions regarding warning signs that give notice that it is unlawful for a person to carry a weapon on the premises under certain conditions.

SECTION 14. Amends Section 11.61(a), Alcoholic Beverage Code, to provide that this subsection does not apply to a person who possesses a concealed handgun of the same category the person is licensed to carry under Article 4413(29ee), V.T.C.S., unless the person is on the premises of a business described by Section 46.035(b)(1), Penal Code.

SECTION 15. Amends Section 61.11, Alcoholic Beverage Code, to require each holder of a license who is not otherwise required to display a sign under Section 31, Article 4413(29ee), V.T.C.S., to display in a prominent place on the license holder's premises a sign stating certain information. Sets forth the appearance of the sign. Deletes the existing language relating to the sign. Deletes a provision providing that a licensee who violates this section commits a misdemeanor punishable by a fine of not more than \$25.

SECTION 16. Amends Section 61.71(f), Alcoholic Beverage Code, to make a conforming change.

SECTION 17. Amends Chapter 104, Alcoholic Beverage Code, by adding Section 104.06, as follows:

Sec. 104.06. **MONITORING OF GROSS RECEIPTS**. Sets forth provisions regarding the monitoring of gross receipts for the premises for which the licence or permit is issued.

SECTION 18. Amends Section 12.092(b), Health and Safety Code, to require the medical advisory board to assist the Department of Public Safety in determining whether an applicant for or holder of a license to carry a concealed handgun under the authority of Article 4413(29ee), V.T.C.S., is capable of exercising sound judgment with respect to the proper use and storage of a handgun.

SECTION 19. Amends Sections 12.095(a), (c), and (d), Health and Safety Code, as added by Chapter 165, Acts of the 74th Legislature, Regular Session, 1995, to require the commissioner of public health (commissioner) or a person designated by the commissioner to convene a panel to consider the case or question submitted by the department if the Department of Public Safety requests an opinion or recommendation from the medical advisory board as to the ability of an applicant or license holder to exercise sound judgment with respect to the proper use and storage of a handgun. Makes conforming and nonsubstantive changes.

SECTION 20. Amends Chapter 30, Penal Code, by adding Section 30.06, as follows:

Sec. 30.06. **TRESPASS BY HOLDER OF LICENSE TO CARRY CONCEALED HANDGUN**. Provides that a license holder commits a Class A misdemeanor if the person performs certain actions. Provides that a person received notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral and written communication. Defines "entry" and "license holder."

SECTION 21. Amends Section 46.02, Penal Code, to delete provisions regarding certain defenses to prosecution under this section.

SECTION 22. Amends Section 46.03(b) and (c), Penal Code, to delete a peace officer from the provisions of Subsection (a). Defines "premises" and redefines "secured area."

SECTION 23. Amends Section 46.035(b), Penal Code, to make a conforming change.

SECTION 24. Amends Section 46.15, Penal Code, as follows:

Sec. 46.15. New heading: NONAPPLICABILITY. Provides that this section does not apply to certain persons.

SECTION 25. Repealer: Section 1(10), Article 4413(29ee), V.T.C.S. (Definitions).

SECTION 26. Makes application of this Act prospective.

SECTION 27. Authorizes a person, who before the effective date of this Act was licensed to carry a concealed handgun under Article 4413(29ee), V.T.C.S., and whose license was revoked on the sole basis that the person was charged with the commission of certain offenses to apply to the department to change the status of the person's license in accordance with Sections 12 and 13 Article 4413(29ee), V.T.C.S., by a certain date. Requires the Department of Public Safety to promptly place the person's license on suspension if the charges against the person are still pending or reinstate the person's license if the charges against the person have been dismissed.

SECTION 28. Requires the Department of Public Safety to establish procedures and to commence any negotiations required by Section 25, Article 4413(29ee), V.T.C.S., by a certain date.

SECTION 29. Sets forth certain requirements for the Texas Alcoholic Beverage Commission regarding the adoption of rules and other determinations. Makes application of this Act prospective.

SECTION 30. Makes application of this Act prospective.

SECTION 31. Effective date: September 1, 1997.

SECTION 32. Emergency clause.