

SUBJECT: Restricting employer prohibitions on guns in workplace parking lots

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 5 ayes — Merritt, Frost, Driver, P. King, Vo

0 nays

1 present, not voting — Mallory Caraway

3 absent — Burnam, Lewis, Rodriguez

SENATE VOTE: On final passage, March 25 — 31-0

WITNESSES: For — Robert S. Morgan; Alice Tripp, Texas State Rifle Association;
(*Registered, but did not testify*: Bill Elkin, Houston Police Retired Officers Association; Christopher Self)

Against — Robert Gilbert, United Services Automobile Association; Jack Taylor, Freescale Semiconductor, Inc.; (*Registered, but did not testify*: Jeffrey Clark, Technology Association of America; Hugo Gutierrez, Marathon Oil Corp.; Dan Hagan, American Airlines/Air Transport Association; Rebecca Moss, Texas Association of Manufacturers; Steve Perry, Chevron USA; Kandice Sanaie, Texas Association of Business; Duplé Tradillion, Fed Ex Corp.; Dave Walden, Continental Airlines/American Transport Association)

BACKGROUND: Government Code, sec. 411.203 does not prevent or otherwise limit the right of a public or private employer to prohibit persons who hold concealed handgun licenses from carrying their concealed handguns on the premises of the business.

Penal Code, sec. 46.035 (f) (3) defines “premises” as a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

DIGEST: CSSB 730 would amend Government Code, sec. 411.203 to limit the

ability of public or private employees to restrict concealed handgun license holders ability to carry their weapons only inside buildings. Employers could not prohibit concealed handgun license holders from possessing or storing their weapons in a parking lot, parking garage, or other parking area.

CSSB 730 would amend the Labor Code, adding ch. 52, to state that an employer could not prohibit an employee who held a concealed handgun license or otherwise legally possessed a firearm or ammunition from transporting or storing the firearm or ammunition in a locked, privately owned motor vehicle.

The bill would provide immunity from liability to the employer for personal injury, death, property damage, or any other damages caused by the storage of firearms or ammunition or because of theft of the firearm or ammunition.

The employer would not have a duty to:

- patrol, inspect or secure any parking lot or garage or any private vehicle in those parking areas; or
- investigate, confirm, or determine an employee's compliance with laws on transporting or storing firearms or ammunition in a privately owned motor vehicle.

The bill would not prohibit an employer from adopting a policy to require that any firearm be stored in a locked vehicle and hidden from view or locked in a case while the vehicle was on the employer's parking facility.

CSSB 730 would allow an employer to prohibit possession or storage of firearms or ammunition if access to the parking area was restricted or limited by a fence, gate, security station, sign, or other means, and the employer provided:

- an alternative location on the employer's property to store the employee's unloaded firearm; or
- an alternative parking lot, reasonably close to the main parking area, where employees and other persons could transport or store firearms in a locked privately owned vehicle.

The bill would not apply to possession of a firearm in the building or in a vehicle owned or leased by the employer. The bill also would not

authorize concealed handgun license holders from carrying their weapons on any property otherwise restricted by state or federal law.

CSSB 730 also would exclude:

- school districts;
- open-enrollment charter schools;
- private schools; or
- property owned or leased by an employer who was required to submit a risk management plan under the federal Clean Air Act and whose primary business was the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials regulated by state or federal law.

The bill would take effect on September 1, 2009.

SUPPORTERS
SAY:

CSSB 730 would end an inconsistency in state law that prevents employees from storing their weapons in their employers' parking areas while no such restriction applies to visitors or other non-employees using those same parking lots or garages. Many companies with operations in Texas have adopted "no firearms" policies that extend beyond the actual workplace and into parking areas that often are accessible to the general public and not secured. These restrictions emanate from headquarters located outside of Texas or even the United States and do not take into account the state's firearms transportation laws and sporting culture. The bill would end this disparate treatment between employees and non-employees using the same parking areas.

Business concerns about potential violence should not be used to justify forcing employees to choose between protecting themselves and losing their jobs because of violations of "no firearm" policies. Concerns about workplace safety should not end at the front door of a business. Workers have a right to protect themselves in the parking lot or during their commutes to and from work. Employers appear to be more concerned about their own liability than about the safety of their employees when leave their parking lots.

Obviously, CSSB 730 would involve a balance between private property rights of the business owners and the Second Amendment rights of the employees. However, the decision should be made in favor of the right to bear arms, protected by both the U.S. and Texas constitutions. In February

2009, the U. S. Tenth Circuit Court of Appeals upheld similar Oklahoma laws that hold employers criminally liable for prohibiting employees from storing firearms in locked vehicles on company property (*Ramsey Winch Inc. v. Henry*, No. 07-5166 (10th Cir. Feb. 18, 2009)). The appeals court specifically held that the Oklahoma laws were not an unconstitutional taking of the employers' property. CSSB 730 would be similar to these Oklahoma statutes that have undergone close court scrutiny.

CSSB 730 would provide for reasonable exemptions for businesses that handled hazardous materials and would allow companies to meet risk management and Homeland Security requirements. *Ramsey Winch Inc. v. Henry* held that there are no specific Occupational Health and Safety Administration rules determining that storing firearms or ammunition in parking lots constitutes a hazard. Also, Texas-based Southwest Airlines, which is in an industry directly affected by the 9/11 terrorism attacks, accommodates employees who want to store firearms in their vehicles parked on company lots.

There is no empirical evidence that having firearms in vehicles leads to workplace violence. The bill would not interfere with business policies to forbid firearms inside the work areas or in company vehicles. Employers would have immunity from liability. It would also allow businesses to exclude firearms in parking areas if a secured area could be provided for those wishing to store their weapons and ammunition in their locked vehicles.

OPPONENTS
SAY:

CSSB 730 would infringe on the basic constitutional rights of employers to control their property. It should always be the prerogative of the property owner and a business owner to make decisions about their property, such as prohibiting weapons.

The current uncertain economic times would make for an unstable mix of job-related emotions and guns in the parking lot. The presence of weapons could increase the likelihood that a heated dispute between a worker and a supervisor or among co-workers could escalate into a tragedy. There also could also be dangers to the gun owner or to passersby should the firearm be discharged accidentally.

Employers have the right to set the terms of employment, and this should include whether employees may bring concealed handguns onto property. This is a logical extension of the employers' rights to ban concealed

handguns from their premises. Employers are charged with providing a safe workplace, and employees having easy access to weapons in their cars could compromise this.

Workplaces are safest when businesses decide on safety measures. Businesses operate under unique circumstances, and employers who believe that a workplace is safer without concealed handguns in the parking area should be able to ban them. For example, a pawn shop owner might have different concerns about weapons than a coffee shop owner. Those concerns could be amplified if the business were a day care center or located at a private home. Businesses are given the right to decide their workplace policies, and prohibiting concealed handguns should fall under this authority.

Concealed handgun advocates overstate the law-abiding nature of those with concealed handgun license holders. While DPS records show concealed handgun license holders commit a statistically insignificant portion of all crimes in the state, some are convicted of serious offenses. DPS reports are delayed to include final convictions, but the report for 2007 showed that four concealed handgun license holders were convicted for murder, including two for capital murder.

**OTHER
OPPONENTS
SAY:**

The bill would not go far enough to address legitimate security concerns by employers. The exception for companies who handle hazardous materials as a primary business would not cover some semi-conductor manufacturers. Some employers are located in congested areas, and it would be cost-prohibitive to build a separate secured parking lot to accommodate gun owners.

NOTES:

The House companion bill, HB 1301 by Frost, was heard by the House Public Safety Committee on March 23 and left pending.

During the 2007 regular session, the Senate passed a similar bill, SB 534 by Hegar, which died on the House General Calendar.