

SUBJECT: Illegal posting of “no carry” signs by state agencies, political subdivisions

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer

0 nays

2 absent — Burnam, Toth

WITNESSES: For — (*Registered, but did not testify*: Jerry Patterson)

Against — None

On — Scott Houston, Texas Municipal League; (*Registered, but did not testify*: Alice Tripp, Texas State Rifle Association)

BACKGROUND: Penal Code, sec. 30.06 makes it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for a concealed handgun license holder to carry a concealed handgun on another’s property without effective consent if the person received certain notice. The notice must be that that entry on the property by a concealed handgun licensee with a concealed handgun was prohibited or that remaining on the property with a concealed handgun was forbidden and the person did not depart. Notice can be provided orally or in writing. The definition of written communication includes a sign posted on the property and displayed in a conspicuous manner with specific language in sec. 30.06

In addition, Penal Code, sec. 46.03 lists places where all firearms and other weapons are prohibited. It is not a defense to prosecution under this offense that a person had a handgun and was licensed to carry a concealed handgun.

Penal Code, sec. 46.035(c) and (i) prohibit concealed handgun license holders from carrying concealed handguns in several types of places, including any meeting of a government entity, if the license holder was given notice that complied with Penal Code, sec. 30.06. These offenses are class A misdemeanors.

DIGEST:

CSHB 508 would prohibit state agencies and political subdivisions of the state from providing notice to concealed handgun licensees, as described by Penal Code, sec. 30.06, that entering or remaining on the premises of a governmental entity was prohibited if license holders were not prohibited from carrying a concealed handgun on the premises by Penal Code, secs. 46.03 or 46.035.

State agencies and political subdivisions that violated this prohibition would be liable for civil penalties of \$1,000 to \$1,500 for the first violation and \$10,000 to \$10,500 for second and subsequent violations. Each day of a continuing violation would be considered a separate violation. The penalties would be deposited in the crime victims' compensation fund.

Upon request by a Texas citizen or a person with a Texas concealed handgun license, the attorney general would be required to sue to collect the civil penalty in CSHB 508. Before bringing a suit, the attorney general would have to give the agency or subdivision notice that described the violation, stated the proposed penalty, and gave the agency or subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the penalty, unless it was a repeat offense. Sovereign immunity would be waived for liability created by the bill.

The current prohibition for concealed handgun licensees to carry a handgun "at" government meetings would be changed to specify that the prohibition applied to the room or rooms where a meeting was held, and to require that it be an open meeting under the Government Code and that the government entity had provided notice of the prohibition.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date.

SUPPORTERS
SAY:

CSHB 508 would ensure that governmental entities did not post "no carry" signs unless carrying a concealed handgun was prohibited by statute. Currently, some governmental entities post "no carry" signs erroneously in places in which it is legal to carry a concealed handgun. This is confusing and could potentially subject concealed handgun license holders to a criminal penalty. CSHB 508 would address this problem by creating a civil penalty for the wrongful placement of these signs.

CSHB 508 would impose a reasonable civil penalty for violations. The bill

would create a 15-day period during which governmental entities could cure any violation and avoid fines. This is ample time for any entity acting in good faith to avoid a lawsuit. Requiring the attorney general to file these suits would ensure that violations of the bill were addressed. It would be appropriate to waive sovereign immunity in these narrowly drawn circumstances to ensure that Texas' concealed carry laws are followed.

The bill also would clarify that it is in the actual room where a government meeting is taking place that concealed handguns could be prohibited, that it must be an open meeting, and that notice must be provided. This reasonable, common interpretation of the current law would help both concealed handgun license holders and governmental entities follow the statutes.

**OPPONENTS
SAY:**

The state should be cautious about waiving sovereign immunity of state agencies and political subdivisions, even for the limited circumstances of CSHB 508. This should be reserved only for situations in which there is no other appropriate remedy.

CSHB 508 should not mandate that the attorney general file suits under the bill on the request of Texas citizens or concealed handgun licensees. The attorney general should have discretion about filing suits.