

# **FIREARMS LAW ISSUES IN THE HOSPITALITY INDUSTRY**

**DEWEY A. BRACKIN**, *Austin*  
Gardere Wynne Sewell LLP

State Bar of Texas  
**FIREARMS LAW – WHAT EVERY TEXAS ATTORNEY NEEDS TO KNOW**  
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**CHAPTER 12**



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# Firearms Law Issues in the Hospitality Industry

## I. INTRODUCTION

The focus of this paper is specifically on the federal and statewide gun regulations which affect the hospitality industry. Citizens and entities are subject to the authority of both the state and federal governments, and therefore subject to all federal and state laws.

### A. Federal Law

The right to keep and bear arms is protected by the Second Amendment of the US Constitution. Federal law restricts or prohibits certain types of guns, sets age limits, and prohibits possession of firearms in certain places.

#### 1. Weapon Regulations

The National Firearms Act (NFA) regulates the following types of weapons: machine guns (any weapon which shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger), and certain parts designed for weapons that allow fully automatic fire; short barreled rifles; modified shotguns; destructive devices such as bombs, grenades, rockets, and missiles; and non-sporting firearms with bores over 1/2".<sup>1</sup>

The NFA makes it a federal felony for any person other than the registered owner to possess an NFA firearm.<sup>2</sup> To register an NFA item in a person's name, he or she must pay a transfer tax, submit an application to the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") and receive approval before the transfer.<sup>3</sup> ATF maintains a registry of these weapons known as the National Firearms Registration and Transfer Record. Some states impose an outright prohibition on possession of NFA items. Texas allows possession of NFA items as long as they are kept in compliance with federal law.<sup>4</sup>

Due to the Firearm Owner's Protection Act civilians may only legally own and transfer machine guns registered before May 19, 1986. Machine guns that were not registered as of that date may only be legally transferred or possessed by the federal government, a State, or a department, agency, or political subdivision thereof.<sup>5</sup>

#### 2. Federal Age restrictions

Persons under 18 years of age may not lawfully possess handguns or ammunition that are only usable in handguns.<sup>6</sup> There are certain exceptions involving specific circumstances. It is illegal for a gun dealer to sell a rifle or shotgun to anyone under 18 years of age, or to sell any other firearm (including handguns and NFA items) to anyone under 21 years of age. It is illegal for a gun dealer to sell ammunition for a handgun, shotgun, or rifle to anyone under 21 years of age.<sup>7</sup>

#### 3. Law Enforcement Officers and Retired Law Enforcement Officers

Congress passed the Law Enforcement Officers' Safety Act ("LEOSA") in 2004. The Act allows current and retired law enforcement officers to carry concealed handguns nationwide, regardless of state or local laws (with some notable exceptions, discussed below).<sup>8</sup>

Whether or not a person is privileged by LEOSA (and its amendments) to carry a concealed firearm depends on whether or not he or she meets the federal definitions for either a "qualified law enforcement officer" or a "qualified retired law enforcement officer." If a person meets the criteria, then "notwithstanding any other provision of the law of any State or any political subdivision thereof", he or she may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce. As a result, an individual who qualifies under LEOSA does not require a state-issued permit for carrying a concealed firearm in any state.<sup>9</sup>

Although LEOSA preempts state and local laws, it also carves out two notable exceptions: "the laws of any State that (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property" (including bars, private clubs, amusement parks, etc.), or "(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park."<sup>10</sup>

Additionally, LEOSA does not override other co-existing federal laws, including the federal Gun-Free School Zone Act (GFSZA), as well as any federal laws and federal agency policies that restrict the carrying of concealed firearms in certain federal

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<sup>1</sup> 26 U.S.C §5845

<sup>2</sup> 26 U.S.C. §5861

<sup>3</sup> 26 U.S.C §5811; 26 U.S.C §5812

<sup>4</sup> TEX. PENAL CODE § 46.05

<sup>5</sup> 18 U.S.C. §922(o)

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<sup>6</sup> 18 U.S.C. § 922(x)

<sup>7</sup> 18 U.S.C. § 922(b)(1), (c)(1)

<sup>8</sup> 18 U.S.C. §§ 926(B), 926(C)

<sup>9</sup> 18 U.S.C. §§ 926(B), 926(C)

<sup>10</sup> 18 U.S.C. §§ 926(B), 926(C)

buildings and lands, as well as federal regulations prohibiting the carriage of firearms on airplanes.

An officer exercising these rights must carry his or her photo identification and may not be under the influence of alcohol or drugs.<sup>11</sup>

#### 4. Federal Prohibition of guns in certain places

Federal law makes it illegal to take any "dangerous weapon" into a "federal facility," which means any building or part thereof owned or leased by the federal government, where federal employees are regularly present for the purpose of performing their official duties.<sup>12</sup> Dangerous weapon is defined to include guns. Federal law also prohibits or restricts the carrying of guns into post offices, national parks, military bases, and school zones.

### B. Texas Law

Texas law regulates who can have a gun, where you can have a gun, what kind of gun you can have, and for what purposes you can have it. There is no waiting period to purchase a gun under Texas law. Texas does not require gun registration or a firearms owner's identification. A "firearm" is defined in Texas Law as any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.<sup>13</sup>

The authority of a state to regulate guns comes from the state's general police power. That power is limited by the Bill of Rights in the Texas Constitution, Article 1, Section 23, which states:

RIGHT TO KEEP AND BEAR ARMS.  
Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

#### 1. State Prohibition of guns in certain places

<sup>11</sup> 18 U.S.C. §§ 926(B), 926(C)

<sup>12</sup> 18 USC § 930

<sup>13</sup> TEX. PENAL CODE §46.01(1)(a)(3)

Texas law carves out certain places where it is illegal to carry a firearm or any other type of weapon. Texas Penal Code § 46.03 makes it illegal to possess a gun of any type in certain places including schools, places where a school activity is occurring, as well as school transportation vehicles like school buses; polling places on election day or during early voting; courts and court offices; racetracks; secured areas of airports; and within 1000' of places of execution, on execution day, if notice is given. This section applies to everyone except peace officers and members of the armed forces. There is no exception for Concealed Handgun License holders ("CHL holders"). This law applies to all guns, including rifles, shotguns, and handguns.<sup>14</sup>

#### 2. Rifles and shotguns

Rifles and shotguns are subject to fewer restrictions than handguns. This can be deduced by a reading of Texas Penal Code § 46.02 (which prohibits the carrying of handguns and certain other weapons, but does not apply to rifles and shotguns), in conjunction with Texas Penal Code § 46.03 discussed above. Texas law permits open carry of rifles and shotguns, except for places where possession of all guns is prohibited. No permit is required to carry a rifle or shotgun and there is no requirement to conceal them.

#### 3. Handguns generally

A "handgun" is a subset of a firearm and means any firearm that is designed, made, or adapted to be fired with one hand.<sup>15</sup> Texas regulates handguns more strictly than rifles and shotguns. Texas Penal Code § 46.02(a), entitled "Unlawful Carrying Weapons" ("UCW"), generally prohibits the carrying on or about your person of handguns and certain other types of weapons. The UCW statute only applies to handguns and therefore as stated previously, Texas permits open carry of rifles and shotguns. (Specific conduct with a rifle or shotgun may violate other laws, including for example aggravated assault.)

The UCW alone would effectively ban handguns altogether, however there are exceptions.

#### 4. Handgun exceptions, no CHL needed

<sup>14</sup> TEX. PENAL CODE §46.03

<sup>15</sup> TEX. PENAL CODE §46.01(1)(a)(5)

Texas has a number of exceptions to the prohibition of carrying handguns, the most obvious of which applies to holders of a CHL. There are also a number of other exceptions that do not require a CHL, including an exception that allows you to possess a handgun at your home or business; an exception that allows you to carry during lawful hunting, fishing, or other sporting activities; an exception which allows you to take a gun home after buying it; and an exception which allows you to take it in for repairs. Some of these exceptions are listed in Texas Penal Code § 46.15, and some have been established through court cases. The Motorist Protection Act created a major exception to the UCW law as well, generally allowing law-abiding citizens to keep *concealed* handguns in their vehicles.<sup>16</sup> *Keep in mind these exceptions do not require the carrier to have a handgun license.*

Other than the exceptions just noted the carrying of a handgun is generally prohibited without a CHL.<sup>17</sup> Thus non-licensed handgun carriers are banned in bars, restaurants and package stores. Carrying a handgun without a license becomes a third degree felony if it occurs on the premises of any business which sells alcoholic beverages.<sup>18</sup>

##### 5. Handgun exception for CHL holders

The concealed handgun law passed in 1995, allowing civilians to obtain licenses to carry concealed handguns in most public places with some exceptions which are discussed below.<sup>19</sup> Eligible persons can obtain a CHL from the state, and as long as they keep the license current, keep the handgun concealed (or in a belt or shoulder holster pursuant to the new open carry law, discussed below), and do not carry it places where it is specifically prohibited, CHL holders have the right to carry their handgun wherever they go. It is a crime to carry a handgun even with a CHL while intoxicated.<sup>20</sup>

Until recently, CHL holders were required to conceal their handguns. However Legislative changes in Texas law in regards to open carry and concealed carry of firearms became effective as of January 1, 2016, and now licensees are able to carry a handgun

concealed or in an open fashion using a belt or shoulder holster. It is still unlawful for a CHL holder to intentionally display a handgun in plain view of another person in a public place.<sup>21</sup>

##### a. Mandatory Restrictions on CHL Holders

CHL holders are prohibited from carrying handguns onto the premises of sporting events and the premises of correctional facilities. They are also prohibited from carrying handguns on the premises of hospital or nursing homes, at amusement parks, at churches, and at meetings of any governmental entity, but only if a proper notice is posted.<sup>22</sup>

Governmental entities have little or no discretion on the issue of whether or not to ban licensees from carrying handguns, as state law either allows handguns or prohibits them. In 2015 the Legislature adopted Senate Bill 273, which imposes significant penalties on entities which try to ban guns where state law would otherwise allow them.<sup>23</sup>

CHL holders are also prohibited from carrying handguns into businesses that derive 51% or more of their income from alcohol (the location is required to post a red "51%" sign, discussed in detail below).<sup>24</sup> Violation of the statute by bringing a handgun onto the premises of a location which serves alcoholic beverages and which has properly posted the signage is a felony of the third degree.<sup>25</sup>

Pursuant to the Texas Alcoholic Beverage Code ("TABC"), the alcoholic beverage location itself is subject to having its license cancelled for knowingly allowing a person to possess a firearm in a building on the licensed premises described above (what we will call "red 51% sign" locations).<sup>26</sup> A business owner has no discretion to allow the carrying of guns into these red 51% sign locations, as the gun prohibitions and sign requirements are mandatory. Business owners can verify if they fall into this category by checking the TABC public website, or referring to their permit or license and looking for language stating "Gun Sign: RED". The requirements for proper posting of the red 51% signs are discussed

<sup>16</sup> TEX. PENAL CODE §46.02

<sup>17</sup> TEX. PENAL CODE § 46.02

<sup>18</sup> TEX. PENAL CODE §46.02(c)

<sup>19</sup> TEX. PENAL CODE § 46.15(b)(6)

<sup>20</sup> TEX. PENAL CODE §46.035

<sup>21</sup> TEX. PENAL CODE § 46.035

<sup>22</sup> TEX. PENAL CODE § 46.035; TEX. GOV. CODE § 411.204

<sup>23</sup> TEX. GOV. CODE §411.209

<sup>24</sup> TEX. PENAL CODE § 46.035; TEX. GOV. CODE § 411.204

<sup>25</sup> TEX. PENAL CODE § 46.035

<sup>26</sup> TEX. ALCO. CODE §§ 11.61; 61.71

below. The Texas Alcoholic Beverage Commission, pursuant to TABC § 104.06, determines upon the issuance and renewal of a license or permit whether the location derives 51 percent or more of its gross receipts from the sale or service of alcoholic beverages. Once this determination is made, it is denoted in the verbiage on the permit. If it is determined that the licensed location does not meet the 51% or more gross receipts criteria, it is denoted as a “blue sign” location, and is subject to different rules in regards to firearms, which will be discussed in further detail below.

#### b. Optional Restrictions on CHL holders

Employers (public or private, including a city) can prohibit their employees from carrying on the business’ premises, however the CHL holder may generally leave the handgun in a private locked car in the parking lot.<sup>27</sup>

Private property owners (with or without licenses under the Alcoholic Beverage Code) including hotels, liquor stores, package stores, grocery stores, convenience stores, and other hospitality businesses can exclude persons from their property for any lawful reason. These entities can elect (although it is not required) to prohibit access by CHL holders carrying handguns by posting signs that meet the requirements of Texas Penal Code § 30.06 relating to the carrying of concealed handguns and/or Texas Penal Code § 30.07 relating to the carrying of openly carried handguns. A 30.06 sign makes it illegal for a license holder to carry a concealed handgun into the business. A 30.07 sign makes it illegal for a license holder to openly carry (through use of a belt or shoulder holster). In sum, a business can choose to forbid license holders to carry handguns in a concealed fashion, (Texas Penal Code § 30.06), a business can choose to forbid license holders to carry handguns in an open carry fashion, (Penal Code § 30.07), or a business can forbid the carrying of a handgun into the business outright by posting both the 30.06 and 30.07 signs.

CHL holders can open (belt or shoulder holster) or concealed carry a handgun into a place that serves alcohol on-premise but derives less than 51% of its income from its sale (most restaurants), as well as liquor stores, package stores, grocery stores, and convenience stores, so long as that specific business has not chosen to post signage prohibiting open carry, concealed carry, or both. Locations can verify if they fall into this category by checking the TABC public website, or referring to their permit or license and looking for language stating “Gun Sign: BLUE”. The requirements for proper posting of the red 51% signs are discussed below.

#### 6. Rifles and Shotguns on the property of alcoholic beverage licensed locations

It is illegal (except for certain exceptions) to allow any unlicensed firearm on a premises licensed to sell alcoholic beverages; to knowingly allow possession of an unlicensed firearm can result in the cancellation of the location’s alcoholic beverage license.<sup>28</sup> The term ‘firearms’ as used here includes long rifles, semi-automatic weapons, and unlicensed handguns (whether concealed or openly-carried). This is especially important to note given that rifles and shotguns are allowed except for places where possession of all guns is prohibited. The import of the laws governing the alcoholic beverage licensed locations in conjunction with Texas Penal Code §46.02 and Texas Penal Code §46.03 is that while it is unlawful for locations to allow a person carrying a long gun on the premises, it is not unlawful per se for unlicensed carriers to bring them on the premises. The criminal infraction occurs for the individual only for the crime of trespassing.

#### 7. The exception to the exception: The owner or supervisor of a bar may possess a handgun

A person who holds any alcoholic beverage permit or license (or an employee of such a license holder) may possess a handgun in a bar if the person is supervising the operation of the permitted or licensed premises.<sup>29</sup>

#### 8. Signage Requirements (Specific to Locations licensed to Sell Alcohol)

<sup>27</sup> TEX. GOV. CODE §411.203; TEX. LABOR CODE §§ 52.061, 52.062

<sup>28</sup> TEX. ALCO. BEV. CODE §§ 11.61, 61.71

<sup>29</sup> TEX. PENAL CODE § 46.15(b)(7)

Businesses licensed under the Alcoholic Beverage Code pursuant to Chapter 25 (pertaining to wine and beer retail), Chapter 28 (pertaining to mixed beverages), Chapter 32 (pertaining to private clubs), Chapter 69 (pertaining to on or off premise sale of beer), or Chapter 74 (pertaining to brew pub licenses), that derive 51% or more of their income from alcoholic beverages, which is determined based upon sales figures disclosed by the applicant in the Texas Alcoholic Beverage Commission application, must post a sign stating that it is unlawful for a CHL holder to carry a handgun on the premises.<sup>30</sup> Coupled with Texas Penal Code § 46.02 which makes the carrying of a handgun without a license illegal in most instances, this effectively forbids any handguns on these premises, with the exception for that of the owner or supervisor of the establishment. The red 51% signs have 51% in large red numbers superimposed over the warning. The warning notes that it is unlawful for a person to carry a handgun on this premise, including a person licensed under Subchapter H, Chapter 411 of the Government Code.

Locations required to post the Texas Alcoholic Beverage Commission's red 51% sign must make sure the signage meets the following requirements: the sign must give notice in both English and Spanish that it is unlawful for a person licensed under this subchapter to carry a handgun on the premises; the sign must appear in contrasting colors with block letters at least one inch in height; the sign must include on its face the number "51" printed in solid red at least five inches in height; and the sign must be displayed in a conspicuous manner clearly visible to the public.<sup>31</sup>

The links provided below are to the Official TABC website dictating current red 51% sign requirements.

<http://www.tabc.state.tx.us/publications/brochures/weapons51.pdf>

<http://www.tabc.state.tx.us/publications/brochures/weapons51spanish.pdf>

Establishments licensed to sell alcoholic beverages for off-premises consumption or, if licensed for sale for on-premises consumption, establishments whose alcohol sales are less than 51% of total gross

receipts, based upon sales figures disclosed on the applicant's Texas Alcoholic Beverage Commission application, are required to post the Texas Alcoholic Beverage Commission's blue sign.<sup>32</sup> Locations required to post the Texas Alcoholic Beverage Commission's blue sign must make sure the signage meets the following requirements: the sign must give notice in both English and Spanish, the sign must be a least 6 inches high and 14 inches wide, the sign must appear in contrasting colors, and the sign must be displayed in a conspicuous manner clearly visible to the public. These signs must warn that the unlicensed possession of a weapon on the premises is a felony.

CHL holders may lawfully carry a concealed/properly open carried handgun into these locations, so long as the location has not opted to post the additional 30.06 and/or 30.07 signs banning CHL carriers.

The links provided below are to the Official Texas Alcoholic Beverage Commission website for the printable "blue sign" with proper verbiage, in both English and Spanish. (Note the signs available on the website, link provided below, are 14 x 8.5 inches, dark blue and black ink on white.)

<http://www.tabc.state.tx.us/publications/brochures/weapons.pdf>

[Weapons Warning Sign - Blue - Spanish version](#)

Texas Alcoholic Beverage Commission blue sign locations may choose to forbid CHL holders from carrying handguns onto their locations by posting 30.06 signs relating to the carrying of concealed handguns and/or 30.07 signs relating to the carrying of openly carried handguns, or both, as the blue sign on its own only forbids the unlicensed possession of a weapon.

The optional 30.06 and/or 30.07 signs must meet the following requirements: the signs must appear in contrasting colors with block letters at least one inch in height; the signs must be in both English and Spanish; and the signs must be displayed in a "conspicuous manner clearly visible to the public at each entrance to the property." Texas Penal Code Section 30.07 adds the language "at each entrance to the property" meaning one 30.06 sign can be posted

<sup>30</sup> TEX. GOV. CODE § 411.204

<sup>31</sup> TEX. GOV. CODE §411.204.

<sup>32</sup> TEX. ALCO. BEV. CODE §§11.041, 61.11



conspicuously at one point of entry, while the 30.07 sign must be posted at each entrance to the property.

The 30.06 sign must state:

PURSUANT TO SECTION 30.06, PENAL CODE (TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

The 30.07 sign must state:

PURSUANT TO SECTION 30.07, PENAL CODE (TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

There has been no Spanish translation of the signage officially approved by the State at this time, however the link provided here offers made to order signage for both Sec. 30.06 and 30.07 in both English and Spanish.

<http://www.30.07sign.com/>

#### 9. Hotels, and the hotel exception as a temporary residence

Texas case law states that a "residence" includes a temporary residence and includes such places as hotel rooms. A hotel guest who brings a firearm into his room is therefore by definition not committing a criminal offense.<sup>33</sup> If the person must pass through hallways to get to the room the hotel operator's only recourse if they wish to ban firearms may be to exclude the guest from the premises upon discovery of the firearm.

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<sup>33</sup> TEX. PENAL CODE § 46.02(a)(1)

Texas Occupations Code § 2155.103 requires any hotel that has a policy prohibiting or restricting the possession, storage, or transportation of firearms by hotel guests to post that policy on its website. If a hotel accepts a phone reservation and subsequently confirms it in writing, it must state how the customer can review its policies and must specifically include those policies applicable to firearms.

Pursuant to Texas Alcoholic Beverage Code § 102.05 a hotel may hold a package store permit, mixed beverage permit, wine and beer retailer's permit, and retail dealer's license if the businesses are completely segregated from each other. Each business within the hotel would need to be diagrammed on a floor plan as a distinct premises for Texas Alcoholic Beverage Commission purposes with the gun signage appropriate to each establishment posted at the entrance to each specific premises.

#### 10. Texas Open/Concealed Carry Signage in Owned/Leased Governmental Buildings (Specific to those premises which the governmental entity or a lessee of the governmental entity has obtained an alcoholic beverage license or permit)

As noted by Government Code Sec. 411.209, a governmental entity or a lessee of a governmental facility may not introduce signage to ban open/concealed carry at such premises unless such carrying is specifically prohibited by § 46.03 and/or 46.035 of the Penal Code. Penal Code Sec. 46.035(b)(1) prohibits a CHL holder from intentionally, knowingly, or recklessly carrying a handgun on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74 of the Alcoholic Beverage Code, if the business derives 51% or more of its income from the sale or service of alcoholic beverages for on-premise consumption, as determined by the Texas Alcoholic Beverage Commission ("TABC") under Sec. 104.06 of the Alcoholic Beverage Code. The Texas Alcoholic Beverage Commission's mandated red 51% signs are to be posted on the premises of establishments where the possession of a handgun by an open/concealed carry license holder is illegal. Therefore, if the governmental entity or a lessee of the governmental entity has a permit or license issued under Chapter 25, 28, 32, 69, or 74 of the Alcoholic Beverage Code, and the business derives 51% or more

of its income from the sale or service of alcoholic beverages, the business must post the required red 51% signage prohibiting handguns by CHL holders as well as by unlicensed handgun carriers.

The applicable Alcoholic Beverage, Government, and Penal Code statutes are pasted and highlighted below:

**Alcoholic Beverage Code Sec. 411.204. NOTICE REQUIRED ON CERTAIN PREMISES.**

(a) A business that has a permit or license issued under Chapter [25](#), [28](#), [32](#), [69](#), or [74](#), Alcoholic Beverage Code, and that derives 51 percent or more of its income from the sale of alcoholic beverages for on-premises consumption as determined by the Texas Alcoholic Beverage Commission under Section [104.06](#), Alcoholic Beverage Code, shall prominently display at each entrance to the business premises a sign that complies with the requirements of Subsection (c).

(b) A hospital licensed under Chapter [241](#), Health and Safety Code, or a nursing home licensed under Chapter [242](#), Health and Safety Code, shall prominently display at each entrance to the hospital or nursing home, as appropriate, a sign that complies with the requirements of Subsection (c) other than the requirement that the sign include on its face the number "51".

(c) The sign required under Subsections (a) and (b) must give notice in both English and Spanish that it is unlawful for a person licensed under this subchapter to carry a handgun on the premises. The sign must appear in contrasting colors with block letters at least one inch in height and must include on its face the number "51" printed in solid red at least five inches in height. The sign shall be displayed in a conspicuous manner clearly visible to the public.

(d) A business that has a 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 [61.11](#), Alcoholic Beverage Code.

(e) This section does not apply to a business that has a food and beverage certificate issued under the Alcoholic Beverage Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 10.01(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 9.16(a), eff. Sept. 1, 1999;

Acts 1999, 76th Leg., ch. 523, Sec. 1, eff. June 18, 1999.

Text of subsection effective until January 01, 2016

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

(1) the handgun is in plain view; or

(2) the person is:

(A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating;

(B) prohibited by law from possessing a firearm; or

(C) a member of a criminal street gang, as defined by Section 71.01.

(a-2) For purposes of this section, "premises" includes real property and a recreational vehicle that is being used as living quarters, regardless of whether that use is temporary or permanent. In this subsection, "recreational vehicle" means a motor vehicle primarily designed as temporary living quarters or a vehicle that contains temporary living quarters and is designed to be towed by a motor vehicle. The term includes a travel trailer, camping trailer, truck camper, motor home, and horse trailer with living quarters.

(a-3) For purposes of this section, "watercraft" means any boat, motorboat, vessel, or personal watercraft, other than a seaplane on water, used or capable of being used for transportation on water.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

The Texas State Legislature has mandated through Sec. 411.204 of the Texas Government Code the posting of notice on certain premises. Businesses permitted under Chapter 25 pertaining to wine and beer retail, Chapter 28 pertaining to mixed beverages, Chapter 32 pertaining to private clubs, Chapter 69 pertaining to on or off premise sale of beer, or Chapter 74 pertaining to brew pub licenses, who also derive 51 percent or more of their income from the sale of alcoholic beverages, and who do not have a food and beverage certificate must post signage indicating it is unlawful for persons with a handgun license to carry on the premise. Coupled with Texas Penal Code Statute Section 46.02 which makes the carrying of a

This is the "51% sign." The sign must be in English and Spanish, contrasting colors at least one inch tall, with a red "51" at least 5 inches tall. The business must post such a sign at each entrance, and they must be displayed conspicuously so they are clearly visible to the public. §411.204(c).

A business with an alcohol license or permit that derives less than 51% of its income from alcoholic beverages must post a sign stating that it is unlawful to carry a weapon on the premises unless the person is a CHL holder. Alcoholic Beverage Code §§ 11.041, 61.11. This is the "ten years imprisonment" sign. The sign must be at least six inches by fourteen inches, in contrasting colors, and displayed conspicuously so they are clearly visible to the public. § 11.041(b); 61.11(b). The commissioner can require a sign in Spanish if appropriate. §11.041(b); 61.11(b).

Business that sell alcoholic beverages do not have the option of posting or not posting these signs.

**Alcoholic Beverage Code Sec. 61.71. GROUNDS FOR CANCELLATION OR SUSPENSION: RETAIL DEALER.** (a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) made a false statement or a misrepresentation in his original application or a renewal application;

(5) with criminal negligence sold, served, or delivered an alcoholic beverage to a minor;

(6) sold, served, or delivered an alcoholic beverage to an intoxicated person;

(7) sold, served, or delivered an alcoholic beverage at a time when its sale is prohibited;

(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(10) does not have at his licensed premises:

(A) running water, if it is available; and

(B) separate toilets for both sexes which are properly identified, or, if the premises is a restaurant that derives less than 50 percent of its gross revenue from the sale of alcohol, is 2,500 square feet or less, and has an occupancy rating of 50 persons or less, at least one toilet that is properly identified;

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in

doing so, in an establishment where beer is sold for on-premises consumption;

(13) conspired with a person to violate Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of these sections or rules;

(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

(16) maintained blinds or barriers at his place of business in violation of this code;

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer's or distributor's license;

(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

(21) owned an interest of any kind in the business or premises of the holder of a distributor's license;

(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package

bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(25) imported beer into this state except as authorized by Section 107.07 of this code;

(26) occupied premises in which the holder of a manufacturer's or distributor's license had an interest of any kind;

(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(29) is residentially domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code;

(30) is residentially domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

(31) failed to promptly report to the commission a breach of the peace occurring on the licensee's licensed premises.

(b) Subdivisions (9), (28), (29), and (30) of Subsection (a) of this section do not apply to a licensee whose business is located in a hotel in which an establishment authorized to sell distilled spirits in unbroken packages is also located if the licensed premises of the businesses do not coincide or overlap.

(c) The grounds listed in Subsection (a) of this section, except the ground contained in Subdivision (2), also apply to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. This subsection shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

(d) The grounds set forth in Subdivisions (1), (4)-(14), (16), (18), (19), (21), (23), and (26), of Subsection (a) of this section, also apply to an agent, servant, or employee of the licensee.

(e) The commission or administrator without a hearing may for investigative purposes summarily suspend a retail dealer's on-premise license for not more than seven days if the commission or administrator finds that a shooting, stabbing, or murder has occurred on the licensed premises which is likely to result in a subsequent act of violence. Notice of the order suspending the license shall be given to the licensee personally within 24 hours of the time the violent act occurs. If the licensee cannot be located, notice shall be provided by posting a copy of the order on the front door of the licensed premises.

(f) Except as provided by Subsection (g) or (j), the commission or administrator shall cancel an original or renewal dealer's on-premises or off-premises license if it is found, after notice and hearing, that the licensee knowingly allowed a person to possess a firearm in a building on the licensed premises. This subsection does not apply to a person:

(1) who holds a security officer commission issued under Chapter 1702, Occupations Code, if:

(A) the person is engaged in the performance of the person's duties as a security officer;

(B) the person is wearing a distinctive uniform; and

(C) the weapon is in plain view;

(2) who is a peace officer;

(3) who is a licensee or an employee of a licensee if the person is supervising the operation of the premises; or

(4) who possesses a [concealed] handgun the person is licensed to carry under Subchapter H, Chapter 411, Government Code, unless the person is on the premises of a business described by Section 46.035(b)(1), Penal Code [*Refer to Appendix for this citation*].

**Penal Code Sec. 30.06. TRESPASS BY LICENSE HOLDER WITH A [OF LICENSE TO CARRY] CONCEALED HANDGUN.** (a) A license holder commits an offense if the license holder:

(1) carries a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that[:

(A) ]entry on the property by a license holder with a concealed handgun was forbidden[; or

(B) remaining on the property with a concealed handgun was forbidden and failed to depart].

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section 30.05(b).

(2) "License holder" has the meaning assigned by Section 46.035(f).

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by license holder with [of license to carry] a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code ([concealed] handgun licensing law), may not enter this property with a concealed handgun"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035.

*NOTE: Amendments to Sec. 30.06 are effective January 1, 2016. (HB 910, 84<sup>th</sup> Legislature, Regular Session.)*

**Penal Code Sec. 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN.** (a) A license holder commits an offense if the license holder:

(1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section 30.05(b).

(2) "License holder" has the meaning assigned by Section 46.035(f).

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035.

(f) It is not a defense to prosecution under this section that the handgun was carried in a shoulder or belt holster.

*NOTE: Sec. 30.07 is effective January 1, 2016. (HB 910, 84<sup>th</sup> Legislature, Regular Session.)*

**Penal Code Sec. 46.03. PLACES WEAPONS PROHIBITED.**

Text of subsection effective until August 01, 2016

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section [46.05\(a\)](#):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article [43.19](#), Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

Text of subsection effective on August 01, 2016

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or

goes with a firearm, illegal knife, club, or prohibited weapon listed in Section [46.05\(a\)](#):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter [411](#), Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article [43.19](#), Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(b) It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a



firearm while in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

Text of subsection effective until August 01, 2016

(c) In this section:

(1) "Premises" has the meaning assigned by Section [46.035](#).

(2) "Secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

Text of subsection effective on August 01, 2016

(c) In this section:

(1) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section [61.003](#), Education Code.

(2) "Premises" has the meaning assigned by Section [46.035](#).

(3) "Secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a member of the armed forces or national guard;

(2) a guard employed by a penal institution; or

(3) a security officer commissioned by the Texas Private Security Board if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view; or

(4) a security officer who holds a personal protection authorization under Chapter [1702](#), Occupations Code, provided that the officer is either:

(A) wearing the uniform of a security officer, including any uniform or apparel described by Section [1702.323\(d\)](#), Occupations Code, and carrying the officer's firearm in plain view; or

(B) not wearing the uniform of a security officer and carrying the officer's firearm in a concealed manner.

(e) It is a defense to prosecution under Subsection (a)(5) that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.

(e-1) It is a defense to prosecution under Subsection (a)(5) that the actor:

(1) possessed, at the screening checkpoint for the secured area, a concealed handgun that the actor was licensed to carry under Subchapter H, Chapter [411](#), Government Code; and

(2) exited the screening checkpoint for the secured area immediately upon completion of the required screening processes and notification that the actor possessed the handgun.

(e-2) A peace officer investigating conduct that may constitute an offense under Subsection (a)(5) and that consists only of an actor's possession of a concealed handgun that the actor is licensed to carry under Subchapter H, Chapter [411](#), Government Code, may not arrest the actor for the offense unless:

(1) the officer advises the actor of the defense available under Subsection (e-1) and gives the actor an opportunity to exit the screening checkpoint for the secured area; and

(2) the actor does not immediately exit the checkpoint upon completion of the required screening processes.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 1001 (H.B. [554](#)), Sec. 1

(f) Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 46

(f) It is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(g) An offense under this section is a third degree felony.

(h) It is a defense to prosecution under Subsection (a)(4) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies, if:

(1) the actor is wearing a distinctive uniform; and

(2) the firearm or club is in plain view.

(i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:

(1) while in a vehicle being driven on a public road; or

(2) at the actor's residence or place of employment.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2962, ch. 508, Sec. 1, eff. Aug. 29, 1983; Acts 1989, 71st Leg., ch. 749, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, Sec. 2.79; Acts 1991, 72nd Leg., ch. 386, Sec. 71, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 433, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 554, Sec. 50, eff. Sept. 1, 1991. Renumbered from Penal Code Sec. 46.04 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg.,

ch. 229, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 260, Sec. 42, eff. May 30, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 17, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 790, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 10.03, 31.01(70), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1221, Sec. 2, 3, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1060, Sec. 1, 2 eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1178, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.21, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 46, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 438 (S.B. 11), Sec. 3, eff. August 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1001 (H.B. 554), Sec. 1, eff. September 1, 2015.

**Penal Code Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER.** (a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder.

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on or about the license holder's person:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption,

as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a [at any] meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.

(g) An offense under this section Subsection (a), (a-1), (a-2), (a-3), (b), (c), (d), or (e) is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) It is a defense to prosecution under Subsection (a), (a-1), (a-2), or (a-3) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of force or deadly force under Chapter 9.

(j) Subsections (a), (a-1), (a-2), (a-3), and (b)(1) do not apply to a historical reenactment performed in compliance with the rules of the Texas Alcoholic Beverage Commission.

**NOTE:** In Section 46.035, Subsections (a-1) - (a-3), (b)(2) - (b)(6), (d) - (f), (h-1), (i), (k), and (l) were omitted in this document because they are not applicable to TABC.

**NOTE:** In Section 46.035 in the 84<sup>th</sup> Legislature, subsection (c) was amended by HB 910 and SB 273 and subsections (g), (h), and (j) were amended by HB 910 and SB 11. Per Government Code, Section 311.025(b), amended language in this document for Section 46.035(c) represents harmonization of amendments in order to give effect to all provisions of both. Considering conflicting verbiage in subsections (g), (h), and (j), Section 311.025(b), Government Code, dictates using language in the bill enacted later, which was SB 11. Once updated statutes from

the 84<sup>th</sup> Legislature are updated online by Texas Legislative Council, the subsections mentioned will be reviewed and updated as necessary.

**Penal Code Sec. 46.05. PROHIBITED WEAPONS.** (a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or classified as a curio or relic by the United States Department of Justice:

- (A) an explosive weapon;
- (B)[(2)] a machine gun;
- (C)[(3)] a short-barrel firearm;
- (D)[(4)] a firearm silencer;
- (2)[(5)] knuckles;
- (3)[(6)] armor-piercing ammunition;
- (4)[(7)] a chemical dispensing device;
- (5)[(8)] a zip gun; or
- (6)[(9)] a tire deflation device.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a correctional facility.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) was incidental to dealing with a short-barrel firearm or tire deflation device solely as an antique or curio;

(2) was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b); or

(3) was incidental to dealing with a tire deflation device solely for the purpose of making the device available to an organization, agency, or institution listed in Subsection (b).

(e) An offense under Subsection (a)(1), [(2),] (3), (4), [(6), (7),] or (5) [(8)] is a felony of the third degree. An offense under Subsection (a)(6) [(a)(9)] is a state jail felony. An offense under Subsection (a)(2) [(a)(5)] is a Class A misdemeanor.

(f) It is a defense to prosecution under this section for the possession of a chemical dispensing device that the actor is a security officer and has received training on the use of the chemical dispensing device by a training program that is:

(1) provided by the Texas Commission on Law Enforcement; or

(2) approved for the purposes described by this subsection by the Texas Private Security Board of the Department of Public Safety.

(g) In Subsection (f), "security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

**Government Code Sec. 411.209. WRONGFUL EXCLUSION OF CONCEALED HANDGUN LICENSE HOLDER.**

(a) A state agency or a political subdivision of the state may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.

(b) A state agency or a political subdivision of the state that violates Subsection (a) is liable for a civil penalty of:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

(c) Each day of a continuing violation of Subsection (a) constitutes a separate violation.

(d) A citizen of this state or a person licensed to carry a concealed handgun under this subchapter may file a complaint with the attorney general that a state agency or political subdivision is in violation of Subsection (a) if the citizen or person provides the agency or subdivision a written notice that describes the violation and specific location of the sign found to be in violation and the agency or subdivision does not cure the violation before the end of the third business day after the date of receiving the written notice. A complaint filed under this subsection must include evidence of the violation and a copy of the written notice.

(e) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure.

(f) Before a suit may be brought against a state agency or a political subdivision of the state for a violation of Subsection (a), the attorney general must investigate the complaint to determine whether legal action is warranted. If legal action is warranted, the attorney general must give the chief administrative officer of the agency or political subdivision charged with the violation a written notice that:

(1) describes the violation and specific location of the sign found to be in violation;

(2) states the amount of the proposed penalty for the violation; and

(3) gives the agency or political subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the

penalty, unless the agency or political subdivision was found liable by a court for previously violating Subsection (a).

(g) If the attorney general determines that legal action is warranted and that the state agency or political subdivision has not cured the violation within the 15-day period provided by Subsection (f)(3), the attorney general or the appropriate county or district attorney may sue to collect the civil penalty provided by Subsection (b). The attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief. A suit or petition under this subsection may be filed in a district court in Travis County or in a county in which the principal office of the state agency or political subdivision is located. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(h) Sovereign immunity to suit is waived and abolished to the extent of liability created by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 593 (S.B. 273), Sec. 1, eff. September 1, 2015.

**Alcoholic Beverage Code Sec. 104.06. MONITORING OF GROSS RECEIPTS.** (a) On the issuance and renewal of a license or permit that allows on-premises consumption of any alcoholic beverage the commission shall determine whether the holder receives, or for the issuance of a license or permit is to receive, 51 percent or more of the gross receipts of the premises for which the license or permit is issued from the holder's sale or service of alcoholic beverages for on-premises consumption.

(b) The commission shall:

(1) adopt rules for making a determination under Subsection (a); and

(2) require a holder of a license or permit to provide any information or document that the commission needs to make a determination.

(c) If the commission makes a determination under Subsection (a) that a holder of a

license or permit receives 51 percent or more of the gross receipts of the premises from the sale or service of alcoholic beverages, the holder shall comply with the requirements of Section 31, Article 4413(29ee), Revised Statutes, and shall continue to comply with those requirements until the commission determines that the holder receives less than 51 percent of the gross receipts of the premises from the sale or service of alcoholic beverages for on-premises consumption.