

A BILL TO BE ENTITLED

AN ACT

relating to persons eligible for a license to carry a concealed handgun, to the rights and duties of license holders, and to certain offenses involving weapons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2(a), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(a) A person is eligible for a license to carry a concealed handgun if the person:

(1) 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(b) of this article;

(2) is at least 21 years of age;

(3) has not been convicted of a felony;

(4) is not charged with the commission of a Class A or Class B misdemeanor or an offense under Section 42.01, Penal Code, or of a felony under an information or indictment;

(5) is not a fugitive from justice for a felony or a Class A or Class B misdemeanor;

(6) is not a chemically dependent person;

(7) is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun [~~a person of unsound mind~~];

(8) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or an offense under Section 42.01, Penal Code;

(9) is fully qualified under applicable federal and state law to purchase a handgun;

(10) has not been finally determined to be delinquent in making a child support payment administered or collected by the attorney general;

(11) has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, state treasurer, tax collector of a political subdivision of the state, Texas Alcoholic Beverage Commission, or any other agency or subdivision of the state;

(12) has not been finally determined to be in default on a loan made under Chapter 57, Education Code;

(13) is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, not including a restraining order solely affecting property interests;

(14) has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and

(15) has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section 3 of this article or in a request for application submitted pursuant to Section 4 of this article.

SECTION 2. Section 2, Article 4413(29ee), Revised Statutes, is amended by adding Subsection (d) to read as follows:

(d)(1) For purposes of Subsection (a)(7) of this section, a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if:

(A) the person has a medical or psychiatric diagnosis, disorder, or condition that in the opinion of a qualified psychiatrist or other clinically appropriate medical professional causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability; or

(B) the person had a diagnosis, disorder, or condition described by Paragraph (A) of this subdivision that is in remission:

(i) but is reasonably likely to redevelop at a future time; or

(ii) because of treatment and the person relies on continued treatment to avoid redevelopment.

(2) The following are evidence that a person has a medical or psychiatric diagnosis, disorder, or condition described by Subdivision (1)(A) of this subsection:

(A) involuntary psychiatric hospitalization in the preceding five-year period;

(B) psychiatric hospitalization in the preceding two-year period;

(C) inpatient or residential substance abuse treatment in the preceding five-year period;

(D) diagnosis in the preceding five-year period by a psychiatrist or other clinically appropriate medical professional that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(E) diagnosis at any time by a psychiatrist or other clinically appropriate medical professional that the person has or has had:

(i) schizophrenia, schizoaffective disorder, delusional disorder, shared psychotic disorder, psychotic disorder caused by a chronic medical condition or defect, or a substantially similar disorder;

(ii) bipolar disorder;

(iii) chronic dementia, including Alzheimer's dementia, whether caused by illness, brain defect, or brain injury;

(iv) dissociative identity disorder;

(v) intermittent explosive disorder;

(vi) antisocial personality disorder;

(vii) schizotypal personality disorder;

(viii) borderline personality disorder; or

(ix) any diagnosis that is substantially clinically similar to a diagnosis listed in this paragraph, but titled differently because of changing diagnostic nomenclature.

SECTION 3. Section 3(a), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(a) An applicant for a license to carry a concealed handgun must submit to the director's designee described by Section 5 of this article:

(1) a completed application on a form provided by the department that requires only the information listed in Subsection (b) of this section;

(2) two recent color passport photographs of the applicant;

(3) a certified copy of the applicant's birth certificate or certified proof of age;

(4) proof of residency in this state;

(5) two complete sets of legible and classifiable fingerprints of the applicant taken by a person ~~[employed by a law enforcement agency who is]~~ appropriately trained in recording fingerprints who is employed by a law enforcement agency or by a private entity designated by a law enforcement agency as an entity qualified to take fingerprints of an applicant for a license under this article;

(6) a nonrefundable application and license fee of \$140 paid to the department;

(7) a handgun proficiency certificate described by Section 17 of this article;

(8) an affidavit signed by the applicant stating that the applicant:

(A) has read and understands each provision of this article that creates an offense under the laws of this state and each provision of the laws of this state related to use of deadly force; and

(B) fulfills all the eligibility requirements listed under Section 2 of this article; and

(9) a form executed by the applicant that authorizes the director to make an inquiry into any noncriminal history records that are necessary to determine the applicant's eligibility for a license under Section 2(a) of this article.

SECTION 4. Section 5(b), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(b) The director's designee as needed shall conduct an additional criminal history record check of the applicant and an investigation of the applicant's local official records to verify the accuracy of the application materials. 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 receives the application materials. The department shall send a fingerprint card to the Federal Bureau of Investigation for a national criminal history check of the applicant. On completion of the investigation, the director's designee shall return all materials and the result of the investigation to the appropriate division of the department at its Austin headquarters. The director's designee may submit to the appropriate division of the department, at the department's Austin headquarters, along with the application materials a written recommendation for disapproval of the application, accompanied by an affidavit stating personal knowledge or naming persons with personal knowledge of a ground for denial under Section 2 of this article. The director's designee in the appropriate geographical area may also submit the application and the recommendation that the license be issued. On receipt at the department's Austin headquarters of the application materials and the result of the investigation by the director's designee, the department shall conduct any further record check or investigation the department determines is necessary based on the recommendation of the director's designee, except that the department shall complete the record check and investigation not later than 180 days after the date the department receives the application materials from the applicant.

SECTION 5. Section 6(b), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(b)(1) ~~Not [After January 1, 1997, the department, not]~~ later than the 60th day after the date of the receipt by the director's designee of the completed application materials, the department shall:

(1) ~~[(A)]~~ issue the license; ~~[or]~~

(2) ~~[(B)]~~ notify the applicant in writing that the application was denied:

(A) ~~[(i)]~~ on the grounds that the applicant failed to qualify under the criteria listed in Section 2 of this article;

(B) ~~[(ii)]~~ based on the affidavit of the director's designee submitted to the department under Section 5(b) of this article; or

(C) ~~[(iii)]~~ based on the affidavit of the qualified handgun instructor submitted to the department under Section 17(c) of this article; or

(3) 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.

~~[(2) Between the effective date of this article and December 31, 1996, the department shall perform the duties set out in this subsection not later than the 90th day after the date of the receipt by the director's designee of the completed application materials.]~~

SECTION 6. Sections 6(g), (h), and (i), Article 4413(29ee), Revised Statutes, are amended and relettered to read as follows:

~~(g) [On a demand by a magistrate or a peace officer that a license holder display the license holder's handgun license, the license holder shall display both the license and the license holder's driver's license or identification certificate issued by the department.]~~

~~[(h)]~~ If a license holder is carrying a handgun on or about the license holder's person when a magistrate or a peace officer demands that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate issued by

the department and the license holder's handgun license. 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.

~~(h)~~ [(+) ] A person commits an offense if the person fails or refuses to display the license and identification as required by Subsection (g) [~~or (h)~~] of this section after previously having had the person's license suspended for a violation of that subsection. An offense under this subsection is a Class B misdemeanor.

SECTION 7. Section 12(a), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(a) A license may be revoked under this section if the license holder:

(1) was not entitled to the license at the time it was issued;

(2) gave false information on the application;

(3) 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, or of a felony under an information or indictment; [~~or~~]

(4) is convicted of an offense under Section 46.035, Penal Code; or

(5) is determined by the department to have engaged in conduct constituting a reason to suspend a license listed in Section 13(a) of this article after the person's license has been previously suspended twice for the same reason.

SECTION 8. Sections 13(a) and (c), Article 4413(29ee), Revised Statutes, are amended to read as follows:

(a) A license may be suspended under this section if the license holder:

(1) is charged with the commission of a Class A or Class B misdemeanor or an offense [~~convicted of disorderly conduct punishable as a Class C misdemeanor~~] under Section 42.01, Penal Code, or of a felony under an information or indictment;

(2) fails to display a license as required by Section 6 of this article;

(3) fails to notify the department of a change of address or name as required by Section 8 of this article;

(4) carries a concealed handgun under the authority of this article of a different category than the license holder is licensed to carry; or

(5) ~~[has been charged by indictment with the commission of an offense that would make the license holder ineligible for a license on conviction]; or~~

~~[(6)]~~ fails to return a previously issued license after a license is modified as required by Section 10(d) of this article.

(c) A license may be suspended under this section:

(1) for 30 days, if the person's license is subject to suspension for a reason listed in Subsection (a)(3), (4), or (5) of this section, except as provided by Subdivision (3) of this subsection;

(2) for 90 days, if the person's license is subject to suspension for a reason listed in Subsection (a)(2) of this section, except as provided by Subdivision (3) of this subsection;

(3) for not less than one year and not more than three years if the person's license is subject to suspension for a reason listed in Subsection (a) of this section, other than the reason listed in Subsection (a)(1) of this section, and the person's license has been previously suspended for the same reason; or

(4) until dismissal of the charges, if the person's license is subject to suspension for the reason listed in Subsection (a)(1) of this section.

SECTION 9. Section 17(c), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(c) A qualified handgun instructor may submit to the department a written recommendation for disapproval of the application for a license, renewal, or modification of a license, accompanied by an affidavit stating personal knowledge or naming persons with personal knowledge of facts that lead the instructor to believe that an applicant is not qualified for handgun proficiency certification. The department may use a written recommendation submitted

under this subsection as the basis for denial of a license only if the department determines that the recommendation is made in good faith and is supported by a preponderance of the evidence. The department shall make a determination under this subsection not later than the 45th day after the date the department receives the written recommendation. The 60-day period in which the department must take action under Section 6(b) of this article is extended one day for each day a determination is pending under this subsection.

SECTION 10. Sections 18(c) and (f), Article 4413(29ee), Revised Statutes, are amended to read as follows:

(c) The department shall provide training to an individual who applies for certification as a qualified handgun instructor. An applicant shall pay a fee of \$100 to the department for the training. An applicant must take and successfully complete the training offered by the department and pay the training fee before the department may certify the applicant as a qualified handgun instructor. If the [The] department certifies a person as a qualified handgun instructor, the department shall at that time issue to the person ~~[waive the requirements regarding a handgun proficiency certification under Section 17 of this article for an applicant for]~~ a license to carry a concealed handgun under the authority of this article ~~[who takes and successfully completes training under this subsection and pays the training fee]~~. The department by rule may prorate or waive the training fee for an employee of another governmental entity.

(f) If the department determines that a reason exists to revoke, suspend, or deny a license to carry a concealed handgun with respect to a person who is a qualified handgun instructor or an applicant for certification as a qualified handgun instructor, the department shall take that action against the person's license to carry a concealed handgun and the person's certification as a qualified handgun instructor ~~[regardless of whether the person has a license issued under this article to carry a concealed handgun]~~.

SECTION 11. Sections 31(a) and (c), Article 4413(29ee), Revised Statutes, are amended to read as follows:

(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 shall prominently display at each entrance to the business premises a sign that complies with the requirements of Subsection (c) of this section.

(c) The sign required under Subsections (a) and (b) of this section must give notice in both English and Spanish that it is unlawful for a person licensed under this article 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.

SECTION 12. Section 35, Article 4413(29ee), Revised Statutes, is amended to read as follows:

Sec. 35. RECIPROCAL LICENSE. (a) On application by a person who has a valid license to carry a concealed handgun issued by another state, the department may issue to the person a license under this article without requiring that the person meet eligibility requirements or pay fees otherwise imposed under this article, but only if the department determines that:

(1) the ~~[eligibility requirements imposed by the]~~ other state recognizes a license issued under [are at least as rigorous as the requirements imposed by] this article when the license holder is in that state; or [and]

(2) the other state provides reciprocal licensing privileges to a person who holds a license issued under this article and applies for a license in the other state.

(b) On application by a person who is a legal resident of a state that does not provide for the issuance of a license to carry a concealed handgun to eligible applicants, the department may issue to the person a license under this article provided that the person meets the eligibility requirements, other than the residency requirement, and pays the fees imposed under this article for a legal resident of this state.

SECTION 13. Section 11.61(e), Alcoholic Beverage Code, is amended to read as follows:

(e) Except as provided by Subsection (f), the commission or administrator shall cancel an original or renewal permit if it is found, after notice and hearing, that the permittee 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 by the Texas Board of Private Investigators and Private Security Agencies, 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; ~~[or]~~

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

(4) who possesses a concealed handgun of the same category the person is licensed to carry under Article 4413(29ee), Revised Statutes, unless the person is on the premises of a business described by Section 46.035(b)(1), Penal Code.

SECTION 14. Section 61.71(f), Alcoholic Beverage Code, is amended to read as follows:

(f) Except as provided by Subsection (g), 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 by the Texas Board of Private Investigators and Private Security Agencies, 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; [ØF]

(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 of the same category the person is licensed to carry under Article 4413(29ee), Revised Statutes, unless the person is on the premises of a business described by Section 46.035(b)(1), Penal Code.

SECTION 15. Section 12.092(b), Health and Safety Code, as added by Chapter 165, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The medical advisory board shall assist the Department of Public Safety of the State of Texas in determining whether:

(1) an applicant for a driver's license or a license holder is capable of safely operating a motor vehicle; or

(2) an applicant for or holder of a license to carry a concealed handgun under the authority of Article 4413(29ee), Revised Statutes, is capable of exercising sound judgment with respect to the proper use and storage of a handgun.

SECTION 16. Sections 12.095(a), (c), and (d), Health and Safety Code, as added by Chapter 165, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) If the Department of Public Safety of the State of Texas requests an opinion or recommendation from the medical advisory board as to the ability of an applicant or license holder to operate a motor vehicle safely or to exercise sound judgment with respect to the proper use and storage of a handgun, the commissioner or a person designated by the commissioner shall convene a panel to consider the case or question submitted by that department.

(c) Each panel member shall prepare an individual independent written report for the Department of Public Safety of the State of Texas that states the member's opinion as to the ability of the applicant or license holder to operate a motor vehicle safely or to exercise sound judgment with respect to the proper use and storage of a handgun, as appropriate. In the report

the panel member may also make recommendations relating to that department's subsequent action.

(d) In its deliberations, a panel may examine any medical record or report that contains material that may be relevant to the ability of the applicant or license holder ~~[to operate a motor vehicle safely]~~.

SECTION 17. Chapter 30, Penal Code, is amended by adding Section 30.06 to read as follows:

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

(1) carries a handgun under the authority of Article 4413(29ee), Revised Statutes, 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 and 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).

(d) An offense under this section is a Class A misdemeanor.

SECTION 18. Section 46.03, Penal Code, is amended by adding Subsection (i) to read as follows:

(i) It is a defense to prosecution under Subsection (a)(1), (2), or (4) that at the time of the commission of the offense:

(1) the actor possessed a concealed handgun of the same category the actor was licensed to carry under Article 4413(29ee), Revised Statutes;

(2) the handgun was in a secure position in a motor vehicle in which the actor was the driver or a passenger; and

(3) the vehicle was in a driveway, parking area, or other part of the premises that reasonably appeared to be a place intended for use as a driveway or parking area.

SECTION 19. Section 46.035(b), Penal Code, is amended to read as follows:

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Article 4413(29ee), Revised Statutes, regardless of whether the handgun is concealed, 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 of alcoholic beverages for on-premises consumption;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home administration, as appropriate;

(5) in an amusement park; or

(6) on the premises of a church, synagogue, or other established place of religious worship.

SECTION 20. Section 1(10), Article 4413(29ee), Revised Statutes, is repealed.

SECTION 21. (a) The changes in law made by this Act in repealing Section 1(10), Article 4413(29ee), Revised Statutes, adding Section 2(d), Article 4413(29ee), Revised Statutes, and

amending Sections 12.092 and 12.095, Health and Safety Code, as added by Chapter 165, Acts of the 74th Legislature, Regular Session, 1995, apply only to a person's initial application for a license to carry a concealed handgun under Article 4413(29ee), Revised Statutes, if the application is made on or after the effective date of this Act. A person who makes an initial application for a license to carry a concealed handgun under Article 4413(29ee), Revised Statutes, before the effective date of this Act is covered by the law that existed when the application was made, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act in repealing Section 1(10), Article 4413(29ee), Revised Statutes, adding Section 2(d), Article 4413(29ee), Revised Statutes, and amending Sections 12.092 and 12.095, Health and Safety Code, as added by Chapter 165, Acts of the 74th Legislature, Regular Session, 1995, regarding the revocation of a license to carry a handgun, apply to any revocation proceeding initiated on or after the effective date of this Act.

SECTION 22. Not later than September 1, 1998, a person who before the effective date of this Act was licensed to carry a concealed handgun under Article 4413(29ee), Revised Statutes, and whose license was revoked on the sole basis that the person was charged with the commission of a Class A or Class B misdemeanor or an offense under Section 42.01, Penal Code, or a felony under an information or indictment may apply to the department to change the status of the person's license in accordance with Sections 12 and 13, Article 4413(29ee), Revised Statutes, as amended by this Act. The Department of Public Safety shall 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 23. The change in law made by this Act to Section 18, Article 4413(29ee), Revised Statutes, applies only to an application for certification as a qualified handgun instructor that is submitted to the Department of Public Safety on or after the effective date of this Act. An application for certification as a qualified handgun instructor submitted before the effective date of this Act is covered by the law under Section 18, Article 4413(29ee), Revised Statutes, as it existed before amendment by this Act, and the former law is continued in effect for this purpose.

SECTION 24. The changes in law made by this Act to Sections 46.03 and 46.035, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 25. This Act takes effect September 1, 1997.

SECTION 26. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.