

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 1(4), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(4) "Convicted" means an adjudication of guilt or an order of deferred adjudication entered against a person by a court of competent jurisdiction whether or not[:

~~[(A)]~~ the imposition of the sentence is subsequently probated and the person is discharged from community supervision. The term does not include an adjudication of guilt or an order of deferred adjudication which has been subsequently:

(A) expunged; or

(B) pardoned under the authority of a state or federal official.[; or

~~[(B) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.]~~

SECTION 2. 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(a) 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 3. 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 been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;

(B) the person suffers from a psychiatric disorder or condition described by Paragraph (A) of this subdivision that:

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

(ii) requires continuous medical treatment to avoid redevelopment;

(C) the person has been diagnosed by a licensed physician or declared by a court to be incompetent to manage the person's own affairs; or

(D) the person has entered in any criminal proceeding a plea of not guilty by reason of insanity.

(2) The following are evidence that a person has a psychiatric 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 licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(E) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:

(i) schizophrenia or delusional disorder;

(ii) bipolar disorder;

(iii) chronic dementia, whether caused by illness,
brain defect, or brain injury;

(iv) dissociative identity disorder;

(v) intermittent explosive disorder; or

(vi) antisocial personality disorder.

(3) Notwithstanding Subdivision (1), a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subdivision (1) or listed in Subdivision (2) is not because of that disorder or condition incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person provides the department with a certificate from a licensed physician whose primary practice is in the field of psychiatry stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop at a future time.

SECTION 4. 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 5. 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 in the event that a question exists with respect to the accuracy of the application materials or the eligibility of the applicant, except that the department shall complete the record check and investigation not later than 180 days after the date the department receives the application materials from the applicant.

SECTION 6. 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 7. 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) [(i)] 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 8. 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 9. 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 10. Section 16(a), Article 4413(29ee), Revised Statutes, is amended to read as follows:

(a) The director shall by rule establish minimum standards for handgun proficiency and shall develop a course to teach handgun proficiency and examinations to measure handgun proficiency. The course to teach handgun proficiency must contain training sessions divided into two parts. One part of the course must be classroom instruction and the other part must be range instruction and an actual demonstration by the applicant of the applicant's ability to safely and proficiently use the category of handgun for which the applicant seeks certification. An applicant may not be certified unless the applicant demonstrates, at a minimum, the degree of proficiency that is required to effectively operate a ~~[9-millimeter or .38-caliber]~~ handgun of .32 caliber or above. The department shall distribute the standards, course requirements, and examinations on request to any qualified handgun instructor.

SECTION 11. 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 12. 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. The department shall issue ~~[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 to any person who is certified as a qualified handgun instructor and who pays to the department a fee of \$100 in addition to ~~[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, if the person is an applicant for or the holder of such a license, 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 13. Article 4413(29ee), Revised Statutes, is amended by amending Section 28 and adding Section 28A to read as follows:

Sec. 28. HONORABLY RETIRED PEACE OFFICERS. (a) A person who is licensed as a peace officer under Chapter 415, Government Code, and who has been employed full-time as a peace officer by a law enforcement agency may apply for a license under this article on

retirement. The application must be made not later than the first anniversary after the date of retirement.

(b) The person shall submit two complete sets of legible and classifiable fingerprints and a sworn statement from the head of the law enforcement agency employing the applicant. No head of a law enforcement agency may refuse to issue a statement under this subsection. If the statement is alleged by the applicant to be untrue, the department shall investigate the validity of the statement. The statement shall include:

- (1) the name and rank of the applicant;
- (2) the status of the applicant before retirement;
- (3) whether or not the applicant was accused of misconduct at the time of the retirement;
- (4) the physical and mental condition of the applicant;
- (5) the type of weapons the applicant had demonstrated proficiency with during the last year of employment;
- (6) whether the applicant would be eligible for reemployment with the agency, and if not, the reasons the applicant is not eligible; and
- (7) a recommendation from the agency head regarding the issuance of a license under this article.

(c) The department may issue a license under this article to an applicant under this section if the applicant is honorably retired and physically and emotionally fit to possess a handgun. In this subsection, "honorably retired" means the applicant:

- (1) did not retire in lieu of any disciplinary action;
- (2) was employed as a full-time peace officer for not less than 10 years by one agency; and
- (3) is entitled to receive a pension or annuity for service as a law enforcement officer.

(d) An applicant under this section shall pay a fee of \$25 for a license issued under this article.

(e) A retired peace officer who obtains a license under this article must maintain, for the category of weapon licensed, the proficiency required for a peace officer under Section 415.035, Government Code. The department or a local law enforcement agency shall allow a retired peace officer of the department or agency an opportunity to annually demonstrate the required proficiency. The proficiency shall be reported to the department on application and renewal.

(f) A license issued under this section expires as provided by Section 9 of this article.

(g) A retired officer ~~[criminal investigator]~~ of the United States who was eligible to carry a firearm in the discharge of his official duties ~~[is designated as a "special agent"]~~ is eligible for a license under this section. An applicant described by this subsection may submit the application at any time after retirement. The applicant shall submit with the application proper proof of retired status by presenting the following documents prepared by the agency from which the applicant retired:

(1) retirement credentials; and

(2) a letter from the agency head stating the applicant retired in good standing.

Sec. 28A. ACTIVE PEACE OFFICERS. (a) A person who is licensed as a peace officer under Chapter 415, Government Code, and is employed full-time as a peace officer by a law enforcement agency may apply for a license under this article. The person shall submit to the department two complete sets of legible and classifiable fingerprints and a sworn statement of the head of the law enforcement agency employing the applicant. No head of a law enforcement agency may refuse to issue a statement under this subsection. If the statement is alleged by the applicant to be untrue, the department shall investigate the validity of the statement. The statement must include:

(1) the name and rank of the applicant;

(2) whether the applicant has been accused of misconduct at any time during the applicant's period of employment with the agency and the disposition of that accusation;

(3) a description of the physical and mental condition of the applicant;
(4) a list of the types of weapons the applicant has demonstrated proficiency with during the preceding year; and
(5) a recommendation from the agency head that a license be issued to the person under this article.

(b) The department may issue a license under this article to an applicant under this section if the statement from the head of the law enforcement agency employing the applicant complies with Subsection (a) of this section and indicates that the applicant is qualified and physically and mentally fit to carry a handgun.

(c) An applicant under this section shall pay a fee of \$25 for a license issued under this article.

(d) A license issued under this section expires as provided by Section 9 of this article.

SECTION 14. Section 31, Article 4413(29ee), Revised Statutes, is amended by amending Subsections (a) and (c) and adding Subsections (d) and (e) to read as follows:

(a) A business that has a permit or license issued under Chapter 25, 28, 32, ~~[69]~~ 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) 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.

(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 Section 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.

SECTION 15. Section 35, Article 4413(29ee), Revised Statutes, is amended to read as follows:

Sec. 35. NONRESIDENT ~~[RECIPROCAL]~~ LICENSE. (a) The department by rule shall establish a procedure for 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 and who meets the eligibility requirements of this article other than the residency requirement established by Section 2(a)(1) of this article to obtain a license under this article. The procedure shall include payment of a fee in an amount sufficient to recover the average cost to the department of obtaining a criminal history record check and investigation on a nonresident applicant.

(b) The department shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state ~~[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 include background check requirements that meet or exceed background check ~~[are at least as rigorous as the]~~ requirements imposed by federal law as a condition of receiving a handgun ~~[this article]~~; and

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

SECTION 16. Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.041 to read as follows:

Sec. 11.041. WARNING SIGN REQUIRED. (a) Each holder of a permit who is not otherwise required to display a sign under Section 31, Article 4413(29ee), Revised Statutes, shall display in a prominent place on the permit holder's premises a sign giving notice that it is unlawful for a person to carry a weapon on the premises unless the weapon is a concealed handgun of the same category the person is licensed to carry under Article 4413(29ee), Revised Statutes.

(b) The sign must be at least 6 inches high and 14 inches wide, must appear in contrasting colors, and shall be displayed in a conspicuous manner clearly visible to the public. The commission or administrator may require the permit holder to also display the sign in a language other than English if it can be observed or determined that a substantial portion of the expected customers speak the other language as their familiar language.

SECTION 17. 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 18. Section 61.11, Alcoholic Beverage Code, is amended to read as follows:

Sec. 61.11. Warning Sign Required. (a) Each holder of a license who is not otherwise required to display a sign under Section 31, Article 4413(29ee), Revised Statutes, shall display in a prominent place on the license holder's [his] premises a sign giving notice that it is unlawful for a person to carry a weapon on the premises unless the weapon is a concealed handgun of the same category the person is licensed to carry under Article 4413(29ee), Revised Statutes.

(b) The sign must be [7] at least 6 inches high and 14 inches wide, must appear in contrasting colors, and shall be displayed in a conspicuous manner clearly visible to the public [stating:
~~FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF TEN YEARS'~~
~~IMPRISONMENT AND A FINE NOT TO EXCEED \$5,000 FOR CARRYING WEAPONS~~
~~WHERE ALCOHOLIC BEVERAGES ARE SOLD, SERVED, OR CONSUMED].~~ The
commission or administrator may require the holder of the license to also display the sign in a
language other than English if it can be observed or determined that a substantial portion of the
expected customers speak the other language as their familiar language.

~~[(b) A licensee who violates this section commits a misdemeanor punishable by a fine of not more than \$25.]~~

SECTION 19. 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; [Ø]

(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 20. Chapter 104, Alcoholic Beverage Code, is amended by adding Section 104.06 to read as follows:

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.

SECTION 21. 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 22. 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 23. 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 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 holder of license to carry a concealed handgun), a person licensed under Article 4413(29ee), Revised Statutes (concealed handgun 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 A misdemeanor.

SECTION 24. Section 46.02, Penal Code, is amended to read as follows:

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) ~~[It is a defense to prosecution under this section that the actor was, at the time of the commission of the offense:~~

~~[(1) in the actual discharge of his official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;~~

~~[(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event he must comply with Subdivision (5);~~

~~[(3) traveling;~~

~~[(4) engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or was directly en route between the premises and the actor's residence, if the weapon is a type commonly used in the activity;~~

~~[(5) a person who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:~~

~~[(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;~~

~~[(B) he is wearing a distinctive uniform; and~~

~~[(C) the weapon is in plain view; or~~

~~[(7) carrying a concealed handgun and a valid license issued under Article 4413(29ee), Revised Statutes, to carry a concealed handgun of the same category as the handgun the person is carrying.~~

~~[(7) a person who holds a security officer commission and a personal protection authorization issued by the Texas Board of Private Investigators and Private Security Agencies and who is providing personal protection under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes).~~

~~[(7) a holder of an alcoholic beverage permit or license or an employee of a holder of an alcoholic beverage permit or license if the actor is supervising the operation of the permitted or licensed premises.~~

~~[(c) It is a defense to prosecution under this section for the offense of carrying a club that the actor was, at the time of the commission of the offense, a noncommissioned security guard at an institution of higher education who carried a nightstick or similar club, and who had undergone 15 hours of training in the proper use of the club, including at least seven hours of training in the use of the club for nonviolent restraint. For the purposes of this section, "nonviolent restraint" means the use of reasonable force, not intended and not likely to inflict bodily injury.~~

~~[(d) It is a defense to prosecution under this section for the offense of carrying a firearm or carrying a club that the actor was, at the time of the commission of the offense, a public security officer employed by the adjutant general under Section 431.029, Government Code, and was performing official duties or traveling to or from a place of duty.~~

~~[(e) Except as provided by Subsection (c) ~~[(f)]~~, an offense under this section is a Class A misdemeanor.~~

(c) ~~[(f)]~~ 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.

SECTION 25. Sections 46.03(b) and (c), Penal Code, are amended to read as follows:

(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 ~~[peace officer or a]~~ member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) In this section:

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

(2) "Secured [~~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.

SECTION 26. 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, ~~[or] 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;

(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 27. Section 46.035, Penal Code, is amended by adding Subsection (i) to read as follows:

(i) Subsections (b)(4), (b)(5), (b)(6), and (c) do not apply if the actor was not given effective notice under Section 30.06.

SECTION 28. Section 46.15, Penal Code, is amended to read as follows:

Sec. 46.15. NONAPPLICABILITY [~~TO PEACE OFFICERS~~]. (a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers and neither section prohibits a peace officer from carrying a weapon in this state, regardless of whether the officer is engaged in the actual discharge of the officer's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code; or

(4) a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court who is licensed to carry a concealed handgun under Article 4413(29ee), Revised Statutes.

(b) Section 46.02 does not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) is on the person's own premises or premises under the person's control unless the person is an employee or agent of the owner of the premises and the person's primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event the person must comply with Subdivision (5);

(3) is traveling;

(4) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is directly en route between the premises and the actor's residence, if the weapon is a type commonly used in the activity;

(5) 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 or traveling to and from the person's place of assignment;

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

(C) the weapon is in plain view;

(6) is carrying a concealed handgun and a valid license issued under Article 4413(29ee), Revised Statutes, to carry a concealed handgun of the same category as the handgun the person is carrying;

(7) holds a security officer commission and a personal protection authorization issued by the Texas Board of Private Investigators and Private Security Agencies and who is providing personal protection under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes); or

(8) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises.

(c) The provision of Section 46.02 prohibiting the carrying of a club does not apply to a noncommissioned security guard at an institution of higher education who carries a nightstick or similar club, and who has undergone 15 hours of training in the proper use of the club, including at least seven hours of training in the use of the club for nonviolent restraint. For the purposes of this subsection, "nonviolent restraint" means the use of reasonable force, not intended and not likely to inflict bodily injury.

(d) The provisions of Section 46.02 prohibiting the carrying of a firearm or carrying of a club do not apply to a public security officer employed by the adjutant general under Section 431.029, Government Code, in performance of official duties or while traveling to or from a place of duty.

SECTION 29. Chapter 76, Government Code, is amended by adding Section 76.0051 to read as follows:

Sec. 76.0051. AUTHORIZATION TO CARRY WEAPON. An officer is authorized to carry a weapon while engaged in the actual discharge of the officer's duties only if:

(1) the officer possesses a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 415.038; and

(2) the director of the department and the judges participating in the management of the department agree to the authorization.

SECTION 30. Subchapter B, Chapter 415, Government Code, is amended by adding Section 415.038 to read as follows:

Sec. 415.038. FIREARMS PROFICIENCY; SUPERVISION OFFICERS. (a) The commission and the Texas Department of Criminal Justice shall adopt a memorandum of understanding that establishes their respective responsibilities in developing a basic training program in the use of firearms by community supervision and corrections department officers and parole officers. The memorandum of understanding must establish a program that provides instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of officers;

(2) range firing and procedure and firearms safety and maintenance; and
(3) other topics determined by the commission and the department to be necessary
for the responsible use of firearms by officers.

(b) The commission and the department by rule shall adopt the memorandum of
understanding establishing the basic training program.

(c) The commission shall administer the training program and shall issue a certificate of
firearms proficiency to each community supervision and corrections department officer or parole
officer the commission determines has successfully completed the program described by
Subsection (a).

(d) The commission may establish reasonable and necessary fees for the administration of
this section.

SECTION 31. Section 1(10), Article 4413(29ee), Revised Statutes, is repealed.

SECTION 32. The Commission on Law Enforcement Officer Standards and Education and the Texas Department of Criminal Justice shall adopt the memorandum of understanding required by Section 415.038, Government Code, as added by this Act, not later than January 1, 1998.

SECTION 33. (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 34. 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 35. Not later than December 1, 1997, the Department of Public Safety shall establish the procedure and shall commence any negotiation required by Section 35, Article 4413(29ee), Revised Statutes, as amended by this Act.

SECTION 36. (a) The Texas Alcoholic Beverage Commission shall:

(1) not later than October 1, 1997, adopt the rules required by Section 104.06, Alcoholic Beverage Code, as added by this Act; and

(2) at the time of the issuance or the first renewal of a license or permit under the Alcoholic Beverage Code, that allows on-premises consumption of any alcoholic beverage and that occurs on or after October 1, 1997, make the initial determination required by Section 104.06, Alcoholic Beverage Code, as added by this Act.

(b) The change in law made by this Act to Section 31, Article 4413(29ee), Revised Statutes, applies only to the display of a sign on or after the date the Texas Alcoholic Beverage Commission makes an initial determination under Section 104.06, Alcoholic Beverage Code, as added by this Act, in accordance with Subsection (a)(2) of this section, with respect to the holder

of a license or permit who conducts business on the premises for which the determination is made.

(c) The change in law made by this Act to Section 46.035, Penal Code, relating to the Texas Alcoholic Beverage Commission's determination of the percentage of income derived from the sale or service of alcoholic beverages for on-premises consumption applies only to an offense committed on or after October 1, 1998. For purposes of this section, an offense is committed before October 1, 1998, if any element of the offense occurs before that date.

SECTION 37. The changes in law made by this Act to Sections 46.02, 46.03, and 46.15, 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 38. This Act takes effect September 1, 1997.

SECTION 39. 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.

President of the Senate

Speaker of the House

I certify that H.B. No. 2909 was passed by the House on May 14, 1997, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2909 on May 29, 1997, by a non-record vote; and that the House adopted H.C.R. No. 329 authorizing certain corrections in H.B. No. 2909 on May 31, 1997, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 2909 was passed by the Senate, with amendments, on May 28, 1997, by a viva-voce vote; and that the Senate adopted H.C.R. No. 329 authorizing certain corrections in H.B. No. 2909 on June 1, 1997, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor