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## Open Carry and Campus Carry: Expanded Handgun Rights in Texas in 2016 and Beyond

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In its most recent session, the Texas legislature passed two bills related to handgun possession in Texas. House Bill No. 910 (HB 910) legalizes open carry of handguns in Texas. Senate Bill No. 11 (SB 11) allows handgun license holders in some circumstances to carry a concealed handgun on college campuses in Texas. This article summarizes some of the important provisions in the new laws that will affect employers and educational institutions in Texas beginning in 2016. Employers and educational institutions should review, and consider revising, their existing policies regarding handgun possession in the workplace. In some cases, employers and educational institutions may need to promulgate new policies and procedures to adapt to these new laws.

### Open Carry in Texas is Coming in 2016

The most important aspect of HB 910 is its change to Texas law regarding the carrying of handguns in Texas. Since 1995, handgun license holders in Texas have been able to carry a handgun as long as the handgun is concealed.<sup>1</sup> Effective January 1, 2016, holders of a handgun license in Texas may lawfully carry their handguns in an open manner as long as the handgun is secured in a shoulder or belt holster.<sup>2</sup> A handgun license holder also retains the option of carrying a handgun in a concealed manner. The major thrust of HB 910 was to amend no fewer than 12 of the named Texas Codes<sup>3</sup> to take out the modifying word "concealed" and leave only the word "handgun." Thus, for example, starting on January 1, 2016, a person will hold a "handgun license" and not a "concealed handgun license."

Beyond that, not much has changed from a legal standpoint. After January 1, 2016, it will still be illegal to carry a handgun (openly or concealed) in places such as, among others, high schools; collegiate and professional sporting events; correctional facilities; hospitals and nursing homes; amusement parks; churches and synagogues; government buildings; and airports.<sup>4</sup> Employers

1 Texas Penal Code § 46.035(a) (amended by HB 910 § 47, effective January 1, 2016).

2 House Bill No. 910, Section 49 (amending Section 46.15(b)(6) of the Texas Penal Code).

3 The amended codes are: Alcohol Beverage Code, Code of Criminal Procedure, Education Code, Election Code, Family Code, Government Code, Health and Safety Code, Labor Code, Local Government Code, Occupations Code, Parks and Wildlife Code, and Penal Code.

4 See generally Texas Penal Code § 46.035.

may still prohibit handguns (openly or concealed) on their premises.<sup>5</sup> And employees may continue to store their firearms and ammunition in a locked, privately-owned vehicle in employer parking lots.<sup>6</sup>

The one major change brought about by HB 910 concerns giving notice to licensed handgun holders that concealed handguns are prohibited on an owner's property. Under the current law, if a property owner (or employer) desires to prohibit concealed handguns on the owner's property, the owner has to notify the licensed handgun holder "orally or by written communication" that handguns are prohibited.<sup>7</sup> The term "written communication" has a specific meaning that requires the property owner to place notice on a card or other document or otherwise post a sign in English and Spanish, that appears in contrasting colors with block letters at least one inch in height, and display the sign in a conspicuous manner clearly visible to the public.<sup>8</sup> The sign has to display word for word the exact language in the statute to convey proper notice. If the sign does not comply with the law, then arguably a licensed handgun holder does not receive effective notice. Although the notice aspect of the law has not changed, the precise wording of the notice has changed. Beginning January 1, 2016, a property owner will have to display a new sign that specifically states the following:

*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.*<sup>9</sup>

And, although it may seem redundant, in order to prohibit open carry on a property, the property owner must display a second sign, presumably next to the first sign that says 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.*<sup>10</sup>

Under the new law, a property owner may prohibit open carry of a handgun by properly displaying a Section 30.07 notice while still allowing concealed carry on the property. But if a property owner wants to prohibit both concealed and open carry, the owner must display both signs in a manner required by Sections 30.06 and 30.07 of the Penal Code.

There is no doubt that reasonable parties will continue to debate whether open carry is proper public policy in Texas. But regardless of political debate surrounding the issue, as of January 1, 2016, open carry of handguns in Texas will be the law, and employers need to prepare for the change.

Prior to the new law, if an employee carried a concealed handgun, the employer might not know about it because by nature of the law, the handgun was concealed. But now that Texas has adopted open carry, employers may want to change their policies, lest employees will legally be able to openly carry handguns at work. Employers that want to prohibit open carry at work should review and revise current policies or adopt new ones as needed. Employers and property owners will also need to post new signage beginning January 1, 2016.

## Senate Bill No. 11, Handguns Matriculate on Campus

Senate Bill 11, the so-called "campus carry" law, amends the Texas Government and Penal Codes to allow handgun license holders to carry a concealed handgun on the campuses of public and private colleges and universities, as well as other independent institutions of higher learning. The law goes into effect on August 1, 2016, but does not apply to public junior or community colleges until August 1, 2017.

The campus carry legislation is not to be confused with the open-carry law. Open and unconcealed carry of handguns on campuses will not be allowed under the provisions passed in the open carry legislation. The campus carry law permits only the carrying of concealed handguns by license holders.

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5 Texas Govt. Code § 411.203

6 Texas Labor Code § 52.061.

7 Penal Code § 30.06(a) (amended by HB 910 § 42, effective January 1, 2016).

8 Penal Code § 30.06(c)(3) (amended by HB 910 § 43, effective January 1, 2016).

9 HB 910 §43.

10 HB 910 § 44.

In general, individuals are eligible for licenses to carry concealed handguns, if they:

1. Are over 21 years of age;
2. Have been a legal resident of the state for a six-month period preceding the application;
3. Have not been convicted of a felony;
4. Are not currently charged with commission of a Class A or B misdemeanor;
5. Are not chemically dependent;
6. Are capable of exercising sound judgment;
7. Are qualified under federal and state law to purchase a handgun; and
8. Are current on child support payments or other monies collected by a state agency.<sup>11</sup>

Accordingly, many students on campus will not be old enough to meet the eligibility requirements to qualify for a concealed handgun permit.

Even so, under the campus carry bill, colleges and universities are expected to adopt reasonable policies and rules regarding the carrying of concealed handguns on campus, but may not adopt policies that would have the effect of generally prohibiting the carrying of a concealed handgun on campus.<sup>12</sup> The law also contemplates a review of those policies by the institution's board of regents, and the law also sets out a schedule by which colleges and universities must report to the Texas legislature and standing committees with jurisdiction over the law describing their policies with regard to campus carry, and stating the reasons for choosing and implementing those particular policies.<sup>13</sup>

Not surprisingly, colleges and universities in other states that allow handguns on campus have long wrestled with issues such as, (1) the proper training of staff, students and faculty on what to expect, (2) how to address the improper display of a handgun on campus, (3) deciding how and where handguns should be stored on campus, and (4) how to address disorderly conduct involving handguns. Moreover, public colleges in Texas will need the input and expertise of security experts, law enforcement, students, staff and faculty to determine what areas of campus should be gun-free zones. This determination will be made more difficult because the bill prohibits any act that will frustrate its purpose, which is to allow license holders to carry concealed handguns on campus.

This is particularly important given the duty of college campuses to comply with the Clery Act and other laws that address an institution's duty to protect students and employees from violent acts on or near campuses.<sup>14</sup>

Under the law's provisions, private universities have been given the choice to opt out of the law after consulting with staff, students, and faculty.<sup>15</sup> In addition, the law gives public universities the authority to designate gun-free zones on campus, but public universities may not adopt policies or regulations that would frustrate the purpose of bill by generally prohibiting licensed holders from carrying concealed handguns on campus.<sup>16</sup>

Universities are also permitted to establish rules regarding the storage of handguns in dormitories and other campus housing.<sup>17</sup> Further, the law does not disturb existing Penal Code provisions prohibiting the carry of concealed handguns into any of the following which may be located on the property of public or private universities: schools for preschool through high school-aged children, bars, sporting events, hospitals or churches.<sup>18</sup> The law also limits liability for colleges and universities and their officers and employees in connection with the actions of a concealed handgun license holder on campus.<sup>19</sup>

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11 See Tex. Govt. Code §411.172. This list is not exhaustive.

12 Texas Govt. Code § 411.2031 (added by SB 11 § 1).

13 Id.

14 See Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f), which requires colleges to disclose information about crimes on and around their campuses. Institutions must also issue timely warnings on campus about Clery Act crimes which pose a serious or ongoing threat to students and employees.

15 Texas Govt. Code § 411.2031 (added by SB 11 § 1).

16 Id.

17 Id.

18 Texas Penal Code §§ 46.03, 46.035 (amended by SB 11 §§ 3-4).

19 Texas Govt. Code § 411.208 (amended by SB 11 § 2).

Public and private colleges and universities should review the new law and start taking steps to develop and implement a plan for complying with the new legislation in advance of the August 1, 2016 effective date.<sup>20</sup> The law recognizes that the needs of each campus in Texas differ and authorizes institutions to tailor policies and practices to their individual needs. Therefore, many institutions may want to form a task force to study and make recommendations to their leadership on how best to implement campus-carry.

Although private colleges and universities may opt out from campus carry, the law still requires that those institutions affirmatively establish policies prohibiting campus-carry after consulting with staff, students, and faculty.<sup>21</sup>

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20 The law does not apply to public junior colleges, as defined by Texas Education Code § 61.003, until August 1, 2017.

21 Texas Govt. Code § 411.2031 (added by SB 11 § 1).