

**In This Issue:**

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Texas joins the list of states that allow employees to store their lawfully possessed firearms in their vehicles in parking areas provided by employers.

## **Guns in Vehicles in Company Parking Lots Now Allowed in Texas**

**By Jim Cuaderes**

On June 17, 2011, Governor Rick Perry signed into law Senate Bill 321,<sup>1</sup> which restricts employers from prohibiting employee storage of lawfully possessed firearms in vehicles parked in employer parking lots. The amendment to Chapter 52 of the Texas Labor Code,<sup>2</sup> SB 321 provides that a private or public employer may not prohibit an employee from storing a firearm or ammunition in a locked, privately owned motor vehicle in a parking lot, garage, or other parking area provided by the employer. In order to store a firearm in his or her vehicle, the employee must hold a concealed handgun license (CHL) in accordance with Chapter 411 of the Texas Government Code or otherwise lawfully possess a firearm.<sup>3</sup>

As with any legislation, the general rule also contains several exceptions. SB 321 does not authorize possession of a firearm where possession of a firearm is otherwise prohibited by state or federal law. SB 321 does not apply to vehicles owned or leased by the employer even if the employee uses the employer's vehicle in the course and scope of employment. Thus, employers may continue to prohibit possession of firearms in a company car. The exception to this exception is where the employee is required to transport or store a firearm as part of the employee's duties.

SB 321 also does not apply to employee storage of firearms in their vehicles in parking lots of school districts, open-enrollment charter schools, or private schools. SB 321 does not apply to property owned or controlled by a person, other than the employer, subject to a valid, unexpired oil, gas, or mineral lease, as long as the lease contains a provision prohibiting possession of firearms on the property.

Finally, SB 321 does not apply to chemical manufacturers or oil and gas refiners<sup>4</sup> where the primary business is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials. Even this exception contains an exception. An employee who holds a CHL may store a firearm or ammunition in a privately owned vehicle at a chemical plant or oil and gas refinery as long as the car is in a parking lot outside of the restricted area of the plant, and as long as the plant is not open to the public and entry to the plant is monitored by security personnel.

SB 321 applies only to parking areas. An employer may continue to prohibit employees

from possessing a firearm on the “premises” of the employer’s business.<sup>5</sup> The term “premises” is defined by Section 46.035(f)(3) of the Texas Penal Code as a building or portion of a building. “Premises” does not include a driveway, street, sidewalk, walkway, parking lot, parking garage, or other parking area.

Except for cases of gross negligence, SB 321 expressly gives an employer<sup>6</sup> immunity from civil liability in an action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition stored or transported in an employee’s vehicle. The presence of a firearm or ammunition in a manner allowed by the new law does not constitute a failure by the employer to provide a safe workplace. Finally, the law expressly states that the employer does not have any duty to inspect, patrol, or secure the parking lot or any vehicles parked in the parking lot. In addition, the employer has no duty to confirm or determine an employee’s compliance with laws relating to firearm ownership or possession.

Interestingly, SB 321 does not contain an express private right of action for aggrieved employees. If an employer maintains a policy that prohibits its employees from storing otherwise lawfully possessed firearms in their vehicles, such a policy likely would be contrary to SB 321. Would this allow an employee to bring a cause of action against his or her employer to enjoin enforcement of the employer’s policy? What if an employer terminates an employee for violation of the policy? Would the employee have a cause of action against the employer for wrongful termination? Texas courts have been loath to adopt judicial exceptions to the well established doctrine of employment at will.<sup>7</sup> It would be hard to imagine that the Texas Supreme Court would recognize an exception to the doctrine of employment at will for an employee who alleges wrongful termination if the employee is fired for storing a lawfully possessed firearm in his or her vehicle. In absence of an express private right of action, it appears that the employee’s only remedy would be to report the employer’s policy to the Texas Attorney General or other law enforcement authorities.

Advocates nationwide on both sides of this issue have been engaged in an on-going debate about this type of legislation. Some argue that employee access to handguns in a parking lot is a recipe for disaster. It does not take much to imagine a situation where a distraught employee, perhaps enraged by an incident at work, goes out to his or her car, retrieves a weapon, and then goes back to the workplace and shoots a coworker or supervisor. Having a weapon so readily available at work has the potential to elevate an incident of workplace violence. Others would argue that the legislation is necessary in order to give CHL holders the complete right to self protection envisioned when concealed handgun legislation was first passed many years ago. CHL holders argue that if they cannot store their handgun in their vehicles, they have no other choice but to leave their handgun at home. Keeping a handgun in their vehicle is the only practical place to store a weapon. If they want to protect themselves from a would be assailant if they were to stop at a store on the way home from work, then they must have the right to store their handgun in their vehicles.

SB 321 goes into effect September 1, 2011. Employers in Texas should review their employment and security policies to make sure that their policies comply with SB 321.

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 Jim Cuaderes is Of Counsel in Littler Mendelson’s Dallas office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Cuaderes at jcuaderes@littler.com.

<sup>1</sup> The final text of SB 321 can be found at [www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=SB321](http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=SB321).

<sup>2</sup> SB 321 adds Sections 52.061 through 52.064 of Subchapter G to Chapter 52 of the Texas Labor Code.

<sup>3</sup> In Texas, a person may possess a concealed handgun in his or her vehicle even though the person does not hold a CHL. Texas Penal Code § 46.02(a-1). There are exceptions to this rule that are not generally applicable to most employees. Id. § 46.02(a-1)(2)(A)-(C).

<sup>4</sup> In order to qualify for this exception, the business must possess an air authorization under Chapter 382 of the Texas Health and Safety Code.

<sup>5</sup> In this respect, SB 321 amends Section 411.203 of the Texas Government Code to make clear that an employer may limit the right of a person holding a CHL from carrying a concealed handgun on the employer’s premises. However, SB 321 defines narrowly the term “premises” and adopts the definition of “premises” set forth in Section 46.035(f)(3) of the Texas Penal Code.

<sup>6</sup> This includes an employer’s principal, officer, director, employee, or agent.

<sup>7</sup> The only common law exception in Texas to the doctrine of employment at will is where an employer discharges an employee for refusing to perform a criminal act. *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985).