

# The Senate of The State of Texas



NOMINATIONS—CHAIRMAN.  
SUBCOMMITTEE ON  
BORDER SECURITY—CHAIRMAN

STATE AFFAIRS  
NATURAL RESOURCES &  
ECONOMIC DEVELOPMENT  
VETERANS AFFAIRS &  
MILITARY INSTALLATIONS

**BRIAN BIRDWELL**

November 18, 2015

The Honorable Ken Paxton  
Attorney General of Texas  
Post Office Box 12548  
Austin, Texas 78711-2548

Dear General Paxton:

The 84<sup>th</sup> Texas Legislature passed SB 11 (hereinafter the “Act”) commonly referred to as the Texas “campus carry” law. The Act was signed into law by Governor Abbott on June 13, 2015 and it goes into effect for four year colleges and universities (hereinafter referred to collectively as “Colleges”) on August 1, 2016. It goes into effect for junior colleges on August 1, 2017. The authority granted to public Colleges and private colleges are different, as are procedural and reporting requirements. This request will deal solely with public Colleges.

The term “campus carry” is a misnomer in that it has been legal for Texas concealed handgun licensees (hereinafter “Licensees”) to carry handguns on College campuses since 1996. The only prohibition is the carrying of firearms into buildings, certain activity grounds when College sponsored activities are ongoing, and College transportation vehicles, unless pursuant to written authorization from the school.

The Act decriminalizes the carrying of concealed handguns in College buildings, activity grounds and transportation vehicles by the addition of subdivision §46.03(a)(1)(B) to the Texas Penal Code. The Act also prohibits public Colleges from adopting “*any rule, regulation, or other provision prohibiting license holders from carrying handguns on the campus of the institution.*” TEX. GOV’T CODE §411.2031(c). For purposes of the Act, “*campus*” is defined to include “*all land and buildings owned or leased*” by the College. *Id.* @ §411.203(a)(1).

While the Act decriminalized the carrying of handguns in College buildings, and prohibits a College from adopting and enforcing rules against the carrying of concealed handguns by Licensees, it established procedures by which public Colleges can render portions of their campuses prohibited areas for possession of concealed handguns.

**Pursuant to TEX. GOV’T CODE Ann. § 402.042, I am requesting information on the meaning and effect of the Act in the following circumstances. The answers to these questions affect the public interest because they would help to clarify the rights of public Colleges and Licensees under the Act.**



**1. Discretionary authority to create prohibited areas:**

While some discretion was granted to College presidents and chief executive officers to establish certain areas of a public College that will be prohibited areas for the carrying of concealed handguns by Licensees, the Act expressly prohibits rules or regulations that “*generally prohibit or have the effect of generally prohibiting*” a Licensee from carrying a concealed handgun everywhere on campus. The operative part of the Act reads as follows:

*The president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.*

TEX. GOV'T CODE Ann. §411.2031(d-1). (Emphasis added.)

Some public College professors are asking for a blanket rule against the carrying of concealed handguns by Licensees in College classrooms. Some public College presidents or chief executive officers are considering the adoption of a rule against the carrying of concealed handguns by Licensees in all classrooms, or a majority of classrooms.

As a fallback position, some college professors are asking to be granted the authority to prohibit the possession of handguns in their individual classrooms, if a global classroom ban is not adopted by the College. If something less than all professors were to adopt a prohibitive rule, it would create a hodgepodge of rules and prohibited areas making it difficult for Licensees to know where they may and may not carry a handgun. If a meaningful number of professors were to prohibit Licensees from carrying handguns in classrooms, then it would be operationally identical to a campus-wide ban that would “*have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.*”

If a public College were to adopt a rule that prohibits the carrying of concealed handguns by Licensees in College classrooms, it would effectively force such students to leave their handguns in their personal motor vehicles, or in their dormitories or other residential housing. Since students go to college to attend classes, this would effectively prohibit a student/Licensee from carrying their handgun on campus.

**2. Regulation of the storage of handguns in dormitories and other residential housing owned or leased by a College:**

Public College presidents and chief executive officers are granted the authority to establish rules regarding the storage of handguns in dormitories and other residential housing located on campus. The operative part of the Act reads as follows:

*An institution of higher education or private or independent institution of higher education in this state may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution.*

TEX. GOV'T CODE Ann. §411.2031(d). (Emphasis added.)

It has been reported in the public media that some public Colleges are considering prohibiting the possession of handguns in some or all dormitories and/or other College-owned or leased residential housing. This would appear to violate the express language of the Act that limits regulatory authority to those pertaining to “*storage*” of handgun in such locations.

### **3. Temporary prohibition on possession of handguns.**

The public college discourse on implementing the Act includes discussions about authorizing the creation of areas in which handguns would be prohibited on a temporary basis. Examples given include campus-wide or classroom-wide during “*finals week*,” or in specific locations when “*visiting dignitaries*” are present.

Temporary “*prohibited areas*” would seem to violate at least two and possibly three subsections of the Act. If the temporary prohibition were to encompass all or nearly all of the campus, then it would violate TEX. GOV'T CODE Ann. §411.2031(d-1). (*See, infra.*)

The creation of temporary prohibited locations would also violate TEX. GOV'T CODE Ann. §411.2031(d-3) regarding widespread publication of all rules and regulations. The Subsection reads:

*An institution of higher education shall widely distribute the rules, regulations, or other provisions described by Subsection (d-1) to the institution's students, staff, and faculty, including by prominently publishing the provisions on the institutions' Internet website.*

### **4. Newly created criminal offenses:**

A new criminal offense is created by the Act and is found in TEX. PENAL CODE Ann. §46.035(a-3). A public College that follows all procedures required by the Act cannot create a criminal offense for the carrying of a handgun by a Licensee anywhere on campus, other than in a building. This limited authority is set out below:

*After consulting with students, staff, and faculty of the institution regarding the nature of the student population, specific safety considerations, and the uniqueness of the campus environment, the president or other chief executive officer of an institution of higher education in this state shall establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders on the campus of the institution or on premises located on the campus of the institution. The president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution. The president or officer may amend the provisions as necessary for campus safety. The provisions take effect as determined by the president or officer unless subsequently amended by the board of regents or other governing board under*

***Subsection (d-2). The institution must give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry.***

TEX. GOV'T CODE Ann. §411.2031(d-1). (Emphasis added.)

The above-quoted subsection of the Act includes both the regulatory authority of a public College to establish rules and regulations as well as a requirement that Licensees entering all buildings rendered off-limits be provided effective notice pursuant to TEX. PENAL CODE Ann. §30.06. Although oral notice is effective under the Code, effective notice under Section 30.06 is always given in the form of a sign meeting the requirements of that Code provision.

A criminal offense is created only when a Licensee enters a “*premise*” as that term is statutorily defined. That definition is found in TEX. PENAL CODE Ann. §46.035 which reads “*Premises’ means a building or a portion of a building.*” Thus, neither TEX. PENAL CODE Ann. §30.06 nor §46.035(a-3) are violated unless a Licensee carries a concealed handgun into a building or portion of a building that has properly been designated as an area where the possession of handguns is prohibited and effective notice has been given in accordance with the Act and TEX. PENAL CODE Ann. §30.06.

The newly created criminal offense applicable to public Colleges is found in TEX. PENAL CODE Ann. §46.035(a-3) that reads as follows:

***Notwithstanding Subsection (a) or Section 46.03(a), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.***

*Id.* (Emphasis added.)

With this background, I respectfully request an opinion concerning the questions set out below.

**QUESTION 1:**

If a public College designates a meaningful number of classrooms as areas in which the possession of concealed handguns by Licensees is not allowed, has the College violated that provision in the Act that states “[*t*]he president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution[?]”

**QUESTION 2:**

If a public College allows individual professors to designate their classrooms as areas in which the possession of concealed handguns by Licensees is not allowed, has the College violated that provision in the Act that states “[*t*]he president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution[?]”

**QUESTION 3:**

If the rules established by a public College relating to College dormitories and/or other college-owned or leased residential housing go beyond reasonable storage requirements and prohibit or effectively prohibit the possession of handguns in those locations, has the College violated the Act?

**QUESTION 4:**

If, on a temporary basis, a College prohibits the carrying of handguns by Licensees on all or most of the campus, has the College violated the portion of the Act that prohibits a College from establishing rules *“that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution[?]”*

**QUESTION 4.1:**

If, on a temporary basis, a College prohibits the carrying of handguns by Licensees on certain portions of the campus, has the College violated the portion of the Act that requires Colleges to *“widely distribute the rules, regulations, or other provisions described by Subsection (d-1) to the institution’s students, staff, and faculty, including by prominently publishing the provisions on the institutions’ Internet website[?]”*

**QUESTION 5:**

If a Licensee reasonably believes that a public College has exceeded its authority granted under the Act, or that it has taken regulatory action without meeting the procedural requirements of the Act, does the Licensee have standing to bring an action?

**QUESTION 6:**

If the answer to Questions 1, 2, 3 or 4 is in the affirmative, does the newly created offense found in TEX. PENAL CODE Ann. §46.035(a-3) apply to a Licensee carrying a concealed handgun, in spite of the public College’s failure to comply with the Act?

As you and your staff process this request, General Paxton, I would respectfully ask that you do so with the utmost urgency and consideration of time sensitivity. As you likely know, our public university systems are pushing their respective campuses to promulgate the aforementioned rules in a manner that affords boards of regents time to appropriately review and ultimately adopt said rules before the August 1, 2016 deadline outlined in the Act. Indeed, some campuses have already released drafts of their proposed rules, thus making this request all the more time sensitive. Thank you for your attention to this important matter and for your continued service to our state.

Sincerely,



Brian Birdwell  
Senate District 22