

CARRYING HANDGUNS IN TEXAS

The right to openly carry a handgun in Texas, for eligible adults, became effective January 1, 2016. On January 1, 2016, Texas joined forty-four other states which have implemented “open carry laws that allow eligible adults to appear in certain public places with a visible handgun. The following is an outline of key points to take from the Open and Concealed Carry Statutes:

ELIGIBILITY FOR OPEN CARRY – GOV. CODE § 411.172

1. Must have a Concealed Handgun License;
2. Must be at least 21 years of age (could be younger if an honorably discharged veteran);
3. Not convicted of a felony;
4. Not charged with the commission of a Class A or Class B Misdemeanor;
5. Not a fugitive from justice;
6. Not chemically dependent;
7. Capable of exercising sound judgment regarding use and storage of a handgun;
8. Paid up child support;
9. Completed 4-6 hours of training.

OPEN AND CONCEALED CARRY – GOV. CODE § 411.203

1. Employers may prohibit employees with CHL’s from carrying handguns on the employer’s premises if the employer provides effective notice under the statute.
2. What is effective notice?
 - Oral or written (including notes on company internet or employee handbook);
 - By owner of premises;
 - Lessee with Apparent Authority.

EFFECTIVE NOTICE BANNING CONCEALED HANDGUNS FROM PREMISES OWNERS OR LESSEES

1. Effective notice includes (Penal Code 30.06):
 - Oral communication from the owner or someone with apparent authority, or;
 - A written card or document which contains the following language: “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”, or;

- A sign posted on the property that includes the above language in both English and Spanish, is written in contrasting colors with block letters at least one inch in height and which is displayed in a conspicuous manner clearly visible to the public.

REQUIREMENTS FOR SIGNS BANNING OPENLY CARRIED HANDGUNS

If the sign is the only notice you provide to visitors that openly carried handguns are prohibited:

- The notice must be in English and Spanish;
- Appear in contrasting colors with block letters at least one inch in height;
- Displayed in a conspicuous manner clearly visible to the public *at each entrance to the property*;

SPECIFIC LANGUAGE PROHIBITING OPEN CARRY – PENAL CODE § 30.07

“Pursuant to § 30.07, penal code (trespass by license holder with an openly carried), 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.”

OPEN CARRY QUESTIONS

1. Can the employer prohibit employees from carrying handguns if the employer does not own the building?

Answer: Yes

- For public and private employers - the employer need only provide a weapons policy to employees giving them notice that weapons of any kind are prohibited on the employer’s premises. The Handbook language does not have to track the language in a § 30.07 sign;
- Example: *“As permitted by law, it is the policy of ABC company to prohibit employees from carrying weapons of any kind, without written authorization from the VP of HR, on company premises.”*

2. Can the employer prohibit visitors from carrying handguns if the employer does not own the building?

Answer: Yes

- With regard to private companies, the employer can choose one or more of four ways to give notice that concealed and openly carried handguns are prohibited:

- A card available to guests entering the employer's premises which announces the prohibition, or
- A document (like a letter or leaflet) that is available to people entering the premises, or
- Orally communicating to visitors that weapons are not permitted, or
- A § 30.06 and § 30.07 sign-posted at each entrance to prohibit open carry or posted conspicuously to prohibit concealed carry.

3. Are some employers required to post § 30.06 or § 30.07 Notices Prohibiting Weapons?

Answer: Yes

- Hospitals licensed under Chapter 241 of the Health And Safety Code- must prominently display the sign at each entrance;
- Nursing homes licensed under Chapter 242 of the Health and Safety Code; and
- A business that has a permit issued under the Alcoholic Beverage Code.

4. Are handguns prohibited by law on some premises?

Answer: Yes. See Penal Code § 46.036 – Places Weapons are Prohibited.

- The Penal Code provides that people with CHL's may not bring a firearm on the premises of:
 - A K-12 public or private school, any grounds or buildings on which an activity sponsored by a school or educational institution is being conducted;
 - A passenger transportation vehicle of a K-12 school or educational institution, unless permitted by written regulation or written authorization of the institution § 46.036;
 - On the premises of a polling place on the day of an election or during early voting;
 - On the premise of any government court or offices utilized by the court:
 - Premises Issues: Recently the Texas Attorney General found that the "no guns" sign at the Dallas County Government Center violated state law. The County argued that the entire government center should be gun free because it houses justices of the peace and truancy courts. However, the center also houses non-court offices. Paxton issued an opinion that counties and cities may ban

the carrying of handguns only from courtroom and judicial offices. The Attorney General's office has stated that state law does not allow political subdivisions to prohibit licensed handgun holds from entering into an entire building simply because the court or court offices are located in a portion of the building;

- On the premises of a race track;
- In or into a secured area of an airport; or
- Within 1,000 feet of the premises which is a place of execution on a day that a sentence of death is set to be imported.

OTHER OFFENSES BY LICENSE HOLDERS

Under § 46.035(a)(3) licensed handgun owners commit an offense:

- § 46.035(a)(3) - If they intentionally carry a concealed handgun on the portion of the premises of **a higher education campus**, where it is prohibited, provided the institution gives effective notice under §30.06;
- § 46.035(b)(1) - If they intentionally, knowingly or recklessly carry a handgun, either openly in a shoulder or belt holster or concealed on the premises of a business that has a permit or license issued under Chapters 25.28, 32, 69 or 74 or the Alcohol Beverage Code, if the business derives 51% or more of its income from the sale or service of alcoholic beverages. (Businesses must also post prohibition notice under Government Code §411.204);
- § 46.035(b)(2) - If they carry a handgun on the premises where a high school, collegiate or professional sporting event or interscholastic event is taking place;
- § 46.035(b)(3) – On the premises of a correctional facility – “premises” means a building or a portion of a building. “Premises” does not include a public or private driveway, street, sidewalk or walkway, parking lot, parking garage or other parking area;
- § 46.035(b)(4) - On the premises of a hospital or nursing facility (owner must also post notice prohibiting handguns) (Gov. Code §411.204);
- § 46.035(6)(5) – In an amusement park – which includes a permanent indoor or outdoor facility where rides are available for use by the public in a county with a population of more than one-million people, and is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. (Owner must post notice prohibiting handguns);
- §46.035(b)(6) – On the premises (not including parking lots, driveways or garages) of a church, synagogue or other established place of religious worship. (Owner must also post notice prohibiting handguns);

- §46.035(c) – In rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to the Open Meeting Act. (Owner must also post notice prohibiting handguns) (Gov. Code §46.035(i));
- Premises do not include parking lots offered by the employer to employees!

PARKING LOT STORAGE OF WEAPONS – EMPLOYER CONSIDERATIONS

Tex. Labor Code § 52.061: Employers may not prohibit employees from storing firearms in a locked, privately owned vehicle in the employer’s parking lot, parking garage, or other parking area:

1. Employers may prohibit firearms and handguns on the premises;
2. Employer has immunity from civil liability except in cases of gross negligence;
3. Employer has no duty to patrol, inspect, or secure the parking lot or to confirm the employee’s compliance with the law.

EXCEPTIONS TO PARKING LAW STORAGE

1. Places where firearms are prohibited by federal or state law;
2. Company vehicles used in the course and scope of employment; (Labor Code § 52.062);
3. Parking lots of public, open-enrollment charter, or private schools; (Labor Code § 52.062(2)(B));
4. Mineral or oil and gas leases controlled by someone other than the employer; the lease must prohibit possession of firearms on the property;
5. Chemical or oil and gas refineries (but can store in a parking lot outside the secured area of the plant); the primary business must be the manufacture, use, storage or transportation of hazardous, combustible or explosive materials;
6. Section 52.062(b) – Remember § 52.062(b) allows employers to prohibit employee from possession of firearm of any kind on the employer’s premises.

WORKPLACE VIOLENCE POLICIES

1. Don’t limit the policy to handguns;
2. Include other weapons like knives, explosive devices, bows and arrows, brass knuckles, chemical dispensing devices, etc.;
3. Address handgun-related issues with employees by enforcing the company policy;
4. Deal with all other invitees with effective notice or oral and/or written signs or cards.

AUTHORITY OF PUBLIC EMPLOYERS TO PROHIBIT EMPLOYEES FROM CARRYING WEAPONS IN THE WORKPLACE

1. In general, public employers can limit the right of employees to carry weapons on the employer's premises;
 - A premise includes the employer's building. Section 411.203 Gov. Code;
 - Except for public and private K-12 educational institutions, the employer's premise does not include any public or private driveway, sidewalk, street, walkway, parking lot, garage or other parking areas. Public colleges must allow employees to possess firearms in vehicles in parking lots or garages, etc.

ZOOS

On March 30, 2016, the Attorney General's office upheld the right of the Dallas Zoo to ban handguns because the zoo has a carousel which is an amusement ride, and security guards.

SCHOOL DISTRICT ADMINISTRATOR BUILDINGS

In a letter dated April 29, 2016, the Office of the Attorney General ("OAG") concluded that pursuant to § 411.209(c) of the Texas Government Code that the § 30.06 notice sign prohibiting handguns was permissible because the Administration building of a school district was an "educational institution." Thus, handguns could be excluded under Penal Code § 46.03(a)(1).

INTENTIONAL OPEN DISPLAY OF HANDGUNS ON COLLEGE CAMPUSES IS PROHIBITED

1. *Penal Code Sections 46.03 and 46.035*
 - It is a violation of Penal Code Section 46.035 to intentionally and openly display a handgun in plain view of another person on the premises of a public or private institution of higher education;
 - This includes public and private campus driveways and parking areas;
 - This does not restrict the rights of people to store handguns in locked cars on private or public campuses

HANDGUNS AT PUBLIC AND PRIVATE HIGHER ED INSTITUTIONS

After August 1, 2016 - 4 Year Colleges

Penal Code Section 46.035

1. A person possessing a concealed handgun license (CHL) under Chapter 411 Gov. Code may carry a concealed weapon at:

- Institutions of higher education (Private Colleges may opt out);
- On any grounds or building on which an activity sponsored by the institution is being conducted;
- The handgun must be concealed in a shoulder or belt holster or otherwise completely concealed while the person is in a public place;
- Remember: Open carry on campus is not permitted by persons possessing a CHL.

HANDGUNS AT PUBLIC AND PRIVATE HIGHER ED INSTITUTIONS

4 Year Colleges

Section 411.2031 Tex. Gov. Code - Campus Carry

1. The institution must establish rules and regulations concerning the storage of handguns in dormitories, or other residential facilities owned or operated by the school:
 - The institution must give notice under Penal Code Section 30.06 with respect to any portion of the premises on which the license holders may not carry handguns;
 - Note: Prohibition on campus carry cannot include parking garages, streets, or driveways located on the campus.

UNANSWERED QUESTIONS FOR COLLEGE CAMPUSES

- Can colleges prohibit handguns at special programs, such as summer camps, college for kids, campus tours, etc.”
- Can colleges prohibit handguns on campuses which offer childcare?

LIMITS OF CIVIL LIABILITY

Section 411.208 Tex. Gov. Code

1. No liability for public and private institution employees due to:
 - Failure to perform a duty imposed by Section 411.000;
 - Actions of licensed gun holder or an applicant for a license;
 - Immunity does not cover acts that are capricious or arbitrary; and
 - Immunity does not cover employees with handguns whose acts form the basis of a claim for personal injury or property damage.