

AN ACT

relating to the applicability of the offense of unlawful carrying of weapons to certain persons and to the consequence of certain presumptions in the prosecution of a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 46.15, Penal Code, is amended by adding Subsection (i) to read as follows:

(i) For purposes of Subsection (b)(3), a person is presumed to be traveling if the person is:

(1) in a private motor vehicle;

(2) not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic;

(3) not otherwise prohibited by law from possessing a firearm;

(4) not a member of a criminal street gang, as defined by Section 71.01; and

(5) not carrying a handgun in plain view.

SECTION 2. Section 2.05, Penal Code, is amended to read as follows:

Sec. 2.05. PRESUMPTION. (a) Except as provided by Subsection (b), when [~~when~~] this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

1 (1) if there is sufficient evidence of the facts that
2 give rise to the presumption, the issue of the existence of the
3 presumed fact must be submitted to the jury, unless the court is
4 satisfied that the evidence as a whole clearly precludes a finding
5 beyond a reasonable doubt of the presumed fact; and

6 (2) if the existence of the presumed fact is submitted
7 to the jury, the court shall charge the jury, in terms of the
8 presumption and the specific element to which it applies, as
9 follows:

10 (A) that the facts giving rise to the presumption
11 must be proven beyond a reasonable doubt;

12 (B) that if such facts are proven beyond a
13 reasonable doubt the jury may find that the element of the offense
14 sought to be presumed exists, but it is not bound to so find;

15 (C) that even though the jury may find the
16 existence of such element, the state must prove beyond a reasonable
17 doubt each of the other elements of the offense charged; and

18 (D) if the jury has a reasonable doubt as to the
19 existence of a fact or facts giving rise to the presumption, the
20 presumption fails and the jury shall not consider the presumption
21 for any purpose.

22 (b) When this code or another penal law establishes a
23 presumption in favor of the defendant with respect to any fact, it
24 has the following consequences:

25 (1) if there is sufficient evidence of the facts that
26 give rise to the presumption, the issue of the existence of the
27 presumed fact must be submitted to the jury unless the court is

1 satisfied that the evidence as a whole clearly precludes a finding
2 beyond a reasonable doubt of the presumed fact; and

3 (2) if the existence of the presumed fact is submitted
4 to the jury, the court shall charge the jury, in terms of the
5 presumption, that:

6 (A) the presumption applies unless the state
7 proves beyond a reasonable doubt that the facts giving rise to the
8 presumption do not exist;

9 (B) if the state fails to prove beyond a
10 reasonable doubt that the facts giving rise to the presumption do
11 not exist, the jury must find that the presumed fact exists;

12 (C) even though the jury may find that the
13 presumed fact does not exist, the state must prove beyond a
14 reasonable doubt each of the elements of the offense charged; and

15 (D) if the jury has a reasonable doubt as to
16 whether the presumed fact exists, the presumption applies and the
17 jury must consider the presumed fact to exist.

18 SECTION 3. The changes in law made by this Act apply only to
19 an offense committed on or after the effective date of this Act. An
20 offense committed before the effective date of this Act is covered
21 by the law in effect at the time the offense was committed, and the
22 former law is continued in effect for that purpose. For purposes of
23 this section, an offense was committed before the effective date of
24 this Act if any element of the offense was committed before that
25 date.

26 SECTION 4. This Act takes effect September 1, 2005.

David Swihurst

President of the Senate

Jim Cordell

Speaker of the House

I certify that H.B. No. 823 was passed by the House on April 20, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 823 on May 27, 2005, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 823 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 29, Nays 2.

Datsy Shaw

Secretary of the Senate

APPROVED: 16 JUNE '05

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

1:45 PM O'CLOCK

JUN 16 2005

Rock Williams
Secretary of State