

TO: Media

FROM: Terry Keel, State Representative, Austin, Texas

RE: HB 823 by Keel, Effective 9/1/05

## **Clarifies Right to Carry Handgun in Vehicle While Traveling**

### **PRESS RELEASE**

DATE: August 30, 2005

It is well established in Texas that a person who is traveling has a right to possess a handgun for personal protection. The practical problem with this right has historically been that courts have disagreed on the definition of "traveling". The legislature has likewise never defined "traveling" because a definition invariably has the unintended effect of unfairly limiting the term to a narrow set of circumstances.

HB 823 becomes effective September 1, 2005, shoring up the right of citizens to carry a concealed handgun while traveling. There have been many inquiries to my office from citizens and media regarding the upcoming change in the law and what it means.

HB 823 provides for a legal presumption in favor of citizens that they are travelers if they are in a private vehicle with a handgun that is not in plain view, they are not otherwise engaged in unlawful activity nor otherwise prohibited by law from possessing a firearm, and they are not a member of a criminal street gang.

In plain terms, a law-abiding person should not fear arrest if they are transporting a concealed pistol in a motor vehicle. There is no longer the need for a law enforcement officer to apply a subjective definition of what constitutes "traveling" where the citizen is cloaked with the presumption per the terms of the new statute. Under those circumstances the citizen should be allowed to proceed on their way.

HB 823 represents the first time a presumption has been crafted in favor of a defendant in the modern penal code of Texas. The presumption applies unless the prosecution proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist. If the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists. By enacting this evidentiary standard in conjunction with the presumption, the legislation is intended to have the practical effect of preventing in the first place the arrest of citizens who meet the newly specified prerequisites of being a presumed traveler.

It should be noted that the very real problem of citizens having to prove their innocence after arrest by the assertion of their right to carry a firearm while traveling was the reason for a 1997 legislative change which replaced the "defense" of traveling with a classification of the statute of UCW as instead entirely "inapplicable" to a traveler. This change was well-intentioned but did not have the intended effect of protecting honest citizens from potential arrest because the term "traveling" was still left to individual police or judicial officials to define on a case-by-case basis. As a consequence, law-abiding citizens who availed themselves of their right to have \*a \*handgun while traveling continued to face arrest and often later prevailed only in a court of law after proving that they were indeed traveling.

In enacting HB 823, the 79th legislature, like all previous legislatures, declined to define traveling as a narrow set of particular circumstances. For example, to require someone to have an overnight stay in a journey in order to be classified as a traveler would be unfair to persons traveling great distances in one day. Likewise, a requirement that a citizen be "crossing county lines" may make no sense, such as in areas of Texas where travelers drive hundreds of miles without leaving a single county. Moreover, the ability of police to elicit such evidence and consistently apply its subjective terms on the street in a traffic stop has not proven practical, at all. The new statute instead focuses on a defined set of relevant, objective facts that are capable of being determined on the spot by law officers.

There are several additional important points that should be made in regard to the enactment of HB 823 and its interface with current law. HB 823 does not give "everyone the right to carry a gun in a car". State and federal laws applicable to firearms must be noted in conjunction with the new statute's terms, particularly the limitation of the presumption to persons who are "not otherwise prohibited by law from possessing a firearm." For example, persons subject to an active protective order are not covered by the presumption, nor are persons with any felony conviction or even some misdemeanor convictions for offenses, e.g., family violence. The presumption is likewise inapplicable to persons associated with a criminal street gang, even if they have no conviction for any offense. These as well as all other existing limitations on firearm ownership and/or possession make the new statute inapplicable to persons covered by such prohibitions.

Furthermore, as stated in the statute, the presumption will not apply to persons who are otherwise engaged in any criminal conduct. This would include persons who are driving while intoxicated, driving recklessly, committing criminal mischief, or committing any other criminal offense outside that of a minor traffic infraction.

The presumption also does not apply where the gun is openly displayed.

The enactment of HB 823 was the culmination of study, committee hearings and debate by the House Committee on Criminal Jurisprudence. I am confident that the new law will assist law enforcement in doing its job while at the same time protecting law-abiding citizens from the threat of arrest for merely exercising their right to arm themselves while traveling----a right to which they are already entitled.

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