



Open Carry Laws

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OPEN CARRY BY U.S. JURISDICTION

Jurisdiction	Permissive	Licensed	Anomalous/ Rural	Non-Permissive	Comments
Alabama	✓				
Alaska	✓				
American Samoa				✓	Open carry prohibited.
Arizona	✓				
Arkansas	✓				
California			✓		Open carry permitted in rural counties where local ordinances authorize open carry (some with and some without a license requirement).
Colorado	✓				Open carry without a license permitted, except in City and County of Denver (where open carry prohibited by local ordinance pre-dating preemption law).
Connecticut		✓			Handgun open carry with license permitted (licenses granted on Shall-Issue, with Limited Discretion basis). Long gun open carry varies based on local ordinances.
Delaware	✓				
District of Columbia				✓	Open carry prohibited.
Florida				✓	Constitutionality on ban on open carry currently being challenged.
Georgia		✓			Open carry with license permitted (licenses granted on Shall Issue basis).
Guam		✓			FOID card required (Firearm Owner's Identification card).
Hawaii		✓		Actual practice	Licenses rarely issued to ordinary citizens and are valid in the issuing county only.
Idaho	✓				
Illinois				✓	
Indiana		✓			Open carry with license permitted (licenses granted on Shall Issue basis) and recognition of all other states' carry licenses.
Iowa		✓			
Kansas	✓				
Kentucky	✓				
Louisiana	✓				

OPEN CARRY BY U.S. JURISDICTION (cont'd...)

Maine	✓				
Maryland		✓		Actual practice	Handgun licenses rarely issued to ordinary citizens. Long gun open carry without license permitted.
Massachusetts		✓		Actual practice	Handgun open carry with license permitted (licenses issued on May-Issue statewide basis), but issuance varies between localities. In practice, open carry is discouraged and one may be charged with Disorderly Conduct or Breach of Peace if open carry causes public alarm. Long gun open carry prohibited.
Michigan	✓				Open carry without license permitted unless in a vehicle and then a CHL (Concealed Handgun License) is required (CHL granted on Shall-Issue basis).
Minnesota		✓			Open carry with license permitted (licenses granted on Shall Issue basis).
Mississippi	✓				
Missouri		✓			
Montana	✓				
Nebraska		✓			
Nevada	✓				Open carry without license permitted, subject to local ordinances.
New Hampshire	✓				Open carry without license permitted unless in a vehicle and then a CHL is required.
New Jersey		✓		Actual practice	Licenses rarely issued to ordinary citizens. Long gun open carry prohibited.
New Mexico	✓				Statewide open carry does not preempt tribal laws on Native American reservations, except when on a state-owned highway. Some tribes prohibit open carry and others require a tribal permit.
New York				✓	Handgun open carry prohibited unless hunting or at a gun range. Long gun open carry prohibited unless seasonal hunting in designated game reserves.
North Carolina	✓				
North Dakota		✓			
Northern Mariana Islands				✓	

OPEN CARRY BY U.S. JURISDICTION (cont'd...)

Ohio	✓				Open carry without license permitted unless in a vehicle and then a CHL is required.
Oklahoma		✓			Open carry without license permitted and recognition of other states' right to carry without license with valid ID from home state.
Oregon			✓		Open carry without license permitted, subject to local ordinances, except that any person with CHL is exempt from local restrictions.
Pennsylvania			✓		
Puerto Rico	✓				
Rhode Island		✓			Open carry of handguns permitted with issuance of license by Attorney General's Office. Long gun open carry without license permitted.
South Carolina				✓	
Tennessee		✓			
Texas		✓			Open carry of handguns permitted with issuance of license. Long gun open carry without license permitted.
U.S. Virgin Islands				✓	
Utah		✓			Open carry without license permitted if firearm is unloaded and exposed; license required to open carry loaded firearm (e.g., a live round of ammunition in the firing chamber of the weapon).
Vermont	✓				
Virginia	✓				Open carry without license permitted, subject to local ordinances prohibiting firearms with more than 7 rounds without license, except that any person with CHL is exempt from local restrictions.
Washington	✓				Open carry without license permitted unless in a vehicle and loaded and then a CHL is required.
West Virginia	✓				
Wisconsin	✓				Open carry without license is permitted, but if do not hold a state CHL or qualifying out of state license, firearm in vehicle must be visible.
Wyoming	✓				

OPEN CARRY BY U.S. JURISDICTION (cont'd...)

Key Terms:

Open carry

The act of publicly carrying a firearm in plain sight.

Preemption

Legislatively enacted state laws limiting or eliminating the ability of local governments to regulate the possession or carrying of firearms.

Prohibited persons

Persons who are prohibited by law from carrying a firearm, *e.g.*, felons, convicts of misdemeanor domestic violence, drug or alcohol addicts, involuntarily committed mental patients.

Permissive

A *Permissive* state has passed full preemption of all firearms laws, with few exceptions. Open carry without a license is permitted for all non-prohibited persons. Such open carry is lawful on foot and in a vehicle. Any person openly carrying a firearm may be detained and cited by law enforcement officials for disorderly conduct or disturbing the peace in certain locations and in circumstances where open carry causes public alarm.

Licensed

A *Licensed* state has passed full preemption of all firearms laws, with few exceptions. Open carry with a license is permitted for all non-prohibited persons. Such open carry is lawful on foot and in a vehicle. In practice however, some of these states have *May-Issue* licensing laws (not *Shall-Issue*) and can be regarded as *Non-Permissive* for open carry, since licensing authorities rarely or never grant licenses to ordinary citizens.

Anomalous

The legality of open carry varies within each such *Anomalous* state, based on local policies. In such states, some local jurisdictions may permit open carry while others may impose varying degrees of restrictions or prohibit open carry entirely.

Rural

In *Rural* states, open carry is generally prohibited, except in unincorporated areas of counties where population densities are below statutorily-defined thresholds. In such rural areas, local authorities have enacted ordinances permitting open carry in such areas (*i.e.*, California). These states are also regarded as *Anomalous* open carry states.

Non-permissive

In *Non-permissive* states, open carry of a handgun is not lawful, or is only lawful under such a limited set of circumstances (*e.g.*, while hunting, while on one's own property/for lawful self-defense) that open carry is effectively prohibited. Some states with *May-Issue* licensing laws are *Non-Permissive* in practice since those authorities are highly restrictive in the issuance of open carry licenses.

Texas: A Case Study of Licensed Open Carry

HB 910 – OPEN CARRY LEGISLATION EFFECTIVE Jan. 1, 2016

- > Allows individuals licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, to openly carry the gun, provided it is holstered.
- > Subchapter H, Chapter 411, was previously the concealed carry statute.
- > Amended Chapter 30, Penal Code to add new Sec. 30.07 in addition to 30.06 to regulate trespass by a license holder with a handgun.
- > In essence, the legislature struck the word “concealed” wherever it appeared before the word “handgun” and added new trespass provisions to also apply to open carry.

Texas: A Case Study of Licensed Open Carry

HB 910 - Prohibited Places

- > Handguns prohibited in the following locations:
 - K-12 school and school bus
 - High school, collegiate or professional sporting event
 - Polling place
 - Court
 - Racetrack
 - Secured area of an airport
 - Bar
 - Correctional facility
 - Hospital or nursing facility
 - Amusement park
 - Church
 - Any meeting of governmental entity
 - While intoxicated

Texas: A Case Study of Licensed Open Carry

HB 910 - Can Prohibit Handguns on Private Property

- > Private property owners may continue to prohibit handguns on their premises if they provide proper notification (oral or written).
- > *Owner or someone with apparent authority to act for the owner* must provide oral or written communication that carrying a concealed or holstered handgun on the property is forbidden.
- > Property manager or other authorized individual acting on behalf of owner may provide the proper notification.

Texas: A Case Study of Licensed Open Carry

HB 910 - Can Prohibit Handguns on Private Property

- > HB 910 creates a new type of written notice to make carrying a handgun on a premise illegal trespass:
 - 30.06 Notice – Required to prohibit concealed carry - some modifications made in the text of the notice;
 - 30.07 Notice – Required to prohibit open carry; and
 - If want to prohibit both concealed and open carry, you must post *both* 30.06 and 30.07 Notice.

Texas: A Case Study of Licensed Open Carry

HB 910 - Trespass by Holder of Handgun License

- > A party who trespasses in violation of a posted notice is subject to a Class C misdemeanor charge punishable by a fine not to exceed \$200.
- > If license holder is personally given the notice by oral communication and commits trespass by refusing to leave is subject to a Class A misdemeanor charge, punishable by up to a year in the county jail and/or a \$4,000 fine.

Texas: A Case Study of Licensed Open Carry

HB 910 - Written Communication Requirements

- > May be a card, document and/or a posted sign.
- > Must say:
 - “Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 441, Government Code (handgun licensing law), may not enter this property with a concealed handgun.
 - “Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 441, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.
- > Any sign must additionally:
 - appear in contrasting colors with block letters at least one inch in height;
 - be printed in both English and Spanish; and
 - be displayed in a “conspicuous manner” at each entry to the property.

Texas: A Case Study of Licensed Open Carry

HB 910 – Employer/Employee

- > Employer may prohibit employees from carrying firearms on the premises.
- > “Premises” means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area, so law only applies to building itself.
- > If employee has a license to carry a handgun, or otherwise lawfully possesses a firearm or ammunition, employer cannot prohibit an employee from keeping the employee’s firearm or ammunition in a locked privately owned motor vehicle in any parking lot, parking garage or other employer-provided parking area.

Texas: A Case Study of Licensed Open Carry

HB 910 – Analysis (cont'd...)

- > **Scenario 1 -- Building owner prohibits handguns on the premises**
 - Determine if prohibiting both concealed and holstered (openly carried) handguns.
 - Post the statutory notices at ALL entrances to the building.
 - Determine protocol for when someone enters the premises with a visible handgun or displays a concealed handgun if prohibited, *i.e.*, management asks individual to leave versus calling police.
 - In this Scenario, owner should proactively enforce the posted prohibition - failure to do so could result in liability.
 - Add lease provisions reiterating prohibition.

Texas: A Case Study of Licensed Open Carry

HB 910 – Analysis (cont'd...)

- > Scenario 2 -- Building owner does not prohibit handguns on the premises, but leaves it up to the tenants to prohibit handguns in their leased premises.
- > In this Scenario, there is no prohibition for the building owner to enforce, but tenants may be less comfortable in the building.

Texas: A Case Study of Licensed Open Carry

HB 910 – Analysis (cont'd...)

- > Licensed gun rights advocates may openly carry holstered handguns into many buildings to test law or otherwise compile evidence of who is posting signs, how certain situations are being handled by business owners, etc.; see *e.g.*, www.Texas3006.com
- > This will taper off in a few months after novelty has worn off.
- > If used, posted signage or other written communication needs to be in strict compliance with statute.
- > Building managers, security personnel, human resources and other relevant personnel must be briefed on the law.

Texas: A Case Study of Licensed Open Carry

HB 910 – Standing Down or Enforcing Security Measures

- > Consider leaving issue to tenants to determine if they want to bar handguns (open and/or concealed) from the leased space.
- > Significant omission from the new law is no employer immunity from civil actions resulting from an occurrence involving the employee and his or her openly carried firearm, except in cases of gross negligence.
- > Likewise, there is no safe harbor for property managers if:
 - An injury occurs and there is a reasonable presumption that a licensed carrier could have prevented the injury by using the handgun.
 - The opposite is true if someone was injured by a licensed handgun carrier and the owner did not properly bar them from the premises.
- > Is the safest position to stand down and not usurp the law?
- > Preserves argument that no rights were granted and no one stood in the way of the exercise of open or concealed carry rights.

Texas: A Case Study of Licensed Open Carry

HB 910 – Standing Down or Enforcing Security Measures (cont'd...)

- > General tort law principles have held that a landowner that voluntarily undertakes to provide building security measures for the benefit of its patrons must do so with reasonable care.
- > There is the potential for increased liability if landowner voluntarily undertakes security procedures and is negligent in enforcing and carrying out those security procedures.
- > This is the case with all security measures, not just those concerning firearms.
- > To the extent that any commercial owner opts to prohibit firearms on premises, the owner must adopt a clear policy regarding enforcement of the firearm prohibition – even if that policy is to call the police in the event of trespass – and ensure that any security measures put into place are consistently followed.

Final Thoughts on Open Carry: Insurance

- > What actions, if any, by the insured are being encouraged/required? Stand Down v. Prohibit
- > Do policies/rates differ depending on the security measures taken (or not taken) as to open and/or concealed carry?
- > What effect do different state laws have on insurance requirements/underwriting standards? Permissive v. Licensed v. Anomalous/Rural v. Non-permissive?
- > Thoughts and discussion welcomed on these issues.