

# The Senate of The State of Texas

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MAY 11 2012

**ROBERT F. DEUELL, M.D.**  
TEXAS SENATE DISTRICT 2**OPINION COMMITTEE**

May 7, 2012

The Office of the Attorney General  
Attn: Jason Boatright  
P.O. Box 12548  
Austin, Texas 78711

FILE # ML-47047-12I.D. # 47047**RQ-1061-GA**

Dear Mr. Boatright:

As you know, Texas S.B. 321 (the Act) was signed into law on June 17, 2011, and became effective on September 1, 2011.

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 employees' rights and employers' responsibilities under the Act.

The Act provides for a number of exceptions and states that it does not:

"authorize a person ... who ... lawfully possesses a firearm, or ... ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law." - *Tex. Labor Code Ann. § 52.062(a)(1)*.

1.) Given the limitation as it pertains to state law, can an employer still ban the transport and storage of handguns in locked private vehicles by employees with Concealed Handgun Licenses in employee parking areas by posting notice authorized by the provisions of Tex. Penal Code § 30.06(c)(3)(B)? In other words, would firearms be considered "prohibited by state ... law" in this circumstance?

2.) Some employers are required by federal laws, such as the Maritime Transportation Security Act of 2002, 46 U.S.C.A. § 70101 *et seq.*, and the Chemical Facility Anti-Terrorism Standards, 6 C.F.R. § 27.100 *et seq.*, to conduct facility security assessments and enact facility security plans (FSPs) in accordance with federal standards and then submit the FSPs to specified federal officials for approval. Certain such employers claim that if their FSPs ban firearms in employee parking lots and are approved by DHS, the Act would not apply because firearms would then be "prohibited by ... federal law" under the terms of Tex. Labor Code Ann. § 52.062(a)(1) or

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because the approved FSP is in effect a federal law that preempts the Act. Are such claims of preemption valid?

3. The Act does not specifically establish remedies for employees who believe they have been subjected to employer actions the Act prohibits. What, if any, such remedies are available under Texas law and who has standing to pursue them? May the Attorney General's Office or other state agency seek corrective action against an employer who violates the Act?

Thank you for your prompt attention to this matter.

Regards,

A handwritten signature in black ink that reads "Bob Deuell". The signature is written in a cursive, slightly slanted style.

Robert F. Deuell, M.D.  
Chairman, Senate Committee on Nominations