

This defect in the law is fatal to the application or enforcement of the new law on July 14, 2009. The new Ninth Count is as follows:

XI. NINTH COUNT: UNCONSTITUTIONAL VAGUENESS

91. The new law is unconstitutionally vague because the statute's definition of a restaurant, "the serving of such meals shall be the principal business conducted" provides no notice or opportunity to know what establishments are, or are not, covered by the statute.
92. Under the new law criminal penalties (Class A misdemeanor) apply unless the firearm is carried by a permit holder into a "restaurant." Legislative proponents of the bill, including the Speaker of the House, have repeatedly asserted the new law is a "restaurant carry" law and not a "guns in bar bill", stating that the law only applies to restaurants and not bars. See "*Williams Blasts Media for 'Guns in Bars' Portrayal*" available at: <http://bit.ly/yyBWT> "*Guns-in-restaurants bill a vote for safety*", available at: <http://bit.ly/T4LIY>²
93. Senator Doug Jackson also stated on WAMB radio on July 2, 2009 that HCP (hand gun permit) holders should not take their weapons into establishments that do not serve meals as their primary purpose (51%) <http://bit.ly/DFUCn>; <http://www.bobpopegunshows.com/>

Applying the statute to establishments in which alcohol is the predominate product creates vagueness and ambiguity. How would one know whether alcohol is the establishment's sole or primary product so that he or she may temper his or her conduct accordingly? Ordinary people would be unable to understand where certain conduct is prohibited. See *Kolender*, 461 U.S. at 358, 103 S.Ct. at 1858.

In addition, law enforcement would face the same problem. It would be difficult for an officer to distinguish between legal and illegal conduct. This would, in turn, encourage arbitrary and discriminatory enforcement. It is the opinion of this office that the statute survives constitutional muster as it is written, and that the limitation proposed in question 2 might render the statute vulnerable to attack on vagueness grounds." by permitted handgun owners. Tenn. [Atty. Gen. Op. 00-020 \(February 15, 2000\)](#)

² "When this bill takes effect on July 14, law-abiding citizens who undergo a safety course and criminal background check to obtain a handgun carry permit will be allowed to carry in restaurants like Chili's that happen to serve alcohol. . . . Contrary to popular belief, the bill does not allow firearms into bars. The principal business conducted by the establishment must be to serve meals, not to serve alcohol." : <http://bit.ly/T4LIY>

94. On July 14, 2009, however, HCP (handgun permit holders) holders will have no way of knowing whether the establishment they are entering serves meals as its “principal business.” The new law is therefore unconstitutionally vague because it is a Class A misdemeanor for a permit holder to carry a gun into a place that serves alcohol that is not exempted as a restaurant. Permit holders will have no notice or way to determine if an establishment is a restaurant or a bar (whether its primary purpose is serving meals) as there is no distinction by licensing laws law or notice. Compare [Tex. Govt. Code § 411.204](#).³
95. This is a criminal statute and the fear of enforcement in a vague manner is unconstitutional. The law is unconstitutional on its face *and* as it is likely to be applied.
96. As a penal statute it must be strictly construed against the state. The permit holder acts at his or her peril with the mere armed entry into an “alcohol-serving, non-restaurant. The permit holders simply cannot know if it is a restaurant or a non-restaurant and the risk of a sanction is high.
97. The law is vague and unconstitutional in three distinct ways: a) a permit holder’s threat of criminal prosecution; b) a business owner’s loss of business if prospective customers guess wrong, and 3) the public who enter establishments at their unknown peril.

³ [Tex. Govt. Code § 411.204](#). **Notice Required on Certain Premises**

(a) A business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, and that derives 51 percent or more of its income from the sale of alcoholic beverages for on-premises consumption as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code, shall prominently display at each entrance to the business premises a sign that complies with the requirements of Subsection (c).

(c) The sign required under Subsections (a) and (b) must give notice in both English and Spanish that it is unlawful for a person licensed under this subchapter to carry a handgun on the premises. The sign must appear in contrasting colors with block letters at least one inch in height and must include on its face the number “51” printed in solid red at least five inches in height. The sign shall be displayed in a conspicuous manner clearly visible to the public.

