

## **BILL ANALYSIS**

Senate Research Center  
81R2542 KCR-D

S.B. 367  
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Transportation & Homeland Security  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The manufacture of false identification documents by organized criminal entities, particularly by transnational gangs involved in the sale of illegal drugs, is a growing problem in Texas. The Department of Public Safety (DPS) found that a number of people in the state of Texas possessed more than one state identification card. This is a serious problem for law enforcement for many reasons. There are two Texas statutes that penalize the use of false identification documents, one in the Transportation Code and the other in the Penal Code.

Section 521.453 (Fictitious License or Certificate), Transportation Code, penalizes a person under the age of 21 years for possession of a false identification document with the intent to represent that the person is 21 years of age. The penalty for this offense is a Class C misdemeanor and includes provisions for additional community service. Section 521.453 also expressly states that it is not an offense under the section if the identification document in question displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally, clearly and indelibly on its front and back face, in solid red capital letters at least one-fourth inch in height.

Section 37.10 (Tampering with Governmental Record), Penal Code, criminalizes tampering with a governmental record, which includes knowingly making a false state identification document such as a driver's license. Section 37.10 identifies punishment categories for the crime, which range from a Class A misdemeanor to a second degree felony based on the type of government record at issue and the intent of the criminal actor. Recently, manufacturers of falsified identification documents have attempted to avoid the effects of Sections 37.10 of the Penal Code by adding the statement "NOT A GOVERNMENT DOCUMENT" to a falsified document, but intentionally showing the statement in very small, sometimes illegible lettering in an obscure area of the document. In addition to the offenses related to the use of false identification documents, Section 38.02 (Failure to Identify), Penal Code, also creates an offense for the "failure to identify." This offense is defined as an intentional refusal to give identifying information on arrest by a peace officer, and can be a Class A through C misdemeanor depending on the circumstances surrounding the offense.

As proposed, S.B. 367 provides that including the statement "NOT A GOVERNMENT DOCUMENT" on an identification document is not a defense to prosecution under the Penal Code unless the statement is displayed in the same manner required by Section 521.453, Transportation Code. The bill also makes the offense of "failure to identify" a state jail felony, rather than a misdemeanor, when the offender is a member of a criminal street gang, as defined under Section 71.01 (Definitions), Penal Code, and committed the offense with the intent to either further gang activities or avoid detection as a gang member.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 37.10, Penal Code, by adding Subsection (j), to provide that it is not a defense to prosecution under Subsection (a)(2) (relating to an offense if a person makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record) that the record, document, or thing made,

presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

SECTION 2. Amends Section 38.02, Penal Code, by amending Subsection (c) and adding Subsection (d-1), as follows:

(c) Provides that except as provided by Subsections (d) (relating to the trial of an offense wherein it is shown that the defendant was a fugitive from justice at the time of the offense) and (d-1), rather than Subsection (e) (relating to prosecution under Section 106.07 if conduct that constitutes an offense under this section also constitutes an offense under Section 106.07), an offense under this section is a Class C misdemeanor if the offense is committed under Subsection (a) (relating to an offense if a person intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information), or a Class B misdemeanor if the offense is committed under Subsection (b) (relating to an offense in which a person intentionally gives a false or fictitious name, residence, address, or date of birth to a peace officer under certain circumstances).

(d-1) Provides that an offense under Subsection (b) is a state jail felony if it is shown on the trial of the offense that the actor was at the time of the offense a member of a criminal street gang, as defined by Section 71.01 (Definitions), and committed the offense with the intent to further the criminal activities of the criminal street gang or avoid detection as a member of a criminal street gang.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.