

## **BILL ANALYSIS**

Senate Research Center  
83R571 NAJ-D

S.B. 538  
By: Rodríguez  
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4/3/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court of the United States struck down Section 21.06 of the Penal Code as unconstitutional under the due process clause of the Fourteenth Amendment. In his opinion, Justice Clarence Thomas commented that "the law before the Court today is uncommonly silly...if I were a member of the Texas Legislature, I would vote to repeal it."

Despite a ruling by the nation's highest court striking down this law, and rebukes of the law from all sides of the political spectrum, the statute remains unchanged today. There is no valid legal reason to keep the void section of code on the books. Moreover, this is not merely an academic argument. The "homosexual conduct" law was used in a 2009 incident in El Paso as possible grounds for the police to arrest patrons in a restaurant, resulting in a suit against the city. Not only is the continued existence of this law on the books a source of misinformation to law enforcement, but state and local governments have been forced to expend their limited resources due to its misuse.

S.B. 538 is part of the 2013 legislative program of the State Bar of Texas. It proposes to remove Section 21.06 of the Penal Code, which has been deemed unconstitutional by the United States Supreme Court, as well as references in other law to this section.

As proposed, S.B. 538 amends current law relating to the repeal of the offense of homosexual conduct.

### **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. Repealer: Section 21.06 (Homosexual Conduct), Penal Code.

SECTION 2. Amends Section 85.007(b), Health and Safety Code, to delete existing text requiring the materials in the education programs intended for persons younger than 18 years of age to state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code.

SECTION 3. Amends Section 163.002, Health and Safety Code, to delete existing text providing that course materials and instruction relating to sexual education or sexually transmitted diseases should include emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under Section 21.06, Penal Code.

SECTION 4. Effective date: upon passage or September 1, 2013.