

BILL ANALYSIS

Senate Research Center
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S.B. 1822
By: Burton
Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, the legislature passed H.B. 1396, which called for a study of all criminal offenses listed outside of the Penal Code and Chapter 481, Health and Safety Code. The legislature charged the Commission to Study and Review Certain Penal Laws (commission) with reviewing these offenses and making recommendations regarding the repeal of laws identified as "unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law." In December of 2016, the commission provided a fourteen-page list of recommendations to the legislature.

S.B. 1822 codifies the recommendations listed in pages 7 through 20 of the final report for the commission.

Broadly speaking, the legislature intended all criminal offenses to be found in the Penal Code. However, several criminal offenses exist outside of the Penal Code for behavior that is either already addressed elsewhere in the Penal Code or for commonplace behavior. These laws create a complicated justice system that over-criminalizes individuals for everyday behavior—behavior they may not even know is illegal. According to the Labor Code, it is currently a misdemeanor for an employer to provide an employee a hoe with a handle less than four feet long, an absurd law that this bill repeals. The commission also found several antiquated laws that are no longer applicable. For example, an offense exists in Vernon's Civil Statutes that creates a misdemeanor for the peddling of printed matter by deaf or mute persons. These kinds of offenses should be removed to ensure consistency and applicability of our criminal laws.

As proposed, S.B. 1822 amends current law relating to criminal offenses previously compiled in statutes outside the Penal Code, to repealing certain of those offenses, and to conforming punishments for certain of those offenses to the penalty structure provided in the Penal Code, increases the punishment for sabotage and sedition, and imposes a civil penalty.

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. Reenacts Section 17.46(b), Business & Commerce Code, as amended by Chapters 1023 (H.B. 1265) and 1080 (H.B. 2573), Acts of the 84th Legislature, Regular Session, 2015, and amends it to redefine "false, misleading, or deceptive acts or practices," and redesignate subdivisions appropriately.

SECTION 2. Transfers Section 17.461, Business & Commerce Code, to Subchapter D, Chapter 32, Penal Code, and redesignates it as Section 32.55, Penal Code, as follows:

Sec. 32.55. PYRAMID PROMOTIONAL SCHEME. Makes no further changes to this section.

SECTION 3. Transfers Sections 522.001 and 522.002, Business & Commerce Code, to Subchapter D, Chapter 32, Penal Code, redesignates them as Section 32.511, Penal Code, and amends them as follows:

Sec. 32.511. New heading: IDENTITY THEFT BY ELECTRONIC DEVICE. (a) Creates this subsection from existing text. Replaces a reference to chapter with section.

(b) Redesignates existing Section 522.002(a) as Subsection (b). Makes no further changes to this subsection.

(c) Redesignates existing Section 522.002(b) as Subsection (c). Makes no further changes to this subsection.

(d) Redesignates existing Section 522.002(c) as Subsection (d). Makes no further changes to this subsection.

SECTION 4. Amends Article 18.18(g), Code of Criminal Procedures, to redefine "re-encoder" and "scanning device."

SECTION 5. Article 59.01(2), Code of Criminal Procedure, to redefine "contraband."

SECTION 6. Transfers Articles 62.102 and 62.203, Code of Criminal Procedure, to Chapter 38, Penal Code, redesignates them as Sections 38.20 and 38.21, Penal Code, respectively, and amends them, as follows:

Sec. 38.20. New heading: FAILURE TO COMPLY WITH SEX OFFENDER REGISTRATION REQUIREMENTS. (a) Provides that a person commits an offense if the person is required to register as a sex offender under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, and fails to comply with any requirement of that chapter, rather than provides that a person commits an offense if the person is required to register and fails to comply with any requirement of this chapter.

(b) Provides that an offense under this section, rather than article, is a certain felony. Makes nonsubstantive changes.

(c) Makes conforming changes.

(d) Makes conforming and nonsubstantive changes.

Sec. 38.21. New heading: FAILURE TO COMPLY WITH SEX OFFENDER REGISTRATION REQUIREMENTS: INDIVIDUALS SUBJECT TO COMMITMENT AS SEXUALLY VIOLENT PREDATORS. (a) Provides that a person commits an offense if the person, after commitment as a sexually violent predator under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code, but before a certain event, fails to comply with any requirement of Chapter 62, Code of Criminal Procedure, rather than after commitment as a sexually violent predator, but before a certain event, fails to comply with any requirement of this chapter.

(b) Provides that an offense under this section, rather than article, is a felony of the second degree.

SECTION 7. Amends Section 24.579(c), Government Code, to require the state to pay certain salaries, notwithstanding any other law and only to the extent of certain duties or to criminal cases involving offenses under Section 841.085 (Criminal Penalty; Prosecution of Offense), Health and Safety Code, and Section 38.21, Penal Code, rather than Article 62.203, Code of Criminal Procedure.

SECTION 8. Transfers Sections 557.001 and 557.011, Government Code, to Chapter 40, Penal Code, as added by this Act, redesignates them as Sections 40.01 and 40.02, Penal Code, respectively, and amends them, as follows:

Sec. 40.01. SEDITION. (a) Makes no changes to this subsection.

(b) Provides that an offense under this section is a felony of the second degree, rather than is a felony punishable by certain fines and terms of imprisonment.

(c) Makes no changes to this subsection.

Sec. 40.02. SABOTAGE. (a) Makes no changes to this subsection.

(b) Provides that an offense under this section is a felony of the second degree, rather than a felony punishable by certain confinement.

(c) and (d) Makes no changes to these subsections.

SECTION 9. Amends Section 557.002, Government Code, to prohibit a person who is finally convicted of an offense under Section 40.01, Penal Code, rather than Section 557.001, from holding office or a certain position.

SECTION 10. Amends Section 3101.010(b), Government Code, to provide that an offense under this section is a misdemeanor and on conviction is punishable by a fine of not less than \$5 or more than \$300, rather than is punishable by certain fines or confinement.

SECTION 11. Amends Section 615.002(e), Local Government Code, to provide that an offense under this subsection is a Class C misdemeanor, rather than a misdemeanor punishable by a fine of not less than \$1 nor more than \$20.

SECTION 12. Amends Section 11.074(b), Natural Resources Code, as follows:

(b) Provides that certain individuals commit an offense if they make certain use of any portion of the land covered by Subsection (a) (relating to prohibiting certain individuals from fencing, using, occupying, or appropriating by herding or line-riding public land) without a lease for the land. Provides that an offense under this section is a Class C misdemeanor. Deletes existing text requiring certain individuals, on conviction, to be fined not less than \$100 nor more than \$1,000 and confined in the county jail for not less than three months nor more than two years. Makes nonsubstantive changes.

SECTION 13. Amends Section 88.134(b), Natural Resources Code, as follows:

(b) Provides that a person commits an offense for certain violations of this chapter (Control of Oil Property). Provides that an offense under this subsection is a felony of the third degree. Deletes existing text providing that a certain person, on conviction, is considered guilty of a felony and on conviction is required to be punished by certain imprisonment.

SECTION 14. Amends Section 114.102(b), Natural Resources Code, to provide that an offense under this section is a Class A misdemeanor, rather than a felony of the third degree.

SECTION 15. Amends Section 264.151(a), Occupations Code, to delete existing text providing that each day of a violation is a separate offense.

SECTION 16. Amends Section 266.303, Occupations Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that an offense for a violation of Section 266.151 (Registration Required) is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense for a violation of Section 266.151, rather than a third degree felony.

(b-1) Provides that an offense for a violation of Section 266.301(b) (relating to prohibitions on filling a prescription to prepare or repair a dental prosthetic appliance) is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense for a violation of Section 266.301(b).

SECTION 17. Amends Section 1701.553(b), Occupations Code, to provide that an offense under Subsection (a) (relating to an offense if the person appoints, employs, or retains an individual as an officer, public security officer, telecommunicator, or county jailer) is a Class A misdemeanor, rather than a state jail felony.

SECTION 18. Amends Subchapter E, Chapter 1802, Occupations Code, by adding Section 1802.2025, as follows:

Sec. 1802.2025. FRIVOLOUS CLAIMS; CIVIL PENALTY. (a) Prohibits a person, for personal benefit or to harm another, from instituting a certain claim or suit.

(b) Provides that a person who violates Subsection (a) is subject to a civil penalty under Section 51.352 (Injunctive Relief; Civil Penalty).

SECTION 19. Amends Section 2155.002(d), Occupations Code, to provide that an offense under Subsection (a) (relating to posting of hotel room rates) or (c) (relating to charging more than the posted room rate) is a misdemeanor punishable by a fine of not less than \$25 or more than \$100, rather than punishable by certain fines or confinement.

SECTION 20. Amends Section 2156.006, Occupations Code, to delete existing text providing that a theater's lessee or a lessee's assigns forfeit the lease and any rights and privileges under the lease if the person is convicted of an offense under Section 2156.005 (Discrimination Against Reputable Productions: Offense).

SECTION 21. Amends Section 32.153(a), Parks and Wildlife Code, to delete existing text providing that a person commits an offense if the person violates Section 32.053(b) (relating to floating cabin applicants and owners signing the application) or Section 32.057(d) (relating to a new permit holder signing the information provided to the Texas Parks and Wildlife Department) and makes nonsubstantive changes.

SECTION 22. Amends Section 62.013, Parks and Wildlife Code, as follows:

Sec. 62.013. PENALTIES. (a) Includes Subsection (b-1) in the list of exceptions to this section.

(b) Deletes violation of Section 62.005 (Hunting with Light) from sections under which a person commits an offense.

(b-1) Provides that a person who violates Section 62.005 commits an offense that is a certain misdemeanor or state jail felony depending on certain circumstances.

(c) Includes punishments provided in Subsection (b-1) among punishments by which a person is punishable.

SECTION 23. Amends Section 76.040, Parks and Wildlife Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Deletes exiting text providing that a person who violates Section 76.038 (Interference with Buoys or Markers) commits a certain offense.

(b-1) Provides that a person who violates Section 76.038 commits an offense that is a certain class of misdemeanor depending on certain circumstances.

SECTION 24. Amends Section 76.118, Parks and Wildlife Code, by amending Subsections (a), (b), and (c) and adding Subsection (a-1) as follows:

(a) Includes Subsection (a-1) in the list of exceptions to this section.

(a-1) Provides that a person who violates Section 76.101 (Oyster Licenses Required) or 76.109 (Night Dredging Prohibited) or a regulation of the Texas Parks and Wildlife Commission issued under one of those sections commits a certain offense.

(b) Deletes existing text providing that a person who violates Section 76.101 or 76.109 commits a certain offense.

(c) Provides that a person who violates certain sections commits an offense that is a Class B Parks and Wildlife Code misdemeanor if the person commits the offense recklessly or a Class A Parks and Wildlife Code misdemeanor if the person intentionally or knowingly commits the offense, rather than a Class A Parks and Wildlife Code misdemeanor. Makes nonsubstantive changes.

SECTION 25. Amends Section 77.061(b), Parks and Wildlife Code, to provide that a certain person, notwithstanding certain provisions, commits an offense that is a certain misdemeanor depending on circumstances, rather than commits an offense that on conviction is punishable by a certain fine or confinement.

SECTION 26. Amends Section 19.03(a), Penal Code, to provide that a person commits an offense if the person commits murder as defined under Section 19.02(b)(1) (relating to intentionally or knowingly causing the death of an individual) and the person intentionally commits the murder in the course of committing or attempting to commit certain crimes, including sabotage.

SECTION 27. Amends Section 32.51(c-1), Penal Code, to provide that a certain offense is increased to the next higher category of offense if it is shown on the trial of the offense that the actor fraudulently used identifying information with the intent to facilitate an offense under Section 38.20, rather than Article 62.102, Code of Criminal Procedure.

SECTION 28. Amends Section 37.10(c)(2), Penal Code, to include a public school record, form, report, or budget required by Chapter 42 (Foundation School Program), Education Code, or a rule adopted under that chapter in the list of governmental records to which an offense under this section applies under certain circumstances.

SECTION 29. Amends Section 38.05(d), Penal Code, to include an offense under Section 38.20, rather than Section 62.102, Code of Criminal Procedure, to offenses that are a felony of the third degree.

SECTION 30. Amends Title 8, Penal Code, by adding Chapter 40 and adding a heading to that chapter, to read as follows:

CHAPTER 40. SEDITION AND SABOTAGE

SECTION 31. Amends Section 154.517, Tax Code, as follows:

Sec. 154.517. New heading: FELONY OR MISDEMEANOR. (a) Creates this subsection from existing text. Deletes an offense under Section 154.513 (Previously Used or Old Design Stamps) from offenses that are a felony of the third degree. Makes nonsubstantive changes.

(b) Provides that an offense under Section 154.513 is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a felony of the third degree.

SECTION 32. Amends Section 155.208, Tax Code, as follows:

Sec. 155.208. MISDEMEANOR. (a) Creates this subsection from existing text. Deletes an offense under Section 155.203 (Possession: Tax Due \$50 or Less) from offenses that are Class A misdemeanors. Makes nonsubstantive changes.

(b) Provides that an offense under Section 155.203 is a Class C misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a Class A misdemeanor.

SECTION 33. Amends Section 155.213, Tax Code, as follows:

Sec. 155.213. New heading: FELONY OR MISDEMEANOR. Creates this subsection from existing text. Deletes an offense under Sections 155.209 (Transportation of Tobacco Products) and 155.211 (Possession: Tax Due More than \$50) from a list of offenses that are a felony of the third degree. Makes nonsubstantive changes.

(b) Provides that an offense under Section 155.209 is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a felony of the third degree.

(c) Provides that an offense under Section 155.211 is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a felony of the third degree.

SECTION 34. Amends Section 15.030(c), Utilities Code, to provide that an offense under this section (Offense) is a Class A misdemeanor, rather than a felony of the third degree.

SECTION 35. Amends Section 105.024(b), Utilities Code, to provide that an offense under this section (Offense) is a Class A misdemeanor, rather than a felony of the third degree.

SECTION 36. Repealer: Section 101.64 (Indecent Graphic Material), Alcoholic Beverage Code.

Repealers: Sections 17.22 (Criminal Penalty), 17.30 (Misusing Dairy Container Bearing Proprietary Mark), 17.31 (Identification, Possession, and Use of Certain Containers), and 204.005 (Criminal Penalty), Business & Commerce Code.

Repealer: Chapter 504 (Prohibited Use of Crime Victim or Motor Vehicle Accident Information), Business & Commerce Code.

Repealer: the heading to Chapter 522 (Identity Theft by Electronic Device), Business & Commerce Code.

Repealer: Section 44.051 (Interference with Operation of Foundation School Program), Education Code.

Repealers: Sections 59.002 (Slander or Libel of Bank), 89.101 (Criminal Slander), 119.202 (Criminal Slander or Libel), 122.251 (Defamation), and 199.001 (Slander or Libel of State Trust Company), Finance Code.

Repealers: the heading to Subchapter B (Sabotage), Chapter 557 (Sedition, Sabotage, and Communism), Government Code.

Repealers: Sections 557.012 (Capital Sabotage) and 557.013 (Enforcement), Government Code.

Repealers: Sections 52.021 (Maximum Length of Hoe Handles) and 52.022 (Offense; Penalty), Labor Code.

Repealers: Sections 205.401(b) (relating to violations related to acupuncture), 1802.302 (Frivolous Claim; Offense), 1805.103 (Criminal Penalty), 2156.004 (Recordkeeping; Offense), 2156.005 (Discrimination Against Reputable Productions; Offense), and 2158.003 (Criminal Offense), Occupations Code.

Repealers: Sections 32.053(b) (relating to floating cabin applicants and owners signing the application) and 32.057(d) (relating to new permit holders signing the information provided to the Texas Parks and Wildlife Department), Parks and Wildlife Code.

Repealers: Articles 4005a (Free Pass Law), 4006a (Exceptions), 4006b (Using Another's Pass), 4015d (Reduced Rate for Officers), 4015e (Collecting Fare from State or Political Subdivision by Officer or Employee Using Free Pass), and 5196b (Penalty), Revised Statutes.

Repealer: Chapter 281 (H.B. 2680), Acts of the 73rd Legislature, Regular Session, 1993 (Article 4413(47e-1) (Superconducting Super Collider Facility; Activities Near Site), Vernon's Texas Civil Statutes (V.T.C.S.)).

Repealer: Chapter 487 (H.B. 376), Acts of the 56th Legislature, Regular Session, 1959 (Article 9010, Peddling of Printed Matter by Deaf or Mute Persons, V.T.C.S.).

SECTION 37. Makes application of this Act prospective.

SECTION 38. Provides that, to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 39. Effective date: September 1, 2017.