

BILL ANALYSIS

C.S.H.B. 2165
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain interested parties contend that the first ordinance in the nation outlawing the use of the marihuana plant was adopted in El Paso, and these parties explain that this ordinance at the time was seen as a means of addressing what was perceived to be the rowdy behavior of young male refugees fleeing the Mexican Revolution and seeking work in Texas. The parties, however, agree with the scholars who attribute the purpose of these types of ordinances to untruthful hype, racism, and the possible motivations of certain industries seeking to control competition from hemp in some commodities markets. These parties contend that marihuana and its cousin plant, hemp, can not only provide significant medicinal benefits to individuals but can also produce economic benefits to the state. The parties further assert that even though some legislative proposals being discussed would create substantial regulations and licensing schemes, the repeal of marihuana offenses from Texas statutes would reshape the current debate in such a way that focus would shift from the current debate surrounding prohibition to a debate about how to provide for medical marihuana in a way that would not require substantial state oversight. C.S.H.B. 2165 seeks to repeal certain marihuana offenses.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2165 repeals Health and Safety Code provisions establishing the offenses of possession of marihuana and delivery of marihuana and amends the Health and Safety Code to remove the offense of delivery of marihuana to a child. The bill instead makes it a Class C misdemeanor to, with criminal negligence, sell, give, or cause to be sold or given marihuana to a minor or to a person who intends to deliver it to a minor. The bill establishes that an employee of the owner of a store in which marihuana is sold at retail is criminally responsible and subject to prosecution for an offense that occurs in connection with a sale by the employee. The bill establishes a defense to prosecution for the offense of selling or distributing marihuana to a minor if the person to whom the marihuana was sold or given presented to the defendant apparently valid proof of identification and establishes that proof of identification satisfies this defense if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency, including a driver's license issued by Texas or another state, a passport, or an identification card issued by a state or the federal government. The bill establishes a presumption that the defendant

was presented with an apparently valid proof of identification if the defendant shows that a transaction scan device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate used at the time the marihuana was sold or given, confirmed that the proof of identification was valid. The bill creates an exception to the application of the offense that the actor providing marihuana to the minor was the minor's parent or guardian and the parent or guardian directly supervised the minor's possession or use of the marihuana.

C.S.H.B. 2165 requires each retailer to notify each individual employed by that retailer who is to be engaged in retail sales of marihuana that state law prohibits the sale or distribution of marihuana to any person who is younger than 18 years of age and that a violation of that law is a Class C misdemeanor. The bill requires the notice to be provided within 72 hours of the date an individual begins to engage in retail sales of marihuana and requires the individual to signify that the individual has received the notice by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law. The bill requires each form signed by the individual to indicate the date of the signature and the current address of the individual and requires the retailer to retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ. The bill makes it a Class C misdemeanor for a retailer required to notify employees to fail, on demand of a peace officer or an agent of the comptroller of public accounts, to provide the required forms. The bill establishes a defense to prosecution for such an offense that the retailer shows proof that the employee did complete, sign, and date the forms and requires the proof to be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of the peace officer's or agent's demand to provide the forms.

C.S.H.B. 2165 makes it a Class C misdemeanor for a retailer or other person to offer marihuana for sale in a manner that permits a customer direct access to the marihuana or to install or maintain a vending machine containing marihuana. The bill exempts from application of this offense a facility or business that is not open to minors at any time. The bill makes it a Class C misdemeanor to distribute to a minor a free sample of marihuana or a coupon or other item that the recipient may use to receive free or discounted marihuana or a sample of marihuana. The bill makes it a Class C misdemeanor to accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive free or discounted marihuana or a sample of marihuana if the recipient is a minor.

C.S.H.B. 2165 requires the comptroller to enforce the bill's provisions relating to the sale or distribution of marihuana to minors in partnership with local law enforcement agencies and authorizes the comptroller to make block grants to counties and municipalities to be used by local law enforcement agencies to enforce those provisions in a manner that can reasonably be expected to reduce the extent to which marihuana is sold or distributed to minors. The bill requires the comptroller to rely, to the fullest extent possible, on local law enforcement agencies to enforce those provisions. The bill authorizes the comptroller to enter into interagency contracts with other state agencies to facilitate the effective administration and enforcement of those provisions and authorizes those agencies to assist the comptroller in the administration and enforcement of the provisions. The bill requires the use of a minor to act as a minor decoy to test compliance with those provisions to be conducted in a fashion that promotes fairness and sets out the requirements a person must meet to be enlisted by the comptroller or a local law enforcement agency to act as a decoy. The bill requires a local or state law enforcement agency or other governmental unit to notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of those provisions that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

C.S.H.B. 2165 amends the Education Code to remove conduct involving marihuana from the conduct for which a student is required to be removed from class, for which a student is authorized to be expelled, and to which statutory provisions relating to school principal reports to

law enforcement and limits on liability for reporting certain student conduct apply.

C.S.H.B. 2165 amends the Code of Criminal Procedure, Government Code, Insurance Code, Penal Code, and Tax Code to make conforming changes. The bill amends the Human Resource Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to make conforming changes.

C.S.H.B. 2165 prohibits the prosecution of a possession of marihuana offense or delivery of marihuana offense after the bill's effective date. The bill establishes that a criminal action pending for such an offense on the bill's effective date is dismissed on that date but that a final conviction for such an offense that exists on the bill's effective date is unaffected by the bill's provisions. The bill makes its provisions applicable to an offense committed before, on, or after the bill's effective date that involves delivery of marihuana to a child; possession or delivery of drug paraphernalia; illegal barter, expenditure, or investment; or directing activities of criminal street gangs but establishes that a final conviction for such an offense that exists on that date is unaffected by the bill's provisions.

C.S.H.B. 2165 repeals the following provisions:

- Article 13.22, Code of Criminal Procedure
- Section 481.002(26), Health and Safety Code
- Section 481.120, Health and Safety Code
- Section 481.121, Health and Safety Code
- Section 159.001(4), Tax Code
- Section 159.101(e), Tax Code

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2165 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill and does not indicate differences relating to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. The following provisions are repealed: (1) Article 13.22, Code of Criminal Procedure; (2) Sections 481.002(26), 481.120, and 481.121, Health and Safety Code; and (3) Sections 159.001(4) and 159.101(e), Tax Code.	SECTION 1. Same as introduced version.
SECTION 2. Article 14.06(d), Code of Criminal Procedure, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Article 15.27(h), Code of	SECTION 3. Same as introduced version.

Criminal Procedure, is amended.

SECTION 4. Section 4, Article 18.20, Code of Criminal Procedure, is amended.

SECTION 5. Section 15(a)(1), Article 42.12, Code of Criminal Procedure, is amended.

SECTION 6. Section 15(d), Article 42.12, Code of Criminal Procedure, is amended.

SECTION 7. Section 37.006(a), Education Code, is amended.

SECTION 8. Section 37.007(b), Education Code, is amended.

SECTION 9. Section 37.015(a), Education Code, is amended.

SECTION 10. Section 37.016, Education Code, is amended.

SECTION 11. Section 76.017(b), Government Code, is amended.

SECTION 12. Section 123.002, Government Code, is amended.

No equivalent provision.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Chapter 161, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. SALE OR DISTRIBUTION OF MARIHUANA TO MINORS

Sec. 161.091. DEFINITIONS. In this subchapter:

(1) "Marihuana" means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;

(B) the mature stalks of the plant or fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

(D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or

(E) the sterilized seeds of the plant that are

incapable of beginning germination.

(2) "Minor" means a person younger than 18 years of age.

Sec. 161.092. SALE OR DISTRIBUTION OF MARIHUANA TO MINORS PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given marihuana to a minor; or

(2) sells, gives, or causes to be sold or given marihuana to another person who intends to deliver it to a minor.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which marihuana is sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the marihuana was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(f) There is a presumption that the defendant was presented with an apparently valid proof of identification if the defendant shows that a transaction scan device, as defined by Section 161.0825, used at the time the marihuana was sold or given, confirmed that the proof of identification was valid.

(g) It is an exception to the application of this section that the actor providing marihuana to the minor was the minor's parent or guardian, and the parent or guardian directly supervised the minor's possession or use of the marihuana.

Sec. 161.093. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each

retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of marihuana that state law prohibits the sale or distribution of marihuana to any person who is younger than 18 years of age as provided by Section 161.092 and that a violation of that section is a Class C misdemeanor.

(b) The notice required by Subsection (a) must be provided within 72 hours of the date an individual begins to engage in retail sales of marihuana. The individual shall signify that the individual has received the notice required by Subsection (a) by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Sec. 161.094. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer marihuana for sale in a manner that permits a customer direct access to the marihuana; or

(2) install or maintain a vending machine containing marihuana.

(b) Subsection (a) does not apply to a facility or business that is not open to minors at any time.

(c) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Sec. 161.095. DISTRIBUTION OF MARIHUANA. (a) A person may not distribute to a minor:

(1) a free sample of marihuana; or

(2) a coupon or other item that the recipient may use to receive free or discounted marihuana or a sample of marihuana.

(b) A person may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive free or discounted marihuana or a sample of marihuana if the recipient is a minor.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

Sec. 161.096. ENFORCEMENT. (a) The comptroller shall enforce this subchapter in partnership with local law enforcement agencies.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter in a manner that can reasonably be expected to reduce the extent to which marihuana is sold or distributed to minors. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a minor to act as a minor decoy to test compliance with this subchapter shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a minor to act as a decoy to test compliance with this subchapter;

(2) at the time of the inspection, the decoy is younger than 17 years of age;

(3) the decoy has an appearance that would cause a reasonably prudent seller of marihuana to request identification and proof of age;

(4) the decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a decoy who carries identification presents it on request to any seller of marihuana; and

(5) the decoy answers truthfully any questions about the minor's age.

Sec. 161.097. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

SECTION 13. Sections 481.002(17) and (25), Health and Safety Code, are amended.

SECTION 14. Section 481.111(c), Health and Safety Code, is amended.

SECTION 15. The heading to Section 481.122, Health and Safety Code, is amended.

SECTION 16. Sections 481.122(a) and (b), Health and Safety Code, are amended.

SECTION 17. Section 481.126, Health and Safety Code, is amended.

SECTION 18. Section 481.133(c), Health and Safety Code, is amended.

SECTION 19. Sections 481.134(b), (c), (d), (e), and (f), Health and Safety Code, are amended.

SECTION 20. Section 481.140(a), Health and Safety Code, is amended.

SECTION 21. Section 31.0031(d), Human Resources Code, is amended.

SECTION 22. Section 1355.006, Insurance Code, is amended.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. Substantially the same as introduced version.

SECTION 23. Same as introduced version.

SECTION 23. Section 71.023(a), Penal Code, is amended.

SECTION 24. Same as introduced version.

SECTION 24. Sections 159.001(3) and (7), Tax Code, are amended.

SECTION 25. Same as introduced version.

SECTION 25. Section 159.004, Tax Code, is amended.

SECTION 26. Same as introduced version.

SECTION 26. Section 159.101(b), Tax Code, is amended.

SECTION 27. Same as introduced version.

SECTION 27. (a) An offense under Section 481.120 or 481.121, Health and Safety Code, may not be prosecuted after the effective date of this Act. If on the effective date of this Act a criminal action is pending for an offense under one of those sections, the action is dismissed on that date. However, a final conviction for an offense under one of those sections that exists on the effective date of this Act is unaffected by this Act.

SECTION 28. Same as introduced version.

(b) The change in law made by this Act applies to an offense under Section 481.122, 481.125, or 481.126, Health and Safety Code, or Section 71.023, Penal Code, committed before, on, or after the effective date of this Act, except that a final conviction for an offense that exists on the effective date of this Act is unaffected by this Act.

SECTION 28. This Act takes effect September 1, 2015.

SECTION 29. Same as introduced version.