

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1822
By: Burton
Criminal Justice
5/1/2017
Committee Report (Substituted)

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 14-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 The commission also found several antiquated laws that are no longer applicable.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. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1822 amends current law relating to the creation of a commission to review certain penal laws of this state and certain recommendations regarding those laws, to criminal offenses previously compiled in statutes outside the Penal Code, to repeal certain of those offenses, and to conform punishments for certain of those offenses to the penalty structure provided in the Penal Code; increase the punishment for sabotage and sedition; and impose 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

ARTICLE 1. PURPOSE

SECTION 1.01. PURPOSE. Provides that the purpose of this Act is to implement the recommendations of the Commission to Study and Review Certain Penal Laws (commission) created by Section 29, Chapter 1251 (H.B. 1396) (Certain Criminal Offenses, Punishment, and Procedures; the Construction of Certain Statutes and Rules that Create or Define Criminal Offenses and Penalties; A Review of Certain Penal Laws of this State), Acts of the 84th Legislature, Regular Session, 2015, and to authorize additional review of the penal laws described by Section 2.01(a) of this Act.

ARTICLE 2. COMMISSION TO STUDY CERTAIN PENAL LAWS

SECTION 2.01. COMMISSION TO STUDY CERTAIN PENAL LAWS. (a) Provides that a commission is created to study and review all penal laws of this state other than criminal offenses under the Penal Code, under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, or related to the operation of a motor vehicle.

(b) Requires the commission to:

(1) evaluate all laws described by Subsection (a) of this section; and

(2) make recommendations to the legislature regarding the repeal or amendment of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law, including the laws identified by the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015, as requiring additional review; and

(3) evaluate the recommendations made by the commission by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015.

(c) Provides that the commission is composed of nine members appointed as follows:

(1) two members appointed by the governor;

(2) two members appointed by the lieutenant governor;

(3) two members appointed by the speaker of the house of representatives;

(4) two members appointed by the chief justice of the Texas Supreme Court (supreme court); and

(5) one member appointed by the presiding judge of the Texas Court of Criminal Appeals (CCA).

(d) Requires the officials making appointments to the commission under Subsection (c) of this section to ensure that the membership of the commission includes representatives of all areas of the criminal justice system, including prosecutors, defense attorneys, judges, legal scholars, and relevant business interests.

(e) Requires the governor to designate one member of the commission to serve as the presiding officer of the commission.

(f) Provides that a member of the commission is not entitled to compensation or reimbursement of expenses.

(g) Requires the commission to meet at the call of the presiding officer.

(h) Requires the commission, not later than November 1, 2018, to report the commission's findings and recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, the supreme court, CCA, and the standing committees of the house of representatives and the senate with primary jurisdiction over criminal justice. Requires the commission to include in its recommendations any specific statutes that the commission recommends repealing or amending.

SECTION 2.02. APPOINTMENT OF MEMBERS. Requires the governor, the lieutenant governor, the speaker of the house of representatives, the chief justice of the supreme court, and the presiding judge of CCA, not later than the 60th date after the effective date of this Act, to appoint the members of the commission created under this article.

SECTION 2.03. ABOLITION OF COMMISSION. Provides that the commission is abolished and this article expires December 31, 2018.

ARTICLE 3. MISCELLANEOUS AMENDMENTS RELATING TO CRIMINAL OFFENSES

SECTION 3.01. 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 3.02. 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 3.03. 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 3.04. Amends Article 18.18(g), Code of Criminal Procedures, to redefine "re-encoder" and "scanning device."

SECTION 3.05. Article 59.01(2), Code of Criminal Procedure, to redefine "contraband."

SECTION 3.06. 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 3.07. 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 3.08. 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 3.09. 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 3.10. 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 3.11. 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 3.12. 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 3.13. Amends Section 264.151(a), Occupations Code, to delete existing text providing that each day of a violation is a separate offense.

SECTION 3.14. 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 3.15. 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 in violation of certain statutes) is a Class A misdemeanor, rather than a state jail felony.

SECTION 3.16. 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 3.17. 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 3.18. 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 3.19. 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 3.20. 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 3.21. 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 3.22. 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 3.23. 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 3.24. 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 3.25. Amends Section 37.10(c)(2), Penal Code, to include a public school record, form, report, or budget required under 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 3.26. 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 3.27. 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 a list of 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 3.28. 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 3.29. 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 3.30. 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 3.31. 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 3.32. 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.

Repealer: 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 (Minimum 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.).

ARTICLE 4. TRANSITION PROVISIONS; EFFECTIVE DATE

SECTION 4.01. Makes application of this Act prospective.

SECTION 4.02. 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 4.03. Effective date: September 1, 2017.