

- SUBJECT:** Creating a commission to review certain penal laws, revising offenses
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco
- 0 nays
- WITNESSES:** For — Marc Levin, Texas Public Policy Foundation; (*Registered, but did not testify*: Chris Jones, CLEAT)
- Against — None
- On — (*Registered, but did not testify*: Stormy King and Jarret Barker, Texas Parks and Wildlife Department)
- BACKGROUND:** The 84th and 85th legislatures created commissions to study penal laws outside of the Penal Code, the Texas Controlled Substance Act, and offenses related to motor vehicles. The commissions were created by HB 351 by Canales in 2017 and HB 1396 by Workman in 2015, and both bills required the commissions to make recommendations to the Legislature. In December 2018, the Commission to Study and Review Certain Penal Laws that was created by the 85th Legislature issued its final report and was abolished. The report includes recommendations on repealing and revising offenses in the Occupations Code and on certain statutes outside the Penal Code and their culpable mental states. It also includes the recommendations from the 2016 commission, which include suggested action on offenses in multiple codes.
- DIGEST:** CSHB 226 would create a commission to study certain penal laws outside of the Penal Code, move some offenses and penalties to the Penal Code from other codes, and eliminate and revise penalties in several codes.
- The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date. To the extent of any conflict,

CSHB 226 would prevail over any other act of the 86th Legislature's regular session relating to nonsubstantive additions and corrections.

Commission. CSHB 226 would create a commission to study penal laws outside of the Penal Code, the Texas Controlled Substance Act, and offenses related to motor vehicles. The commission would be required to make recommendations to the Legislature about repealing or amending laws it identified as unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve their intended purposes. It also would be charged with evaluating the recommendations of previous similar commissions.

The commission would have nine members appointed by the governor, lieutenant governor, the House speaker, the chief justice of the Texas Supreme Court, and the presiding judge of the Texas Court of Criminal Appeals. The appointments would have to represent all areas of the criminal justice system. The governor would appoint the presiding officer and members would not be compensated.

The commission would have to report its findings by November 1, 2020, including recommendations on specific statutes to repeal or amend. Appointments to the commission would have to be made within 60 days of the bill's effective date.

Fraud. CSHB 226 would move the Business and Commerce Code sec. 17.461 offense related to pyramid promotional schemes and the Business and Commerce Code ch. 522 offense of identity theft by electronic device to Penal Code ch. 32 on fraud.

Sabotage and sedition. CSHB 226 would move the Government Code offenses of sedition and sabotage to Penal Code ch. 40. The bill would replace the current penalties involving fines and prison terms of one or two to 20 years in prison with a penalty of a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

The bill would repeal Government Code sec. 557.012 capital sabotage

provisions punishing an act of sabotage or attempted sabotage that caused the death of an individual with the punishments of death, life in prison, or a prison term of at least two years. CSHB 226 would include committing murder while committing or attempting to commit sabotage in the Penal Code sec. 19.03(a) list of offenses that are eligible for the death penalty.

Natural Resources Code. The bill would modify several offenses and penalties in the Natural Resources Code, including:

- changing the penalty for illegal herding or line-riding from a fine of \$100 to \$1,000 and three months to two years in jail to a class C misdemeanor;
- changing the penalty for certain violations of provisions relating to the control of oil field property from a prison term of two to four years to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000); and
- reducing the penalty for failing to make available an oil tanker cargo manifest or take other actions relating to the manifest from a third-degree felony to a class A misdemeanor.

Occupations Code. CSHB 226 would amend Occupations Code offenses relating to several different occupations.

It would revise provisions of Occupations Code ch. 266 relating to dentistry. The bill would remove provisions that make each day of a violation for practicing dentistry without a license a separate offense and would keep the third-degree felony penalty for the offense. The bill also would reduce the penalty from a third-degree felony to a class A misdemeanor for first-time offenses related to certifications to operate dental laboratories and certain prohibited practices related to dental prosthetic appliances. Repeat offenses would be third-degree felonies.

Other changes in the Occupations Code would include:

- reducing from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a class A

misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) Occupation Code sec. 1701.533 violations of prohibitions on hiring persons convicted of certain crimes as peace officers, public security officers, county jailers and others in violation of license requirements;

- establishing in Occupations Code ch. 1802 a civil penalty for frivolous claims against an auctioneer with penalties of up to \$5,000 per day for each violation and repealing provisions making such claims related to auctioneers class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000);
- repealing Occupations Code sec. 2155.002 provisions allowing a fine of \$25 to \$100 and a jail term of up to 30 days or both for violations relating to hotel personnel posting certain notifications of room rates or charging room rates that are higher than the posted rates and making all such offenses misdemeanor fines of up to \$100; and
- repealing Occupations Code sec. 2156.006 offenses for certain recordkeeping violations by persons in charge of theaters and for discrimination against reputable productions.

Parks and Wildlife Code. CSHB 226 would revise several provisions relating to offenses and penalties in the Parks and Wildlife Code.

Floating cabins. The bill would eliminate Parks and Wildlife Code ch. 32 requirements that all owners of floating cabins sign permit applications under the penalty of perjury and the offense associated with the requirement. The bill also would eliminate a requirement that a new permit holder sign, under penalty of perjury, certain information that has to be submitted upon transfer of a permit

Hunting with artificial lights. The bill would revise Parks and Wildlife Code sec. 62 penalties relating to hunting game animals and birds protected by the Parks and Wildlife Code with artificial lights. Instead of all first offenses being Parks and Wildlife class A misdemeanors (\$500 to \$4,000 fine and/or up to a year in jail) and repeat offenses being Parks and Wildlife state jail felonies (180 days to two years in jail and/or a fine of

\$1,500 to \$10,000), offenses would be class C misdemeanors (\$25 to \$500) if committed recklessly, class A misdemeanors if committed intentionally or knowingly, and state jail felonies for repeat offenses.

Oyster bed buoys and markers. The bill would revise offenses relating to interference with buoys or markers designed to enclose a private oyster bed. Instead of these offenses being class B Parks and Wildlife misdemeanors (\$200 to \$2,000 and up to 180 days in jail), offenses committed recklessly would be class C Parks and Wildlife misdemeanors and those done intentionally or knowingly would be class B Parks and Wildlife misdemeanors.

Oyster licenses and takings. Parks and Wildlife Code sec. 76 offenses relating to requirements for oyster licenses in certain circumstances and prohibiting the night dredging of oysters would be revised. Instead of these offenses being class C Parks and Wildlife misdemeanors, offenses committed recklessly would be class C Parks and Wildlife misdemeanors, and those done intentionally or knowingly would be class B Parks and Wildlife misdemeanors.

Instead of offenses relating to taking oysters from restricted areas being class A Parks and Wildlife misdemeanors, those done recklessly would be class B misdemeanors, and those done intentionally or knowingly would be class A misdemeanors.

Catching shrimp. Offenses in Parks and Wildlife Code ch. 77 relating to violating the closed season for catching shrimp would be revised. Instead of these offenses being punished by a fine of \$2,500 to \$5,000 and six months to one year in jail, offenses committed recklessly would be class C Parks and Wildlife misdemeanors and those committed intentionally or knowingly would be class B Parks and Wildlife misdemeanors.

Tampering with certain educational records. CSHB 226 would move to the Penal Code an Education Code penalty dealing with tampering with certain educational records. Similar provisions in Education Code sec. 44.051 would be repealed.

Taxes on tobacco products. The bill would revise several Tax Code offenses dealing with cigarettes and tobacco products.

Three offenses would have their penalties reduced from third-degree felonies to class A misdemeanors with repeat offenses being third-degree felonies. This reduction would apply to Tax Code sec. 154.513 offenses relating to using or handling previously used or old-design cigarette tax stamps; Tax Code sec. 155.209 offenses related to transporting certain tobacco products; and Tax Code sec. 155.211 offenses for possessing certain tobacco products for which a tax of \$50 or more is owed.

The bill also would reduce the penalty for Tax Code sec. 155.203 offenses for possessing certain tobacco products for which a tax of \$50 or less is owed from a class A misdemeanor to a class C misdemeanor, with repeat offenses being class A misdemeanors.

Other provisions. The bill would make other changes, including reducing penalties for violations of the Public Utility Regulatory Act and the Gas Utility Regulatory Act from third-degree felonies to class A misdemeanors.

The possible jail term of up to three months for illegally thrashing pecans would be removed, leaving the fine of \$5 to \$300.

The bill would change the penalty in Local Government Code sec. 615.002 for offenses involving violating certain rules about parking near courthouses from a fine of \$1 to \$20 to a class C misdemeanor.

CSHB 226 would repeal numerous provisions, including:

- Alcoholic Beverage Code sec. 101.64 prohibitions on holders of alcoholic beverage licenses or permits possessing or displaying cards, calendars, placards, pictures, or handbills that are immoral, indecent, lewd, or profane;
- Business and Commerce Code secs. 17.30, 17.31, and 204.005

provisions on misusing certain dairy container proprietary marks, misusing shopping carts and other containers that bear certain marks, and violations relating to handling plastic bulk merchandise;

- Business and Commerce Code ch. 504 provisions creating a criminal offense related to the prohibited uses of crime victim and motor vehicle accident information;
- Occupations Code sec. 1805.103 penalties related to transactions for the sale of used business machines;
- Labor Code sec. 502.021 provisions making it a class C misdemeanor for employers to provide certain commercial agricultural laborers with hoes with handles shorter than four feet;
- Occupations Code sec. 205.401 provisions making each day a person practices acupuncture without a license a separate offense punishable by a third-degree felony;
- Occupations Code sec. 2158.003 provisions making it a class C misdemeanor for certain parking lot owners to charge more than a specified rate for a special event;
- offenses prohibiting certain activities including blasting and rock quarry operations near a superconducting supercollider constructed in Ellis County; and
- several provisions in Vernon's Civil Statutes, including provisions relating to prohibitions on certain railway, telegraph, and telephone companies giving free passes and to other restrictions on fares; a prohibition on certain types of peddling by persons who are deaf or mute; and penalties applied to acts violating a law on discrimination and restrictions on labor.