

BILL ANALYSIS

Senate Research Center
81R35879 GCB-F

C.S.H.B. 2609
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Administration
5/22/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, when a person trespasses onto residential property a peace officer's only recourse is to arrest the trespasser. There are some cases where this is not the best use of the officer's time and issuing a ticket would be sufficient.

C.S.H.B. 2609 makes trespass on residential land, agricultural land, a recreational vehicle park, or a building, a Class B misdemeanor, except where the trespass is committed on agricultural land within 100 feet of the boundary of the land or on residential land within 100 of a protected freshwater area, then it is a Class C misdemeanor, thereby authorizing a peace officer to issue a ticket for the offense rather than arrest the offender. The bill creates an affirmative defense to the prosecution of the offense that the actor was an employee of an electric or gas utility or other entity that has authorization to enter the land and the actor is performing a duty within the scope of the actor's employment.

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. Amends Section 30.05(a), Penal Code, to provide that a person commits an offense if the person, rather than he, enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person, rather than without effective consent or he enters or remains in a building of another without effective consent and he, had notice that the entry was forbidden, or received notice to depart but failed to do so.

SECTION 2. Amends Section 30.05(b), Penal Code, by adding Subdivisions (8), (9), (10), and (11), to define "protected freshwater area," "recognized state," "recreational vehicle park," and "residential land."

SECTION 3. Amends Sections 30.05(d) and (e), Penal Code, as follows:

(d) Provides that an offense under this section is:

- (1) a Class B misdemeanor, except as provided by Subdivisions (2) and (3);
- (2) a Class C misdemeanor, except as provided by Subdivision (3), if the offense is committed on agricultural land and within 100 feet of the boundary of the land, or on residential land and within 100 feet of a protected freshwater area; and
- (3) a Class A misdemeanor, rather than that the offense is a Class A misdemeanor, if the offense is committed in a habitation or a shelter center, on a Superfund site, or on or in a critical infrastructure facility, or the person carries a deadly weapon, rather than the actor carries a deadly weapon on or about his person, during the commission of the offense.

Deletes existing text providing that an offense under Subsection (e) is a Class C misdemeanor unless it is committed in a habitation or unless the actor carries a

deadly weapon on or about the actor's person during the commission of the offense, in which the event it is a Class A misdemeanor; and providing that an offense under Subsection (a) includes certain offenses. Makes nonsubstantive changes.

(e) Provides that it is a defense to prosecution under this section that the actor at the time of the offense was:

(1) a fire fighter or emergency medical services personnel, as defined by Section 773.003 (Definitions), Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;

(2) a person who was:

(A) an employee or agent of an electric utility, as defined by Section 31.002 (Definitions), Utilities Code; a telecommunications provider, as defined by Section 51.002 (Definitions), Utilities Code; a video service provider or cable service provider, as defined by Section 66.002 (Definitions), Utilities Code; a gas utility, as defined by Section 101.003 (Definitions) or 121.001 (Definition of Gas Utility), Utilities Code; or a pipeline used for the transportation or sale of oil, gas, or related products; and

(B) performing a duty within the scope of that employment or agency; or

(3) a person who was:

(A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and

(B) performing a duty within the scope of that employment or agency, rather than is on the agricultural land and within 100 feet of the boundary of the land when apprehended and had notice that the entry was forbidden or received notice to depart but failed to do so.

Deletes existing text providing that a person commits an offense if without express consent or if without authorization provided by any law, whether in writing or other form, the person enters or remains on agricultural land of another, is on the agricultural land and within 100 feet of the boundary of the land when apprehended, and had notice that the entry was forbidden or received notice to depart but failed to do so. Makes nonsubstantive changes.

SECTION 4. Repealer: Section 30.05(c) (relating to defense to prosecution that the actor at the time of the offense was a fire fighter or emergency medical services personnel), Penal Code.

Repealer: Section 30.05(j) (relating to the definition of recognized state), Penal Code.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2009.