

1-1 By: Kolkhorst, et al. (Senate Sponsor - Staples) H.B. No. 864
1-2 (In the Senate - Received from the House April 7, 2003;
1-3 April 9, 2003, read first time and referred to Committee on
1-4 Criminal Justice; May 21, 2003, reported favorably by the
1-5 following vote: Yeas 7, Nays 0; May 21, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to prohibiting the introduction or possession of certain
1-9 items in correctional facilities or on certain property of the
1-10 Texas Department of Criminal Justice; providing penalties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 38.11, Penal Code, is amended by
1-13 amending Subsections (a), (d), and (e) and adding Subsection (j) to
1-14 read as follows:

1-15 (a) A person commits an offense if the person provides:

1-16 (1) an alcoholic beverage, controlled substance, or
1-17 dangerous drug to an inmate of a correctional facility, except on
1-18 the prescription of a physician;

1-19 (2) a deadly weapon to an inmate of a correctional
1-20 facility; or

1-21 (3) a cellular telephone, cigarette, tobacco product,
1-22 or money to an inmate of a correctional facility operated by or
1-23 under contract with the Texas Department of Criminal Justice.

1-24 (d) A person commits an offense if the person:

1-25 (1) possesses a controlled substance or dangerous drug
1-26 while:

1-27 (A) [~~1~~] on property owned, used, or controlled
1-28 by the Texas Department of Criminal Justice; or

1-29 (B) [~~2~~] in a correctional facility; or

1-30 (2) possesses a deadly weapon while in a correctional
1-31 facility.

1-32 (e) It is an affirmative defense to prosecution under
1-33 Subsection (d)(1) of this section that the person possessed the
1-34 controlled substance or dangerous drug pursuant to a prescription
1-35 issued by a practitioner or while delivering the substance or drug
1-36 to a warehouse, pharmacy, or physician on property owned, used, or
1-37 controlled by the department. It is an affirmative defense to
1-38 prosecution under Subsection (d)(2) of this section that the person
1-39 possessing the deadly weapon is a peace officer or is an officer or
1-40 employee of the correctional facility authorized to possess the
1-41 deadly weapon while on duty or traveling to or from the person's
1-42 place of assignment.

1-43 (j) A person commits an offense if the person while an
1-44 inmate of a correctional facility operated by or under contract
1-45 with the Texas Department of Criminal Justice possesses a cellular
1-46 telephone.

1-47 SECTION 2. Section 38.11(f), Penal Code, is amended by
1-48 adding Subdivisions (3) and (4) to read as follows:

1-49 (3) "Cigarette" has the meaning assigned by Section
1-50 154.001, Tax Code.

1-51 (4) "Tobacco product" has the meaning assigned by
1-52 Section 155.001, Tax Code.

1-53 SECTION 3. The heading to Section 38.11, Penal Code, is
1-54 amended to read as follows:

1-55 Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN CORRECTIONAL
1-56 FACILITY OR ON PROPERTY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE.

1-57 SECTION 4. (a) The change in law made by this Act applies
1-58 only to an offense committed on or after the effective date of this
1-59 Act. For purposes of this section, an offense is committed before
1-60 the effective date of this Act if any element of the offense occurs
1-61 before the effective date.

1-62 (b) An offense committed before the effective date of this
1-63 Act is covered by the law in effect when the offense was committed,
1-64 and the former law is continued in effect for that purpose.

2-1 SECTION 5. This Act takes effect September 1, 2003.

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