

By: Menendez

H.B. No. 38

Substitute the following for H.B. No. 38:

By: Gallego

C.S.H.B. No. 38

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the criminal penalty for and certain civil consequences
3 of damaging property with graffiti.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 28.08, Penal Code, is amended by
6 amending Subsections (b), (c), and (d) and adding Subsection (b-1)
7 to read as follows:

8 (b) Except as provided by Subsection (c) [~~(d)~~], an offense
9 under this section is[+]

10 [~~(1)~~] a Class A [~~B~~] misdemeanor, except that the
11 offense is a state jail felony if the marking is made on a school, an
12 institution of higher education, a place of worship or human
13 burial, a public monument, a city hall, a courthouse, or a community
14 center that provides medical, social, or educational programs [~~if~~
15 ~~the amount of pecuniary loss is less than \$500,~~

16 [~~(2)~~] ~~a Class A misdemeanor if the amount of pecuniary~~
17 ~~loss is \$500 or more but less than \$1,500,~~

18 [~~(3)~~] ~~a state jail felony if the amount of pecuniary~~
19 ~~loss is \$1,500 or more but less than \$20,000,~~

20 [~~(4)~~] ~~a felony of the third degree if the amount of~~
21 ~~pecuniary loss is \$20,000 or more but less than \$100,000,~~

22 [~~(5)~~] ~~a felony of the second degree if the amount of~~
23 ~~pecuniary loss is \$100,000 or more but less than \$200,000, or~~

24 [~~(6)~~] ~~a felony of the first degree if the amount of~~

1 ~~pecuniary loss is \$200,000 or more].~~

2 (b-1) The minimum term of confinement for an offense under
3 this section is 72 hours.

4 (c) An offense under this section is increased to the next
5 higher category of offense if it is shown on the trial of the
6 offense that the defendant has been previously convicted of an
7 offense under this section. [~~When more than one item of tangible~~
8 ~~property, belonging to one or more owners, is marked in violation of~~
9 ~~this section pursuant to one scheme or continuing course of~~
10 ~~conduct, the conduct may be considered as one offense, and the~~
11 ~~amounts of pecuniary loss to property resulting from the marking of~~
12 ~~the property may be aggregated in determining the grade of the~~
13 ~~offense.~~]

14 (d) For the purposes of Subsection (c) [An offense under
15 this section is a state jail felony if]:

16 (1) a defendant has been previously convicted of an
17 offense under this section if the defendant was adjudged guilty of
18 the offense or entered a plea of guilty or nolo contendere in return
19 for a grant of deferred adjudication, regardless of whether the
20 sentence for the offense was ever imposed or whether the sentence
21 was probated and the defendant was subsequently discharged from
22 community supervision [~~the marking is made on a school, an~~
23 ~~institution of higher education, a place of worship or human~~
24 ~~burial, a public monument, or a community center that provides~~
25 ~~medical, social, or educational programs]; and~~

26 (2) a conviction under the laws of another state for an
27 offense containing elements that are substantially similar to the

1 elements of an offense under this section is a conviction of an
2 offense under this section [~~the amount of the pecuniary loss to real~~
3 ~~property or to tangible personal property is less than \$20,000~~].

4 SECTION 2. Section 125.061(3), Civil Practice and Remedies
5 Code, is amended to read as follows:

6 (3) "Gang activity" means the following types of
7 conduct:

8 (A) organized criminal activity as described by
9 Section 71.02, Penal Code;

10 (B) terroristic threat as described by Section
11 22.07, Penal Code;

12 (C) coercing, soliciting, or inducing gang
13 membership as described by Section 71.022 [~~22.015~~], Penal Code;

14 (D) criminal trespass as described by Section
15 30.05, Penal Code;

16 (E) disorderly conduct as described by Section
17 42.01, Penal Code;

18 (F) criminal mischief as described by Section
19 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;

20 (G) a graffiti offense in violation of Section
21 28.08, Penal Code, that:

22 (i) causes a pecuniary loss of \$500 or more;

23 or

24 (ii) occurs at a school, an institution of
25 higher education, a place of worship or human cemetery, a public
26 monument, a city hall, a courthouse, or a community center that
27 provides medical, social, or educational programs;

1 (H) a weapons offense in violation of Chapter 46,
2 Penal Code; or

3 (I) unlawful possession of a substance or other
4 item in violation of Chapter 481, Health and Safety Code.

5 SECTION 3. Section 521.320, Transportation Code, is amended
6 to read as follows:

7 Sec. 521.320. SUSPENSION FOR CONVICTION OR ADJUDICATION
8 INVOLVING GRAFFITI [~~CERTAIN CRIMINAL MISCHIEF~~]; LICENSE DENIAL.

9 (a) A court shall [~~may~~] order the department to suspend a person's
10 driver's license on conviction of an offense under Section 28.08,
11 Penal Code. A juvenile court shall order the department to suspend
12 a person's provisional license or driver's license if the person has
13 been adjudicated to have engaged in delinquent conduct that
14 violates Section 28.08, Penal Code.

15 (b) A court shall [~~may~~] order the department to deny an
16 application for reinstatement or issuance of a driver's license to
17 a person convicted of an offense under Section 28.08, Penal Code,
18 who, on the date of the conviction, did not hold a driver's license.
19 A juvenile court shall order the department to deny an application
20 for reinstatement or issuance of a provisional license or driver's
21 license to a person who has been adjudicated to have engaged in
22 delinquent conduct that violates Section 28.08, Penal Code, and
23 who, on the date of the adjudication, did not hold a provisional
24 license or driver's license.

25 (c) The period of suspension under this section is two years
26 [~~one year~~] after the date of a final conviction or the date on which
27 the disposition is made, as applicable. The period of license

1 denial is two years [~~one year~~] after the date the person applies to
2 the department for reinstatement or issuance of a provisional
3 license or driver's license.

4 (d) The department may not reinstate a provisional license
5 or driver's license suspended under Subsection (a) unless the
6 person whose license was suspended applies to the department for
7 reinstatement.

8 (e) A person whose license is suspended under Subsection (a)
9 remains eligible to receive an occupational license under
10 Subchapter L or a hardship license under Section 521.223.

11 (f) For the purposes of this section, a person is convicted
12 of an offense regardless of whether the sentence is imposed or the
13 person is placed on community supervision for the offense under
14 Article 42.12, Code of Criminal Procedure.

15 SECTION 4. The changes in law made by this Act in amending
16 Section 28.08, Penal Code, and Section 521.320, Transportation
17 Code, apply only to an offense committed on or after the effective
18 date of this Act. An offense committed before the effective date of
19 this Act is governed by the law in effect when the offense was
20 committed, and the former law is continued in effect for that
21 purpose. For purposes of this section, an offense was committed
22 before the effective date of this Act if any element of the offense
23 occurred before that date.

24 SECTION 5. The change in law made by this Act in amending
25 Section 125.061, Civil Practice and Remedies Code, applies only to
26 a cause of action that accrues on or after the effective date of
27 this Act. A cause of action that accrued before the effective date

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1 of this Act is governed by the law in effect immediately before the
2 effective date of this Act, and that law is continued in effect for
3 that purpose.

4 SECTION 6. This Act takes effect September 1, 2011.