

By: Menendez

H.B. No. 38

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for the offense of graffiti.

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

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

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

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

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

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

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

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

~~[(6)] a felony of the first degree if the amount of pecuniary loss is \$200,000 or more].~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 or

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

27 (H) a weapons offense in violation of Chapter 46,

1 Penal Code; or

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

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

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

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

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

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

1 the department for reinstatement or issuance of a provisional
2 license or driver's license.

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

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

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

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

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

1 effective date of this Act, and that law is continued in effect for
2 that purpose.

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