

By: Hilderbran

H.B. No. 255

Substitute the following for H.B. No. 255:

By: Otto

C.S.H.B. No. 255

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of tax laws; providing a criminal penalty.

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

SECTION 1. Article 13.13, Code of Criminal Procedure, is amended to read as follows:

Art. 13.13. CONSPIRACY. Criminal conspiracy may be prosecuted in the county where the conspiracy was entered into, in the county where the conspiracy was agreed to be executed, or in any county in which one or more of the conspirators does any act to effect an object of the conspiracy. If the object of the conspiracy is an offense classified as a felony under the Tax Code, regardless of whether the offense was committed, the conspiracy may be prosecuted in any county in which venue is proper under the Tax Code for the offense. If a conspiracy was entered into outside this State under circumstances that give this State jurisdiction to prosecute the offender, the offender may be prosecuted in the county where the conspiracy was agreed to be executed, ~~or~~ in the county where any one of the conspirators was found, or in Travis County.

SECTION 2. Article 13.21, Code of Criminal Procedure, is amended to read as follows:

Art. 13.21. ORGANIZED CRIMINAL ACTIVITY. The offense of engaging in organized criminal activity may be prosecuted in any

1 county in which any act is committed to effect an objective of the
2 combination, or, if the prosecution is based on a criminal offense
3 classified as a felony under the Tax Code, in any county in which
4 venue is proper under the Tax Code for the offense.

5 SECTION 3. Chapter 13, Code of Criminal Procedure, is
6 amended by adding Article 13.35 to read as follows:

7 Art. 13.35. MONEY LAUNDERING. Money laundering may be
8 prosecuted in the county in which the offense was committed as
9 provided by Article 13.18 or, if the prosecution is based on a
10 criminal offense classified as a felony under the Tax Code, in any
11 county in which venue is proper under the Tax Code for the offense.

12 SECTION 4. Chapter 42, Code of Criminal Procedure, is
13 amended by adding Article 42.0182 to read as follows:

14 Art. 42.0182. FINDINGS REGARDING TAX FRAUD. (a) In the
15 trial of an offense under the Tax Code or an offense under the Penal
16 Code related to the administration of taxes, the state may file a
17 written request with the court in which the indictment or
18 information is pending for the court to make affirmative findings
19 regarding the commission of tax fraud as described by Subsection
20 (b). The state must provide a copy of the written request to the
21 defendant before the date the trial begins.

22 (b) If the state requests affirmative findings in the manner
23 required by Subsection (a), the court shall make the requested
24 affirmative findings and enter the findings in the papers in the
25 case if the court finds by clear and convincing evidence that:

26 (1) the defendant's failure to pay a tax or file a
27 report when due, as required by Title 2 or 3, Tax Code, was a result

1 of fraud or an intent to evade the tax;

2 (2) the defendant altered, destroyed, or concealed any
3 record, document, or thing, or presented to the comptroller any
4 altered or fraudulent record, document, or thing, or otherwise
5 engaged in fraudulent conduct for the apparent purpose of affecting
6 the course or outcome of an audit, investigation, redetermination,
7 or other proceeding before the comptroller; or

8 (3) the defendant's failure to file a report under
9 Chapter 162, Tax Code, or to pay a tax under that chapter when the
10 tax became due is attributable to fraud or an intent to evade the
11 application of Chapter 162, Tax Code, or a rule adopted under
12 Chapter 111 or 162, Tax Code.

13 SECTION 5. Section 403.012, Government Code, is amended to
14 read as follows:

15 Sec. 403.012. ACCEPTANCE OF FEDERAL MONEY OR PROPERTY. (a)
16 The comptroller may accept federal money for a state agency not
17 otherwise restricted by statute or by rider or special provision in
18 the General Appropriations Act, if the state agency has certified
19 to the comptroller that the agency will be responsible for
20 compliance with applicable federal and state law.

21 (b) The comptroller may accept money or property under a
22 federal equitable sharing program. In accepting the money or
23 property, the comptroller shall comply with federal program
24 requirements, including those governing accounting and the
25 permissible use of an award.

26 SECTION 6. Section 411.109(a), Government Code, is amended
27 to read as follows:

1 (a) The comptroller is entitled to obtain from the
2 department criminal history record information maintained by the
3 department that the comptroller believes is necessary for the
4 enforcement or administration of Chapter 151, 152, [~~153,~~] 154, [~~or~~]
5 155, or 162, Tax Code, including criminal history record
6 information that relates to a person who is:

7 (1) an applicant for a permit under any of those
8 chapters;

9 (2) a permit holder under any of those chapters;

10 (3) an officer, director, stockholder owning 10
11 percent or more of the outstanding stock, partner, owner, or
12 managing employee of an applicant or permit holder under any of
13 those chapters that is a corporation, association, joint venture,
14 syndicate, partnership, or proprietorship;

15 (4) believed to have violated any of those chapters;

16 or

17 (5) being considered by the comptroller for employment
18 as a peace officer.

19 SECTION 7. Section 34.01(4), Penal Code, is amended to read
20 as follows:

21 (4) "Proceeds" means funds acquired or derived
22 directly or indirectly from, produced through, or realized through:

23 (A) an act; or

24 (B) conduct that constitutes an offense under
25 Section 151.7032, Tax Code.

26 SECTION 8. Section 71.02(a), Penal Code, as amended by
27 Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554),

1 Acts of the 81st Legislature, Regular Session, 2009, is reenacted
2 and amended to read as follows:

3 (a) A person commits an offense if, with the intent to
4 establish, maintain, or participate in a combination or in the
5 profits of a combination or as a member of a criminal street gang,
6 the person commits or conspires to commit one or more of the
7 following:

8 (1) murder, capital murder, arson, aggravated
9 robbery, robbery, burglary, theft, aggravated kidnapping,
10 kidnapping, aggravated assault, aggravated sexual assault, sexual
11 assault, forgery, deadly conduct, assault punishable as a Class A
12 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
13 motor vehicle;

14 (2) any gambling offense punishable as a Class A
15 misdemeanor;

16 (3) promotion of prostitution, aggravated promotion
17 of prostitution, or compelling prostitution;

18 (4) unlawful manufacture, transportation, repair, or
19 sale of firearms or prohibited weapons;

20 (5) unlawful manufacture, delivery, dispensation, or
21 distribution of a controlled substance or dangerous drug, or
22 unlawful possession of a controlled substance or dangerous drug
23 through forgery, fraud, misrepresentation, or deception;

24 (6) any unlawful wholesale promotion or possession of
25 any obscene material or obscene device with the intent to wholesale
26 promote the same;

27 (7) any offense under Subchapter B, Chapter 43,

1 depicting or involving conduct by or directed toward a child
2 younger than 18 years of age;

3 (8) any felony offense under Chapter 32;

4 (9) any offense under Chapter 36;

5 (10) any offense under Chapter 34 or 35;

6 (11) any offense under Section 37.11(a);

7 (12) any offense under Chapter 20A;

8 (13) any offense under Section 37.10; ~~[or]~~

9 (14) any offense under Section 38.06, 38.07, 38.09, or
10 38.11;i

11 (15) [~~(14)~~] any offense under Section 42.10;

12 (16) [~~(14)~~] any offense under Section 46.06(a)(1) or
13 46.14; or

14 (17) any offense classified as a felony under the Tax
15 Code.

16 SECTION 9. Chapter 101, Tax Code, is amended by adding
17 Section 101.0021 to read as follows:

18 Sec. 101.0021. APPLICABILITY OF PENAL CODE. In addition to
19 Section 1.03, Penal Code, Sections 15.02 and 15.04, Penal Code, and
20 Title 11, Penal Code, apply to offenses prescribed by this code.

21 SECTION 10. Subchapter A, Chapter 111, Tax Code, is amended
22 by adding Section 111.00452 to read as follows:

23 Sec. 111.00452. EMPLOYMENT OF INVESTIGATORS. (a) In
24 addition to the authority granted by Section 111.0045, an
25 investigator employed under that section may investigate:

26 (1) any criminal offense under this code; or

27 (2) any criminal offense under any other law if the

1 offense relates directly or indirectly to a tax, fee, penalty, or
2 charge administered, collected, or enforced by the comptroller.

3 (b) An investigator commissioned by the comptroller as a
4 peace officer has the powers of a peace officer coextensive with the
5 boundaries of this state.

6 SECTION 11. Section 111.006(c), Tax Code, is amended to
7 read as follows:

8 (c) The comptroller or the attorney general may:

9 (1) use information or records made confidential by
10 [provisions of] this title to enforce:

11 (A) [any provisions of] this title; or

12 (B) the criminal laws of this state or the United
13 States; or

14 (2) [may] authorize the [their] use of information or
15 records made confidential by this title in a judicial or an
16 administrative proceeding in which this state, another state, or
17 the federal government is a party.

18 SECTION 12. Section 111.061, Tax Code, is amended by adding
19 Subsection (c) to read as follows:

20 (c) The penalties provided by Subsection (b) are intended to
21 be remedial in nature and are provided for the protection of state
22 revenue and to reimburse the state for expenses incurred as a result
23 of fraud, including expenses incurred in conducting an
24 investigation.

25 SECTION 13. Sections 111.207(a) and (b), Tax Code, are
26 amended to read as follows:

27 (a) In determining the expiration date for a period when a

1 tax imposed by this title may be assessed, collected, or refunded,
2 the following periods are not considered:

3 (1) the period following the date of a tax payment made
4 under protest, but only if a lawsuit is timely filed in accordance
5 with Chapter 112;

6 (2) the period during which a judicial proceeding is
7 pending in a court of competent jurisdiction to determine the
8 amount of the tax due; ~~and~~

9 (3) the period during which an administrative
10 redetermination or refund hearing is pending before the
11 comptroller; and

12 (4) the period during which an indictment or
13 information is pending for a felony offense related to the
14 administration of the Tax Code against any taxpayer or any person
15 personally liable or potentially personally liable for the payment
16 of the tax under Section 111.0611.

17 (b) The suspension of a period of limitation under
18 Subsection (a)(1), (2), or (3) ~~[(a)]~~ is limited to the issues that
19 were contested under those subdivisions ~~[Subdivision (1), (2), or~~
20 ~~(3) of that subsection]~~.

21 SECTION 14. Section 151.025(a), Tax Code, is amended to
22 read as follows:

23 (a) All sellers and all other persons storing, using, or
24 consuming in this state a taxable item purchased from a retailer
25 shall keep the following records in the form the comptroller
26 requires:

27 (1) records of all gross receipts, including

1 documentation in the form of receipts, shipping manifests,
2 invoices, and other pertinent papers, from each sale, rental,
3 lease, taxable service, and taxable labor transaction occurring
4 during each reporting period;

5 (2) records in the form of receipts, shipping
6 manifests, invoices, and other pertinent papers of all purchases of
7 taxable items from every source made during each reporting period;
8 [~~and~~]

9 (3) records in the form of receipts, shipping
10 manifests, invoices, and other pertinent papers that substantiate
11 each claimed deduction or exclusion authorized by law; and

12 (4) records in the form of sales receipts, invoices,
13 or other equivalent records showing all sales and use tax, and any
14 money represented to be sales and use tax, received or collected on
15 each sale, rental, lease, or service transaction during each
16 reporting period.

17 SECTION 15. The heading to Section 151.7032, Tax Code, is
18 amended to read as follows:

19 Sec. 151.7032. FAILURE TO PAY TAXES COLLECTED; CRIMINAL
20 PENALTY AND AGGREGATION OF AMOUNTS INVOLVED.

21 SECTION 16. Section 151.7032, Tax Code, is amended by
22 amending Subsection (b) and adding Subsection (c) to read as
23 follows:

24 (b) An offense under this section is:

25 (1) a Class C misdemeanor if the amount of the tax
26 collected and not paid is less than \$50 [~~\$10,000~~];

27 (2) a Class B misdemeanor if the amount of the tax

1 collected and not paid is \$50 or more but less than \$500;

2 (3) a Class A misdemeanor if the amount of the tax
3 collected and not paid is \$500 or more but less than \$1,500;

4 (4) a state jail felony if the amount of the tax
5 collected and not paid is \$1,500 [~~\$10,000~~] or more but less than
6 \$20,000;

7 (5) [~~(3)~~] a felony of the third degree if the amount of
8 the tax collected and not paid is \$20,000 or more but less than
9 \$100,000; [~~and~~]

10 (6) [~~(4)~~] a felony of the second degree if the amount
11 of the tax collected and not paid is \$100,000 or more but less than
12 \$200,000; and

13 (7) a felony of the first degree if the amount of the
14 tax collected and not paid is \$200,000 or more.

15 (c) When tax is collected and not paid in violation of
16 Subsection (a) pursuant to one scheme or continuous course of
17 conduct, the conduct may be considered as one offense and the
18 amounts aggregated in determining the grade of the offense.

19 SECTION 17. Section 151.707(b), Tax Code, is amended to
20 read as follows:

21 (b) An offense under Subsection (a) [~~(a)(1) or (a)(2) of~~
22 ~~this section~~] is:

23 (1) a Class C misdemeanor if the tax avoided by the use
24 of the exemption or resale certificate is less than \$20;

25 (2) a Class B misdemeanor if the tax avoided by the use
26 of the exemption or resale certificate is \$20 or more, but less than
27 \$200;

1 (3) a Class A misdemeanor if the tax avoided by the use
2 of the exemption or resale certificate is \$200 or more, but less
3 than \$750;

4 (4) a felony of the third degree if the tax avoided by
5 the use of the exemption or resale certificate is \$750 or more, but
6 less than \$20,000; or

7 (5) a felony of the second degree if the tax avoided by
8 the use of the exemption or resale certificate is \$20,000 or more.

9 SECTION 18. Subchapter L, Chapter 151, Tax Code, is amended
10 by adding Section 151.7075 to read as follows:

11 Sec. 151.7075. FAILURE TO PRODUCE CERTAIN RECORDS AFTER
12 USING RESALE CERTIFICATE; CRIMINAL PENALTY. (a) A person commits
13 an offense if the person intentionally fails to produce to the
14 comptroller records that document a taxpayer's taxable sale of
15 items that the taxpayer obtained using a resale certificate.

16 (b) The records to which Subsection (a) applies are records:
17 (1) required to be kept under Section 151.025; and
18 (2) requested by the comptroller under Section 151.023
19 that are not produced in the period required by that section.

20 (c) The items to which Subsection (a) applies are items the
21 sales of which are required to be reported to the comptroller under
22 Section 151.433, 154.212, or 155.105.

23 (d) An offense under this section is:
24 (1) a Class C misdemeanor if the tax avoided by the use
25 of the resale certificate is less than \$20;
26 (2) a Class B misdemeanor if the tax avoided by the use
27 of the resale certificate is \$20 or more but less than \$200;

1 (3) a Class A misdemeanor if the tax avoided by the use
2 of the resale certificate is \$200 or more but less than \$750;

3 (4) a felony of the third degree if the tax avoided by
4 the use of the resale certificate is \$750 or more but less than
5 \$20,000; or

6 (5) a felony of the second degree if the tax avoided by
7 the use of the resale certificate is \$20,000 or more.

8 (e) It is an affirmative defense to prosecution under this
9 section that the items listed for purchase on the resale
10 certificate had not been resold at the time of the comptroller's
11 request for records under Section 151.023.

12 (f) If conduct described by Subsection (a) is related to one
13 scheme or continuous course of conduct, the conduct may be
14 considered as one offense and the amounts of tax avoided may be
15 aggregated in determining the grade of the offense.

16 SECTION 19. Section 154.405, Tax Code, is amended by adding
17 Subsection (e) to read as follows:

18 (e) A forfeiture proceeding under this section is an in rem
19 proceeding.

20 SECTION 20. Section 154.406, Tax Code, is amended by
21 amending Subsection (a) and adding Subsection (d) to read as
22 follows:

23 (a) The comptroller may sell property forfeited to the state
24 at public or private sale in any commercially reasonable manner or
25 retain the property for official use by the comptroller's criminal
26 investigation division. Property retained for use under this
27 subsection may later be sold by the comptroller under this section.

1 (d) If an automobile or other vehicle seized under Section
2 154.403 is forfeited and retained by the comptroller under
3 Subsection (a), the comptroller is considered the owner under
4 Subtitle A, Title 7, Transportation Code. The Texas Department of
5 Motor Vehicles shall issue a certificate of title for the vehicle to
6 the comptroller. The comptroller may maintain, repair, use, and
7 operate the vehicle with money appropriated for current operations.

8 SECTION 21. Subchapter H, Chapter 154, Tax Code, is amended
9 by adding Section 154.407 to read as follows:

10 Sec. 154.407. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING
11 SEIZED CIGARETTES. (a) The comptroller may photograph cigarettes
12 seized under Section 154.403 before their sale under this
13 subchapter.

14 (b) In a proceeding arising out of this chapter, including a
15 criminal proceeding, the state is not required to produce the
16 actual cigarettes.

17 (c) The photographs are admissible in evidence under rules
18 of law governing the admissibility of photographs. The photographs
19 are as admissible in evidence as are the cigarettes themselves.

20 (d) A person's rights of discovery and inspection of
21 tangible physical evidence are satisfied if the photographs taken
22 under this section are made available to the person by the state on
23 order of any court or other entity having jurisdiction over the
24 proceeding.

25 SECTION 22. Section 155.145, Tax Code, is amended by adding
26 Subsection (e) to read as follows:

27 (e) A forfeiture proceeding under this section is an in rem

1 proceeding.

2 SECTION 23. Section 155.1451, Tax Code, is amended by
3 amending Subsection (a) and adding Subsection (d) to read as
4 follows:

5 (a) The comptroller may sell property forfeited to the state
6 at public or private sale in any commercially reasonable manner or
7 retain the property for official use by the comptroller's criminal
8 investigation division. Property retained for use under this
9 subsection may later be sold by the comptroller under this section.

10 (d) If an automobile or other vehicle seized under Section
11 155.143 is forfeited and retained by the comptroller under
12 Subsection (a), the comptroller is considered the owner under
13 Subtitle A, Title 7, Transportation Code. The Texas Department of
14 Motor Vehicles shall issue a certificate of title for the vehicle to
15 the comptroller. The comptroller may maintain, repair, use, and
16 operate the vehicle with money appropriated for current operations.

17 SECTION 24. Subchapter E, Chapter 155, Tax Code, is amended
18 by adding Section 155.146 to read as follows:

19 Sec. 155.146. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING
20 SEIZED TOBACCO PRODUCTS. (a) The comptroller may photograph
21 tobacco products seized under Section 155.143 before their sale
22 under this subchapter.

23 (b) In a proceeding arising out of this chapter, including a
24 criminal proceeding, the state is not required to produce the
25 actual tobacco products.

26 (c) The photographs are admissible in evidence under rules
27 of law governing the admissibility of photographs. The photographs

1 are as admissible in evidence as are the tobacco products
2 themselves.

3 (d) A person's rights of discovery and inspection of
4 tangible physical evidence are satisfied if the photographs taken
5 under this section are made available to the person by the state on
6 order of any court or other entity having jurisdiction over the
7 proceeding.

8 SECTION 25. Section 162.401, Tax Code, is amended by adding
9 Subsection (c) to read as follows:

10 (c) The penalties provided by Subsection (b) are intended to
11 be remedial in nature and are provided for the protection of state
12 revenue and to reimburse the state for expenses incurred as a result
13 of fraud, including expenses incurred in conducting an
14 investigation.

15 SECTION 26. Except as provided by Section 27 of this Act,
16 the changes in law made by this Act apply only to an offense
17 committed on or after the effective date of this Act. An offense
18 committed before the effective date of this Act is covered by the
19 law in effect when the offense was committed, and the former law is
20 continued in effect for that purpose. For purposes of this section,
21 an offense was committed before the effective date of this Act if
22 any element of the offense occurred before that date.

23 SECTION 27. The change in law made by this Act in amending
24 Article 13.13, Code of Criminal Procedure, applies only to a
25 criminal case in which the indictment or information is presented
26 to the court on or after the effective date of this Act. A criminal
27 case in which the indictment or information was presented to the

1 court before the effective date of this Act is governed by the law
2 in effect when the indictment or information was presented, and the
3 former law is continued in effect for that purpose.

4 SECTION 28. This Act applies only to a seizure of property
5 that occurs on or after the effective date of this Act. A seizure of
6 property that occurs before the effective date of this Act is
7 covered by the law in effect as it existed on the date the seizure
8 occurred, and the former law is continued in effect for that
9 purpose.

10 SECTION 29. This Act takes effect September 1, 2011.