

By: Simpson, Rodriguez, Menendez, Kolkhurst,
Chisum, et al.

H.B. No. 1937

Substitute the following for H.B. No. 1937:

By: Gallego

C.S.H.B. No. 1937

A BILL TO BE ENTITLED

AN ACT

relating to prosecution and punishment for the offense of official
oppression by the intrusive touching of persons seeking access to
public buildings and transportation; providing penalties.

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

SECTION 1. Section 39.03, Penal Code, is amended by
amending Subsections (a) and (b) and adding Subsections (c-1) and
(c-2) to read as follows:

(a) A person who is a public servant [~~acting under color of
his office or employment~~] commits an offense if the person:

(1) while acting under color of the person's office or
employment [~~he~~]:

(A) [~~(1)~~] intentionally subjects another person
to mistreatment or to arrest, detention, search, seizure,
dispossession, assessment, or lien that the actor [~~he~~] knows is
unlawful;

(B) [~~(2)~~] intentionally denies or impedes
another person in the exercise or enjoyment of any right,
privilege, power, or immunity, knowing the actor's [~~his~~] conduct is
unlawful; or

(C) [~~(3)~~] intentionally subjects another person
to sexual harassment; or

(2) while acting under color of the person's office or
employment without probable cause to believe the other person

1 committed an offense:

2 (A) performs a search for the purpose of granting
3 access to a publicly accessible building or form of transportation;
4 and

5 (B) intentionally, knowingly, or recklessly:

6 (i) touches the anus, sexual organ,
7 buttocks, or breast of the other person, including touching through
8 clothing; or

9 (ii) touches the other person in a manner
10 that would be offensive to a reasonable person.

11 (b) For purposes of this section, a person who is a public
12 servant acts under color of the person's [~~his~~] office or employment
13 if the person [~~he~~] acts or purports to act in an official capacity
14 or takes advantage of such actual or purported capacity.

15 (c-1) For purposes of Subsection (a)(2), "public servant"
16 includes:

17 (1) an officer, employee, or agent of:

18 (A) the United States;

19 (B) a branch, department, or agency of the United
20 States; or

21 (C) another person acting under contract with a
22 branch, department, or agency of the United States for the purpose
23 of providing a security or law enforcement service; and

24 (2) any other person acting under color of federal
25 law.

26 (c-2) For a person described by Subsection (c-1)(1) or (2),
27 it is a defense to prosecution for an offense under Subsection

1 (a)(2) that the actor performed the search pursuant to and
2 consistent with an explicit and applicable grant of federal
3 statutory authority that is consistent with the United States
4 Constitution.

5 SECTION 2. (a) This section applies only to a prosecution of
6 an offense under Section 39.03(a)(2), Penal Code, as added by this
7 Act, in which the defendant was, at the time of the alleged offense,
8 acting under the color of federal law.

9 (b) In a prosecution described by Subsection (a) of this
10 section, if the government of the United States, the defendant, or
11 the defendant's employer challenges the validity of Section
12 39.03(a)(2), Penal Code, as added by this Act, on grounds of
13 unconstitutionality, preemption, or sovereign immunity, the
14 attorney general of this state, with the consent of the appropriate
15 local county or district attorney, shall take any actions necessary
16 on behalf of the state to defend the validity of the statute. The
17 attorney general may make any legal arguments the attorney general
18 considers appropriate, including that this Act constitutes a valid
19 exercise of:

- 20 (1) the state's police powers;
- 21 (2) the liberty interests of the people secured by the
22 Ninth Amendment to the United States Constitution;
- 23 (3) the powers reserved to the states by the Tenth
24 Amendment to the United States Constitution; or
- 25 (4) the rights and protections secured by the Texas
26 Constitution.

27 SECTION 3. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2011.