

1-1 By: Simpson, et al. (Senate Sponsor - Patrick) H.B. No. 1937  
1-2 (In the Senate - Received from the House May 16, 2011;  
1-3 May 17, 2011, read first time and referred to Committee on  
1-4 Transportation and Homeland Security; May 21, 2011, reported  
1-5 favorably by the following vote: Yeas 9, Nays 0; May 21, 2011,  
1-6 sent to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to prosecution and punishment for the offense of official  
1-10 oppression by the intrusive touching of persons seeking access to  
1-11 public buildings and transportation; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 39.03, Penal Code, is amended by  
1-14 amending Subsections (a) and (b) and adding Subsections (c-1) and  
1-15 (c-2) to read as follows:

1-16 (a) A person who is a public servant [acting under color of  
1-17 his office or employment] commits an offense if the person:

1-18 (1) while acting under color of the person's office or  
1-19 employment [he]:

1-20 (A) [~~(1)~~] intentionally subjects another person  
1-21 to mistreatment or to arrest, detention, search, seizure,  
1-22 dispossession, assessment, or lien that the actor [he] knows is  
1-23 unlawful;

1-24 (B) [~~(2)~~] intentionally denies or impedes  
1-25 another person in the exercise or enjoyment of any right,  
1-26 privilege, power, or immunity, knowing the actor's [his] conduct is  
1-27 unlawful; or

1-28 (C) [~~(3)~~] intentionally subjects another person  
1-29 to sexual harassment; or

1-30 (2) while acting under color of the person's office or  
1-31 employment without probable cause to believe the other person  
1-32 committed an offense:

1-33 (A) performs a search for the purpose of granting  
1-34 access to a publicly accessible building or form of transportation;  
1-35 and

1-36 (B) intentionally, knowingly, or recklessly:

1-37 (i) touches the anus, sexual organ,  
1-38 buttocks, or breast of the other person, including touching through  
1-39 clothing; or

1-40 (ii) touches the other person in a manner  
1-41 that would be offensive to a reasonable person.

1-42 (b) For purposes of this section, a person who is a public  
1-43 servant acts under color of the person's [his] office or employment  
1-44 if the person [he] acts or purports to act in an official capacity  
1-45 or takes advantage of such actual or purported capacity.

1-46 (c-1) For purposes of Subsection (a)(2), "public servant"  
1-47 includes:

1-48 (1) an officer, employee, or agent of:

1-49 (A) the United States;

1-50 (B) a branch, department, or agency of the United  
1-51 States; or

1-52 (C) another person acting under contract with a  
1-53 branch, department, or agency of the United States for the purpose  
1-54 of providing a security or law enforcement service; and

1-55 (2) any other person acting under color of federal  
1-56 law.

1-57 (c-2) For a person described by Subsection (c-1)(1) or (2),  
1-58 it is a defense to prosecution for an offense under Subsection  
1-59 (a)(2) that the actor performed the search pursuant to and  
1-60 consistent with an explicit and applicable grant of federal  
1-61 statutory authority that is consistent with the United States  
1-62 Constitution.

1-63 SECTION 2. (a) This section applies only to a prosecution of  
1-64 an offense under Section 39.03(a)(2), Penal Code, as added by this

2-1 Act, in which the defendant was, at the time of the alleged offense,  
2-2 acting under the color of federal law.

2-3 (b) In a prosecution described by Subsection (a) of this  
2-4 section, if the government of the United States, the defendant, or  
2-5 the defendant's employer challenges the validity of Section  
2-6 39.03(a)(2), Penal Code, as added by this Act, on grounds of  
2-7 unconstitutionality, preemption, or sovereign immunity, the  
2-8 attorney general of this state, with the consent of the appropriate  
2-9 local county or district attorney, shall take any actions necessary  
2-10 on behalf of the state to defend the validity of the statute. The  
2-11 attorney general may make any legal arguments the attorney general  
2-12 considers appropriate, including that this Act constitutes a valid  
2-13 exercise of:

- 2-14 (1) the state's police powers;
- 2-15 (2) the liberty interests of the people secured by the  
2-16 Ninth Amendment to the United States Constitution;
- 2-17 (3) the powers reserved to the states by the Tenth  
2-18 Amendment to the United States Constitution; or
- 2-19 (4) the rights and protections secured by the Texas  
2-20 Constitution.

2-21 SECTION 3. This Act takes effect immediately if it receives  
2-22 a vote of two-thirds of all the members elected to each house, as  
2-23 provided by Section 39, Article III, Texas Constitution. If this  
2-24 Act does not receive the vote necessary for immediate effect, this  
2-25 Act takes effect September 1, 2011.

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