

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

H.B. No. 1938

Substitute the following for H.B. No. 1938:

By: Fletcher

C.S.H.B. No. 1938

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of body imaging scanning equipment in
airports; providing criminal and civil penalties.

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

SECTION 1. Subchapter Z, Chapter 22, Transportation Code,
is amended by adding Section 22.902 to read as follows:

Sec. 22.902. BODY IMAGING SCANNING EQUIPMENT. (a) In this
section:

(1) "Airport operator" means:

(A) a local government that owns or controls an
airport; or

(B) a person who operates, as the agent of a local
government or otherwise, an airport owned or controlled by the
local government.

(2) "Body imaging scanning equipment" means a device,
including a device that uses backscatter x-rays or millimeter
waves, that has the capability of capturing or transmitting data
for use in creating a visual image of a person's unclothed body and
that is intended to detect concealed objects.

(b) An airport operator may not allow body imaging scanning
equipment to be installed or operated in any airport in this state
unless:

(1) the body imaging scanning equipment is used
exclusively as part of the investigation of a person who the

1 equipment operator has probable cause to believe has committed an
2 offense; or

3 (2) the airport operator establishes a procedure that
4 prohibits a person from being scanned with the equipment unless the
5 person, immediately before the scan is performed, gives written
6 consent to the scan to the equipment operator or to an agent or
7 employee of the airport operator after being informed of the
8 potential health hazards posed by the equipment.

9 (c) An airport operator commits an offense if the operator
10 fails to comply with Subsection (b).

11 (d) An airport operator who commits an offense under
12 Subsection (c) is subject to a civil penalty in an amount not to
13 exceed \$10,000 for each day of the violation.

14 (e) The attorney general may bring suit in a district court
15 of Travis County:

16 (1) for injunctive relief; or

17 (2) to collect the civil penalty described by
18 Subsection (d), plus court costs, reasonable attorney's fees, and
19 costs incurred by the attorney general.

20 SECTION 2. If any person challenges the validity of Section
21 22.902, Transportation Code, as added by this Act, in a criminal,
22 civil, or administrative proceeding on grounds of
23 unconstitutionality, preemption, or sovereign immunity, the
24 attorney general of this state, with the consent of the local county
25 or district attorney, as appropriate, shall take any actions
26 necessary on behalf of the state to defend the validity of the
27 statute. The attorney general may make any legal arguments the

1 attorney general considers appropriate, including that this Act
2 constitutes a valid exercise of:

- 3 (1) the state's police powers;
- 4 (2) the liberty interests of the people secured by the
5 Ninth Amendment to the United States Constitution;
- 6 (3) the powers reserved to the states by the Tenth
7 Amendment to the United States Constitution; or
- 8 (4) the rights and protections secured by the Texas
9 Constitution.

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