

AN ACT

relating to the criminal penalty for the discarding of certain burning materials.

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

SECTION 1. The heading to Section 365.012, Health and Safety Code, is amended to read as follows:

Sec. 365.012. ILLEGAL DUMPING; DISCARDING LIGHTED MATERIALS; CRIMINAL PENALTIES.

SECTION 2. Section 365.012, Health and Safety Code, is amended by adding Subsections (a-1), (d-1), (p), (q), and (r) and amending Subsections (d) and (e) to read as follows:

(a-1) A person commits an offense if:

(1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision (1).

(d) An offense under Subsection (a), (b), or (c) [~~this section~~] is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(d-1) An offense under Subsection (a-1) is a misdemeanor

1 under this subsection if the litter or other solid waste to which  
2 the offense applies weighs less than 500 pounds or has a volume of  
3 less than 100 cubic feet and is punishable by:

4 (1) a fine not to exceed \$500;

5 (2) confinement in jail for a term not to exceed 30  
6 days; or

7 (3) both such fine and confinement.

8 (e) An offense under Subsection (a), (b), or (c) [~~this~~  
9 ~~section~~] is a Class B misdemeanor if the litter or other solid waste  
10 to which the offense applies weighs more than five pounds but less  
11 than 500 pounds or has a volume of more than five gallons but less  
12 than 100 cubic feet.

13 (p) It is an affirmative defense to prosecution under  
14 Subsection (a-1) that the person discarded the lighted litter in  
15 connection with controlled burning the person was conducting in the  
16 area into which the lighted litter was discarded.

17 (q) The operator of a public conveyance in which smoking  
18 tobacco is allowed shall post a sign stating the substance of  
19 Subsections (a-1) and (d-1) in a conspicuous place within any  
20 portion of the public conveyance in which smoking is allowed.

21 (r) If conduct that constitutes an offense under Subsection  
22 (a-1) also constitutes an offense under Subsection (a), the actor  
23 may be prosecuted only under Subsection (a-1). If conduct that  
24 constitutes an offense under Subsection (a-1) also constitutes an  
25 offense under Chapter 28, Penal Code, the actor may be prosecuted  
26 under Subsection (a-1) or Chapter 28, Penal Code, but not both.

27 SECTION 3. The change in law made by this Act applies only

1 to an offense committed on or after the effective date of this Act.  
2 An offense committed before the effective date of this Act is  
3 governed by the law in effect on the date the offense was committed,  
4 and the former law is continued in effect for that purpose. For  
5 purposes of this section, an offense was committed before the  
6 effective date of this Act if any element of the offense occurred  
7 before that date.

8 SECTION 4. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1043 passed the Senate on April 21, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1043 passed the House on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor