

By: Watson
(Martinez)

S.B. No. 1043

A BILL TO BE ENTITLED

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.