

1-1 By: Watson S.B. No. 1043
1-2 (In the Senate - Filed March 1, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; April 12, 2011, reported favorably by the following
1-5 vote: Yeas 8, Nays 0; April 12, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the criminal penalty for the discarding of certain
1-9 burning materials.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. The heading to Section 365.012, Health and
1-12 Safety Code, is amended to read as follows:

1-13 Sec. 365.012. ILLEGAL DUMPING; DISCARDING LIGHTED
1-14 MATERIALS; CRIMINAL PENALTIES.

1-15 SECTION 2. Section 365.012, Health and Safety Code, is
1-16 amended by adding Subsections (a-1), (d-1), (p), (q), and (r) and
1-17 amending Subsections (d) and (e) to read as follows:

1-18 (a-1) A person commits an offense if:

1-19 (1) the person discards lighted litter, including a
1-20 match, cigarette, or cigar, onto open-space land, a private road or
1-21 the right-of-way of a private road, a public highway or other public
1-22 road or the right-of-way of a public highway or other public road,
1-23 or a railroad right-of-way; and

1-24 (2) a fire is ignited as a result of the conduct
1-25 described by Subdivision (1).

1-26 (d) An offense under Subsection (a), (b), or (c) [~~this~~
1-27 ~~section~~] is a Class C misdemeanor if the litter or other solid waste
1-28 to which the offense applies weighs five pounds or less or has a
1-29 volume of five gallons or less.

1-30 (d-1) An offense under Subsection (a-1) is a misdemeanor
1-31 under this subsection if the litter or other solid waste to which
1-32 the offense applies weighs less than 500 pounds or has a volume of
1-33 less than 100 cubic feet and is punishable by:

1-34 (1) a fine not to exceed \$500;

1-35 (2) confinement in jail for a term not to exceed 30
1-36 days; or

1-37 (3) both such fine and confinement.

1-38 (e) An offense under Subsection (a), (b), or (c) [~~this~~
1-39 ~~section~~] is a Class B misdemeanor if the litter or other solid waste
1-40 to which the offense applies weighs more than five pounds but less
1-41 than 500 pounds or has a volume of more than five gallons but less
1-42 than 100 cubic feet.

1-43 (p) It is an affirmative defense to prosecution under
1-44 Subsection (a-1) that the person discarded the lighted litter in
1-45 connection with controlled burning the person was conducting in the
1-46 area into which the lighted litter was discarded.

1-47 (q) The operator of a public conveyance in which smoking
1-48 tobacco is allowed shall post a sign stating the substance of
1-49 Subsections (a-1) and (d-1) in a conspicuous place within any
1-50 portion of the public conveyance in which smoking is allowed.

1-51 (r) If conduct that constitutes an offense under Subsection
1-52 (a-1) also constitutes an offense under Subsection (a), the actor
1-53 may be prosecuted only under Subsection (a-1). If conduct that
1-54 constitutes an offense under Subsection (a-1) also constitutes an
1-55 offense under Chapter 28, Penal Code, the actor may be prosecuted
1-56 under Subsection (a-1) or Chapter 28, Penal Code, but not both.

1-57 SECTION 3. The change in law made by this Act applies only
1-58 to an offense committed on or after the effective date of this Act.
1-59 An offense committed before the effective date of this Act is
1-60 governed by the law in effect on the date the offense was committed,
1-61 and the former law is continued in effect for that purpose. For
1-62 purposes of this section, an offense was committed before the
1-63 effective date of this Act if any element of the offense occurred
1-64 before that date.

2-1 SECTION 4. This Act takes effect September 1, 2011.

2-2 * * * * *