

AN ACT

relating to the creation of the offense of possession, manufacture, transportation, repair, or sale of a tire deflation device and to the offense of attempting to evade arrest through the use of a vehicle or a tire deflation device; providing criminal penalties.

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

SECTION 1. Section 46.01, Penal Code, is amended by adding Subdivision (17) to read as follows:

(17) "Tire deflation device" means a device, including a caltrop or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle's tires. The term does not include a traffic control device that:

(A) is designed to puncture one or more of a vehicle's tires when driven over in a specific direction; and

(B) has a clearly visible sign posted in close proximity to the traffic control device that prohibits entry or warns motor vehicle operators of the traffic control device.

SECTION 2. Subsections (a), (d), and (e), Section 46.05, Penal Code, are amended to read as follows:

(a) A person commits an offense if the person ~~he~~ intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

- 1 (2) a machine gun;
- 2 (3) a short-barrel firearm;
- 3 (4) a firearm silencer;
- 4 (5) a switchblade knife;
- 5 (6) knuckles;
- 6 (7) armor-piercing ammunition;
- 7 (8) a chemical dispensing device; [~~or~~]
- 8 (9) a zip gun; or
- 9 (10) a tire deflation device.

10 (d) It is an affirmative defense to prosecution under this
11 section that the actor's conduct:

12 (1) was incidental to dealing with a switchblade
13 knife, springblade knife, [~~or~~] short-barrel firearm, or tire
14 deflation device solely as an antique or curio; [~~or~~]

15 (2) was incidental to dealing with armor-piercing
16 ammunition solely for the purpose of making the ammunition
17 available to an organization, agency, or institution listed in
18 Subsection (b); or

19 (3) was incidental to dealing with a tire deflation
20 device solely for the purpose of making the device available to an
21 organization, agency, or institution listed in Subsection (b).

22 (e) An offense under Subsection (a)(1), (2), (3), (4), (7),
23 (8), or (9) [~~this section~~] is a felony of the third degree [~~unless~~
24 ~~it is committed under Subsection (a)(5) or (a)(6), in which event,~~
25 ~~it is a Class A misdemeanor]~~. An offense under Subsection (a)(10)
26 is a state jail felony. An offense under Subsection (a)(5) or (6)
27 is a Class A misdemeanor.

1 SECTION 3. Subsections (b) and (c), Section 38.04, Penal
2 Code, are amended to read as follows:

3 (b) An offense under this section is a Class A misdemeanor,
4 except that the offense is:

5 (1) a state jail felony if~~+~~
6 [~~(A)~~] the actor has been previously convicted
7 under this section; [~~or~~
8 [~~(B) the actor uses a vehicle while the actor is~~
9 ~~in flight and the actor has not been previously convicted under this~~
10 ~~section;~~]

11 (2) a felony of the third degree if:
12 (A) the actor uses a vehicle while the actor is in
13 flight [~~and the actor has been previously convicted under this~~
14 ~~section]; [~~or~~~~

15 (B) another suffers serious bodily injury as a
16 direct result of an attempt by the officer from whom the actor is
17 fleeing to apprehend the actor while the actor is in flight; or
18 (C) the actor uses a tire deflation device
19 against the officer while the actor is in flight; or

20 (3) a felony of the second degree if:
21 (A) another suffers death as a direct result of
22 an attempt by the officer from whom the actor is fleeing to
23 apprehend the actor while the actor is in flight; or
24 (B) another suffers serious bodily injury as a
25 direct result of the actor's use of a tire deflation device while
26 the actor is in flight.

27 (c) In this section:

1 (1) "Vehicle"~~[, "vehicle"]~~ has the meaning assigned by
2 Section 541.201, Transportation Code.

3 (2) "Tire deflation device" has the meaning assigned
4 by Section 46.01.

5 SECTION 4. Section 38.04, Penal Code, as amended by this
6 Act, applies only to an offense committed on or after the effective
7 date of this Act. An offense committed before the effective date of
8 this Act is governed by the law in effect on the date the offense was
9 committed, and the former law is continued in effect for that
10 purpose. For purposes of this section, an offense was committed
11 before the effective date of this Act if any element of the offense
12 occurred before that date.

13 SECTION 5. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1416 passed the Senate on April 11, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1416 passed the House, with amendment, on May 20, 2011, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor