

BILL ANALYSIS

C.S.S.B. 148
By: Williams
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In an effort to recognize first responders, a local bar association in Texas created a program that provided first responders with complimentary estate planning that included wills, powers of attorney, and directives to physicians. Interested parties note that the program was successful for several years until the bar association became concerned the program might violate certain statutory provisions relating to the acceptance of gifts by public servants, as the value of an estate planning document may exceed the maximum allowable value of a gift that a public servant may accept. Because the parties contend that these services should be available to certain first responders, C.S.S.B. 148 seeks to address this concern.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 148 amends the Penal Code to expand the gifts and benefits that are exempt from the offense of offering a gift to a public servant and the offense of a public servant's soliciting, accepting, or agreeing to accept a gift from a person known to be subject to the public servant's jurisdiction to include complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered to a public servant who is a first responder and through a program or clinic that is operated by a local bar association or the State Bar of Texas and, if the public servant is employed by an agency, that is approved by the head of the agency employing the public servant. The bill defines "first responder" as a peace officer whose duties include responding rapidly to an emergency; fire protection personnel, as defined by reference to Government Code provisions relating to regulating and assisting fire fighters and fire departments; a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office; an ambulance driver; or an individual certified as emergency medical services personnel by the Department of State Health Services.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 148 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 36.10, Penal Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; [ø]

(3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code;

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; [ø]

(8) transportation, lodging, and meals described by Section 36.07(b); or

(9) complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered to a public servant who is a first responder through a program or clinic that is:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 36.10, Penal Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; [ø]

(3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code;

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; [ø]

(8) transportation, lodging, and meals described by Section 36.07(b); or

(9) complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered:

(A) to a public servant who is a first responder; and

(A) operated by a local bar association or the State Bar of Texas; and

(B) approved by the head of the agency employing the public servant, if the public servant is employed by an agency.

(e) In this section, "first responder" means:

(1) a peace officer whose duties include responding rapidly to an emergency;

(2) fire protection personnel as that term is defined by Section 419.021, Government Code;

(3) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision;

(4) an ambulance driver; or

(5) an individual certified as emergency medical services personnel by the Department of State Health Services.

SECTION 2. The change in law made by this Act applies only to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 3. This Act takes effect September 1, 2013.

(B) through a program or clinic that is:

(i) operated by a local bar association or the State Bar of Texas; and

(ii) approved by the head of the agency employing the public servant, if the public servant is employed by an agency.

(e) In this section, "first responder" means:

(1) a peace officer whose duties include responding rapidly to an emergency;

(2) fire protection personnel, as that term is defined by Section 419.021, Government Code;

(3) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office;

(4) an ambulance driver; or

(5) an individual certified as emergency medical services personnel by the Department of State Health Services.

SECTION 2. Substantially the same as engrossed version.

SECTION 3. Same as engrossed version.