

BILL ANALYSIS

C.S.H.B. 1551
By: Krause
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the number of Texas penal laws, particularly the number outside of the Penal Code, has complicated the application of criminal law in Texas, as penalties are often disproportionate to the severity of the crime. C.S.H.B. 1551 seeks to provide for a systematic review of these laws to create consistency among offenses and control criminal justice costs and to revise some of the laws that have already been reviewed and identified as needing revision.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

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.H.B. 1551 creates a commission to study and review all Texas penal laws other than criminal offenses under the Penal Code, under the Texas Controlled Substances Act, or related to the operation of a motor vehicle. The bill requires the commission to evaluate such laws; to make recommendations to the legislature regarding the repeal or amendment of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law; and to evaluate the recommendations made by the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015. The bill establishes the composition of and provides for the appointment and operation of the nine-member commission, which is required to include representatives of all areas of the criminal justice system. The bill requires the governor, lieutenant governor, speaker of the house of representatives, chief justice of the Texas Supreme Court, and presiding judge of the Texas Court of Criminal Appeals to appoint members of the commission not later than the 60th day after the bill's effective date. The bill requires the commission, not later than November 1, 2018, to report its findings and recommendations to the appointing officials and legislative committees with primary jurisdiction over criminal justice and to include in the recommendations any specific statutes that the commission recommends repealing or amending. The bill abolishes the commission and sets the bill's provisions relating to the commission to expire on December 31, 2018.

C.S.H.B. 1551 amends the Government Code to remove the county jail confinement punishment for a thrashing pecans offense.

C.S.H.B. 1551 amends the Local Government Code to remove the specified fine range punishment for violating a courthouse parking lot parking rule in certain counties and to instead make such a violation a Class C misdemeanor offense.

C.S.H.B. 1551 amends the Natural Resources Code to remove the specified fine range and county jail confinement punishment for unauthorized herding and line-riding and to instead make such conduct a Class C misdemeanor offense. The bill changes the penalty for a violation of statutory provisions relating to control of oil property from a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term of not less than two nor more than four years to a third degree felony. The bill decreases the penalty for criminal offenses relating to certain oil tanker vehicle cargo documents from a third degree felony to a Class A misdemeanor.

C.S.H.B. 1551 amends the Occupations Code to remove the specification that each day of a violation of the prohibition against practicing or offering to practice dentistry or dental surgery without a license or representing to practice dentistry without a license is a separate offense. The bill decreases the penalty for a violation of statutory provisions requiring registration of a dental laboratory and relating to filling a prescription to prepare or repair a dental prosthetic appliance from a third degree felony to a Class A misdemeanor but maintains the third degree felony penalty for a subsequent conviction, as applicable. The bill decreases the penalty for the unlawful appointment or retention of persons with certain convictions as a peace officer or reserve law enforcement officer, public security officer, telecommunicator, or county jailer from a state jail felony to a Class A misdemeanor. The bill removes the Class B misdemeanor penalty for committing a frivolous claim offense under statutory provisions relating to auctioneers and instead subjects a person who commits that offense to a civil penalty. The bill removes the jail confinement punishment for certain violations relating to the notification and excessive charging of hotel lodging rates. The bill repeals provisions specifying that each day a person practices acupuncture in Texas without a license constitutes a separate offense; establishing criminal penalties for certain conduct relating to the sale of secondhand business machines; establishing a recordkeeping offense in relation to theaters; establishing an offense relating to a theater's discrimination against reputable productions; and establishing an offense for overcharging for parking a vehicle in a parking facility in connection with a special event in a specified amount.

C.S.H.B. 1551 amends the Parks and Wildlife Code to revise the penalties for the following offenses by establishing penalties ranging from a Class C Parks and Wildlife Code misdemeanor to a Parks and Wildlife Code state jail felony depending on the actor's requisite state of mind and previous convictions, as applicable: hunting with a light; interference with buoys, markers, or fence used to designate or enclose a private oyster bed or related location; certain offenses relating to oyster licenses, night dredging, and taking oysters from restricted areas; and certain shrimping offenses. The bill repeals provisions requiring an applicant for or holder of a floating cabin permit to sign certain documents under penalty of perjury.

C.S.H.B. 1551 amends the Tax Code to decrease from a third degree felony to a Class A misdemeanor the penalty for the following offenses: an offense relating to previously used or old cigarette tax design stamps; an offense relating to the transportation of tobacco products with respect to the associated tax; and an offense for possession of tobacco products on which a tax of more than \$50 is required to be paid. The bill maintains the third degree felony penalty for those offenses for a subsequent conviction of the offense, as applicable. The bill decreases from a Class A misdemeanor to a Class C misdemeanor the penalty for the offense for possession of tobacco products on which a tax of \$50 or less is required to be paid but maintains the Class A misdemeanor penalty for a subsequent conviction of such an offense.

C.S.H.B. 1551 amends the Utilities Code to decrease from a third degree felony to a Class A misdemeanor the penalty for the offenses for wilfully and knowingly violating a provision of the Public Utility Regulatory Act and for knowingly violating a provision of the Gas Utility Regulatory Act.

C.S.H.B. 1551 transfers offenses relating to a pyramid promotional scheme and identity theft by an electronic device from the Business & Commerce Code to the Penal Code. The bill repeals an Education Code provision establishing a third degree felony for interference with operation of a foundation school program and instead amends the Penal Code to incorporate that conduct into a third degree felony tampering with a governmental record offense.

C.S.H.B. 1551 repeals Government Code provisions relating to the offense of capital sabotage and instead amends the Penal Code to expand the conduct constituting capital murder to include intentionally committing a murder in the course of committing or attempting to commit sabotage. The bill transfers the offenses of sedition and sabotage from the Government Code to the Penal Code, removes the specified fine and confinement punishments for the offenses, as applicable, and instead makes those offenses a second degree felony.

C.S.H.B. 1551 amends the Business & Commerce Code and the Code of Criminal Procedure to make conforming changes.

C.S.H.B. 1551 repeals the Alcoholic Beverage Code prohibition against the possession or display of certain indecent graphic material on premises licensed under that code; Business & Commerce Code provisions establishing criminal penalties for certain deceptive trade practices and for the unlawful sale of plastic bulk merchandise containers and provisions relating to the prohibited use for solicitation or sale of crime victim or motor vehicle accident information; Finance Code offenses relating to slander, libel, and defamation of certain financial institutions and businesses; Labor Code offenses relating to restrictions on the length of hoe handles; Revised Statutes provisions relating to free pass transportation law, reduced transportation rates for officers, and an offense for discrimination against a person seeking employment on account of participation in a strike; and Vernon's Texas Civil Statutes provisions relating to penalties for conducting certain activities near a superconducting super collider scientific project facility in Ellis County and the offense for peddling printed matter by deaf or mute persons.

C.S.H.B. 1551 repeals the following provisions:

- Section 101.64, Alcoholic Beverage Code
- Sections 17.22, 17.30, 17.31, and 204.005, Business & Commerce Code
- Chapter 504, Business & Commerce Code
- the heading to Chapter 522, Business & Commerce Code
- Section 44.051, Education Code
- Sections 59.002, 89.101, 119.202, 122.251, and 199.001, Finance Code
- the heading to Subchapter B, Chapter 557, Government Code
- Sections 557.012 and 557.013, Government Code
- Sections 52.021 and 52.022, Labor Code
- Sections 205.401(b), 1802.302, 1805.103, 2156.004, 2156.005, and 2158.003, Occupations Code
- Sections 32.053(b) and 32.057(d), Parks and Wildlife Code
- Articles 4005a, 4006a, 4006b, 4015d, 4015e, and 5196b, Revised Statutes
- Chapter 281 (H.B. 2680), Acts of the 73rd Legislature, Regular Session, 1993 (Article 4413(47e-1), Vernon's Texas Civil Statutes)
- Chapter 487 (H.B. 376), Acts of the 56th Legislature, Regular Session, 1959 (Article 9010, Vernon's Texas Civil Statutes).

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1551 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

ARTICLE 1. PURPOSE

No equivalent provision.

SECTION 1.01. PURPOSE. The purpose of this Act is to implement the recommendations of the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015, and to authorize additional review of the penal laws described by Section 2.01(a) of this Act.

No equivalent provision.

ARTICLE 2. COMMISSION TO STUDY CERTAIN PENAL LAWS

SECTION 1. COMMISSION TO STUDY CERTAIN PENAL LAWS. (a) A commission is created to study and review all penal laws of this state other than criminal offenses:

- (1) under the Penal Code;
- (2) under Chapter 481, Health and Safety Code; or
- (3) related to the operation of a motor vehicle.

- (b) The commission shall:
 - (1) evaluate all laws described by Subsection (a) of this section; and
 - (2) make recommendations to the legislature regarding the repeal or amendment of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law, including the laws identified by the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015, as requiring additional review.

SECTION 2.01. COMMISSION TO STUDY CERTAIN PENAL LAWS. (a) A commission is created to study and review all penal laws of this state other than criminal offenses:

- (1) under the Penal Code;
- (2) under Chapter 481, Health and Safety Code; or
- (3) related to the operation of a motor vehicle.

- (b) The commission shall:
 - (1) evaluate all laws described by Subsection (a) of this section;
 - (2) make recommendations to the legislature regarding the repeal or amendment of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law, including the laws identified by the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015, as requiring additional review; and
 - (3) evaluate the recommendations made by the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015.

(c) The commission is composed of nine members appointed as follows:

(1) two members appointed by the governor;

(2) two members appointed by the lieutenant governor;

(3) two members appointed by the speaker of the house of representatives;

(4) two members appointed by the chief justice of the Supreme Court of Texas; and

(5) one member appointed by the presiding judge of the Texas Court of Criminal Appeals.

(d) The officials making appointments to the commission under Subsection (c) of this section shall ensure that the membership of the commission includes representatives of all areas of the criminal justice system, including prosecutors, defense attorneys, judges, legal scholars, and relevant business interests.

(e) The governor shall designate one member of the commission to serve as the presiding officer of the commission.

(f) A member of the commission is not entitled to compensation or reimbursement of expenses.

(g) The commission shall meet at the call of the presiding officer.

(h) Not later than November 1, 2018, the commission shall report the commission's findings and recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, the Supreme Court of Texas, the Texas Court of Criminal Appeals, and the standing committees of the house of representatives and the senate with primary jurisdiction over criminal justice. The commission shall include in its recommendations any specific statutes that the commission recommends repealing or amending.

SECTION 2. APPOINTMENT OF MEMBERS. Not later than the 60th day after the effective date of this Act, the governor, the lieutenant governor, the speaker of the house of representatives, the chief justice of the Supreme Court of Texas, and the presiding judge of the Texas Court of Criminal Appeals shall appoint the members of the commission created under this Act.

SECTION 3. ABOLITION OF

(c) The commission is composed of nine members appointed as follows:

(1) two members appointed by the governor;

(2) two members appointed by the lieutenant governor;

(3) two members appointed by the speaker of the house of representatives;

(4) two members appointed by the chief justice of the Supreme Court of Texas; and

(5) one member appointed by the presiding judge of the Texas Court of Criminal Appeals.

(d) The officials making appointments to the commission under Subsection (c) of this section shall ensure that the membership of the commission includes representatives of all areas of the criminal justice system, including prosecutors, defense attorneys, judges, legal scholars, and relevant business interests.

(e) The governor shall designate one member of the commission to serve as the presiding officer of the commission.

(f) A member of the commission is not entitled to compensation or reimbursement of expenses.

(g) The commission shall meet at the call of the presiding officer.

(h) Not later than November 1, 2018, the commission shall report the commission's findings and recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, the Supreme Court of Texas, the Texas Court of Criminal Appeals, and the standing committees of the house of representatives and the senate with primary jurisdiction over criminal justice. The commission shall include in its recommendations any specific statutes that the commission recommends repealing or amending.

SECTION 2.02. Substantially the same as introduced version.

SECTION 2.03. Substantially the same as

COMMISSION. The commission is abolished and this Act expires December 31, 2018.

No equivalent provision.

No equivalent provision.

introduced version.

ARTICLE 3. MISCELLANEOUS AMENDMENTS RELATING TO CRIMINAL OFFENSES

SECTION 3.01. Section 17.46(b), Business & Commerce Code, as amended by Chapters 1023 (H.B. 1265) and 1080 (H.B. 2573), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not;
- (6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
- (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparaging the goods, services, or business of another by false or misleading representation of facts;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- (12) representing that an agreement confers

or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 4151.152, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

(A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;

(B) the seller does not represent that the card provides insurance coverage of any kind; and

(C) the discount is not false, misleading, or deceptive;

(19) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing

to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(20) representing that a guaranty or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 to involve obligations in excess of those which are appropriate to the goods;

(21) promoting a pyramid promotional scheme, as defined by Section 32.55, Penal Code [~~Section 17.461~~];

(22) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(23) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit that the person neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(25) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business

entity that is not incorporated under the laws of this state or another jurisdiction;

(26) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act or is not registered with the Teacher Retirement System of Texas as required by Section 8A of that Act;

(27) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity;

(28) using the translation into a foreign language of a title or other word, including "attorney," "lawyer," "licensed," "notary," and "notary public," in any written or electronic material, including an advertisement, a business card, a letterhead, stationery, a website, or an online video, in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States;

(29) [~~(28)~~] delivering or distributing a solicitation in connection with a good or service that:

(A) represents that the solicitation is sent on behalf of a governmental entity when it is not; or

(B) resembles a governmental notice or form that represents or implies that a criminal penalty may be imposed if the recipient does not remit payment for the good or service;

(30) [~~(29)~~] delivering or distributing a solicitation in connection with a good or service that resembles a check or other negotiable instrument or invoice, unless the portion of the solicitation that resembles a check or other negotiable instrument or invoice includes the following notice, clearly and conspicuously printed in at least 18-point type:

"SPECIMEN-NON-NEGOTIABLE";

(31) [~~30~~] in the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002, Health and Safety Code:

(A) making a deceptive representation or designation about the synthetic substance; or
(B) causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested; or

(32) [~~31~~] a licensed public insurance adjuster directly or indirectly soliciting employment, as defined by Section 38.01, Penal Code, for an attorney, or a licensed public insurance adjuster entering into a contract with an insured for the primary purpose of referring the insured to an attorney without the intent to actually perform the services customarily provided by a licensed public insurance adjuster, provided that this subdivision may not be construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured.

No equivalent provision.

SECTION 3.02. Section 17.461, Business & Commerce Code, is transferred to Subchapter D, Chapter 32, Penal Code, and redesignated as Section 32.55, Penal Code, to read as follows:

Sec. 32.55 [~~17.461~~]. PYRAMID PROMOTIONAL SCHEME. (a) In this section:

(1) "Compensation" means payment of money, a financial benefit, or another thing of value. The term does not include payment based on sale of a product to a person, including a participant, who purchases the product for actual use or consumption.

(2) "Consideration" means the payment of cash or the purchase of a product. The term does not include:

(A) a purchase of a product furnished at cost to be used in making a sale and not for resale;

(B) a purchase of a product subject to a repurchase agreement that complies with Subsection (b); or

(C) time and effort spent in pursuit of a sale or in a recruiting activity.

(3) "Participate" means to contribute money into a pyramid promotional scheme without promoting, organizing, or operating the scheme.

(4) "Product" means a good, a service, or intangible property of any kind.

(5) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one or more other persons to participate in a pyramid promotional scheme; or

(B) assisting another person in inducing or attempting to induce one or more other persons to participate in a pyramid promotional scheme, including by providing references.

(6) "Pyramid promotional scheme" means a plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of other persons to participate in the plan or operation rather than from the sale of a product by a person introduced into the plan or operation.

(b) To qualify as a repurchase agreement for the purposes of Subsection (a)(2)(B), an agreement must be an enforceable agreement by the seller to repurchase, on written request of the purchaser and not later than the first anniversary of the purchaser's date of purchase, all unencumbered products that are in an unused, commercially resalable condition at a price not less than 90 percent of the amount actually paid by the purchaser for the products being returned, less any consideration received by the purchaser for purchase of the products being returned. A product that is no longer marketed by the seller is considered resalable if the product is otherwise in an unused, commercially resalable condition and is returned to the seller not later than the first anniversary of the purchaser's date of purchase, except that the product is not considered resalable if before the purchaser purchased the product it was clearly disclosed to the purchaser that the product was sold as a nonreturnable, discontinued, seasonal, or special promotion item.

(c) A person commits an offense if the person contrives, prepares, establishes, operates, advertises, sells, or promotes a pyramid promotional scheme. An offense under this subsection is a state jail felony.

(d) It is not a defense to prosecution for an

offense under this section that the pyramid promotional scheme involved both a franchise to sell a product and the authority to sell additional franchises if the emphasis of the scheme is on the sale of additional franchises.

No equivalent provision.

SECTION 3.03. Sections 522.001 and 522.002, Business & Commerce Code, are transferred to Subchapter D, Chapter 32, Penal Code, redesignated as Section 32.511, Penal Code, and amended to read as follows:

Sec. 32.511 [~~522.001~~]. IDENTITY THEFT BY ELECTRONIC DEVICE [~~DEFINITIONS~~]. (a) In this section [~~chapter~~]:

(1) "Payment card" means a credit card, debit card, check card, or other card that is issued to an authorized user to purchase or obtain goods, services, money, or any other thing of value.

(2) "Re-encoder" means an electronic device that can be used to transfer encoded information from a magnetic strip on a payment card onto the magnetic strip of a different payment card.

(3) "Scanning device" means an electronic device used to access, read, scan, or store information encoded on the magnetic strip of a payment card.

~~(b) [Sec. 522.002. OFFENSE; PENALTY.~~

~~(a)~~ A person commits an offense if the person uses a scanning device or re-encoder to access, read, scan, store, or transfer information encoded on the magnetic strip of a payment card without the consent of an authorized user of the payment card and with intent to harm or defraud another.

~~(c) [(b)]~~ An offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if the information accessed, read, scanned, stored, or transferred was protected health information as defined by the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, Health and Safety Code.

~~(d) [(e)]~~ If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

No equivalent provision.

SECTION 3.04. Article 18.18(g), Code of

Criminal Procedure, is amended to read as follows:

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code;

(4) "dog-fighting equipment" means:

(A) equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or training pen;

(B) equipment used for transporting a fighting dog, including any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog;

(C) equipment used to promote or advertise an exhibition of dog fighting, including a printing press or similar equipment, paper, ink, or photography equipment; or

(D) a dog trained, being trained, or intended to be used to fight with another dog;

(5) "obscene device" and "obscene" have the meanings assigned by Section 43.21, Penal Code;

(6) "re-encoder" has the meaning assigned by Section 32.511, Penal [~~522.001, Business & Commerce~~] Code;

(7) "scanning device" has the meaning assigned by Section 32.511, Penal [~~522.001, Business & Commerce~~] Code; and

(8) "obscene material" and "child pornography" include digital images and the media and equipment on which those images are stored.

No equivalent provision.

SECTION 3.05. Article 59.01(2), Code of Criminal Procedure, is amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

- (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
- (iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;
- (B) used or intended to be used in the commission of:
 - (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
 - (ii) any felony under Chapter 483, Health and Safety Code;
 - (iii) a felony under Chapter 151, Finance Code;
 - (iv) any felony under Chapter 34, Penal Code;
 - (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
 - (vi) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
 - (vii) a Class B misdemeanor under Section 32.511, Penal [~~Chapter 522, Business & Commerce~~] Code;
 - (viii) a Class A misdemeanor under Section 306.051, Business & Commerce Code;
 - (ix) any offense under Section 42.10, Penal Code;
 - (x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;
 - (xi) any offense under Chapter 71, Penal Code;
 - (xii) any offense under Section 20.05 or 20.06, Penal Code; or
 - (xiii) an offense under Section 326.002, Business & Commerce Code;
- (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;
- (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

No equivalent provision.

SECTION 3.06. Sections 557.001 and 557.011, Government Code, are transferred to Chapter 40, Penal Code, as added by this Act, redesignated as Sections 40.01 and 40.02, Penal Code, respectively, and amended to read as follows:

Sec. 40.01 [~~557.001~~]. SEDITON. (a) A person commits an offense if the person knowingly:

(1) commits, attempts to commit, or conspires with one or more persons to commit an act intended to overthrow, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force or violence;

(2) under circumstances that constitute a clear and present danger to the security of this state or a political subdivision of this state, advocates, advises, or teaches or conspires with one or more persons to advocate, advise, or teach a person to commit or attempt to commit an act described in Subdivision (1); or

(3) participates, with knowledge of the nature of the organization, in the management of an organization that engages in or attempts to engage in an act intended to overthrow, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force or violence.

(b) An offense under this section is a felony of the second degree [~~punishable by:~~

~~(1) a fine not to exceed \$20,000;~~

~~(2) confinement in the Texas Department of Criminal Justice for a term of not less than one year or more than 20 years; or~~

~~(3) both fine and imprisonment].~~

(c) A person convicted of an offense under this section may not receive community supervision under Chapter 42A, Code of Criminal Procedure.

Sec. 40.02 [~~557.011~~]. SABOTAGE. (a) A person commits an offense if the person, with the intent to injure the United States,

this state, or any facility or property used for national defense sabotages or attempts to sabotage any property or facility used or to be used for national defense.

(b) An offense under this section is a felony of the second degree [~~punishable by confinement in the Texas Department of Criminal Justice for a term of not less than two years or more than 20 years~~].

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, the actor may be prosecuted under both sections.

(d) In this section, "sabotage" means to wilfully and maliciously damage or destroy property.

No equivalent provision.

SECTION 3.07. Section 557.002, Government Code, is amended to read as follows:

Sec. 557.002. DISQUALIFICATION. A person who is finally convicted of an offense under Section 40.01, Penal Code, [~~557.001~~] may not hold office or a position of profit, trust, or employment with the state or any political subdivision of the state.

No equivalent provision.

SECTION 3.08. Section 3101.010(b), Government Code, is amended to read as follows:

(b) An offense under this section is a misdemeanor and on conviction is punishable by[~~:~~

[~~(1)~~] a fine of not less than \$5 or more than \$300[~~;~~

[~~(2)~~] ~~confinement in the county jail for a term not to exceed three months;~~ or

[~~(3)~~] ~~both a fine and confinement~~].

No equivalent provision.

SECTION 3.09. Section 615.002(e), Local Government Code, is amended to read as follows:

(e) A person commits an offense if the person violates a parking rule adopted under this section. An offense under this subsection is a Class C misdemeanor [~~punishable by a fine of not less than \$1 nor more than \$20~~].

No equivalent provision.

SECTION 3.10. Section 11.074(b), Natural Resources Code, is amended to read as follows:

(b) Any owner of stock or a [~~his~~] manager, agent, employee, or servant of the owner who fences, uses, occupies, or appropriates

by herding or line-riding any portion of the land covered by Subsection (a) [~~of this section~~] without a lease for the land commits an offense. An offense under this section is a Class C misdemeanor~~[, on conviction, shall be fined not less than \$100 nor more than \$1,000 and confined in the county jail for not less than three months nor more than two years]~~. Each day for which a violation continues constitutes a separate offense.

No equivalent provision.

SECTION 3.11. Section 88.134(b), Natural Resources Code, is amended to read as follows:

(b) A person who violates any [~~other~~] provision of this chapter other than those covered by Subsection (a), a person who fails to comply with any of the other terms of this chapter, a person who fails to comply with the terms of a rule or order adopted by the governmental agency under the terms of this chapter, or a person who violates any of the rules or orders of the governmental agency adopted under the provisions of this chapter commits an offense. An offense under this subsection is a felony of the third degree [~~on conviction is considered guilty of a felony and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for a term of not less than two nor more than four years]~~.

No equivalent provision.

SECTION 3.12. Section 114.102(b), Natural Resources Code, is amended to read as follows:

(b) An offense under this section is a Class A misdemeanor [~~felony of the third degree~~].

No equivalent provision.

SECTION 3.13. Section 264.151(a), Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person violates Section 256.001. An offense under this subsection is a felony of the third degree. [~~Each day of a violation is a separate offense.~~]

No equivalent provision.

SECTION 3.14. Section 266.303, Occupations Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) An offense for a violation of Section 266.151 is a Class A misdemeanor, except that the offense is a felony of the third

degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense for a violation of Section 266.151.

(b-1) An offense for a violation of [ø] Section 266.301(b) is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense for a violation of Section 266.301(b).

No equivalent provision.

SECTION 3.15. Section 1701.553(b), Occupations Code, is amended to read as follows:

(b) An offense under Subsection (a) is a Class A misdemeanor [~~state jail felony~~].

No equivalent provision.

SECTION 3.16. Subchapter E, Chapter 1802, Occupations Code, is amended by adding Section 1802.2025 to read as follows:

Sec. 1802.2025. FRIVOLOUS CLAIMS; CIVIL PENALTY. (a) A person may not, for personal benefit or to harm another:

(1) institute a claim under this chapter in which the person knows the person has no interest; or

(2) institute a frivolous suit or claim that the person knows is false.

(b) A person who violates Subsection (a) is subject to a civil penalty under Section 51.352.

No equivalent provision.

SECTION 3.17. Section 2155.002(d), Occupations Code, is amended to read as follows:

(d) An offense under Subsection (a) or (c) is a misdemeanor punishable by[:

~~(1)] a fine of not less than \$25 or more than \$100[;~~

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

~~(3) both a fine and confinement].~~

No equivalent provision.

SECTION 3.18. Section 2156.006, Occupations Code, is amended to read as follows:

Sec. 2156.006. FORFEITURE OF LEASE. A theater's lessee or a lessee's assigns forfeit the lease and any rights and privileges under the lease if the person[:

(1)] does not comply with the law governing theaters[; or

(2) is convicted of an offense under

~~Section 2156.005].~~

No equivalent provision.

SECTION 3.19. Section 32.153(a), Parks and Wildlife Code, is amended to read as follows:

(a) A person commits an offense if the person violates:

- (1) Section 32.051;
- (2) ~~[Section 32.053(b);~~
~~[(3)]~~ Section 32.056;
- (3) ~~[(4)]~~ ~~Section 32.057(d);~~
~~[(5)]~~ Section 32.101;
- (4) ~~[(6)]~~ Section 32.104;
- (5) ~~[(7)]~~ Section 32.105;
- (6) ~~[(8)]~~ Section 32.106;
- (7) ~~[(9)]~~ Section 32.107; or
- (8) ~~[(10)]~~ Section 32.108.

No equivalent provision.

SECTION 3.20. Section 62.013, Parks and Wildlife Code, is amended to read as follows:

Sec. 62.013. PENALTIES. (a) Except as provided by Subsections (b), ~~(b-1)~~, and (c) of this section, a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 62.003, 62.004, ~~[62.005;]~~ 62.0065, 62.011(c), or 350.001 or a rule adopted under Section 62.0065 commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or rule, as appropriate, that the defendant has been convicted one or more times before the trial date of a violation of that section or rule, as appropriate, in which case the offense is a Parks and Wildlife Code state jail felony.

(b-1) A person who violates Section 62.005 commits an offense that is a:

(1) Class C Parks and Wildlife Code misdemeanor if the person commits the offense recklessly;

(2) Class A Parks and Wildlife Code misdemeanor if the person intentionally or knowingly commits the offense; or

(3) Parks and Wildlife Code state jail felony if it is shown at the trial of the defendant for a violation of that section that the defendant has been convicted one or more times before the trial date of a violation of that section.

(c) In addition to the punishments provided in Subsections (a), ~~and~~ (b), and (b-1), a

person who violates Section 62.003, 62.004, 62.005, 62.0065, 62.011(c), or 350.001 or a rule adopted under Section 62.0065 is punishable by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

No equivalent provision.

SECTION 3.21. Section 76.040, Parks and Wildlife Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A person who violates Section 76.037 [~~or Section 76.038 of this code~~] commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(b-1) A person who violates Section 76.038 commits an offense that is a:

(1) Class C Parks and Wildlife Code misdemeanor if the person commits the offense recklessly; or

(2) Class B Parks and Wildlife Code misdemeanor if the person intentionally or knowingly commits the offense.

No equivalent provision.

SECTION 3.22. Section 76.118, Parks and Wildlife Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (a-1) to read as follows:

(a) Except as provided in Subsections (a-1), (b)₂, and (c) of this section, a person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(a-1) A person who violates Section 76.101 or 76.109 or a regulation of the commission issued under one of those sections commits an offense that is a:

(1) Class C Parks and Wildlife Code misdemeanor if the person commits the offense recklessly; or

(2) Class B Parks and Wildlife Code misdemeanor if the person intentionally or knowingly commits the offense.

(b) A person who violates Section ~~[76.101,]~~ 76.107~~[, or 76.109]~~ or a regulation of the commission issued under that section ~~[one of those sections]~~ commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) A person who violates Section 76.116, or at the same time violates Sections 76.109 and 76.116, commits an offense that is a:

(1) Class B Parks and Wildlife Code

misdemeanor if the person commits the offense recklessly; or

(2) Class A Parks and Wildlife Code misdemeanor if the person intentionally or knowingly commits the offense.

No equivalent provision.

SECTION 3.23. Section 77.061(b), Parks and Wildlife Code, is amended to read as follows:

(b) Notwithstanding the provisions of Subchapter E, Chapter 12, of this code, a person who violates Subdivision (1) of Subsection (a) of this section or Section 77.024 of this code commits an offense that is a:

(1) Class C Parks and Wildlife Code misdemeanor if the person commits the offense recklessly; or

(2) Class B Parks and Wildlife Code misdemeanor if the person intentionally or knowingly commits the offense [and on conviction is punishable by a fine of not less than \$2,500 nor more than \$5,000, by confinement in the county jail for not less than six months nor more than one year, or by both].

No equivalent provision.

SECTION 3.24. Section 19.03(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation, sabotage, or terroristic threat under Section 22.07(a)(1), (3), (4), (5), or (6);

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

- (B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;
- (6) the person:
 - (A) while incarcerated for an offense under this section or Section 19.02, murders another; or
 - (B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;
- (7) the person murders more than one person:
 - (A) during the same criminal transaction; or
 - (B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct;
- (8) the person murders an individual under 10 years of age; or
- (9) the person murders another person in retaliation for or on account of the service or status of the other person as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

No equivalent provision.

SECTION 3.25. Section 37.10(c)(2), Penal Code, is amended to read as follows:

- (2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:
 - (A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, a public school record, form, report, or budget required under Chapter 42, Education Code, or a rule adopted under that chapter, data reported for a school district or open-enrollment charter school to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law or rule requiring that reporting, or a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree;
 - (B) a written report of a medical, chemical, toxicological, ballistic, or other expert

examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action;

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(D) a search warrant issued by a magistrate.

No equivalent provision.

SECTION 3.26. Title 8, Penal Code, is amended by adding Chapter 40, and a heading is added to that chapter to read as follows:

CHAPTER 40. SEDITION AND SABOTAGE

No equivalent provision.

SECTION 3.27. Section 154.517, Tax Code, is amended to read as follows:

Sec. 154.517. FELONY OR MISDEMEANOR. (a) An offense under Section [Sections] 154.511, 154.512, 154.514, 154.515, or [through] 154.516 is a felony of the third degree.

(b) An offense under Section 154.513 is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a felony of the third degree.

No equivalent provision.

SECTION 3.28. Section 155.208, Tax Code, is amended to read as follows:

Sec. 155.208. MISDEMEANOR. (a) An offense under Section 155.202, 155.204, 155.205, 155.206, or 155.207 [Sections 155.202-155.207] is a Class A misdemeanor.

(b) An offense under Section 155.203 is a Class C misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a Class A misdemeanor.

No equivalent provision.

SECTION 3.29. Section 155.213, Tax Code, is amended to read as follows:

Sec. 155.213. FELONY OR MISDEMEANOR. (a) An offense under Section 155.210 or 155.212 [Sections 155.209-155.212] is a felony of the third

degree.

(b) An offense under Section 155.209 is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a felony of the third degree.

(c) An offense under Section 155.211 is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted of an offense under that section, in which event the offense is a felony of the third degree.

No equivalent provision.

SECTION 3.30. Section 15.030(c), Utilities Code, is amended to read as follows:

(c) An offense under this section is a Class A misdemeanor [~~felony of the third degree~~].

No equivalent provision.

SECTION 3.31. Section 105.024(b), Utilities Code, is amended to read as follows:

(b) An offense under this section is a Class A misdemeanor [~~felony of the third degree~~].

No equivalent provision.

SECTION 3.32. The following laws are repealed:

(1) Section 101.64, Alcoholic Beverage Code;

(2) Sections 17.22, 17.30, 17.31, and 204.005, Business & Commerce Code;

(3) Chapter 504, Business & Commerce Code;

(4) the heading to Chapter 522, Business & Commerce Code;

(5) Section 44.051, Education Code;

(6) Sections 59.002, 89.101, 119.202, 122.251, and 199.001, Finance Code;

(7) the heading to Subchapter B, Chapter 557, Government Code;

(8) Sections 557.012 and 557.013, Government Code;

(9) Sections 52.021 and 52.022, Labor Code;

(10) Sections 205.401(b), 1802.302, 1805.103, 2156.004, 2156.005, and 2158.003, Occupations Code;

(11) Sections 32.053(b) and 32.057(d), Parks and Wildlife Code;

(12) Articles 4005a, 4006a, 4006b, 4015d, 4015e, and 5196b, Revised Statutes;

(13) Chapter 281 (H.B. 2680), Acts of the 73rd Legislature, Regular Session, 1993 (Article 4413(47e-1), Vernon's Texas Civil Statutes); and

(14) Chapter 487 (H.B. 376), Acts of the 56th Legislature, Regular Session, 1959 (Article 9010, Vernon's Texas Civil Statutes).

No equivalent provision.

ARTICLE 4. TRANSITION PROVISIONS; EFFECTIVE DATE

No equivalent provision.

SECTION 4.01. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

No equivalent provision.

SECTION 4.02. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 4. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 4.03. This Act takes effect September 1, 2017.