

By: Moody, Isaac, Dutton, Minjarez, et al.

H.B. No. 81

Substitute the following for H.B. No. 81:

By: Moody

C.S.H.B. No. 81

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the civil and criminal penalties for possession of
3 certain small amounts of marihuana and an exception to prosecution
4 for possession of associated drug paraphernalia; creating a
5 criminal offense.

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

7 SECTION 1. Section [481.121\(b\)](#), Health and Safety Code, is
8 amended to read as follows:

9 (b) An offense under Subsection (a) is:

10 (1) a Class B misdemeanor if the amount of marihuana
11 possessed is two ounces or less but more than one ounce;

12 (2) a Class A misdemeanor if the amount of marihuana
13 possessed is four ounces or less but more than two ounces;

14 (3) a state jail felony if the amount of marihuana
15 possessed is five pounds or less but more than four ounces;

16 (4) a felony of the third degree if the amount of
17 marihuana possessed is 50 pounds or less but more than 5 pounds;

18 (5) a felony of the second degree if the amount of
19 marihuana possessed is 2,000 pounds or less but more than 50 pounds;

20 and

21 (6) punishable by imprisonment in the Texas Department
22 of Criminal Justice for life or for a term of not more than 99 years
23 or less than 5 years, and a fine not to exceed \$50,000, if the amount
24 of marihuana possessed is more than 2,000 pounds.

1 SECTION 2. Subchapter D, Chapter 481, Health and Safety
2 Code, is amended by adding Sections 481.1211 and 481.1212 to read as
3 follows:

4 Sec. 481.1211. CIVIL PENALTY: POSSESSION OF SMALL AMOUNT OF
5 MARIHUANA. (a) Notwithstanding Section 481.121 and except as
6 otherwise provided by Section 481.1212, a person who knowingly or
7 intentionally possesses a usable quantity of marihuana in an amount
8 that is one ounce or less does not commit an offense but is liable to
9 the state for a civil penalty not to exceed \$250.

10 (b) The imposition of a civil penalty under this section is
11 not a conviction and may not be considered a conviction for any
12 purpose.

13 Sec. 481.1212. OFFENSE: SUBSEQUENT POSSESSION OF SMALL
14 AMOUNT OF MARIHUANA. (a) A person commits an offense if the person:

15 (1) knowingly or intentionally possesses a usable
16 quantity of marihuana in an amount that is one ounce or less; and

17 (2) has previously been assessed a civil penalty three
18 times under Section 481.1211.

19 (b) An offense under this section is a Class C misdemeanor.

20 SECTION 3. Section 481.125, Health and Safety Code, is
21 amended by adding Subsection (g) to read as follows:

22 (g) It is a defense to prosecution under this section that
23 drug paraphernalia was knowingly or intentionally used, possessed,
24 or delivered solely in furtherance of a violation of Section
25 481.1211 or an offense under Section 481.1212.

26 SECTION 4. Subchapter B, Chapter 45, Code of Criminal
27 Procedure, is amended by adding Article 45.062 to read as follows:

1 Art. 45.062. PROCEEDINGS FOR CERTAIN MARIHUANA POSSESSION
2 VIOLATIONS AND OFFENSES. (a) A peace officer may not make an
3 arrest solely because of a violation of Section 481.1211, Health
4 and Safety Code, regardless of whether the person may be subject to
5 prosecution under Section 481.1212 of that code. A peace officer
6 may issue to a person a citation that contains written notice of the
7 time and place the person must appear before a justice court, the
8 name and address of the person charged, and the violation charged.
9 The citation must notify the person that the person may be subject
10 to prosecution for a Class C misdemeanor under Section 481.1212,
11 Health and Safety Code, if the person has previously been assessed a
12 civil penalty three times under Section 481.1211, Health and Safety
13 Code.

14 (b) The district or county attorney of the county in which
15 the conduct described by Section 481.1211, Health and Safety Code,
16 is alleged to have occurred may:

17 (1) bring an action in the justice court of the county
18 to collect the civil penalty of a person who receives a citation
19 under this section; or

20 (2) charge the person with an offense under Section
21 481.1212, Health and Safety Code, if the person has previously been
22 assessed a civil penalty three times under Section 481.1211 of that
23 code.

24 (c) Except as otherwise provided by this article, a civil
25 action under this article for a violation of Section 481.1211,
26 Health and Safety Code, shall be conducted in the manner provided by
27 this chapter as if an offense were charged.

1 (d) The court may not:

2 (1) issue an arrest warrant under Article 45.014 for a
3 violation of Section 481.1211, Health and Safety Code, or an
4 offense under Section 481.1212 of that code; or

5 (2) require the person who violates Section 481.1211,
6 Health and Safety Code, or commits an offense under Section
7 481.1212 of that code, to give bail under Article 45.016.

8 (e) A citation issued under this article is considered to be
9 a sufficient complaint for purposes of Articles 45.018 and 45.019
10 if the citation is filed with the court by a district or county
11 attorney.

12 (f) A person liable for a civil penalty under Section
13 481.1211, Health and Safety Code, may not appeal under Article
14 45.042.

15 (g) Before imposing a civil penalty under Section 481.1211,
16 Health and Safety Code, the court shall determine whether the
17 person subject to the penalty is indigent. If the court determines
18 the person is indigent, the court shall waive the penalty and may
19 order the person to complete not more than 10 hours of community
20 service.

21 (h) Subsections (n), (p), and (q) apply to a person for whom
22 a court waives a penalty under Subsection (g).

23 (i) The court may waive or reduce the civil penalty for a
24 person other than a person described by Subsection (g) if:

25 (1) the person subject to a civil penalty under
26 Section 481.1211, Health and Safety Code, attends a program that
27 provides education in substance abuse and is approved by the

1 Department of State Health Services, the Texas Department of
2 Licensing and Regulation, or the Texas Department of Public Safety;
3 or

4 (2) the person performs not more than 10 hours of
5 community service, as ordered by the court.

6 (j) If during a proceeding for a violation of Section
7 481.1211, Health and Safety Code, the court finds that the person
8 has previously been assessed a civil penalty under that section one
9 or two times, the court shall, in addition to assessing a civil
10 penalty, order the person to attend a program that provides
11 education in substance abuse and is approved by the Department of
12 State Health Services, the Texas Department of Licensing and
13 Regulation, or the Texas Department of Public Safety.

14 (k) If during a proceeding for a violation of Section
15 481.1211, Health and Safety Code, the court finds that the person
16 has previously been assessed a civil penalty under that section
17 three times, the court shall suspend the proceedings and notify the
18 appropriate prosecuting attorney so that the person may be charged
19 with an offense under Section 481.1212, Health and Safety Code.

20 (l) On a plea of guilty or nolo contendere for an offense
21 under Section 481.1212, Health and Safety Code, by a defendant and
22 payment of all court costs, the judge shall defer further
23 proceedings without entering an adjudication of guilt and place the
24 defendant on probation under the provisions of Article [45.051](#).

25 (m) The court may issue a capias for the arrest of a person
26 who fails to appear or to make payment, as directed by a citation
27 issued under this section.

1 (n) Law enforcement may seize any marihuana in possession of
2 a person subject to a civil penalty under Section 481.1211, Health
3 and Safety Code, or subject to prosecution under Section 481.1212
4 of that code. If marihuana is seized under this article in
5 connection with a violation of Section 481.1211, Health and Safety
6 Code, law enforcement shall preserve the marihuana as if the
7 marihuana were evidence of an offense under Section 481.1212,
8 Health and Safety Code, pending the final resolution of a civil
9 proceeding under this article. After final resolution of a civil
10 proceeding under this article, any marihuana seized is subject to
11 forfeiture and shall be disposed of in accordance with Section
12 481.159, Health and Safety Code.

13 (o) This article does not affect the authority of a peace
14 officer to conduct a search or seize marihuana or other property as
15 contraband under Chapter 18 or 59 or other law.

16 (p) The identity of a person cited for a violation of
17 Section 481.1211, Health and Safety Code, is confidential
18 information under Section 552.101, Government Code, unless the
19 person is charged with an offense under Section 481.1212, Health
20 and Safety Code, in connection with that citation.

21 (q) The identity of a person found liable for a civil
22 penalty under Section 481.1211, Health and Safety Code, is
23 confidential information under Section 552.101, Government Code.

24 SECTION 5. Section 51.03(a), Family Code, is amended to
25 read as follows:

26 (a) Delinquent conduct is:

27 (1) conduct, other than a traffic offense, that

1 violates a penal law of this state or of the United States
2 punishable by imprisonment or by confinement in jail;

3 (2) conduct that violates a lawful order of a court
4 under circumstances that would constitute contempt of that court
5 in:

6 (A) a justice or municipal court;

7 (B) a county court for conduct punishable only by
8 a fine; or

9 (C) a truancy court;

10 (3) conduct that violates Section 49.04, 49.05, 49.06,
11 49.07, or 49.08, Penal Code; ~~or~~

12 (4) conduct that violates Section 106.041, Alcoholic
13 Beverage Code, relating to driving under the influence of alcohol
14 by a minor (third or subsequent offense); or

15 (5) conduct for which a person is subject to a civil
16 penalty under Section 481.1211, Health and Safety Code, or that
17 violates Section 481.1212 of that code.

18 SECTION 6. Section 118.124, Local Government Code, is
19 amended to read as follows:

20 Sec. 118.124. PROHIBITED FEES. A justice of the peace is
21 not entitled to a fee for:

22 (1) the examination of a paper or record in the
23 justice's office;

24 (2) filing any process or document the justice issues
25 that is returned to court;

26 (3) a motion or judgment on a motion for security for
27 costs;

- 1 (4) taking or approving a bond for costs; [~~or~~]
- 2 (5) the first copy of a document in a criminal case
- 3 issued to:
 - 4 (A) a criminal defendant in the case;
 - 5 (B) an attorney representing a criminal
 - 6 defendant in the case; or
 - 7 (C) a prosecuting attorney; or
- 8 (6) the filing of a civil action by the state under
- 9 Section 481.1211, Health and Safety Code.

10 SECTION 7. The changes in law made by this Act apply only to
11 a violation of law that occurs on or after the effective date of
12 this Act. A violation that occurs before the effective date of this
13 Act is governed by the law in effect on the date the violation
14 occurred, and the former law is continued in effect for that
15 purpose. For purposes of this section, a violation of law occurred
16 before the effective date of this Act if any element of the
17 violation occurred before that date.

18 SECTION 8. This Act takes effect September 1, 2017.