

By: Moody

H.B. No. 81

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a civil action to collect a civil penalty for possession  
3 of certain small amounts of marihuana and an exception to  
4 prosecution for possession of associated drug paraphernalia.

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

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

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

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

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

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

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

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

19 and

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

24 SECTION 2. Subchapter D, Chapter [481](#), Health and Safety

1 Code, is amended by adding Section 481.1211 to read as follows:

2 Sec. 481.1211. CIVIL PENALTY: POSSESSION OF SMALL AMOUNT OF  
3 MARIHUANA. (a) A person who knowingly or intentionally possesses a  
4 usable quantity of marihuana in an amount that is one ounce or less  
5 is liable to the state for a civil penalty not to exceed \$250.

6 (b) The imposition of a civil penalty under this section is  
7 not a conviction and may not be considered a conviction for any  
8 purpose.

9 (c) A peace officer may not make an arrest solely because of  
10 a violation of this section. A peace officer may issue to a person  
11 who violates this section a citation that contains written notice  
12 of the time and place the person must appear before a justice court,  
13 the name and address of the person charged, and the civil violation  
14 charged.

15 (d) The district or county attorney of the county in which  
16 the conduct described by Subsection (a) is alleged to have occurred  
17 may bring an action in the justice court of the county to collect  
18 the civil penalty of a person who receives a citation under this  
19 section.

20 (e) A civil action under this section shall be conducted in  
21 the manner provided by Chapter 45, Code of Criminal Procedure, as if  
22 an offense were charged, except that:

23 (1) the court may not:

24 (A) issue an arrest warrant under Article 45.014,  
25 Code of Criminal Procedure; or

26 (B) require the person liable for a civil penalty  
27 to give bail under Article 45.016, Code of Criminal Procedure;

1           (2) a citation issued under this section is considered  
2 to be a sufficient complaint for purposes of Articles 45.018 and  
3 45.019, Code of Criminal Procedure, if the citation is filed with  
4 the court by a district or county attorney; and

5           (3) a person liable for a civil penalty under this  
6 section may not appeal under Article 45.042, Code of Criminal  
7 Procedure.

8           (f)(1) Before imposing a civil penalty under this section,  
9 the court shall determine whether the person subject to the penalty  
10 is indigent. If the court determines the person is indigent, the  
11 court shall waive the penalty and may order the person to complete  
12 not more than 10 hours of community service.

13           (2) Subsections (i) and (j) apply to a person for whom  
14 a court waives a penalty under Subdivision (1).

15           (g) The court may waive or reduce the civil penalty for a  
16 person other than a person described by Subsection (f) if:

17           (1) the person subject to a civil penalty under this  
18 section attends a program that provides education in substance  
19 abuse and is approved by the Department of State Health Services or  
20 the Texas Department of Public Safety; or

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

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

26           (i) Law enforcement may seize any marihuana in possession of  
27 a person subject to a civil penalty under this section. If marihuana

1 is seized under this section, law enforcement shall preserve the  
2 marihuana as if the marihuana were evidence of an offense under this  
3 chapter pending the final resolution of a civil proceeding under  
4 this section. After final resolution of a civil proceeding under  
5 this section, any marihuana seized is subject to forfeiture and  
6 shall be disposed of in accordance with Section 481.159.

7 (j) The identity of a person cited or found liable for a  
8 civil penalty under this section is confidential information under  
9 Section 552.101, Government Code.

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

12 (g) It is a defense to prosecution under this section that  
13 drug paraphernalia was knowingly or intentionally used, possessed,  
14 or delivered solely in furtherance of a violation of Section  
15 481.1211.

16 SECTION 4. Section 51.03(a), Family Code, is amended to  
17 read as follows:

18 (a) Delinquent conduct is:

19 (1) conduct, other than a traffic offense, that  
20 violates a penal law of this state or of the United States  
21 punishable by imprisonment or by confinement in jail;

22 (2) conduct that violates a lawful order of a court  
23 under circumstances that would constitute contempt of that court  
24 in:

25 (A) a justice or municipal court;

26 (B) a county court for conduct punishable only by  
27 a fine; or

- 1 (C) a truancy court;
- 2 (3) conduct that violates Section 49.04, 49.05, 49.06,
- 3 49.07, or 49.08, Penal Code; [~~or~~]
- 4 (4) conduct that violates Section 106.041, Alcoholic
- 5 Beverage Code, relating to driving under the influence of alcohol
- 6 by a minor (third or subsequent offense); or
- 7 (5) conduct for which a person is subject to a civil
- 8 penalty under Section 481.1211, Health and Safety Code.

9 SECTION 5. Section 118.124, Local Government Code, is  
10 amended to read as follows:

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

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

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

17 (3) a motion or judgment on a motion for security for  
18 costs;

19 (4) taking or approving a bond for costs; [~~or~~]

20 (5) the first copy of a document in a criminal case  
21 issued to:

22 (A) a criminal defendant in the case;

23 (B) an attorney representing a criminal  
24 defendant in the case; or

25 (C) a prosecuting attorney; or

26 (6) the filing of a civil action by the state under  
27 Section 481.1211, Health and Safety Code.

1           SECTION 6. The changes in law made by this Act apply only to  
2 a violation of law that occurs on or after the effective date of  
3 this Act. A violation that occurs before the effective date of this  
4 Act is governed by the law in effect on the date the violation  
5 occurred, and the former law is continued in effect for that  
6 purpose. For purposes of this section, a violation of law occurred  
7 before the effective date of this Act if any element of the  
8 violation occurred before that date.

9           SECTION 7. This Act takes effect September 1, 2017.