

By: Moody, Collier, White, Dutton, Phelan,  
et al.

H.B. No. 63

Substitute the following for H.B. No. 63:

By: Collier

C.S.H.B. No. 63

A BILL TO BE ENTITLED

1 AN ACT  
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  
15 person:

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

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

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

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

23 (g) It is a defense to prosecution under this section that  
24 drug paraphernalia was knowingly or intentionally used, possessed,  
25 or delivered solely in furtherance of a violation of Section  
26 481.1211 or an offense under Section 481.1212.

27 SECTION 4. Subchapter B, Chapter 45, Code of Criminal

1 Procedure, is amended by adding Article 45.062 to read as follows:

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

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

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

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

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

1 this chapter as if an offense were charged.

2 (d) The court may not:

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

6 (2) require the person who violates Section 481.1211,  
7 Health and Safety Code, or commits an offense under Section  
8 481.1212 of that code, to give bail under Article 45.016.

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

13 (f) At the time and place the person is required to appear  
14 before the justice court pursuant to the citation issued to the  
15 person under Subsection (a), the court shall inquire whether the  
16 district or county attorney intends to collect a civil penalty or  
17 prosecute an offense. If the attorney does not answer in the  
18 affirmative, the court shall dismiss the complaint with prejudice.

19 (g) A person liable for a civil penalty under Section  
20 481.1211, Health and Safety Code, may not appeal under Article  
21 45.042.

22 (h) Before imposing a civil penalty under Section 481.1211,  
23 Health and Safety Code, the court shall determine whether the  
24 person subject to the penalty is indigent. If the court determines  
25 the person is indigent, the court shall waive the penalty and may  
26 order the person to complete not more than 10 hours of community  
27 service.

1       (i) Subsections (p), (r), and (s) apply to a person for whom  
2 a court waives a penalty under Subsection (h).

3       (j) The court may waive or reduce the civil penalty for a  
4 person other than a person described by Subsection (h) if:

5           (1) the person subject to a civil penalty under  
6 Section 481.1211, Health and Safety Code, attends a program that  
7 provides education in substance abuse and is approved by the  
8 Department of State Health Services, the Texas Department of  
9 Licensing and Regulation, or the Texas Department of Public Safety;  
10 or

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

13       (k) If during a proceeding for a violation of Section  
14 481.1211, Health and Safety Code, the court finds that the person  
15 has previously been assessed a civil penalty under that section one  
16 time, the court shall, in addition to assessing a civil penalty,  
17 order the person to attend a program that provides education in  
18 substance abuse and is approved by the Department of State Health  
19 Services, the Texas Department of Licensing and Regulation, or the  
20 Texas Department of Public Safety.

21       (l) If during a proceeding for a violation of Section  
22 481.1211, Health and Safety Code, the court finds that the person  
23 has previously been assessed a civil penalty under that section two  
24 times, the court shall suspend the proceedings and notify the  
25 appropriate prosecuting attorney so that the person may be charged  
26 with an offense under Section 481.1212, Health and Safety Code.

27       (m) On a plea of guilty or nolo contendere for an offense

1 under Section 481.1212, Health and Safety Code, by a defendant and  
2 payment of all court costs, the judge shall defer further  
3 proceedings without entering an adjudication of guilt and place the  
4 defendant on probation under the provisions of Article 45.051.

5 (n) The court may issue a capias for the arrest of a person  
6 who fails to appear or to make payment, as directed by a citation  
7 issued under this article.

8 (o) If the court determines that the civil penalty assessed  
9 under Section 411.1211, Health and Safety Code, is uncollectable,  
10 the court may enter an order waiving any remaining unpaid portion of  
11 the penalty.

12 (p) Law enforcement may seize any marihuana in possession of  
13 a person subject to a civil penalty under Section 481.1211, Health  
14 and Safety Code, or subject to prosecution under Section 481.1212  
15 of that code. If marihuana is seized under this article in  
16 connection with a violation of Section 481.1211, Health and Safety  
17 Code, law enforcement shall preserve the marihuana as if the  
18 marihuana were evidence of an offense under Section 481.1212,  
19 Health and Safety Code, pending the final resolution of a civil  
20 proceeding under this article. After final resolution of a civil  
21 proceeding under this article, any marihuana seized is subject to  
22 forfeiture and shall be disposed of in accordance with Section  
23 481.159, Health and Safety Code.

24 (q) This article does not affect the authority of a peace  
25 officer to conduct a search or seize marihuana or other property as  
26 contraband under Chapter 18 or 59 or other law.

27 (r) The identity of a person cited for a violation of

1 Section 481.1211, Health and Safety Code, is confidential  
2 information and may not be disclosed to the public unless the person  
3 is charged with an offense under Section 481.1212, Health and  
4 Safety Code, in connection with that citation.

5 (s) The identity of a person found liable for a civil  
6 penalty under Section 481.1211, Health and Safety Code, is  
7 confidential information and may not be disclosed to the public.

8 (t) A court that assesses a civil penalty under Section  
9 481.1211, Health and Safety Code, may maintain a database or other  
10 electronic record of penalties assessed under that section. The  
11 court may share that database or electronic record with other  
12 courts and prosecutors in this state for purposes of determining  
13 whether a person has been previously assessed a civil penalty under  
14 Section 481.1211, Health and Safety Code, and is subject to  
15 prosecution under Section 481.1212 of that code. The information  
16 in the database or electronic record is confidential and may not be  
17 disclosed to the public.

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

20 (a) Delinquent conduct is:

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

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

27 (A) a justice or municipal court;

1 (B) a county court for conduct punishable only by  
2 a fine; or

3 (C) a truancy court;

4 (3) conduct that violates Section 49.04, 49.05, 49.06,  
5 49.07, or 49.08, Penal Code; [~~or~~]

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

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

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

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

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

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

20 (3) a motion or judgment on a motion for security for  
21 costs;

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

23 (5) the first copy of a document in a criminal case  
24 issued to:

25 (A) a criminal defendant in the case;

26 (B) an attorney representing a criminal  
27 defendant in the case; or



1                   (C) a prosecuting attorney; or  
2                   (6) the filing of a civil action by the state under  
3 Section 481.1211, Health and Safety Code.

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

12           SECTION 8. This Act takes effect September 1, 2019.