

BILL ANALYSIS

H.B. 816
By: Krause
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been suggested that having a large number of offenses in state law outside of the Penal Code has rendered some aspects of criminal law in Texas unwieldy and unjust, with penalties seemingly disproportionate to the severity of the crime. H.B. 816 seeks to address this issue by establishing a commission to study certain laws outside of the Penal Code and by revising penalty structures for certain offenses that are currently compiled outside of the Penal Code.

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

H.B. 816 creates a nine-member 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 those laws;
- 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 any laws requiring additional review, as identified by the commission created to study and review certain penal laws by the 84th Legislature and other successor commissions; and
- evaluate the current applicability of any recommendations that were previously made by those commissions that have not yet been implemented.

The bill provides for the commission's composition, member appointments, and operations. The bill requires the commission, not later than November 1, 2022, to report its 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 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 commission and the bill's provisions relating to the commission expire on December 31, 2022. The bill establishes the purpose of its provisions.

H.B. 816 transfers from the Business & Commerce Code to the Penal Code provisions relating to a pyramid promotional scheme and provisions relating to identity theft by an electronic device.

H.B. 816 transfers from the Government Code to the Penal Code provisions creating the offenses of sedition and sabotage and amends those provisions to remove the specified fine and confinement punishments for the offenses and to categorize those offenses as second degree felonies.

H.B. 816 amends the Government Code to remove the county jail confinement punishment for a thrashing pecans offense.

H.B. 816 amends the Local Government Code to change the penalty for violating a courthouse parking lot rule in certain counties from a misdemeanor punishable by a fine of not less than \$1 nor more than \$20 to a Class C misdemeanor.

H.B. 816 amends the Natural Resources Code to change the penalty for unauthorized herding and line-riding from a fine of not less than \$100 nor more than \$1,000 and confinement in the county jail for not less than three months nor more than two years to a Class C misdemeanor. The bill categorizes a violation of statutory provisions relating to the control of oil property as 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.

H.B. 816 amends the Occupations Code to remove the specification that a person commits a separate offense for each day a person violates the prohibition against practicing or offering to practice dentistry or dental surgery or representing that the person practices dentistry without a license. 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 and enhances the penalty for a subsequent conviction of those applicable offenses to a third degree felony. The bill decreases from a state jail felony to a Class A misdemeanor the penalty for the unlawful appointment, employment, or retention of individuals with certain convictions as a peace officer or reserve law enforcement officer, public security officer, telecommunicator, or county jailer.

H.B. 816 repeals the statutory provision establishing a Class B misdemeanor penalty for committing a frivolous claim offense relating to auctioneers and adds a provision that instead subjects a person who engages in conduct constituting that offense to a civil penalty. The bill changes the penalty for certain violations relating to the notification of and excessive charging of hotel lodging rates from a misdemeanor punishable by a fine of not less than \$25 or more than \$100, confinement in jail for a term not to exceed 30 days, or both the fine and confinement to a misdemeanor punishable by a maximum fine of \$100. The bill repeals provisions:

- creating an offense for violating provisions relating to chiropractors;
- creating an offense for practicing acupuncture in Texas without a license;
- creating an offense for knowingly operating, or attempting to operate, a health spa without the requisite certificate, security measures, or prepayments and escrow;
- establishing criminal penalties relating to land surveyors under the Professional Land Surveying Practices Act;
- creating an offense for wilfully violating or failing to comply with the Real Estate License Act or a Texas Real Estate Commission order;
- creating an offense for engaging in business as a residential rental locator in Texas without a license;
- creating an offense for acting as a broker or sales agent without holding a license or engaging in certain activity for which a certificate of registration is required without holding the certificate;
- creating an offense for engaging in activity as a real estate appraiser without the required certificate or license;
- creating an offense for engaging in activity under the Texas Appraisal Management Company Registration and Regulation Act without the required registration;

- creating offenses for acting as an auctioneer without a license, for instituting certain claims, and for violating certain provisions or rules relating to auctioneers;
- creating an offense for certain conduct relating to the sale of secondhand business machines;
- creating a recordkeeping offense in relation to theaters;
- creating an offense relating to a theater's discrimination against reputable productions;
- creating an offense for overcharging for parking a vehicle in a parking facility in connection with a special event in a specified amount; and
- creating an offense for engaging in certain prohibited practices relating to personnel services.

H.B. 816 amends the Penal Code to include as conduct constituting a capital murder offense the conduct that constitutes capital sabotage. The bill includes as conduct constituting a third degree felony tampering with a governmental record offense certain conduct that constitutes interference with operation of a foundation school program requirement.

H.B. 816 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 is required to be paid that has not been paid.

The bill enhances the penalty for a subsequent conviction of those applicable offenses to a third degree felony.

H.B. 816 amends the Utilities Code to decrease from a third degree felony to a Class A misdemeanor the penalty for a person who wilfully and knowingly violates the Public Utility Regulatory Act and for a person who knowingly violates the Gas Utility Regulatory Act.

H.B. 816 amends the Business & Commerce Code, Code of Criminal Procedure, and Government Code to make conforming changes.

H.B. 816 repeals the following:

- Alcoholic Beverage Code provisions prohibiting 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, for the unlawful sale of returnable containers, and for the prohibited use of crime victim or motor vehicle accident information;
- Labor Code provisions creating offenses relating to restrictions on the length of hoe handles;
- Revised Statutes provisions relating to free pass transportation law, reduced transportation rates for officers, an offense for discrimination against a person seeking employment on account of participation in a strike, and an offense for peddling certain printed matter; and
- Vernon's Texas Civil Statutes provisions relating to penalties for conducting certain activities near a certain superconducting super collider facility.

H.B. 816 repeals the following provisions:

- Section 101.64, Alcoholic Beverage Code;
- Sections 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;
- 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 201.604, 205.401, 702.556, 1071.504, 1101.756, 1101.757, 1101.758, 1103.5545, 1104.253, 1802.301, 1802.302, 1802.303, 1805.103, 2155.002(d), 2156.004, 2156.005, 2158.003, and 2501.251, Occupations Code;
- Articles 4005a, 4006a, 4006b, 4015d, 4015e, 5196b, and 9010, Revised Statutes; and
- Chapter 281 (H.B. 2680), Acts of the 73rd Legislature, Regular Session, 1993 (Article 4413(47e-1), Vernon's Texas Civil Statutes).

EFFECTIVE DATE

September 1, 2021.