87R3240 JSC-D

By:  Zwiener, Collier, White, Dutton H.B. No. 441

Substitute the following for H.B. No. 441:

By:  Collier C.S.H.B. No. 441

A BILL TO BE ENTITLED

AN ACT

relating to the criminal and licensing consequences of certain marihuana possession and drug paraphernalia possession offenses; imposing a fee.

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

SECTION 1.  Section 481.121(b), Health and Safety Code, is amended to read as follows:

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

(1)  a Class C misdemeanor if the amount of marihuana possessed is one ounce or less;

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

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

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

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

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

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

SECTION 2.  Article 14.06, Code of Criminal Procedure, is amended by adding Subsections (b-1) and (b-2) and amending Subsection (d) to read as follows:

(b-1)  A peace officer who is charging a person with committing an offense under Section 481.121(b)(1) or 481.125(a), Health and Safety Code, may not arrest the person and shall issue the person a citation as provided by Subsection (b).

(b-2)  Subsection (b-1) does not apply to an officer making an arrest for an offense other than an offense under Section 481.121(b)(1) or 481.125(a), Health and Safety Code.

(d)  Subsection (c) applies only to a person charged with committing an offense under:

(1)  Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~] or (2) of that section;

(1-a)  Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(2)  Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3)  Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(2) or (3) of that section;

(4)  Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5)  Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6)  Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7)  Section 521.457, Transportation Code.

SECTION 3.  Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.02161 to read as follows:

Art. 45.02161.  EXPUNCTION OF CERTAIN RECORDS. (a) This article applies only to a person charged with an offense under Section 481.121(b)(1) or 481.125(a), Health and Safety Code.

(b)  Records of a person relating to a complaint may be expunged under this article if:

(1)  the complaint was dismissed under Article 45.051 or 45.052 or other law and:

(A)  at least 180 days have elapsed from the date of the dismissal; or

(B)  at least one year has elapsed from the date of the citation; or

(2)  the person was acquitted of the offense.

(c)  The person must make a written request to have the records expunged. The request must be under oath.

(d)  The court shall order all complaints, verdicts, sentences, and prosecutorial and law enforcement records and any other documents relating to the offense expunged from the person's record if the court finds that the person satisfies the requirements of this article.

(e)  The justice or municipal court shall require a person who requests expungement under this article to pay a fee in the amount of $30 to defray the cost of notifying state agencies of orders of expungement under this article.

(f)  The procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55.

SECTION 4.  Article 45.051, Code of Criminal Procedure, is amended by adding Subsections (a-2) and (e-1) to read as follows:

(a-2)  Unless the defendant has previously received a deferral of disposition for an offense under Section 481.121(b)(1) or 481.125(a), Health and Safety Code, committed within the 12-month period preceding the date of the commission of the instant offense, on plea of guilty or nolo contendere for either offense, the judge shall defer further proceedings without entering an adjudication of guilt and place the defendant on probation under the provisions of this article.

(e-1)  A court that dismisses a complaint under this article for a person charged with an offense under Section 481.121(b)(1) or 481.125(a), Health and Safety Code, shall notify the defendant in writing of the person's expunction rights under Article 45.02161 and provide the person with a copy of that article. The dismissed complaint is not a conviction and may not be used against the person for any purpose.

SECTION 5.  Section 411.0728(a), Government Code, is amended to read as follows:

(a)  This section applies only to a person:

(1)  who is convicted of or placed on deferred adjudication community supervision for an offense under:

(A)  Section 481.120, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(B)  Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~];

(C)  Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(1) or (2); or

(D)  Section 43.02, Penal Code; and

(2)  who, if requested by the applicable law enforcement agency or prosecuting attorney to provide assistance in the investigation or prosecution of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense containing elements that are substantially similar to the elements of an offense under any of those sections:

(A)  provided assistance in the investigation or prosecution of the offense; or

(B)  did not provide assistance in the investigation or prosecution of the offense due to the person's age or a physical or mental disability resulting from being a victim of an offense described by this subdivision.

SECTION 6.  Section 521.371(3), Transportation Code, is amended to read as follows:

(3)  "Drug offense" has the meaning assigned under 23 U.S.C. Section 159(c) and includes an offense under Section 49.04, 49.07, or 49.08, Penal Code, that is committed as a result of the introduction into the body of any substance the possession of which is prohibited under the Controlled Substances Act. The term does not include an offense punishable by fine only under the laws of this state.

SECTION 7.  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 was committed before that date.

SECTION 8.  (a) Except as otherwise provided by this section, this Act takes effect September 1, 2021.

(b)  Section 521.371, Transportation Code, as amended by this Act, takes effect on the 91st day after the date the office of the attorney general publishes in the Texas Register a finding that:

(1)  the legislature of this state has adopted a resolution expressing the legislature's opposition to a law meeting the requirements of 23 U.S.C. Section 159 in suspending, revoking, or denying the driver's license of a person convicted of a drug offense punishable by fine only for a period of six months;

(2)  the governor of this state has submitted to the United States secretary of transportation:

(A)  a written certification of the governor's opposition to the enactment or enforcement of a law required under 23 U.S.C. Section 159 as that law relates to offenses punishable by fine only; and

(B)  a written certification that the legislature has adopted the resolution described by Subdivision (1) of this subsection; and

(3)  the United States secretary of transportation has responded to the governor's submission and certified that highway funds will not be withheld from this state in response to the partial repeal of the law required under 23 U.S.C. Section 159.