By:  Zwiener 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;

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

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

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

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

(6) ~~[~~(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

(7) ~~[~~(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.  Section 481.126(a), Health and Safety Code, is amended to read as follows:

(a)  A person commits an offense if the person:

(1)  barters property or expends funds the person knows are derived from the commission of an offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;

(2)  barters property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) ~~[~~481.121(b)(5)];

(3)  barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4)  barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) ~~[~~481.121(b)(5)].

SECTION 3.  Sections 481.134(c), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(c)  The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(5), (6), or (7) ~~[~~481.121(b)(4), ~~(5), or (~~6)] is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1)  in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

(d)  An offense otherwise punishable under Section 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(4) ~~[~~481.121(b)(3)] is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1)  in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

(e)  An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3) ~~[~~481.121(b)(2)] is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1)  in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

(f)  An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(2) ~~[~~481.121(b)(1)] is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1)  in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

SECTION 4.  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)(2) or (3) ~~[~~(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 5.  Articles 42A.551(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a)  Except as otherwise provided by Subsection (b) or (c), on conviction of a state jail felony under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4) ~~[~~481.121(b)(3)], or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

(c)  Subsection (a) does not apply to a defendant who:

(1)  under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance;

(2)  under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or

(3)  under Section 481.121(b)(4) ~~[~~481.121(b)(3)], Health and Safety Code, possessed more than one pound of marihuana.

SECTION 6.  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 45.52 or other law; and

(A)at least 180 days has 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 7.  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 8.  Section 411.0728(a), Government Code, is amended to read as follows:

(a)  This section applies only to a person:

(1)  who is placed on community supervision under Chapter 42A, Code of Criminal Procedure, after conviction 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)(2) ~~[~~(b)(1)];

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

(D)  Section 43.02, Penal Code; or

(E)  Section 43.03(a)(2), Penal Code, if the offense is punishable as a Class A misdemeanor; and

(2)  with respect to whom the conviction is subsequently set aside by the court under Article 42A.701, Code of Criminal Procedure.

SECTION 9.  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 10.  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 11.  (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.