87R7593 JSC-D

By:  Eckhardt S.B. No. 652

A BILL TO BE ENTITLED

AN ACT

relating to the criminal penalties for delivery and possession of marihuana and citations given for those offenses.

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

SECTION 1.  Section 481.120(b), Health and Safety Code, is amended to read as follows:

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

(1)  a Class C [~~B~~] misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(1-a) [~~(2)~~]  a Class B [~~A~~] misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(2) [~~(3)~~]  a Class A misdemeanor [~~state jail felony~~] if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;

(3) [~~(4)~~]  a state jail felony [~~of the second degree~~] if the amount of marihuana delivered is 50 pounds or less but more than five pounds;

(4) [~~(5)~~]  a felony of the second [~~first~~] degree if the amount of marihuana delivered is 2,000 pounds or less but more than 50 pounds; and

(5)  a felony of the first degree [~~(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 10 years, and a fine not to exceed $100,000,~~] if the amount of marihuana delivered is more than 2,000 pounds.

SECTION 2.  Section 481.121, Health and Safety Code, is amended to read as follows:

Sec. 481.121.  OFFENSE: POSSESSION OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of more than one ounce of marihuana.

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

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

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

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

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

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

(5)  a felony of the second degree [~~(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 3.  Sections 481.134(c) 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), (d), (e), or (f) [~~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) or [~~,~~] (5), [~~or (6),~~] or 481.121(b)(4) or [~~,~~] (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.

(f)  An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1-a) [~~481.120(b)(1)~~], or 481.121(b)(1-a) [~~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 14.01, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c)  Notwithstanding Subsection (a) or (b), a peace officer or any other person may not, without a warrant, arrest an offender for a misdemeanor punishable by fine only under Section 418.120(b)(1) or 481.121(b)(1), Health and Safety Code.

SECTION 5.  Article 14.03, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h)  Notwithstanding Subsection (a), (d), or (g), a peace officer may not, without a warrant, arrest a person who only commits an offense punishable by fine only under Section 481.120(b)(1) or 481.121(b)(1), Health and Safety Code.

SECTION 6.  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 481.120(b)(1) or 481.121(b)(1), 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 481.120(b)(1) or 481.121(b)(1), 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 7.  Article 42A.551(c), Code of Criminal Procedure, is amended to read as follows:

(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; or

(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)(3), Health and Safety Code, possessed more than one pound of marihuana~~].

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 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-a) [~~(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 9.  Articles 14.01, 14.03, and 14.06, Code of Criminal Procedure, as amended 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 occurred before that date.

SECTION 10.  Sections 481.120, 481.121, and 481.134, Health and Safety Code, as amended by this Act, apply to an offense committed under Section 481.120 or 481.121, or an offense committed under Section 481.120 or 481.121 and punishable under Section 481.134, before, on, or after September 1, 2021, except that a final conviction for an offense that exists on September 1, 2021, is unaffected by this Act.

SECTION 11.  This Act takes effect September 1, 2021.