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By:  Johnson S.B. No. 1175

A BILL TO BE ENTITLED

AN ACT

relating to the criminal and licensing consequences of certain criminal offenses involving the possession or delivery of marihuana and cannabis concentrate or possession of drug paraphernalia; imposing a fee; authorizing a fine.

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

SECTION 1.  Section 481.002, Health and Safety Code, is amended by amending Subdivision (26) and adding Subdivision (57) to read as follows:

(26)  "Marihuana" means any part of a [~~the~~] plant of the genus Cannabis [~~Cannabis sativa L.~~], whether growing or not, with a concentration of delta-9 tetrahydrocannabinol of one percent or more by weight and:

(A)  includes:

(i)  the seeds of that plant; and

(ii)  cannabis concentrate;[~~,~~] and

(B)  [~~every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term~~] does not include:

(i)  any material excluded from the federal Controlled Substances Act definition of marihuana under 21 U.S.C. Section 802(16)(B);

(ii)  cannabis plant material and products that contain tetrahydrocannabinol and are exempted from the federal Controlled Substances Act under 21 C.F.R. Section 1308.35;

(iii)  [~~(A)  the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;~~

[~~(B)  the mature stalks of the plant or fiber produced from the stalks;~~

[~~(C)  oil or cake made from the seeds of the plant;~~

[~~(D)  a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;~~

[~~(E)  the sterilized seeds of the plant that are incapable of beginning germination; or~~

[~~(F)~~]  hemp, as that term is defined by Section 121.001, Agriculture Code;

(iv)  a nonconsumable hemp product, as that term is defined by Section 122.001, Agriculture Code; or

(v)  a consumable hemp product, as that term is defined by Section 443.001.

(57)  "Cannabis concentrate" means the processed forms of a plant of the genus Cannabis containing five milligrams or more of delta-9 tetrahydrocannabinol, including:

(A)  the resin extracted from the plant; and

(B)  compounds, manufactures, salts, derivatives, decarboxylates, mixtures, or preparations of the plant or the resin extracted from the plant.

SECTION 2.  Section 481.103, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d)  Penalty Group 2 does not include:

(1)  any material excluded from the definition of marihuana by Section 481.002(26)(B);

(2)  a plant of the Cannabis genus with a delta-9 tetrahydrocannabinol concentration of less than one percent by weight; or

(3)  a processed form of a plant of the genus Cannabis containing less than five milligrams of delta-9 tetrahydrocannabinol.

SECTION 3.  Section 481.111(e), Health and Safety Code, is amended to read as follows:

(e)  Sections 481.113, 481.116, 481.120, 481.121, 481.122, and 481.125 do not apply to a person who engages in the acquisition, possession, production, cultivation, delivery, or disposal of a raw material used in or by-product created by the production or cultivation of low-THC cannabis if the person:

(1)  for an offense involving possession only of marihuana or drug paraphernalia, is a patient for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code, or the patient's legal guardian, and the person possesses low-THC cannabis obtained under a valid prescription from a dispensing organization; or

(2)  is a director, manager, or employee of a dispensing organization and the person, solely in performing the person's regular duties at the organization, acquires, possesses, produces, cultivates, dispenses, or disposes of:

(A)  in reasonable quantities, any low-THC cannabis or raw materials used in or by-products created by the production or cultivation of low-THC cannabis; or

(B)  any drug paraphernalia used in the acquisition, possession, production, cultivation, delivery, or disposal of low-THC cannabis.

SECTION 4.  Section 481.120(b), Health and Safety Code, is amended to read as follows:

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

(1)  a Class B misdemeanor if:

(A)  the person committing the offense does not receive remuneration for the marihuana; and

(B)  the amount [~~of marihuana~~] delivered is:

(i)  one-fourth ounce or less of marihuana other than cannabis concentrate [~~and the person committing the offense does not receive remuneration for the marihuana~~]; or

(ii)  cannabis concentrate containing 70 milligrams or less of delta-9 tetrahydrocannabinol;

(2)  except as provided by Subdivision (1), a Class A misdemeanor if the amount [~~of marihuana~~] delivered is:

(A)  two ounces [~~one-fourth ounce~~] or less of marihuana other than cannabis concentrate [~~and the person committing the offense receives remuneration for the marihuana~~]; or

(B)  cannabis concentrate containing 560 milligrams or less of delta-9 tetrahydrocannabinol;

(3)  a state jail felony if:

(A)  the amount of marihuana other than cannabis concentrate delivered is 2.5 [~~five~~] pounds or less but more than two ounces [~~one-fourth ounce~~]; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate delivered is 11 grams or less but more than 560 milligrams;

(4)  a felony of the third [~~second~~] degree if:

(A)  the amount of marihuana other than cannabis concentrate delivered is 25 [~~50~~] pounds or less but more than 2.5 [~~five~~] pounds; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate delivered is 110 grams or less but more than 11 grams;

(5)  a felony of the second [~~first~~] degree if:

(A)  the amount of marihuana other than cannabis concentrate delivered is 1,000 [~~2,000~~] pounds or less but more than 25 [~~50~~] pounds; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate delivered is 4.5 kilograms or less but more than 110 grams; and

(6)  a felony of the first degree [~~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:

(A)  the amount of marihuana other than cannabis concentrate delivered is more than 1,000 [~~2,000~~] pounds; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate delivered is more than 4.5 kilograms.

SECTION 5.  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:

(A)  the amount of marihuana other than cannabis concentrate possessed is one ounce or less; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate possessed is 280 milligrams or less;

(1-a)  a Class B misdemeanor if:

(A)  the amount of marihuana other than cannabis concentrate possessed is two ounces or less but more than one ounce; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate possessed is 560 milligrams or less but more than 280 milligrams;

(2)  a Class A misdemeanor if:

(A)  the amount of marihuana other than cannabis concentrate possessed is four ounces or less but more than two ounces; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate possessed is 1.1 grams or less but more than 560 milligrams;

(3)  a state jail felony if:

(A)  the amount of marihuana other than cannabis concentrate possessed is five pounds or less but more than four ounces; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate possessed is 22 grams or less but more than 1.1 grams;

(4)  a felony of the third degree if:

(A)  the amount of marihuana other than cannabis concentrate possessed is 50 pounds or less but more than 5 pounds; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate possessed is 220 grams or less but more than 22 grams;

(5)  a felony of the second degree if:

(A)  the amount of marihuana other than cannabis concentrate possessed is 2,000 pounds or less but more than 50 pounds; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate possessed is 9 kilograms or less but more than 220 grams; and

(6)  a felony of the first degree [~~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:

(A)  the amount of marihuana other than cannabis concentrate possessed is more than 2,000 pounds; or

(B)  the amount of delta-9 tetrahydrocannabinol in cannabis concentrate possessed is more than 9 kilograms.

SECTION 6.  Section 481.122(b), Health and Safety Code, is amended to read as follows:

(b)  It is an affirmative defense to prosecution under this section that:

(1)  the actor was a child when the offense was committed; or

(2)  the actor:

(A)  was younger than 21 years of age when the offense was committed;

(B)  delivered only marihuana in an amount equal to or less than:

(i)  one-fourth ounce of marihuana other than cannabis concentrate; or

(ii)  cannabis concentrate containing 70 milligrams of delta-9 tetrahydrocannabinol; and

(C)  did not receive remuneration for the delivery.

SECTION 7.  Section 481.134(f), Health and Safety Code, is amended to read as follows:

(f)  An offense otherwise punishable under Section 481.118(b), 481.119(b), 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 8.  Article 14.06(d), Code of Criminal Procedure, is amended to read as follows:

(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 9.  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;

(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:

(A)  more than one pound of marihuana other than cannabis concentrate; or

(B)  cannabis concentrate with more than 4.5 grams of delta-9 tetrahydrocannabinol.

SECTION 10.  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)  A court that dismisses a complaint to which this article applies shall provide written notice to the person of the person's right to expunction under this article as soon as practicable after the date the person becomes eligible for expunction.

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

(e)  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.

(f)  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.

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

SECTION 11.  Article 45.051, Code of Criminal Procedure, is amended by adding Subsection (a-2) 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.

SECTION 12.  Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0179 to read as follows:

Art. 102.0179.  FINE FOR CERTAIN DRUG AND TEXAS CONTROLLED SUBSTANCES ACT CONVICTIONS: MOBILITY FUND. (a) In addition to any other fees and fines imposed under this subchapter, a defendant convicted of an offense described by Section 521.372(a), Transportation Code, punishable by fine only shall pay a fine in an amount that is equivalent to the sum of all fees applicable to a suspension and reinstatement of a driver's license under Chapter 521, Transportation Code. The Department of Public Safety shall annually calculate and make available the amount of the fine described by this subsection.

(b)  The court shall waive imposition of a fine under this article if the defendant's driver's license is suspended under Chapter 521, Transportation Code, as a result of the conviction of another offense arising from the same criminal episode.

(c)  The court shall collect the fine under this article in the same manner as court costs are collected in the case.

(d)  A fine collected under this article shall be deposited to the credit of the Texas mobility fund.

SECTION 13.  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 14.  Section 521.372, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d)  This section does not apply to a drug offense punishable by fine only under the laws of this state.

SECTION 15.  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 16.  (a) Except as otherwise provided by this section, this Act takes effect September 1, 2021.

(b)  Article 102.0179, Code of Criminal Procedure, and Section 521.372(d), Transportation Code, as added by this Act, take 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.