

By: Zwiener, Collier, White, Dutton, Toth,  
et al.

H.B. No. 441

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the criminal and licensing consequences of certain  
3 marihuana possession and drug paraphernalia possession offenses;  
4 imposing a fee.

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

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

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

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

11 (1-a) a Class B misdemeanor if the amount of marihuana  
12 possessed is two ounces or less but more than one ounce;

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

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

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

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

21 and

22 (6) punishable by imprisonment in the Texas Department  
23 of Criminal Justice for life or for a term of not more than 99 years  
24 or less than 5 years, and a fine not to exceed \$50,000, if the amount

1 of marihuana possessed is more than 2,000 pounds.

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

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

9 (b-2) Subsection (b-1) does not apply to an officer making  
10 an arrest for an offense other than an offense under Section  
11 481.121(b)(1) or 481.125(a), Health and Safety Code.

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

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

17 (1-a) Section 481.1161, Health and Safety Code, if the  
18 offense is punishable under Subsection (b)(1) or (2) of that  
19 section;

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

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

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

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

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

3           (7) Section 521.457, Transportation Code.

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

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

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

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

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

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

18           (2) the person was acquitted of the offense.

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

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

26           (e) The justice or municipal court shall require a person  
27 who requests expungement under this article to pay a fee in the

1 amount of \$30 to defray the cost of notifying state agencies of  
2 orders of expungement under this article.

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

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

8 (a-2) Unless the defendant has previously received a  
9 deferral of disposition for an offense under Section 481.121(b)(1)  
10 or 481.125(a), Health and Safety Code, committed within the  
11 12-month period preceding the date of the commission of the instant  
12 offense, on plea of guilty or nolo contendere for either offense,  
13 the judge shall defer further proceedings without entering an  
14 adjudication of guilt and place the defendant on probation under  
15 the provisions of this article.

16 (e-1) A court that dismisses a complaint under this article  
17 for a person charged with an offense under Section 481.121(b)(1) or  
18 481.125(a), Health and Safety Code, shall notify the defendant in  
19 writing of the person's expunction rights under Article 45.02161  
20 and provide the person with a copy of that article. The dismissed  
21 complaint is not a conviction and may not be used against the person  
22 for any purpose.

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

25 (a) This section applies only to a person:

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

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

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

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

7 (D) Section 43.02, Penal Code; and

8 (2) who, if requested by the applicable law  
9 enforcement agency or prosecuting attorney to provide assistance in  
10 the investigation or prosecution of an offense under Section  
11 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense  
12 containing elements that are substantially similar to the elements  
13 of an offense under any of those sections:

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

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

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

22 (3) "Drug offense" has the meaning assigned under 23  
23 U.S.C. Section 159(c) and includes an offense under Section 49.04,  
24 49.07, or 49.08, Penal Code, that is committed as a result of the  
25 introduction into the body of any substance the possession of which  
26 is prohibited under the Controlled Substances Act. The term does  
27 not include an offense punishable by fine only under the laws of

1 this state.

2 SECTION 7. The changes in law made by this Act apply only to  
3 an offense committed on or after the effective date of this Act. An  
4 offense committed before the effective date of this Act is governed  
5 by the law in effect on the date the offense was committed, and the  
6 former law is continued in effect for that purpose. For purposes of  
7 this section, an offense was committed before the effective date of  
8 this Act if any element of the offense was committed before that  
9 date.

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

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

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

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

23 (A) a written certification of the governor's  
24 opposition to the enactment or enforcement of a law required under  
25 23 U.S.C. Section 159 as that law relates to offenses punishable by  
26 fine only; and

27 (B) a written certification that the legislature

1 has adopted the resolution described by Subdivision (1) of this  
2 subsection; and

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