

By: Zwiener

H.B. No. 441

A BILL TO BE ENTITLED

AN ACT

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

13 (3) ~~+(2)]~~ a Class A misdemeanor if the amount of  
14 marihuana possessed is four ounces or less but more than two ounces;

15 (4) ~~+(3)]~~ a state jail felony if the amount of  
16 marihuana possessed is five pounds or less but more than four  
17 ounces;

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

20 (6) ~~+(5)]~~ a felony of the second degree if the amount  
21 of marihuana possessed is 2,000 pounds or less but more than 50  
22 pounds; and

23 (7) ~~+(6)]~~ punishable by imprisonment in the Texas  
24 Department of Criminal Justice for life or for a term of not more

1 than 99 years or less than 5 years, and a fine not to exceed \$50,000,  
2 if the amount of marihuana possessed is more than 2,000 pounds.

3 SECTION 2. Section 481.126(a), Health and Safety Code, is  
4 amended to read as follows:

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

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

10 (2) barter property or expends funds the person knows  
11 are derived from the commission of an offense under Section  
12 481.121(a) that is punishable under Section 481.121(b)(6)  
13 ~~481.121(b)(5)]~~;

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

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

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

24 (c) The minimum term of confinement or imprisonment for an  
25 offense otherwise punishable under Section 481.112(c), (d), (e), or  
26 (f), 481.1121(b)(2), (3), or (4), 481.113(c), (d), or (e),  
27 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4),

1 or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6),  
2 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4),  
3 (5), or (6), or 481.121(b)(5), (6), or (7) ~~481.121(b)(4), (5), or~~  
4 ~~(6)]~~ is increased by five years and the maximum fine for the offense  
5 is doubled if it is shown on the trial of the offense that the  
6 offense was committed:

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

10 (2) on a school bus.

11 (d) An offense otherwise punishable under Section  
12 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b),  
13 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or  
14 481.121(b)(4) ~~481.121(b)(3)]~~ is a felony of the third degree if it  
15 is shown on the trial of the offense that the offense was committed:

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

19 (2) on a school bus.

20 (e) An offense otherwise punishable under Section  
21 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3)  
22 ~~481.121(b)(2)]~~ is a state jail felony if it is shown on the trial  
23 of the offense that the offense was committed:

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

27 (2) on a school bus.

1 (f) An offense otherwise punishable under Section  
2 [481.118\(b\)](#), [481.119\(b\)](#), [481.120\(b\)\(1\)](#), or [481.121\(b\)\(2\)](#)  
3 ~~481.121(b)(1)~~] is a Class A misdemeanor if it is shown on the trial  
4 of the offense that the offense was committed:

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

8 (2) on a school bus.

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

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

16 (b-2) Subsection (b-1) does not apply to an officer making  
17 an arrest for an offense other than an offense under Section  
18 [481.121\(b\)\(1\)](#) or [481.125\(a\)](#), Health and Safety Code.

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

21 (1) Section [481.121](#), Health and Safety Code, if the  
22 offense is punishable under Subsection (b)(2) or (3) ~~+(b)(1) or~~  
23 ~~(2)]~~ of that section;

24 (1-a) Section [481.1161](#), Health and Safety Code, if the  
25 offense is punishable under Subsection (b)(1) or (2) of that  
26 section;

27 (2) Section [28.03](#), Penal Code, if the offense is

1 punishable under Subsection (b)(2) of that section;

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

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

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

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

10 (7) Section 521.457, Transportation Code.

11 SECTION 5. Articles 42A.551(a) and (c), Code of Criminal  
12 Procedure, are amended to read as follows:

13 (a) Except as otherwise provided by Subsection (b) or (c),  
14 on conviction of a state jail felony under Section 481.115(b),  
15 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4)  
16 ~~481.121(b)(3)]~~, or 481.129(g)(1), Health and Safety Code, that is  
17 punished under Section 12.35(a), Penal Code, the judge shall  
18 suspend the imposition of the sentence and place the defendant on  
19 community supervision.

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

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

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

27 (3) under Section 481.121(b)(4) ~~481.121(b)(3)]~~,

1 Health and Safety Code, possessed more than one pound of marihuana.

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

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

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

10 (1)the complaint was dismissed under Article 45.051 or  
11 45.52 or other law; and

12 (A)at least 180 days has elapsed from the date of  
13 the dismissal; or

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

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

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

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

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

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

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

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

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

21        SECTION 8. Section 411.0728(a), Government Code, is amended  
22 to read as follows:

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

24                (1) who is placed on community supervision under  
25 Chapter 42A, Code of Criminal Procedure, after conviction for an  
26 offense under:

27                        (A) Section 481.120, Health and Safety Code, if

1 the offense is punishable under Subsection (b)(1);

2 (B) Section 481.121, Health and Safety Code, if  
3 the offense is punishable under Subsection (b)(2) ~~+(b)(1)]~~;

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

6 (D) Section 43.02, Penal Code; or

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

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

12 SECTION 9. Section 521.371(3), Transportation Code, is  
13 amended to read as follows:

14 (3) "Drug offense" has the meaning assigned under 23  
15 U.S.C. Section 159(c) and includes an offense under Section 49.04,  
16 49.07, or 49.08, Penal Code, that is committed as a result of the  
17 introduction into the body of any substance the possession of which  
18 is prohibited under the Controlled Substances Act. The term does  
19 not include an offense punishable by fine only under the laws of  
20 this state.

21 SECTION 10. The changes in law made by this Act apply only  
22 to an offense committed on or after the effective date of this Act.  
23 An offense committed before the effective date of this Act is  
24 governed by the law in effect on the date the offense was committed,  
25 and the former law is continued in effect for that purpose. For  
26 purposes of this section, an offense was committed before the  
27 effective date of this Act if any element of the offense was



1 committed before that date.

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

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

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

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

15 (A) a written certification of the governor's  
16 opposition to the enactment or enforcement of a law required under  
17 23 U.S.C. Section 159 as that law relates to offenses punishable by  
18 fine only; and

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

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