

By: White, Hunter, et al.

H.B. No. 3772

Substitute the following for H.B. No. 3772:

By: Bell of Kaufman

C.S.H.B. No. 3772

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the criminal consequences of certain criminal offenses  
3 involving the possession of marihuana or possession of drug  
4 paraphernalia; imposing a fee; authorizing a fine.

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

6 SECTION 1. Section 481.002(26), Health and Safety Code, is  
7 amended to read as follows:

8 (26) "Marihuana" means any part of a [the] plant of the  
9 genus Cannabis [sativa L.], whether growing or not, containing  
10 delta-9 tetrahydrocannabinol and:

11 (A) includes:

12 (i) the seeds of that plant; and

13 (ii) processed forms of that plant,  
14 including the resin extracted from the plant and compounds,  
15 manufactures, salts, derivatives, decarboxylates, mixtures, or  
16 preparations of the plant; [7] and

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

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

23 (ii) [~~(A) the resin extracted from a part of~~  
24 ~~the plant or a compound, manufacture, salt, derivative, mixture, or~~

1 ~~preparation of the resin;~~

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

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

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

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

9 ~~[(F)]~~ hemp, as that term is defined by Section  
10 [121.001](#), Agriculture Code;

11 (iii) a nonconsumable hemp product, as that  
12 term is defined by Section [122.001](#), Agriculture Code; or

13 (iv) a consumable hemp product, as that  
14 term is defined by Section [443.001](#).

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

17 (d) Penalty Group 2 does not include any material excluded  
18 from the definition of marihuana under Section [481.002](#)(26)(B).

19 SECTION 3. Section [481.121](#)(b), Health and Safety Code, is  
20 amended to read as follows:

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

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

24 (1-a) a Class B misdemeanor if the amount of marihuana  
25 possessed is two ounces or less but more than one ounce;

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

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

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

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

8 (6) punishable by imprisonment in the Texas Department  
9 of Criminal Justice for life or for a term of not more than 99 years  
10 or less than 5 years, and a fine not to exceed \$50,000, if the amount  
11 of marihuana possessed is more than 2,000 pounds.

12 SECTION 4. Section 481.134(f), Health and Safety Code, is  
13 amended to read as follows:

14 (f) An offense otherwise punishable under Section  
15 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1-a)  
16 [~~481.121(b)(1)~~] is a Class A misdemeanor if it is shown on the trial  
17 of the offense that the offense was committed:

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

21 (2) on a school bus.

22 SECTION 5. Article 14.06(d), Code of Criminal Procedure, is  
23 amended to read as follows:

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

26 (1) Section 481.121, Health and Safety Code, if the  
27 offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~] or (2) of

1 that section;

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

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

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

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

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

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

15 (7) Section 521.457, Transportation Code.

16 SECTION 6. Subchapter B, Chapter 45, Code of Criminal  
17 Procedure, is amended by adding Article 45.02161 to read as  
18 follows:

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

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

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

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

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

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

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

6           (d) The court shall order all complaints, verdicts,  
7 sentences, and prosecutorial and law enforcement records and any  
8 other documents relating to the offense expunged from the person's  
9 record if the court finds that the person satisfies the  
10 requirements of this article.

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

15           (f) The procedures for expunction provided under this  
16 article are separate and distinct from the expunction procedures  
17 under Chapter 55.

18           SECTION 7. Article 45.051, Code of Criminal Procedure, is  
19 amended by adding Subsection (a-2) to read as follows:

20           (a-2) Unless the defendant has previously received a  
21 deferral of disposition for an offense under Section 481.121(b)(1)  
22 or 481.125(a), Health and Safety Code, committed within the  
23 12-month period preceding the date of the commission of the instant  
24 offense, on plea of guilty or nolo contendere for either offense,  
25 the judge shall defer further proceedings without entering an  
26 adjudication of guilt and place the defendant on probation under  
27 the provisions of this article.

1 SECTION 8. Subchapter A, Chapter 102, Code of Criminal  
2 Procedure, is amended by adding Article 102.0179 to read as  
3 follows:

4 Art. 102.0179. FINE FOR CERTAIN DRUG AND TEXAS CONTROLLED  
5 SUBSTANCES ACT CONVICTIONS: MOBILITY FUND. (a) In addition to any  
6 other fees and fines imposed under this subchapter, a defendant  
7 convicted of an offense described by Section 521.372(a),  
8 Transportation Code, punishable by fine only shall pay a fine of  
9 \$100.

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

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

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

18 SECTION 9. Section 411.0728(a), Government Code, is amended  
19 to read as follows:

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

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

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

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

27 (C) Section 31.03, Penal Code, if the offense is

1 punishable under Subsection (e)(1) or (2); or

2 (D) Section 43.02, Penal Code; and

3 (2) who, if requested by the applicable law  
4 enforcement agency or prosecuting attorney to provide assistance in  
5 the investigation or prosecution of an offense under Section  
6 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense  
7 containing elements that are substantially similar to the elements  
8 of an offense under any of those sections:

9 (A) provided assistance in the investigation or  
10 prosecution of the offense; or

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

15 SECTION 10. Section 521.372, Transportation Code, is  
16 amended by adding Subsection (d) to read as follows:

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

19 SECTION 11. The changes in law made by this Act apply only  
20 to an offense committed on or after the effective date of this Act.  
21 An offense committed before the effective date of this Act is  
22 governed by the law in effect on the date the offense was committed,  
23 and the former law is continued in effect for that purpose. For  
24 purposes of this section, an offense was committed before the  
25 effective date of this Act if any element of the offense was  
26 committed before that date.

27 SECTION 12. (a) Except as otherwise provided by this

1 section, this Act takes effect September 1, 2021.

2 (b) Article 102.0179, Code of Criminal Procedure, and  
3 Section 521.372(d), Transportation Code, as added by this Act, take  
4 effect on the 91st day after the date the office of the attorney  
5 general publishes in the Texas Register a finding that:

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

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

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

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

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