

By: White

H.B. No. 3772

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; [7] 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

1 Controlled Substances Act under 21 C.F.R. Section 1308.35;

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

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

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

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

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

12 [(F)] hemp, as that term is defined by Section
13 121.001, Agriculture Code;

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

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

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

21 (A) the resin extracted from the plant; and

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

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

27 (d) Penalty Group 2 does not include:

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

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

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

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

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

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

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

26 (A) in reasonable quantities, any low-THC
27 cannabis or raw materials used in or by-products created by the

1 production or cultivation of low-THC cannabis; or

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

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

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

8 (1) a Class B misdemeanor if:

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

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

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

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

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

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

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

24 (3) a state jail felony if:

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

1 (B) the amount of delta-9 tetrahydrocannabinol
2 in cannabis concentrate delivered is 11 grams or less but more than
3 560 milligrams;

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

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

8 (B) the amount of delta-9 tetrahydrocannabinol
9 in cannabis concentrate delivered is 110 grams or less but more than
10 11 grams;

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

12 (A) the amount of marihuana other than cannabis
13 concentrate delivered is 1,000 [~~2,000~~] pounds or less but more than
14 25 [~~50~~] pounds; or

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

18 (6) a felony of the first degree [~~punishable by~~
19 ~~imprisonment in the Texas Department of Criminal Justice for life~~
20 ~~or for a term of not more than 99 years or less than 10 years, and a~~
21 ~~fine not to exceed \$100,000,~~] if:

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

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

26 SECTION 5. Section [481.121\(b\)](#), Health and Safety Code, is
27 amended to read as follows:

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

2 (1) a Class C misdemeanor if:

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

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

7 (1-a) a Class B misdemeanor if:

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

10 or

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

14 (2) a Class A misdemeanor if:

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

18 (B) the amount of delta-9 tetrahydrocannabinol
19 in cannabis concentrate possessed is 1.1 grams or less but more than
20 560 milligrams;

21 (3) a state jail felony if:

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

25 (B) the amount of delta-9 tetrahydrocannabinol
26 in cannabis concentrate possessed is 22 grams or less but more than
27 1.1 grams;

1 (4) a felony of the third degree if:

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

5 (B) the amount of delta-9 tetrahydrocannabinol
6 in cannabis concentrate possessed is 220 grams or less but more than
7 22 grams;

8 (5) a felony of the second degree if:

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

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

15 (6) a felony of the first degree [~~punishable by~~
16 ~~imprisonment in the Texas Department of Criminal Justice for life~~
17 ~~or for a term of not more than 99 years or less than 5 years, and a~~
18 ~~fine not to exceed \$50,000,~~] if:

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

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

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

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

27 (1) the actor was a child when the offense was

1 committed; or

2 (2) the actor:

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

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

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

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

11 (C) did not receive remuneration for the
12 delivery.

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

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

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

22 (2) on a school bus.

23 SECTION 8. Article 14.06(d), Code of Criminal Procedure, is
24 amended to read as follows:

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

27 (1) Section 481.121, Health and Safety Code, if the

1 offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~] or (2) of
2 that section;

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

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

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

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

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

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

16 (7) Section 521.457, Transportation Code.

17 SECTION 9. Article 42A.551(c), Code of Criminal Procedure,
18 is amended to read as follows:

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

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

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

26 (3) under Section 481.121(b)(3), Health and Safety
27 Code, possessed;

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

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

5 SECTION 10. Subchapter B, Chapter 45, Code of Criminal
6 Procedure, is amended by adding Article 45.02161 to read as
7 follows:

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

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

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

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

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

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

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

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

26 (e) The court shall order all complaints, verdicts,
27 sentences, and prosecutorial and law enforcement records and any

1 other documents relating to the offense expunged from the person's
2 record if the court finds that the person satisfies the
3 requirements of this article.

4 (f) The justice or municipal court shall require a person
5 who requests expungement under this article to pay a fee in the
6 amount of \$30 to defray the cost of notifying state agencies of
7 orders of expungement under this article.

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

11 SECTION 11. Article 45.051, Code of Criminal Procedure, is
12 amended by adding Subsection (a-2) to read as follows:

13 (a-2) Unless the defendant has previously received a
14 deferral of disposition for an offense under Section 481.121(b)(1)
15 or 481.125(a), Health and Safety Code, committed within the
16 12-month period preceding the date of the commission of the instant
17 offense, on plea of guilty or nolo contendere for either offense,
18 the judge shall defer further proceedings without entering an
19 adjudication of guilt and place the defendant on probation under
20 the provisions of this article.

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

24 Art. 102.0179. FINE FOR CERTAIN DRUG AND TEXAS CONTROLLED
25 SUBSTANCES ACT CONVICTIONS: MOBILITY FUND. (a) In addition to any
26 other fees and fines imposed under this subchapter, a defendant
27 convicted of an offense described by Section 521.372(a),

1 Transportation Code, punishable by fine only shall pay a fine in an
2 amount that is equivalent to the sum of all fees applicable to a
3 suspension and reinstatement of a driver's license under Chapter
4 521, Transportation Code. The Department of Public Safety shall
5 annually calculate and make available the amount of the fine
6 described by this subsection.

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

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

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

15 SECTION 13. Section 411.0728(a), Government Code, is
16 amended to read as follows:

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

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

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

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

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

26 (D) Section 43.02, Penal Code; and

27 (2) who, if requested by the applicable law

1 enforcement agency or prosecuting attorney to provide assistance in
2 the investigation or prosecution of an offense under Section
3 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense
4 containing elements that are substantially similar to the elements
5 of an offense under any of those sections:

6 (A) provided assistance in the investigation or
7 prosecution of the offense; or

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

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

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

16 SECTION 15. The changes in law made by this Act apply only
17 to an offense committed on or after the effective date of this Act.
18 An offense committed before the effective date of this Act is
19 governed by the law in effect on the date the offense was committed,
20 and the former law is continued in effect for that purpose. For
21 purposes of this section, an offense was committed before the
22 effective date of this Act if any element of the offense was
23 committed before that date.

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

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

1 effect on the 91st day after the date the office of the attorney
2 general publishes in the Texas Register a finding that:

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

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

10 (A) a written certification of the governor's
11 opposition to the enactment or enforcement of a law required under
12 23 U.S.C. Section 159 as that law relates to offenses punishable by
13 fine only; and

14 (B) a written certification that the legislature
15 has adopted the resolution described by Subdivision (1) of this
16 subsection; and

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