

By: Eckhardt

S.B. No. 652

A BILL TO BE ENTITLED

AN ACT

relating to the criminal penalties for delivery and possession of marihuana and citations given for those offenses.

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

SECTION 1. Section 481.120(b), Health and Safety Code, is amended to read as follows:

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

(1) a Class C [~~B~~] misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(1-a) [~~(2)~~] a Class B [~~A~~] misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(2) [~~(3)~~] a Class A misdemeanor [~~state jail felony~~] if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;

(3) [~~(4)~~] a state jail felony [~~of the second degree~~] if the amount of marihuana delivered is 50 pounds or less but more than five pounds;

(4) [~~(5)~~] a felony of the second [~~first~~] degree if the amount of marihuana delivered is 2,000 pounds or less but more than 50 pounds; and

(5) a felony of the first degree [~~(6) punishable by~~]

1 ~~imprisonment in the Texas Department of Criminal Justice for life~~
2 ~~or for a term of not more than 99 years or less than 10 years, and a~~
3 ~~fine not to exceed \$100,000,]~~ if the amount of marihuana delivered
4 is more than 2,000 pounds.

5 SECTION 2. Section 481.121, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a)
8 Except as authorized by this chapter, a person commits an offense if
9 the person knowingly or intentionally possesses a usable quantity
10 of more than one ounce of marihuana.

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

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

14 (1-a) [~~(2)~~] a Class B [~~A~~] misdemeanor if the amount of
15 marihuana possessed is four ounces or less but more than two ounces;

16 (2) [~~(3)~~] a Class A misdemeanor [~~state jail felony~~] if
17 the amount of marihuana possessed is five pounds or less but more
18 than four ounces;

19 (3) [~~(4)~~] a state jail felony [~~of the third degree~~] if
20 the amount of marihuana possessed is 50 pounds or less but more than
21 5 pounds;

22 (4) [~~(5)~~] a felony of the third [~~second~~] degree if the
23 amount of marihuana possessed is 2,000 pounds or less but more than
24 50 pounds; and

25 (5) a felony of the second degree [~~(6) punishable by~~
26 ~~imprisonment in the Texas Department of Criminal Justice for life~~
27 ~~or for a term of not more than 99 years or less than 5 years, and a~~

1 ~~fine not to exceed \$50,000,~~] if the amount of marihuana possessed is
2 more than 2,000 pounds.

3 SECTION 3. Sections [481.134](#)(c) and (f), Health and Safety
4 Code, are amended to read as follows:

5 (c) The minimum term of confinement or imprisonment for an
6 offense otherwise punishable under Section [481.112](#)(c), (d), (e), or
7 (f), [481.1121](#)(b)(2), (3), or (4), [481.113](#)(c), (d), or (e),
8 [481.114](#)(c), (d), or (e), [481.115](#)(c), (d), (e), or (f)
9 [~~[481.115](#)(c)-(f)~~], [481.1151](#)(b)(2), (3), (4), or (5), [481.116](#)(c),
10 (d), or (e), [481.1161](#)(b)(4), (5), or (6), [481.117](#)(c), (d), or (e),
11 [481.118](#)(c), (d), or (e), [481.120](#)(b)(4) or [~~7~~] (5), [~~or (6)~~] or
12 [481.121](#)(b)(4) or [~~7~~] (5) [~~or (6)~~] is increased by five years and
13 the maximum fine for the offense is doubled if it is shown on the
14 trial of the offense that the offense was committed:

15 (1) in, on, or within 1,000 feet of the premises of a
16 school, the premises of a public or private youth center, or a
17 playground; or

18 (2) on a school bus.

19 (f) An offense otherwise punishable under Section
20 [481.118](#)(b), [481.119](#)(b), [481.120](#)(b)(1-a) [~~[481.120](#)(b)(1)~~], or
21 [481.121](#)(b)(1-a) [~~[481.121](#)(b)(1)~~] is a Class A misdemeanor if it is
22 shown on the trial of the offense that the offense was committed:

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

26 (2) on a school bus.

27 SECTION 4. Article [14.01](#), Code of Criminal Procedure, is

1 amended by adding Subsection (c) to read as follows:

2 (c) Notwithstanding Subsection (a) or (b), a peace officer
3 or any other person may not, without a warrant, arrest an offender
4 for a misdemeanor punishable by fine only under Section
5 418.120(b)(1) or 481.121(b)(1), Health and Safety Code.

6 SECTION 5. Article 14.03, Code of Criminal Procedure, is
7 amended by adding Subsection (h) to read as follows:

8 (h) Notwithstanding Subsection (a), (d), or (g), a peace
9 officer may not, without a warrant, arrest a person who only commits
10 an offense punishable by fine only under Section 481.120(b)(1) or
11 481.121(b)(1), Health and Safety Code.

12 SECTION 6. Article 14.06, Code of Criminal Procedure, is
13 amended by adding Subsections (b-1) and (b-2) and amending
14 Subsection (d) to read as follows:

15 (b-1) A peace officer who is charging a person with
16 committing an offense under Section 481.120(b)(1) or
17 481.121(b)(1), Health and Safety Code, may not arrest the person
18 and shall issue the person a citation as provided by Subsection (b).

19 (b-2) Subsection (b-1) does not apply to an officer making
20 an arrest for an offense other than an offense under Section
21 481.120(b)(1) or 481.121(b)(1), Health and Safety Code.

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

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

27 (1-a) Section 481.1161, Health and Safety Code, if the

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

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

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

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

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

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

13 (7) Section 521.457, Transportation Code.

14 SECTION 7. Article 42A.551(c), Code of Criminal Procedure,
15 is amended to read as follows:

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

17 (1) under Section 481.1151(b)(1), Health and Safety
18 Code, possessed more than five abuse units of the controlled
19 substance; or

20 (2) under Section 481.1161(b)(3), Health and Safety
21 Code, possessed more than one pound, by aggregate weight, including
22 adulterants or dilutants, of the controlled substance [~~, or~~

23 [~~(3) under Section 481.121(b)(3), Health and Safety~~
24 ~~Code, possessed more than one pound of marijuana]~~].

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

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

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

3 (A) Section 481.120, Health and Safety Code, if
4 the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~];

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

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

9 (D) Section 43.02, Penal Code; and

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

16 (A) provided assistance in the investigation or
17 prosecution of the offense; or

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

22 SECTION 9. Articles 14.01, 14.03, and 14.06, Code of
23 Criminal Procedure, as amended by this Act, apply only to an offense
24 committed on or after the effective date of this Act. An offense
25 committed before the effective date of this Act is governed by the
26 law in effect on the date the offense was committed, and the former
27 law is continued in effect for that purpose. For purposes of this

1 section, an offense was committed before the effective date of this
2 Act if any element of the offense occurred before that date.

3 SECTION 10. Sections [481.120](#), [481.121](#), and [481.134](#), Health
4 and Safety Code, as amended by this Act, apply to an offense
5 committed under Section [481.120](#) or [481.121](#), or an offense committed
6 under Section [481.120](#) or [481.121](#) and punishable under Section
7 [481.134](#), before, on, or after September 1, 2021, except that a final
8 conviction for an offense that exists on September 1, 2021, is
9 unaffected by this Act.

10 SECTION 11. This Act takes effect September 1, 2021.