By:  Middleton S.B. No. 2554

A BILL TO BE ENTITLED

AN ACT

authorizing the state to take an interlocutory appeal to seek the overruling of Stogner v. California, 539 U.S. 607 (2003).

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

SECTION 1.  Chapter 12, Code of Criminal Procedure, is amended by adding Article 12.08 to read as follows:

Art. 12.08.  APPEAL TO OVERRULE STOGNER. (a) The state may bring criminal charges against a defendant that would otherwise be barred by the interpretation of the Ex Post Facto Clause adopted by the Supreme Court of the United States in Stogner v. California, 539 U.S. 607 (2003).

(b)  The state may take an immediate appeal directly to the Court of Criminal Appeals from an order dismissing any criminal prosecution as barred by the interpretation of the Ex Post Facto Clause adopted by the Supreme Court of the United States in Stogner v. California, 539 U.S. 607 (2003), and may appeal solely for the purpose of seeking reconsideration of Stogner by the Supreme Court of the United States on petition for certiorari.

(c)  The Court of Criminal Appeals shall expedite the consideration of any appeal taken under Subsection (b) and resolve the appeal as quickly as possible.

(d)  The Court of Criminal Appeals may summarily affirm, without requesting merits briefing or holding oral argument, if it concludes or the state concedes that Stogner compels the dismissal of the criminal prosecution, and there is no reasonable grounds for distinguishing that ruling factually or legally. The state may indicate in its notice of appeal that Stogner compels the dismissal of the criminal prosecution, and there is no reasonable grounds for distinguishing that ruling factually or legally, and that the appeal is taken solely for the purpose of seeking reconsideration of Stogner on petition for certiorari.

(e)  The state may petition for writ of certiorari from any decision of the Court of Criminal Appeals affirming the dismissal of the criminal prosecution under Stogner.

SECTION 2.  If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 3.  This Act takes effect September 1, 2023.