

BILL ANALYSIS

C.S.H.B. 226
By: Krause
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that having a large number of offenses in codes other than the Penal Code has rendered some aspects of criminal law in Texas unwieldy and unjust, with penalties seemingly disproportionate to the severity of the crime. C.S.H.B. 226 seeks to address this issue by establishing a commission to study certain laws outside of the Penal Code and revising penalty structures for certain offenses that are currently compiled outside the Penal Code.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 226 creates a nine-member commission to study and review all Texas penal laws other than criminal offenses under the Penal Code, under the Texas Controlled Substances Act, or related to the operation of a motor vehicle. The bill requires the commission to evaluate those laws, to make recommendations to the legislature regarding the repeal or amendment of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law, and to evaluate the recommendations made by the commission created to study and review certain penal laws by the 84th Legislature. The bill provides for the commission's composition, member appointments, and operations. The bill requires the commission, not later than November 1, 2020, to report its findings and recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, the Supreme Court of Texas, the Texas Court of Criminal Appeals, and the standing legislative committees with primary jurisdiction over criminal justice and to include in the recommendations any specific statutes that the commission recommends repealing or amending. The commission and the bill's provisions relating to the commission expire on December 31, 2020. The bill establishes the purpose of its provisions.

C.S.H.B. 226 transfers from the Business & Commerce Code to the Penal Code provisions relating to a pyramid promotional scheme and provisions relating to identity theft by an electronic device.

C.S.H.B. 226 transfers from the Government Code to the Penal Code provisions establishing the offenses of sedition and sabotage and amends those provisions to remove the specified fine and confinement punishments for the offenses and to make those offenses second degree felonies.

C.S.H.B. 226 amends the Government Code to remove the county jail confinement punishment for a thrashing pecans offense.

C.S.H.B. 226 amends the Local Government Code to change the penalty for violating a courthouse parking lot rule in certain counties from a misdemeanor punishable by a fine of not less than \$1 nor more than \$20 to a Class C misdemeanor.

C.S.H.B. 226 amends the Natural Resources Code to change the penalty for unauthorized herding and line-riding from a fine of not less than \$100 nor more than \$1,000 and confinement in the county jail for not less than three months nor more than two years to a Class C misdemeanor. The bill changes the penalty for a violation of statutory provisions relating to the control of oil property from a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term of not less than two nor more than four years to a third degree felony. The bill decreases the penalty for criminal offenses relating to certain oil tanker vehicle cargo documents from a third degree felony to a Class A misdemeanor.

C.S.H.B. 226 amends the Occupations Code to remove the specification that a person commits a separate offense for each day a person violates the prohibition against practicing or offering to practice dentistry or dental surgery or representing that the person practices dentistry without a license. The bill decreases the penalty for a violation of statutory provisions requiring registration of a dental laboratory and relating to filling a prescription to prepare or repair a dental prosthetic appliance from a third degree felony to a Class A misdemeanor and enhances the penalty for a subsequent conviction of those applicable offenses to a third degree felony. The bill decreases from a state jail felony to a Class A misdemeanor the penalty for the unlawful appointment, employment, or retention of individuals with certain convictions as a peace officer or reserve law enforcement officer, public security officer, telecommunicator, or county jailer.

C.S.H.B. 226 repeals the statutory provision establishing a Class B misdemeanor penalty for committing a frivolous claim offense relating to auctioneers and adds a provision that instead subjects a person who engages in conduct constituting that offense to a civil penalty. The bill changes the penalty for certain violations relating to the notification of and excessive charging of hotel lodging rates from a misdemeanor punishable by a fine of not less than \$25 or more than \$100, confinement in jail for a term not to exceed 30 days, or both the fine and confinement to a misdemeanor punishable by a maximum fine of \$100. The bill repeals provisions:

- specifying that each day a person practices acupuncture in Texas without a license constitutes a separate offense;
- establishing criminal penalties for certain conduct relating to the sale of secondhand business machines;
- creating a recordkeeping offense in relation to theaters;
- creating an offense relating to a theater's discrimination against reputable productions; and
- creating an offense for overcharging for parking a vehicle in a parking facility in connection with a special event in a specified amount.

C.S.H.B. 226 amends the Parks and Wildlife Code to revise the penalties for the following offenses by establishing penalties ranging from a Class C Parks and Wildlife Code misdemeanor to a Parks and Wildlife Code state jail felony depending on the actor's requisite state of mind and previous convictions, as applicable: hunting with a light; interference with a buoy, marker, or fence used to designate or enclose a private oyster bed or related location; certain offenses relating to oyster licenses, night dredging, and oysters taken from restricted areas; and certain shrimping offenses. The bill repeals provisions requiring an applicant for or holder of a floating cabin permit to sign certain documents under penalty of perjury.

C.S.H.B. 226 amends the Penal Code to include as conduct constituting a capital murder offense the conduct set out in a Government Code provision, which is repealed by the bill, that constitutes capital sabotage. The bill includes as conduct constituting a third degree felony tampering with a governmental record offense the conduct set out in an Education Code provision, which is repealed by the bill, that constitutes interference with operation of a foundation school program.

C.S.H.B. 226 amends the Tax Code to decrease from a third degree felony to a Class A misdemeanor the penalty for the following offenses: an offense relating to previously used or old cigarette tax design stamps, an offense relating to the transportation of tobacco products with respect to the associated tax, and an offense for possession of tobacco products on which a tax of more than \$50 is required to be paid. The bill enhances the penalty for a subsequent conviction of those applicable offenses to a third degree felony. The bill decreases from a Class A misdemeanor to a Class C misdemeanor the penalty for the offense of possessing tobacco products on which a tax of \$50 or less is required to be paid and enhances the penalty for a subsequent conviction of such an offense to a Class A misdemeanor.

C.S.H.B. 226 amends the Utilities Code to decrease from a third degree felony to a Class A misdemeanor the penalty for a person who wilfully and knowingly violates the Public Utility Regulatory Act and for a person who knowingly violates the Gas Utility Regulatory Act.

C.S.H.B. 226 amends the Business & Commerce Code, Code of Criminal Procedure, and Government Code to make conforming changes.

C.S.H.B. 226 repeals the following:

- Alcoholic Beverage Code provisions prohibiting the possession or display of certain indecent graphic material on premises licensed under that code;
- Business & Commerce Code provisions establishing criminal penalties for certain deceptive trade practices, for the unlawful sale of plastic bulk merchandise containers, and for the prohibited use of crime victim or motor vehicle accident information;
- Labor Code provisions establishing offenses relating to restrictions on the length of hoe handles;
- Revised Statutes provisions relating to free pass transportation law, reduced transportation rates for officers, an offense for discrimination against a person seeking employment on account of participation in a strike, and an offense for peddling certain printed matter; and
- Vernon's Texas Civil Statutes provisions relating to penalties for conducting certain activities near a certain superconducting super collider facility.

C.S.H.B. 226 repeals the following provisions:

- Section 101.64, Alcoholic Beverage Code
- Sections 17.30, 17.31, and 204.005, Business & Commerce Code
- Chapter 504, Business & Commerce Code
- the heading to Chapter 522, Business & Commerce Code
- Section 44.051, Education Code
- the heading to Subchapter B, Chapter 557, Government Code
- Sections 557.012 and 557.013, Government Code
- Sections 52.021 and 52.022, Labor Code
- Sections 205.401(b), 1802.302, 1805.103, 2155.002(d), 2156.004, 2156.005, and

2158.003, Occupations Code

- Sections 32.053(b) and 32.057(d), Parks and Wildlife Code
- Articles 4005a, 4006a, 4006b, 4015d, 4015e, 5196b, and 9010, Revised Statutes
- Chapter 281 (H.B. 2680), Acts of the 73rd Legislature, Regular Session, 1993 (Article 4413(47e-1), Vernon's Texas Civil Statutes)

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 226 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the repeal of Finance Code provisions establishing offenses relating to slander, libel, and defamation of certain financial institutions and businesses.