

- SUBJECT:** Creating a commission to review certain penal laws, revising offenses
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Kathy Mitchell, Just Liberty; Derek Cohen, Texas Public Policy Foundation)
- Against — (*Registered, but did not testify:* Susana Carranza; Robert Norris)
- BACKGROUND:** The 84th and 85th legislatures created commissions to study penal laws outside of the Penal Code, the Texas Controlled Substance Act, and offenses related to motor vehicles. The bills required the commissions to make recommendations to the Legislature. In December 2018, the Commission to Study and Review Certain Penal Laws that was created by the 85th Legislature issued a report and was abolished. The report includes recommendations on repealing and revising offenses in the Occupations Code.
- DIGEST:** HB 816 would create a commission to study certain penal laws outside of the Penal Code, move some offenses and penalties to the Penal Code from other codes, and eliminate and revise penalties in several codes.
- Commission.** HB 816 would create a commission to study penal laws outside of the Penal Code, the Texas Controlled Substances Act, and offenses related to motor vehicles. The commission would be required to make recommendations to the Legislature about repealing or amending such laws it identified as unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve their intended purposes. It also would be charged with evaluating laws identified by the commission created in 2015 and other successor commissions.

The commission would have nine members appointed by the governor, lieutenant governor, House speaker, chief justice of the Texas Supreme Court, and the presiding judge of the Texas Court of Criminal Appeals. The appointments would have to represent all areas of the criminal justice system. The governor would appoint the presiding officer and members would not be compensated. Appointments would have to be made by November 1, 2021.

The commission would have to report its findings by November 1, 2022, including recommendations on specific statutes to repeal or amend, and the commission would be abolished December 31, 2022.

Fraud. HB 816 would move two offenses from the Business and Commerce Code and place them in a new section of Penal Code ch. 32 on fraud. The bill would move the Business and Commerce Code sec. 17.461 offense for promoting pyramid schemes and the Business and Commerce Code ch. 522 offense on identity theft by electronic devices to new sections of the Penal Code.

Sabotage and sedition. HB 816 would move the Government Code offenses of sedition and sabotage to Penal Code ch. 40, a new section of that code.

The bill would replace the current penalties involving fines and prison terms of one or two to 20 years in prison with a penalty of a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

The bill would repeal Government Code sec. 557.012 capital sabotage provisions punishing an act of sabotage or attempted sabotage that caused the death of an individual with the punishments of death, life in prison, or a prison term of at least two years. HB 816 would include committing murder while committing or attempting to commit sabotage in the Penal Code sec. 19.03(a) list of offenses that are considered capital murder and eligible for the death penalty.

Natural Resources Code. The bill would modify several offenses and penalties in the Natural Resources Code, including:

- changing the penalty for illegal herding or line-riding on certain public lands from a fine of \$100 to \$1,000 and three months to two years in jail to a class C misdemeanor;
- changing the penalty for certain violations of provisions relating to the control of oil field property from a prison term of two to four years to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000); and
- reducing the penalty for failing to make available an oil tanker cargo manifest or take other actions relating to the manifest from a third-degree felony to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Occupations Code. HB 816 would amend Occupations Code offenses relating to several different occupations.

It would revise provisions of Occupations Code chs. 264 and 266 relating to dentistry. The bill would remove provisions that make each day of a violation for practicing dentistry without a license a separate offense and would keep the third-degree felony penalty for the offense. The bill also would reduce the penalty from a third-degree felony to a class A misdemeanor for first-time offenses related to holding certifications to operate dental laboratories and certain prohibited practices related to dental prosthetic appliances. Repeat offenses would be third-degree felonies.

The bill would revise other sections of the Occupations Code, including:

- reducing from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a class A misdemeanor Occupation Code sec. 1701.533 violations of prohibitions on hiring persons convicted of certain crimes as peace officers, public security officers, county jailers and others in

- violation of license requirements;
- establishing in Occupations Code ch. 1802 a civil penalty for frivolous claims against an auctioneer with penalties of up to \$5,000 per day for each violation and repealing provisions making such claims related to auctioneers class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000);
 - repealing Occupations Code sec. 2155.002 provisions allowing a fine of \$25 to \$100 and a jail term of up to 30 days or both for violations relating to hotel personnel posting certain notifications of room rates or charging room rates that are higher than the posted rates and making all such offenses misdemeanor fines of up to \$100; and
 - repealing Occupations Code sec. 2156.006 offenses for certain recordkeeping violations by persons in charge of theaters and for discrimination against reputable productions.

Tampering with certain educational records. HB 816 would move the Education Code penalty dealing with tampering with certain educational records to the Penal Code. Similar provisions in Education Code sec. 44.051 would be repealed.

Taxes on tobacco products. The bill would revise several Tax Code offenses dealing with cigarettes and tobacco products.

Three offenses would have their penalties reduced from third-degree felonies to class A misdemeanors with repeat offenses being third-degree felonies. This reduction would apply to Tax Code sec. 154.513 offenses relating to using or handling previously used or old-design cigarette tax stamps; Tax Code sec. 155.209 offenses related to transporting certain tobacco products; and Tax Code sec. 155.211 offenses for possessing certain tobacco products for which a tax is owed.

Other provisions. The bill would make other changes, including reducing penalties for willfully and knowingly violating the Public Utility Regulatory Act and knowingly violating the Gas Utility Regulatory Act from third-degree felonies to class A misdemeanors.

The possible jail term of up to three months for illegally thrashing pecans would be removed, leaving the possible penalty of \$5 to \$300.

The bill would change the penalty in Local Government Code sec. 615.002 for offenses involving violating certain rules about parking near courthouses from a fine so \$1 to \$20 to a class C misdemeanor.

HB 816 would repeal numerous provisions, including:

- Alcoholic Beverage Code sec. 101.64 prohibitions on holders of alcoholic beverage licenses or permits possessing or displaying cards, calendars, placards, pictures, or handbills that are immoral, indecent, lewd, or profane;
- Business and Commerce Code secs. 17.30, 17.31, and 204.005 provisions on misusing certain dairy container proprietary marks, misusing shopping carts and other containers that bear certain marks, and violations relating to handling certain returnable containers;
- Business and Commerce Code ch. 504 provisions creating a criminal offense related to the prohibited uses of crime victim and motor vehicle accident information;
- Labor Code sec. 502.021 provisions making it a class C misdemeanor for employers to provide certain commercial agricultural laborers with hoes with handles shorter than four feet;
- several Occupations Code provisions relating to criminal penalties for certain actions in health professions;
- several Occupations Code ch. 1101 offenses related to occupations dealing with real estate sales;
- several Occupations Code ch. 1802 offenses relating to auctioneers;
- Occupations Code sec. 1805.103 penalties related to transactions for the sale of used business machines;
- Occupations Code sec. 2158.003 provisions making it a class C misdemeanor for certain parking lot owners to charge more than a specified rate for a special event;

- fines relating to prohibitions on certain activities near the canceled superconducting supercollider project in Ellis County; and
- several provisions in Vernon's Civil Statutes, including provisions relating to prohibitions on certain railway, telegraph, and telephone companies giving free passes and to other restrictions on fares; a prohibition on certain types of peddling by persons who are deaf or mute; and penalties applied to acts violating a law on discrimination and restrictions on labor.

The bill would take effect September 1, 2021, and would apply only to offenses committed on or after that date. To the extent of any conflict, HB 816 would prevail over any other act of the 87th Legislature's regular session relating to nonsubstantive additions and corrections.