

BILL ANALYSIS

Senate Research Center
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S.B. 1391
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, when a person trespasses onto residential property a peace officer's only recourse is to arrest the trespasser. In some cases this is not the best use of the officer's time so issuing a ticket would be sufficient.

As proposed, S.B. 1391 makes trespass on residential land a Class C misdemeanor, thereby authorizing a peace officer to issue a ticket for the offense rather than arrest the offender, unless the trespass is committed in a building or habitation or the actor carries a deadly weapon. The bill provides that criminal trespass would be a Class B misdemeanor if it is shown at trial that the defendant is a repeat offender. The bill also makes it an affirmative defense to the prosecution of the offense that the actor was an employee of an electric or gas utility or other entity that has authorization to enter the land and the actor is performing a duty within the scope of the actor's employment. Finally, S.B. 1391 clarifies that a person commits the offense of criminal trespass if, without express consent or authorization, the person enters or remains on residential land of another and had notice entry was forbidden or failed to leave after receiving notice to depart.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 30.05(b), Penal Code, by adding Subdivision (8), to define "residential land."

SECTION 2. Amends Section 30.05, Penal Code, by amending Subsections (c) and (d) and adding Subsection (k), as follows:

(c) Provides that it is a defense to prosecution under this section that the actor at the time of the offense was:

(1) a fire fighter or emergency medical services personnel, as defined by, rather than as that term is defined by, Section 773.003 (Definitions), Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;

(2) an employee or agent of an electric utility, as defined by Section 31.002 (Definitions), Utilities Code, or an employee or agent of a gas utility, as defined by Section 101.003 (Definitions) or 121.001 (Definition of Gas Utility), Utilities Code, who was performing a duty within the scope of employment or agency; or

(3) a person who was employed by or acting as an agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property and was performing a duty within the scope of that employment or agency. Makes nonsubstantive changes.

(d) Provides that an offense under Subsection (k) is a Class C misdemeanor unless it is committed in a building or habitation or unless the actor carries a deadly weapon on or about the actor's person during the commission of the offense, in which event it is a Class

A misdemeanor. Provides that an offense under Subsection (a) (relating to a person committing an offense if he enters or remains on certain property of another without effective consent) is a Class C, rather than a Class B, misdemeanor, except that the offense is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section and that it is a Class A misdemeanor if the offense is committed in or at certain sites or if the actor carries a deadly weapon. Makes nonsubstantive changes.

(k) Provides that a person commits an offense if without express consent or if without authorization provided by any law, whether in writing or other form, the person enters or remains on residential land of another and had notice that the entry was forbidden or received notice to depart but failed to do so.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.