

By: Simpson

H.B. No. 80

A BILL TO BE ENTITLED

AN ACT

relating to official oppression; creating offenses.

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

SECTION 1. Section 39.03, Penal Code, is amended by amending Subsection (a) and adding Subsection (c-1) to read as follows:

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; ~~or~~

(3) intentionally subjects another to sexual harassment; or

(4) as part of a determination of whether to grant another person access to a publicly accessible venue or form of transportation, intentionally and without probable cause:

(A) touches the anus, breast, buttocks, or sexual organ of the other person, including touching through clothing;

(B) removes a child younger than 18 years of age from the physical custody or control of a parent or guardian of the child or a person standing in the stead of a parent or guardian of

1 the child;

2 (C) otherwise engages in conduct constituting an
3 offense under Section 22.01(a)(3); or

4 (D) harasses, delays, coerces, threatens,
5 intimidates, or effectively denies or conditions access to the
6 other person because of the other person's refusal to consent to
7 (A), (B), or (C).

8 (c-1) For purposes of Subsection (a)(4), "public servant"
9 includes:

10 (1) an officer, employee, or agent of:

11 (A) the United States;

12 (B) a branch, department, or agency of the United
13 States; or

14 (C) another person acting under a contract with a
15 branch, department, or agency of the United States to provide a
16 security or law enforcement service; or

17 (2) any other person acting under color of federal
18 law.

19 SECTION 2. (a) This section applies only to a prosecution
20 of an offense under Section 39.03(a)(4), Penal Code, as added by
21 this Act, in which the defendant was, at the time of the alleged
22 offense, acting under the color of federal law.

23 (b) In a prosecution described by Subsection (a) of this
24 section, if the government of the United States, the defendant, or
25 the defendant's employer challenges the validity of Section
26 39.03(a)(4), Penal Code, as added by this Act, on grounds of
27 unconstitutionality, preemption, or sovereign immunity, the

1 attorney general of this state, with the consent of the appropriate
2 local county or district attorney, shall take any actions necessary
3 on behalf of the state to defend the validity of the statute. The
4 attorney general may make any legal arguments the attorney general
5 considers appropriate, including that this Act constitutes a valid
6 exercise of:

7 (1) the state's police powers;

8 (2) the liberty interests of the people that are
9 secured by the United States Constitution;

10 (3) the powers reserved to the states by the Tenth
11 Amendment to the United States Constitution; or

12 (4) the rights and protections secured by the Texas
13 Constitution.

14 SECTION 3. This Act shall be construed, as a matter of state
15 law, to be enforceable up to but no further than the maximum
16 possible extent consistent with federal constitutional
17 requirements, even if that construction is not readily apparent, as
18 such constructions are authorized only to the extent necessary to
19 save the statute from judicial invalidation.

20 SECTION 4. Every provision in this Act and every
21 application of the provisions in this Act are severable from each
22 other as a matter of state law. If any application of any provision
23 in this Act to any person or group of persons or circumstances is
24 found by a court to be invalid, the remainder of this Act and the
25 application of the Act's provisions to all other persons and
26 circumstances may not be affected. All constitutionally valid
27 applications of this Act shall be severed from any applications

1 that a court finds to be invalid, leaving the valid applications in
2 force, because it is the legislature's intent and priority that the
3 valid applications be allowed to stand alone. Even if a reviewing
4 court finds a provision of this Act invalid in a large or
5 substantial fraction of relevant cases, the remaining valid
6 applications shall be severed and allowed to remain in force.

7 SECTION 5. This Act takes effect September 1, 2013.