

By: Dutton

H.B. No. 414

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the penalties for possession of one ounce or less of
3 marihuana or a synthetic cannabinoid.

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

5 SECTION 1. Section 481.1161, Health and Safety Code, is
6 amended by amending Subsection (b) and adding Subsections (c) and
7 (d) to read as follows:

8 (b) An offense under this section is:

9 (1) a Class C misdemeanor if the amount of controlled
10 substance possessed is, by aggregate weight, including adulterants
11 or dilutants, one ounce or less, except as provided by Subsection
12 (c);

13 (2) a Class B misdemeanor if the amount of the
14 controlled substance possessed is, by aggregate weight, including
15 adulterants or dilutants, two ounces or less but more than one
16 ounce;

17 (3) [~~2~~] a Class A misdemeanor if the amount of the
18 controlled substance possessed is, by aggregate weight, including
19 adulterants or dilutants, four ounces or less but more than two
20 ounces;

21 (4) [~~3~~] a state jail felony if the amount of the
22 controlled substance possessed is, by aggregate weight, including
23 adulterants or dilutants, five pounds or less but more than four
24 ounces;

1 (5) [~~(4)~~] a felony of the third degree if the amount of
2 the controlled substance possessed is, by aggregate weight,
3 including adulterants or dilutants, 50 pounds or less but more than
4 5 pounds;

5 (6) [~~(5)~~] a felony of the second degree if the amount
6 of the controlled substance possessed is, by aggregate weight,
7 including adulterants or dilutants, 2,000 pounds or less but more
8 than 50 pounds; and

9 (7) [~~(6)~~] punishable by imprisonment in the Texas
10 Department of Criminal Justice for life or for a term of not more
11 than 99 years or less than 5 years, and a fine not to exceed \$50,000,
12 if the amount of the controlled substance possessed is, by
13 aggregate weight, including adulterants or dilutants, more than
14 2,000 pounds.

15 (c) An offense under Subsection (b)(1) is a Class B
16 misdemeanor if it is shown on the trial of the offense that the
17 defendant has been previously convicted three or more times of an
18 offense involving the possession of marihuana or a synthetic
19 cannabinoid and each prior offense was committed within the
20 24-month period preceding the date of the commission of the instant
21 offense. For purposes of this subsection, "offense involving the
22 possession of marihuana or a synthetic cannabinoid" means an
23 offense under this section or Section 481.121 or an offense under
24 the laws of another state that contains elements substantially
25 similar to the elements of an offense under either of those
26 sections.

27 (d) A defendant convicted of an offense punishable under

1 Subsection (c) is not eligible for community supervision under
2 Article 42.12, Code of Criminal Procedure.

3 SECTION 2. Section 481.121, Health and Safety Code, is
4 amended by amending Subsection (b) and adding Subsections (c) and
5 (d) to read as follows:

6 (b) An offense under Subsection (a) is:

7 (1) a Class C misdemeanor if the amount of marihuana
8 possessed is one ounce or less, except as provided by Subsection
9 (c);

10 (2) a Class B misdemeanor if the amount of marihuana
11 possessed is two ounces or less but more than one ounce;

12 (3) [~~(2)~~] a Class A misdemeanor if the amount of
13 marihuana possessed is four ounces or less but more than two ounces;

14 (4) [~~(3)~~] a state jail felony if the amount of
15 marihuana possessed is five pounds or less but more than four
16 ounces;

17 (5) [~~(4)~~] a felony of the third degree if the amount of
18 marihuana possessed is 50 pounds or less but more than 5 pounds;

19 (6) [~~(5)~~] a felony of the second degree if the amount
20 of marihuana possessed is 2,000 pounds or less but more than 50
21 pounds; and

22 (7) [~~(6)~~] punishable by imprisonment in the Texas
23 Department of Criminal Justice for life or for a term of not more
24 than 99 years or less than 5 years, and a fine not to exceed \$50,000,
25 if the amount of marihuana possessed is more than 2,000 pounds.

26 (c) An offense under Subsection (b)(1) is a Class B
27 misdemeanor if it is shown on the trial of the offense that the

1 defendant has been previously convicted three or more times of an
2 offense involving the possession of marihuana or a synthetic
3 cannabinoid and each prior offense was committed within the
4 24-month period preceding the date of the commission of the instant
5 offense. For purposes of this subsection, "offense involving the
6 possession of marihuana or a synthetic cannabinoid" means an
7 offense under this section or Section 481.1161 or an offense under
8 the laws of another state that contains elements substantially
9 similar to the elements of an offense under either of those
10 sections.

11 (d) A defendant convicted of an offense punishable under
12 Subsection (c) is not eligible for community supervision under
13 Article 42.12, Code of Criminal Procedure.

14 SECTION 3. Section 481.126(a), Health and Safety Code, is
15 amended to read as follows:

16 (a) A person commits an offense if the person:

17 (1) barter property or expends funds the person knows
18 are derived from the commission of an offense under this chapter
19 punishable by imprisonment in the Texas Department of Criminal
20 Justice for life;

21 (2) barter property or expends funds the person knows
22 are derived from the commission of an offense under Section
23 481.121(a) that is punishable under Section 481.121(b)(6)
24 [~~481.121(b)(5)~~];

25 (3) barter property or finances or invests funds the
26 person knows or believes are intended to further the commission of
27 an offense for which the punishment is described by Subdivision

1 (1); or

2 (4) barter property or finances or invests funds the
3 person knows or believes are intended to further the commission of
4 an offense under Section 481.121(a) that is punishable under
5 Section 481.121(b)(6) [~~481.121(b)(5)~~].

6 SECTION 4. Sections 481.134(c), (d), (e), and (f), Health
7 and Safety Code, are amended to read as follows:

8 (c) The minimum term of confinement or imprisonment for an
9 offense otherwise punishable under Section 481.112(c), (d), (e), or
10 (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e),
11 481.115(c)-(f), 481.116(c), (d), or (e), 481.1161(b)(5), (6), or
12 (7) [~~481.1161(b)(4), (5), or (6)~~], 481.117(c), (d), or (e),
13 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or
14 481.121(b)(5), (6), or (7) [~~481.121(b)(4), (5), or (6)~~] is
15 increased by five years and the maximum fine for the offense is
16 doubled if it is shown on the trial of the offense that the offense
17 was committed:

18 (1) in, on, or within 1,000 feet of the premises of a
19 school, the premises of a public or private youth center, or a
20 playground; or

21 (2) on a school bus.

22 (d) An offense otherwise punishable under Section
23 481.112(b), 481.113(b), 481.114(b), 481.115(b), 481.116(b),
24 481.1161(b)(4) [~~481.1161(b)(3)~~], 481.120(b)(3), or 481.121(b)(4)
25 [~~481.121(b)(3)~~] is a felony of the third degree if it is shown on
26 the trial of the offense that the offense was committed:

27 (1) in, on, or within 1,000 feet of any real property

1 that is owned, rented, or leased to a school or school board, the
2 premises of a public or private youth center, or a playground; or

3 (2) on a school bus.

4 (e) An offense otherwise punishable under Section
5 [481.117\(b\)](#), [481.119\(a\)](#), [481.120\(b\)\(2\)](#), or [481.121\(b\)\(3\)](#)
6 [~~[481.121\(b\)\(2\)](#)~~] is a state jail felony if it is shown on the trial
7 of the offense that the offense was committed:

8 (1) in, on, or within 1,000 feet of any real property
9 that is owned, rented, or leased to a school or school board, the
10 premises of a public or private youth center, or a playground; or

11 (2) on a school bus.

12 (f) An offense otherwise punishable under Section
13 [481.118\(b\)](#), [481.119\(b\)](#), [481.120\(b\)\(1\)](#), or [481.121\(b\)\(1\)](#), (b)(2),
14 or (c) is a Class A misdemeanor if it is shown on the trial of the
15 offense that the offense was committed:

16 (1) in, on, or within 1,000 feet of any real property
17 that is owned, rented, or leased to a school or school board, the
18 premises of a public or private youth center, or a playground; or

19 (2) on a school bus.

20 SECTION 5. Article [14.06\(d\)](#), Code of Criminal Procedure, is
21 amended to read as follows:

22 (d) Subsection (c) applies only to a person charged with
23 committing an offense under:

24 (1) Section [481.121](#), Health and Safety Code, if the
25 offense is punishable under Subsection (b)(2), (b)(3), or (c)
26 [~~(b)(1) or (2)~~] of that section;

27 (1-a) Section [481.1161](#), Health and Safety Code, if the

1 offense is punishable under Subsection (b)(2), (b)(3), or (c)
2 [~~(b)(1) or (2)~~] of that section;

3 (2) Section 28.03, Penal Code, if the offense is
4 punishable under Subsection (b)(2) of that section;

5 (3) Section 28.08, Penal Code, if the offense is
6 punishable under Subsection (b)(1) of that section;

7 (4) Section 31.03, Penal Code, if the offense is
8 punishable under Subsection (e)(2)(A) of that section;

9 (5) Section 31.04, Penal Code, if the offense is
10 punishable under Subsection (e)(2) of that section;

11 (6) Section 38.114, Penal Code, if the offense is
12 punishable as a Class B misdemeanor; or

13 (7) Section 521.457, Transportation Code.

14 SECTION 6. Section 15(a)(1), Article 42.12, Code of
15 Criminal Procedure, is amended to read as follows:

16 (1) On conviction of a state jail felony under Section
17 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(4)
18 [~~481.1161(b)(3)~~], 481.121(b)(4) [~~481.121(b)(3)~~], or
19 481.129(g)(1), Health and Safety Code, that is punished under
20 Section 12.35(a), Penal Code, the judge shall suspend the
21 imposition of the sentence and place the defendant on community
22 supervision, unless the defendant has previously been convicted of
23 a felony, other than a felony punished under Section 12.44(a),
24 Penal Code, or unless the conviction resulted from an adjudication
25 of the guilt of a defendant previously placed on deferred
26 adjudication community supervision for the offense, in which event
27 the judge may suspend the imposition of the sentence and place the

1 defendant on community supervision or may order the sentence to be
2 executed. The provisions of this subdivision requiring the judge
3 to suspend the imposition of the sentence and place the defendant on
4 community supervision do not apply to a defendant who:

5 (A) under Section [481.1151\(b\)\(1\)](#), Health and
6 Safety Code, possessed more than five abuse units of the controlled
7 substance;

8 (B) under Section [481.1161\(b\)\(4\)](#)
9 [~~[481.1161\(b\)\(3\)](#)~~], Health and Safety Code, possessed more than one
10 pound, by aggregate weight, including adulterants or dilutants, of
11 the controlled substance; or

12 (C) under Section [481.121\(b\)\(4\)](#) [~~[481.121\(b\)\(3\)](#)~~],
13 Health and Safety Code, possessed more than one pound of marihuana.

14 SECTION 7. Article [45.051](#), Code of Criminal Procedure, is
15 amended by adding Subsection (g) to read as follows:

16 (g) This subsection applies only to a defendant charged with
17 an offense under Section [481.1161](#) or [481.121](#), Health and Safety
18 Code, who is granted a deferral under Subsection (a). In addition
19 to any other requirement, the judge shall, during the deferral
20 period, require that the defendant successfully complete a drug
21 abuse awareness and education program approved by the Department of
22 State Health Services.

23 SECTION 8. The changes in law made by this Act apply only to
24 an offense committed on or after the effective date of this Act. An
25 offense committed before the effective date of this Act is governed
26 by the law in effect on the date the offense was committed, and the
27 former law is continued in effect for that purpose. For purposes of

1 this section, an offense was committed before the effective date of
2 this Act if any element of the offense was committed before that
3 date.

4 SECTION 9. This Act takes effect September 1, 2015.