

By: Dutton

H.B. No. 902

A BILL TO BE ENTITLED

AN ACT

relating to the penalties for possession of two ounces or less of marihuana and to the issuance of an occupational driver's license.

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

SECTION 1. Section 481.121, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

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

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

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

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

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

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

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

(7) [~~(6)~~] punishable by imprisonment in the

1 institutional division of the Texas Department of Criminal Justice
2 for life or for a term of not more than 99 years or less than 5
3 years, and a fine not to exceed \$50,000, if the amount of marihuana
4 possessed is more than 2,000 pounds.

5 (c) An offense under Subsection (b)(1) is a Class B
6 misdemeanor if it is shown on the trial of the offense that the
7 defendant has been before convicted under that section three times
8 and each prior offense was committed in the 24 months preceding the
9 date of commission of the instant offense.

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

13 SECTION 2. Article 45.051, Code of Criminal Procedure, is
14 amended by adding Subsection (g) to read as follows:

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

22 SECTION 3. Sections 521.242(a), (b), and (e),
23 Transportation Code, are amended to read as follows:

24 (a) A person whose license has been suspended for a cause
25 other than a physical or mental disability or impairment or a
26 conviction under Section 49.04, Penal Code, may apply for an
27 occupational license by filing a verified petition with the clerk

1 of a justice, municipal, [the] county, [court] or district court
2 with jurisdiction that includes ~~[in]~~ the precinct or municipality
3 ~~[county]~~ in which:

4 (1) the person resides; or

5 (2) the offense occurred for which the license was
6 suspended.

7 (b) A person may apply for an occupational license by filing
8 a verified petition only with the clerk of the ~~[county court or~~
9 ~~district]~~ court in which the person was convicted if:

10 (1) the person's license has been automatically
11 suspended or canceled under this chapter for a conviction of an
12 offense under the laws of this state; and

13 (2) the person has not been issued, in the 10 years
14 preceding the date of the filing of the petition, more than one
15 occupational license after a conviction under the laws of this
16 state.

17 (e) The clerk of the court shall file the petition as in any
18 other ~~[civil]~~ matter.

19 SECTION 4. (a) The change in law made by Sections 1 and 2 of
20 this Act applies only to an offense committed on or after September
21 1, 2009. An offense committed before September 1, 2009, is covered
22 by the law in effect when the offense was committed, and the former
23 law is continued in effect for that purpose. For purposes of this
24 subsection, an offense was committed before September 1, 2009, if
25 any element of the offense was committed before that date.

26 (b) The change in law made by Section 3 of this Act applies
27 only to an occupational driver's license that is applied for on or

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1 after September 1, 2009. An occupational driver's license applied
2 for before September 1, 2009, is covered by the law in effect on the
3 date the application was filed, and the former law is continued in
4 effect for that purpose.

5 SECTION 5. This Act takes effect September 1, 2009.