

By: Simpson, Rodriguez, Menendez, Kolkhorst, Chisum, et al. H.B. No. 1937

Substitute the following for H.B. No. 1937:

By: Gallego C.S.H.B. No. 1937

A BILL TO BE ENTITLED

1 AN ACT

2 relating to prosecution and punishment for the offense of official  
3 oppression by the intrusive touching of persons seeking access to  
4 public buildings and transportation; providing penalties.

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

6 SECTION 1. Section 39.03, Penal Code, is amended by  
7 amending Subsections (a) and (b) and adding Subsections (c-1) and  
8 (c-2) to read as follows:

9 (a) A person who is a public servant [~~acting under color of~~  
10 ~~his office or employment~~] commits an offense if the person:

11 (1) while acting under color of the person's office or  
12 employment [~~he~~]:

13 (A) [~~(1)~~] intentionally subjects another person  
14 to mistreatment or to arrest, detention, search, seizure,  
15 dispossession, assessment, or lien that the actor [~~he~~] knows is  
16 unlawful;

17 (B) [~~(2)~~] intentionally denies or impedes  
18 another person in the exercise or enjoyment of any right,  
19 privilege, power, or immunity, knowing the actor's [~~his~~] conduct is  
20 unlawful; or

21 (C) [~~(3)~~] intentionally subjects another person  
22 to sexual harassment; or

23 (2) while acting under color of the person's office or  
24 employment without probable cause to believe the other person

1    committed an offense:

2                (A)    performs a search for the purpose of granting  
3    access to a publicly accessible building or form of transportation;  
4    and

5                (B)    intentionally, knowingly, or recklessly:

6                        (i)    touches the anus, sexual organ,  
7    buttocks, or breast of the other person, including touching through  
8    clothing; or

9                        (ii)    touches the other person in a manner  
10    that would be offensive to a reasonable person.

11                (b)    For purposes of this section, a person who is a public  
12    servant acts under color of the person's [his] office or employment  
13    if the person [he] acts or purports to act in an official capacity  
14    or takes advantage of such actual or purported capacity.

15                (c-1)    For purposes of Subsection (a)(2), "public servant"  
16    includes:

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

18                                (A)    the United States;

19                                (B)    a branch, department, or agency of the United  
20    States; or

21                                (C)    another person acting under contract with a  
22    branch, department, or agency of the United States for the purpose  
23    of providing a security or law enforcement service; and

24                        (2)    any other person acting under color of federal  
25    law.

26                (c-2)    For a person described by Subsection (c-1)(1) or (2),  
27    it is a defense to prosecution for an offense under Subsection

1       (a)(2) that the actor performed the search pursuant to and  
2       consistent with an explicit and applicable grant of federal  
3       statutory authority that is consistent with the United States  
4       Constitution.

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

9               (b) In a prosecution described by Subsection (a) of this  
10       section, if the government of the United States, the defendant, or  
11       the defendant's employer challenges the validity of Section  
12       39.03(a)(2), Penal Code, as added by this Act, on grounds of  
13       unconstitutionality, preemption, or sovereign immunity, the  
14       attorney general of this state, with the consent of the appropriate  
15       local county or district attorney, shall take any actions necessary  
16       on behalf of the state to defend the validity of the statute. The  
17       attorney general may make any legal arguments the attorney general  
18       considers appropriate, including that this Act constitutes a valid  
19       exercise of:

20                       (1) the state's police powers;  
21                       (2) the liberty interests of the people secured by the  
22       Ninth Amendment to the United States Constitution;  
23                       (3) the powers reserved to the states by the Tenth  
24       Amendment to the United States Constitution; or  
25                       (4) the rights and protections secured by the Texas  
26       Constitution.

27               SECTION 3. This Act takes effect immediately if it receives

C.S.H.B. No. 1937

1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2011.