By: Simpson, Rodriguez, Menendez, Kolkhorst, Chisum, et al.

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

(C) [+] intentionally subjects another person to sexual harassment; or

(2) while acting under color of the person's office or employment without probable cause to believe the other person
committed an offense:

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

(B) intentionally, knowingly, or recklessly:

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

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

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

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

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

(A) the United States;

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

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

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

(c-2) For a person described by Subsection (c-1)(1) or (2),
it is a defense to prosecution for an offense under Subsection
(a)(2) that the actor performed the search pursuant to and consistent with an explicit and applicable grant of federal statutory authority that is consistent with the United States Constitution.

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

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

1. the state's police powers;
2. the liberty interests of the people secured by the Ninth Amendment to the United States Constitution;
3. the powers reserved to the states by the Tenth Amendment to the United States Constitution; or
4. the rights and protections secured by the Texas Constitution.

SECTION 3. This Act takes effect immediately if it receives

3
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.