

MORE LAWS PASSED BY THE 82ND LEGISLATURE

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New Class C Misdemeanors

- H.B. 1043 created a new offense for cockfighting in Section 42.105 of the Penal Code. A cock is defined as the male of any type of domestic fowl, and cockfighting means any situation in which one cock attacks or fights with another. It is a state jail felony to cause a cock to fight with another or to profit from a cockfight. It is a Class A misdemeanor to use or allow another to use any property for cockfighting, to own or train a cock with the intent to use it in cockfighting, or to manufacture, buy, sell, barter, exchange, possess, advertise, or offer a steel spur or weapon to attach to a cock's leg to be used in fighting. Finally, it is a Class C misdemeanor to attend a cockfight as a spectator. If it is shown on the trial of the offense, however, that the person has previously been convicted of attending as a spectator, the offense is a Class A misdemeanor. The new offenses took effect September 1, 2011.
- H.B. 2495 created an offense in Section 712.048 of the Health and Safety Code for a person to collect money for the purchase of a memorial and knowingly defalcate or misappropriate the funds. The offense is punishable under the same tiered structure as in Section 32.45 of the Penal Code (Misapplication of Fiduciary Property or Property of Financial Institution), and is a Class C misdemeanor if the funds in question are less than \$20. The new offense took effect September 1, 2011.
- H.B. 2959 created a new Class C misdemeanor, effective September 1, 2011, for the failure of a former county election chair to transfer required records to the new county election chair. The required records are outlined in Section 171.028 of the Election Code.
- S.B. 256 creates a new Class C misdemeanor for the failure of a private autopsy facility to post required notice about filing a complaint against a physician who performs autopsy services. The offense and a definition of "private autopsy facility" are found in new Chapter 671A of the Health and Safety Code, effective January 1, 2012.
- S.B. 431 created a new Class C misdemeanor for a person to fraudulently use or claim to hold a military record. Under new Section 32.54 of the Penal Code, effective September 1, 2011, it is a crime for a person to use or claim to hold a military record the person knows is fraudulent, fictitious, not assigned to that person, or revoked, if the record is used in the following manner: (1) in promotion of a business, or (2) with the intent to obtain priority in receiving services or resources from the Texas Workforce Commission; to qualify for veteran's employment preferences; to obtain a trade, professional, or occupational license; to be promoted, compensated, or receive some other benefit in employment; to obtain a benefit, service, or donation from another person; to gain admission to a state educational program; or to gain a position in state government with authority over another person.
- S.B. 694 created several new offenses relating to metal recycling entities. Section 1956.040(a-1) of the Occupations Code was added to create a misdemeanor offense, punishable by a fine not to exceed \$10,000, if: a person acts as or represents to be a metal recycling entity without being registered or with an expired certificate of registration; a metal recycling entity fails to timely report the acquisition of copper, brass, bronze, aluminum, or other regulated metal material; or a metal recycling entity violates time of day or hour restrictions for the purchase of regulated metal

materials from the general public. A municipal court that collects fine money from a conviction of one of these new offenses must remit 90 percent of the fine to the Comptroller on the quarterly report. The new offenses took effect September 1, 2011, and are enhanceable. If it is shown on the trial of the offense that the person has previously been convicted of one of these violations, the offense is a state jail felony. However, the enhancement only applies to offenses committed on or after January 1, 2012.

The bill also provides that a metal recycling entity may not pay cash for a purchase of regulated metal if the entity does not hold a certificate of registration or if the entity has been prohibited from paying cash by the Department of Public Safety. A city may not adopt or enforce an ordinance that limits the use of cash by a metal recycling entity in a manner more restrictive than this, unless the ordinance was in already in effect on January 1, 2011.

- S.B. 767 added Chapter 21 to the Business and Commerce Code, regulating certain residential mortgage foreclosure consulting services. The bill provides a general penalty for violation of the chapter, punishable as a Class C misdemeanor, effective September 1, 2011.
- S.B. 1518 created a new Class C misdemeanor for violating a rule adopted by the Texas Historical Commission that governs the health, safety, and protection of persons and property in historic sites under the control of the commission. The bill adds Chapter 442 to the Government Code, effective June 17, 2011.

Court Administration Issues

- S.B. 86 repealed Section 702.002 of the Transportation Code, effective June 17, 2011, which provided that only home-rule municipalities could contract with their county assessor-collector or the Department of Motor Vehicles (DMV) under the Scofflaw program to deny vehicle registration renewal to defendants who failed to appear or failed to pay a fine on a traffic law violation. Thus, those cities that have wanted to use the Scofflaw program, but were not home-rule, may now enter into such contracts. Along with the passage of S.B. 1386, which authorizes courts to collect a \$20 fee from those defendants turned over to the Scofflaw program (albeit the fee must be remitted to the county or DMV), these two bills may greatly help those cities struggling with collection efforts.

Other Interesting Bills

- H.B. 962 amended the Civil Practice and Remedies Code to require the Supreme Court to adopt rules of civil procedure regarding the service of process and return of service. A person who knowingly or intentionally falsifies a return of service may be prosecuted for tampering with a governmental record under the Penal Code. The offense will apply to process served on or after January 1, 2012.
- H.B. 1451 added Chapter 802 to the Occupations Code, also known as the “Dog or Cat Breeders Act.” Under the act, a dog or cat breeder, defined as a person who possesses 11 or more adult intact female animals bred for sale and who sells at least 20 animals in a calendar year, must obtain and maintain a license from the Department of Licensing and Regulation (TDLR). The applicant is subject to a criminal background check, and once licensed, must submit to periodic inspections and maintain an annual inventory and required records on each animal. If evidence of animal cruelty or neglect is discovered during an inspection, the investigator must report the breeder to law enforcement within 24 hours.

TDLR shall adopt rules, standards, procedures, and fees for licensing by March 31, 2012; however, a dog or cat breeder is not required to obtain a license or comply with the standards adopted until September 1, 2012. The department shall create and maintain a disciplinary database for license holders who violate any rules, standards, or procedures, and that database shall be made available to the public. For city attorneys and animal control officers, this database may be a good investigative tool for dealing with cruelly-treated animal cases. Breeders who violate a rule are subject to administrative and civil penalties.

The bill does not affect the applicability of city ordinances regulating the possession, breeding, or selling of dogs or cats, nor does it prevent cities from prohibiting or further regulating the same.

Traffic Safety and Transportation Code Issues

- H.B. 1199 created an “aggravated DWI” in Section 49.04 of the Penal Code. A first DWI offense is a Class B misdemeanor. Under H.B. 1199, if it is shown on the trial of the offense that the defendant’s blood, breath, or urine analysis showed an alcohol concentration level of 0.15 or higher, the offense is a Class A misdemeanor. Intoxication assault, generally a third degree felony, can now be enhanced to a felony of the second degree if it is shown at trial that the defendant caused a traumatic brain injury to another that results in a permanent vegetative state. These enhancements took effect September 1, 2011.
- H.B. 1523 amended Section 643.253 of the Transportation Code, which prohibits a person from engaging in or soliciting the transportation of household goods for compensation if not registered. The offense previously was a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000. H.B. 1523, effective September 1, 2011, amends the punishment to make the offense a Class C misdemeanor (with a maximum fine of \$500) for a first offense, a Class B misdemeanor for a second offense, and a Class A misdemeanor for a third or subsequent offense.
- S.B. 364 requires the Department of Public Safety (DPS) to compile and maintain statistical information on the prosecution of offenses relating to the operation of a motor vehicle while intoxicated (i.e., DWI, DWI with child passenger, intoxication assault, or intoxication manslaughter): including, the number of arrests; those resulting in release with no charge; those resulting in guilty, no contest, or not guilty pleas; the number of convictions obtained for DWI or an offense other than that charged; and the number of dismissals. This information must be reported on a form prescribed by DPS by the law enforcement agency, prosecutor’s office, or court that enforces DWI cases. DPS must then submit an annual report to the Texas Legislature showing the statistical information and those agencies, prosecutor offices, and courts that have failed to report. The bill took effect September 1, 2011; however, the first DPS report to the Legislature shall be submitted by February 15, 2013.

Note: This update supplements the bill summaries contained in the August 2011 issue of *The Recorder*, in the TMCEC Legislative Update materials distributed at the August seminars, and on the TMCEC website at www.tmcec.com/Resources/Course_Materials/2011_LegislativeUpdate.