

FINAL REPORT

December 2018



Commission to Study and Review Certain Penal Laws

Created by HB 351 – 85th Session

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Letter from Presiding Officer

The Commission to Study and Review Certain Penal Laws was originally created in the 84th Legislature and renewed in the 85th in an attempt to address approximately 1,500 laws outside of the penal code that create a confusing system without a clear roadmap for citizens to easily understand if they are in compliance with the laws of the state of Texas. Often the new laws are added to larger bills regulating state agencies but will include criminal penalties which can make it even more difficult for the citizens to identify actions that might adversely affect them. Commission members were acutely aware of the burden this lack of transparency and ease of use can cause for the average Texan and worked diligently to try to begin to address the issue. Additionally, the Commission recognized both chambers of the Texas Legislature held hearings on interim charges to study the burdens imposed by occupational regulations and has incorporated a review of occupational licensing to attempt to identify barriers to entering the workforce for aspiring workers. Even after 4 years of careful study, and an added focus on occupational licensing the Commission members feel strongly these will be ongoing issues that deserve greater attention and study by the Legislature. To that end, for ease of reference, the Commission has included the recommendations from its 2016 report that were not addressed in the 85th.

We were fortunate to have a diverse and engaged membership that brought perspectives from varied facets of our criminal justice system. Without the input and unique insight of each member and the significant investment by each of their time and resources, we would not have been able to complete this important assignment. It is important to note that while Commission members concur with the report as a whole, they are not specifically endorsing individual recommendations contained within because there was not always unanimous agreement, but certainly all recommendations are the result of consensus by Commission members.

Respectfully submitted,



Andrea Stroh Thompson
Chair

Legislative Authority

During the 85th Regular Session of the Texas Legislature, HB 351 became effective on September 1st, 2017 through the work of the bill's author, Rep. Terry Canales and sponsor, Sen. Chuy Hinojosa.

Among other provisions in the bill, HB 351 created the Commission to Study and Review Certain Laws. Section 30 of the bill is inserted below:

SECTION 30. (a) A commission is created to study and review all penal laws of this state other than criminal offenses:

- (1) under the Penal Code;
- (2) under Chapter 481, Health and Safety Code; or
- (3) related to the operation of a motor vehicle.

(b) The commission shall:

- (1) evaluate all laws described by Subsection (a) of this section;
- (2) make recommendations to the legislature regarding the repeal or amendment of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law, including the laws identified by the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015, as requiring additional review; and
- (3) evaluate the recommendations made by the commission created by Section 29, Chapter 1251 (H.B. 1396), Acts of the 84th Legislature, Regular Session, 2015.

(c) The commission is composed of nine members appointed as follows:

- (1) two members appointed by the governor;
- (2) two members appointed by the lieutenant governor;
- (3) two members appointed by the speaker of the house of representatives;
- (4) two members appointed by the chief justice of the Supreme Court of Texas; and

(5) one member appointed by the presiding judge of the Texas Court of Criminal Appeals.

(d) The officials making appointments to the commission under Subsection (c) of this section shall ensure that the membership of the commission includes representatives of all areas of the criminal justice system, including prosecutors, defense attorneys, judges, legal scholars, and relevant business interests.

(e) The governor shall designate one member of the commission to serve as the presiding officer of the commission.

(f) A member of the commission is not entitled to compensation or reimbursement of expenses.

(g) The commission shall meet at the call of the presiding officer.

(h) Not later than November 1, 2018, the commission shall report the commission's findings and recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, the Supreme Court of Texas, the Texas Court of Criminal Appeals, and the standing committees of the house of representatives and the senate with primary jurisdiction over criminal justice. The commission shall include in its recommendations any specific statutes that the commission recommends repealing or amending.

(i) Not later than the 60th day after the effective date of this Act, the governor, the lieutenant governor, the speaker of the house of representatives, the chief justice of the Supreme Court of Texas, and the presiding judge of the Texas Court of Criminal Appeals shall appoint the members of the commission created under this section.

(j) The commission is abolished and this section expires December 31, 2018.

Commission Membership

Members were appointed in the following manner

- Office of the Governor –
 - Andrea Thompson (Chair), Judge, 416th District Court
 - Brett Busby, Justice, 14th Court of Appeals
- Lieutenant Governor –
 - Leticia Martinez, Partner, Varghese Summersett
 - Lee Hon, Polk County District Attorney
- Speaker of the House –
 - Jose Luis Aliseda, Jr., Bee County District Attorney
 - Kelley McCormick, Hidalgo County District Attorney's Office
- Supreme Court of Texas –
 - Marc Levin, Director, Center for Effective Justice & Right on Crime, Texas Public Policy Foundation
 - Arif Panju, Managing Attorney (TX), Institute for Justice
- Texas Court of Criminal Appeals –
 - Charles Bubany, Adjunct Professor of Law, Texas Tech University School of Law

Occupations Code Review

The Texas Constitution’s protections for economic liberty ensure that the government does not unreasonably interfere with the pursuit of one’s livelihood or the running of one’s business.¹ To better guarantee those safeguards, the Office of the Governor and the Texas Legislature have sought to reduce the regulatory burden of occupational licensing laws.

In 2018, Governor Abbott announced a new policy to ensure rulemaking by the State’s licensing boards do not infringe on the rights of Texans.² Similarly, both chambers of the Texas Legislature held hearings on interim charges to study the burdens imposed by occupational regulations. Accordingly, in making its recommendations, this Commission reviewed all penal laws contained in the Texas Occupations Code.

Simply put, an occupational license is government permission to practice a particular occupation for pay. Unlike less-restrictive regulatory options like voluntary state certification or registration, under licensing laws, it is illegal to work in a licensed occupation without first fulfilling the government’s requirements. These barriers to entry for aspiring workers restrict competition in licensed occupations, limit economic opportunity, and drive up costs for consumers.

As Justice Willett explained in *Patel v. Texas Department of Licensing and Regulation*:

The Texas occupational licensure regime, predominantly impeding Texans of modest means, can seem a hodge-podge of disjointed, logic-defying irrationalities, where the burdens imposed seem almost farcical, forcing many lower-income Texans to face a choice: submit to illogical bureaucracy or operate an illegal business?³

Texas has 49 state licensing boards, more than any other state in the nation, save Alabama. These boards enforce occupational licensing laws that subject Texans to criminal penalties and come at a steep cost to the Texas economy.⁴

Indeed, “[t]he proliferation of occupational licensing by the State of Texas can be to the detriment of the very consumer the licensing is professing to protect.”⁵ By one measure, mandatory licensing in Texas results in over 140,000 fewer jobs annually.⁶ Because licensing laws limit the pool of people who can work in a licensed occupation, those with a license can charge more for their services than they could in a more competitive market. As a result, licensing also costs the state’s economy \$431.5 million in “deadweight loss,” or reduced economic output, each year, and misallocated

¹ See *Patel v. Texas Dep’t of Licensing and Regulation*, 469 S.W.3d 69 (2015).

² Letter of Luis Saenz, Chief of Staff, Office of the Governor (Jun. 22, 2018).

³ *Patel*, 469 S.W.3d at 108 (Willett, J., concurring, joined by Lehrmann and Devine, JJ.).

⁴ As Nobel economist Milton Friedman observed, “the justification” for licensing is always to protect the public, but “the reason” for licensing is shown by observing who pushes for it – usually those representing not consumers but vested, already-licensed practitioners. MILTON FRIEDMAN & ROSE FRIEDMAN, *FREE TO CHOOSE* 240 (1980) (emphasis in original).

⁵ INTERIM REPORT TO THE 83RD TEX. LEG., 82D TEX. H. COMM. ON GOV’T EFFICIENCY & REFORM 57 (Jan. 2013), available at http://www.house.state.tx.us/_media/pdf/committees/reports/82interim/House-Committee-on-Goverement-Efficiency-and-Refrom-Interim-Report.pdf.

⁶ MORRIS M. KLEINER & EVGENY S. VOROTNIKOV, *AT WHAT COST* (Institute for Justice) 45 (2018).

resources—a broader measure of the value lost from the economy due to licensing—cost the Texas economy \$12.7 billion.⁷

The Commission found that occupational licensing laws not only produce barriers to entry, but also subject Texans to criminal penalties, heavy fines, and even jail time. Its review of the Texas Occupations Code sought to identify those penal provisions most in need of reform. To protect Texans' right to earn a living in their chosen occupation, free from unreasonable governmental interference, the Commission presents the following recommendations.

⁷ *Id.*

Recommended Actions

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	56.003	Allows a licensing authority to deny or suspend a license (or other disciplinary action) for defaulting on student loans.	None specified	Repeal	
Occupations Code	102.001	Soliciting patients for or from any person licensed by a state health care regulatory agency	Class A misdemeanor or felony	Reduce to civil penalty	
Occupations Code	102.006	Failing to disclose a person's affiliation for medical solicitation that is permissible under § 102.001	Class A misdemeanor or felony	Reduce to civil penalty	
Occupations Code	102.051	Soliciting "healing arts" patients (including masseur and optometrists)	Misdemeanor (\$100-\$200)	Repeal or reduce to civil penalty	
Occupations Code	104.007	Violating Chapter 104, Healing Art Practitioners	Misdemeanor with fines increasing per offense.	Reduce to civil penalty	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	165.156	Criminalizes misrepresenting that one is entitled to practice medicine if not licensed "through the use of any letters, words, or terms affixed on stationery or on advertisements"	Class A misdemeanor under catchall contained in Tex. Occ. Code § 165.151(b).	Clarify the scope of applicability	Section 165.156 is poorly written and overbroad. Whether a violation exists turns on the interpretation of "any letters, words, or terms" by market participants on the Texas Medical Board.
Occupations Code	201.604	Violate this chapter regulating chiropractors	Misdemeanor and fine of \$50-\$500 or jail of not more than 30 days	Repeal	The code presently contains a civil penalty of \$1,000 per day for violating the chiropractor practice act (under 201.603), and practicing w/out a license is already punishable with a Class A misdemeanor (under 201.605).
Occupations Code	202.605	Practicing or assuming the duties incident to podiatry without a license	Fine and/or confinement	Reduce to (existing) civil fine and eliminate confinement.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	204.352	Without a physician assistant license, holds out as a physician assistant or uses any term or abbreviation to imply the person is a physician assistant, or acts as a physician assistant	Third degree felony	Reduce to Class A misdemeanor or civil penalty. The Commission further notes that the "acts as a physician assistant" language is vague should be clarified.	
Occupations Code	205.401	Practicing acupuncture without a license	Third degree felony per day	Reduce to civil fine.	The Commission notes that several states, including Oklahoma, Alabama, and South Dakota, do not restrict entry into the practice of acupuncture via mandatory licensure.
Occupations Code	351.607	Dispensing contacts lens without a prescription	Misdemeanor with a \$1,000 fine per lens	Reduce to civil fine.	
Occupations Code	353.207	Violating the chapter regulating contacts lens prescriptions	Class B misdemeanor	Reduce to civil penalty and specify amount.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	501.503	Engaging in the practice of psychology or representing oneself as a psychologist in violation of the chapter	Class A misdemeanor, with each day of violation a separate offense	Repeal criminal penalty, and remove "for each day" from existing civil penalty.	In <i>Serafine v. Branaman</i> , the Fifth Circuit declared in 2016 that this practice act violates the First Amendment. Not only does enforcing a license to talk about certain topics (such as marriage or children) raise First Amendment concerns, but using criminal penalties to enforce such a license has a chilling effect on protected speech. There also exists an administrative penalty for any violation (statute or rule) under 501.451, civil penalties of \$1,000/day under 501.502, and injunctive relief if necessary under 501.501.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	502.454	Act as a marriage or family therapist without a license	Class B misdemeanor	Repeal criminal penalty, and remove "a day" from existing civil penalty.	As noted above, enforcing a license to talk about certain topics (such as marriage or children) not only raises First Amendment concerns, but using criminal penalties to enforce such a license has a chilling effect on protected speech.
Occupations Code	503.452	Without a license, practicing professionally therapy, representing a person as a therapist, or using any title, words, or initials to imply the person is licensed, including as an art therapist without a specialty	Class B misdemeanor	Repeal and replace with civil penalty.	
Occupations Code	505.507	Act as a social worker without a license	Class A misdemeanor	Reduce to Class B misdemeanor	
Occupations Code	702.556	Operating or attempt to operate a health spa in violation of Subchapter C, D, or H	Class A Misdemeanor	Repeal	Violations of this chapter are already subject to civil penalties of \$1,000 per violation, injunctive relief, and private causes of action under Subchapter K.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	801.504	Violating this chapter	Class A misdemeanor	Repeal criminal penalties. Amend administrative penalty in 801.452 from "\$5,000 for each violation per day" to instead "\$1,000 for each violation" and amend civil penalty on unlicensed practice by removing "for each day"	Chapter 801 (regulating veterinarians) is enforceable using an administrative penalty, in addition to an existing civil penalty for unlicensed practice. The TBVME has a history of (mis)using the threat of criminal penalties when sending cease and desist letters to perceived competition by dog groomers (for brushing dog's teeth), and to horse-teeth floaters (an animal husbandry practice such as horseshoeing), and claiming that such acts constitute the unlicensed practice of veterinary dentistry.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1051.801	Violates this chapter in the practice or architecture, performance of any architectural task, or advertisement in any form using the word "architect"	Misdemeanor with fine of \$250-\$1,000, with each day as a separate offense	Repeal and replace with civil penalty. Also, eliminate entirely 1051.801(a)(3) as a punishable offense (using any form of the word "architect" to describe oneself)	Chapter 1051 regulates the practice of architecture which already has a robust disciplinary procedures provision. Adding a civil penalty would allow for enforcement of the license requirement itself, and related provisions. Notably, the criminal penalty addressed here criminalizes the use of the term "architect" by anyone not licensed (e.g., by a software architect, for instance).

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1053.351	Represent oneself as a registered interior designer without being registered, or violate the standard of conduct under this chapter regulating interior designers	Class C misdemeanor	Repeal and replace with civil penalty not to exceed \$200.	This is a titling act. One need only meet eligibility requirements in order to call themselves a "registered interior designer" (the result of a constitutional challenge). The Commission recommends repealing criminal penalties contained in a voluntary titling act.
Occupations Code	1071.504	Surveying: practicing, offering to practice, attempting to use another's registration, giving false information in the registration process, or violating any provision of the chapter or rule adopted by the board	Class B misdemeanor	Repeal and replace with civil penalty.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1101.756	Willfully violating or failing to comply with this chapter regulating real estate brokers and sales agents, or a commission order	Class A misdemeanor	Repeal criminal penalties and replace with civil penalty. The Commission recommends reducing the administrative penalty in 1101.702 from \$5,000 for each violation to \$1,000, removing the "for each day" provision, and amending the civil penalty on unlicensed practice by removing the "for each day" provision.	This practice act regulating the real estate industry is enforceable via a robust administrative penalty regime, and I recommend converting criminal penalties with civil penalties.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1101.757	Engages in business as a residential rental locator without a license	Class A misdemeanor	Repeal and replace with civil penalty.	The Commission recommends a civil penalty. Apartment locators are already forced to obtain an "agent" license (even though they don't sell homes or play a role in the lessor/lessee transaction), and are further prohibited from working independently (and instead must work for a broker). Thus, a civil penalty is appropriate.
Occupations Code	1101.758	Act as a broker or sales agent, or does any act for which such a license is required, without a license	Class A misdemeanor	Repeal and replace with a civil penalty.	
Occupations Code	1102.406	Willfully violating or failing to comply with this chapter regulating real estate inspectors, or a commission order	Class A misdemeanor	Repeal and replace with a civil penalty.	
Occupations Code	1102.407	Engages of the business of real estate inspecting without a license	Class A misdemeanor	Repeal and replace with a civil penalty.	
Occupations Code	1103.5545	Engages in activity requiring a certification as a appraiser without such a certification	Class A misdemeanor	Repeal and replace with a civil penalty.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1104.253	Engages in activity requiring a certification as an appraisal management company without such a certification	Class A misdemeanor	Repeal and replace with a civil penalty.	
Occupations Code	1201.606	A person or agent of a corporation who knowingly violates this chapter, a rule adopted, or order issued by the department under this chapter regulating manufactured housing, in such a way that threatens consumer health and safety	Class A misdemeanor Fine up to \$4,000 and/or jail up to one year	Repeal and replace with a civil penalty.	An administrative penalty regime for enforcing requirements on those engaged in the manufactured housing industry already exists. The Commission recommends converting the criminal penalty provision to a civil penalty for purposes of enforcing the licensing requirement.
Occupations Code	1201.609	Acts in a manner requiring a license under this chapter regulating manufactured housing without such a license	Class A misdemeanor, subsequent offense Class B misdemeanor	Repeal and replace with a civil penalty.	See above.
Occupations Code	1301.508	Violates a provision of this chapter regulating plumbers, does an activity requiring an license under this chapter without a license, or employs someone without a license to commit an activity for which a license is required	Class C misdemeanor	Repeal and replace with a civil penalty.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1302.453	Engages in air conditioning or refrigeration contracting without a license, or engages in air conditioning or refrigeration maintenance without being a student regulated under this chapter	Class C misdemeanor	Repeal and replace with a civil penalty.	Texas's HVAC contractor licensing scheme is very restrictive. People are forced to work for four (4) years under a licensed HVAC contractor before even qualifying for the licensing exam. In other words, if you want to install an HVAC unit, you will need to spend four years working for your future competition. The Commission recommends replacing the criminal penalties with civil penalties.
Occupations Code	1303.406	Violating this chapter regulating home services providers or knowingly making a false statement in a report required by this chapter	Class B misdemeanor	Repeal and replace with a civil penalty.	
Occupations Code	1305.303	Violating the licensing regulations for electricians, performs electrical work without a license, employs an individual without a license, or falsifies a certificate of on-the-job training.	Class C misdemeanor	Repeal and replace with a civil penalty.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1802.301	Acting as an auctioneer without a license	Class B misdemeanor	Repeal and replace with a civil penalty not to exceed \$200.	The Commission notes that several states do not require the government's permission to work as an auctioneer: AK, AZ, CA, MD, OR, WY.
Occupations Code	1802.302	Instituting a claim in which a person has no interest, or frivolously instituting a claim or suit, if the person intends to benefit personally or harm another	Class B misdemeanor	Repeal and replace with a civil penalty.	Same as above.
Occupations Code	1802.303	Violating any rule in this chapter regulating sales and solicitation, or any rule adopted by the commission, for which there is not a penalty provided	Class C misdemeanor	Repeal and replace with a civil penalty not to exceed \$200.	Same as above.
Occupations Code	1805.103	Fails to comply with a select group of provisions regulating the sale, repair, and registration of secondhand business machines	Class B misdemeanor	Repeal and replace with a civil penalty.	
Occupations Code	1903.256	Installing an irrigation system without a license	Class C misdemeanor	Repeal and replace with a civil penalty.	
Occupations Code	1951.603	Violates this chapter regulating structural pest control, or a rule promulgated under specific sections, intentionally makes a false statement in an application for a license or otherwise fraudulently obtains or attempts to obtain a license	Class C misdemeanor. If previously convicted, Class B misdemeanor. Each violation is a separate offense	Repeal and replace with a civil penalty.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	1956.003	Owning or operating a metal recycling entity without a license by the county or municipality if required by that county or municipality	Class B misdemeanor. If previously convicted, Class A misdemeanor	Repeal and replace with a civil penalty.	This penalty is excessive in light of the applicability of penalties levied by the county and municipality.
Occupations Code	1956.040(a)	Violating section 1956.038, governing providing personal identification to a metal recycling plant prior to selling regulated materials, among many other things	Class A misdemeanor. If previously convicted, state jail felony	Repeal and replace with a civil penalty.	
Occupations Code	1956.040(a-1)	Knowingly operating a metal recycling plant without a registration, with an expired registration, failing to report acquisition for which record is required within two operating days, violating local regulations on recycling plant operating hours	Class A misdemeanor, fine not to exceed \$10,000. If previously convicted, it is a state jail felony	Repeal and replace with a civil penalty.	The Commission notes that there are existing criminal penalties for buying stolen regulated materials or insulated communications wire, explosive devices, etc. See 1956.040(b), (c).
Occupations Code	2033.017(b)	A minor who knowingly engages in wagering at a racetrack	Class C misdemeanor	Repeal and replace with civil penalty.	
Occupations Code	2051.501(a) & (b)	Knowingly violate this chapter regulating athletic agents, or a rule under this chapter	Class B misdemeanor	Repeal and replace with reduced penalty	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	2104.151	Act as a promoter for an outdoor music festival without registering with the county clerk in which the festival is to be held; or direct, control, or participate in the direction or control of an outdoor music festival unless the festival is authorized by permit	Misdemeanor punishable by jail not to exceed 30 days and/or a fine not to exceed \$1,000	Repeal and replace with civil penalty.	
Occupations Code	2155.002(a) & (c)	Hotel owner or keeper who does not post a room rate or knowingly charges a room rate higher than is posted for that room (each day charged higher is a separate offense)	Misdemeanor punishable of fine between \$25-\$100 and/or jail not to exceed 30 days	Repeal and replace with civil penalty.	
Occupations Code	2155.002(b)	Hotel owner, keeper, or employee who does not give a guest a ticket	Misdemeanor punishable by fine of up to \$100	Repeal and replace with civil penalty.	
Occupations Code	2155.103	Hotel owner or keeper who does not include the hotel's policy on firearms on the Internet reservation website, or include it in the written confirmation following a telephone reservation	Misdemeanor punishable of fine of up to \$100	Repeal and replace with civil penalty.	
Occupations Code	2156.004	Person in charge of a theater who fails to keep a list of all bookings and show that list to a person desiring in good faith to rent the theater	Misdemeanor punishable of fine from \$10-\$20, each violation is a separate offense	Repeal	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	2156.005	Person in charge of a theater failing to rent or lease the theater for one or more performances of any reputable opera or show on terms not considered unreasonable, extortionate, or prohibitive	Misdemeanor carrying fine of \$100-\$500 and maybe up to 10 days in jail. Each violation is a separate offense. Half the fine must be paid to the complainant.	Repeal or reduce to civil penalty	
Occupations Code	2158.003	Charge for event parking more than twice normally charged	Class C misdemeanor	Repeal and replace with civil penalty.	
Occupations Code	2301.853	Violate this subchapter regulating certain uses of commercial vehicles	Class A misdemeanor	Repeal	
Occupations Code	2302.302	Violate the licensing requirements of this chapter regulating salvage vehicle dealers, or employs a person who does not hold an appropriate license	Class C misdemeanor	Repeal	
Occupations Code	2309.254	Violate the licensing requirements of this chapter governing used auto parts providers, deals in parts without a license, employs an individual who does not hold a license	Class C misdemeanor	Repeal and replace with civil penalty.	
Occupations Code	2351.101	Contracting dockworker who engages in business without first executing the bond and obtaining a license required by section 2351.051	Criminal penalty in the amount of \$100-\$500. Each day of violation a separate offense.	Repeal and replace with civil penalty.	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	2401.252	Transportation service provider violates an provision of the chapter regulating them	Class A misdemeanor	Repeal and replace with civil penalty.	
Occupations Code	2501.251	Knowingly violating this chapter regulating personnel services	Class A misdemeanor	Repeal and replace with civil penalty.	

Statutes and Culpable Mental State

The Final Report of the Commission to Study and Review Penal Laws Outside the Penal Code of December 2016 recommended a review of criminal statutes with potential jail terms that do not contain an expressed culpable mental state. The following is a summary of that review with recommendations.

There are numerous general statutes making a violation of a rule, regulation or order a jailable criminal offense. These statutes are inconsistent as to the requirement of a culpable mental state. Some of them contain an express culpable mental state, but more often than not they do not. In the absence of a clear legislative intent to make an offense a strict liability offense, a culpable mental state would be required to be read into the statute, as least as to those offenses with potential jail time. See Tex. Penal Code § 6.02.

Compare and contrast the following:

CODE	CRIMINAL PENALTY
Nat. Res. Code § 61.254.	A person commits an offense if the person violates an order adopted under this chapter. An offense under this section is a Class B misdemeanor.
Nat. Res. Code § 91.604	<p>(a) A person who knowingly violates a rule, order, or permit of the commission issued under this subchapter commits an offense.</p> <p>(b) An offense under this section is punishable by imprisonment for up to six months, by a fine of up to \$10,000 for each day the violation is committed, or both.</p> <p>(c) Venue for prosecution under this section is in the county in which the violation is alleged to have occurred.</p>

Recommendation:

As to all general statutes making the violation of rule, regulation or order a jailable criminal offense without an express culpable mental state, it is recommended that the culpable mental state of “knowingly” be added or, in the alternative, that the offense should be downgraded to a Class C misdemeanor.

There are also a number of statutes that make it an offense to engage in conduct without a license, permit or registration. Some of them require a culpable mental state. For example:

CODE	CRIMINAL PENALTY
Health & Safety Code § 242.321	<p>(a) A person commits an offense if the person knowingly or intentionally violates Section 242.305 (Practicing as a nursing facility administrator without a license.)</p> <p>(b) An offense under this section is a Class B misdemeanor.</p>
Health & Safety Code §242.614	(a) A person commits an offense if the person knowingly

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- administers medication to a resident and the person:
- (1) Does not hold a license under state law that authorizes the person to administer medication, or
 - (2) Does not hold a permit issued by the department under this subchapter.
- (b) An offense under this section is a Class B misdemeanor.
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But in many instances, such offenses do not contain an express culpable mental stated. For example:

CODE	CRIMINAL PENALTY
Tex. Civil Stat. Art. 581-29, B:	Any person who shall . . . Sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities issued after September 6, 1955, unless said security or securities have been registered or granted a permit as provided in Section 7 of this Act, shall be deemed guilty of a felony of the third degree.

In many instances it may be unlikely that the defendant will not know of the licensing requirement. But in the case of a non-strict liability offense, knowledge of the duty to obtain a license or registration should be an element of the offense which the prosecution would have the burden to establish.

Recommendation:

As to all jailable offenses for engaging in conduct without a license, permit or registration that do not have an express culpable mental state, it is recommended that the culpable mental state of “knowingly” be added or, in the alternative, that the offense be downgraded to a Class C misdemeanor.

There are numerous statutory offense other than the licensing/permitting and violation of rules/regulations offenses involving potential jail time that do not contain an express culpable mental state. One example:

CODE	CRIMINAL PENALTY
Water Code § 11.085q):	Interbasin Transfers (q) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by confinement

in the county jail for not more than six months.

There are a few of the statutes that expressly dispense with a culpable mental state. One example:

CODE	CRIMINAL PENALTY
Park & Wildlife Code § 66.021	Protected Fish: Display of Documents (a) A person commits an offense if the person possess a fish described by Subsection 66.020(a) of this code under Subsection 66.020(b) of this code and: (1) Fails to keep with the fish a document or documents that verify the place of origin of the fish; or (2) Fails, on request of a game warden, to present to the game warden without delay a document or documents that verify the place of origin of the fish. (b) . . . (c) To commit an offense under Subsection (a) of this section, a person is not required have a culpable mental state.

There are numerous statutes that contain an express culpability. For example:

CODE	CRIMINAL PENALTY
Tax Code § 162.404:	(a) A person does not commit an offense under Section 162.403 unless the person intentionally or knowingly engaged in conduct as the definition of the offense requires, except that no culpable mental state is required for an offense under Section 162.403(6).
Tex. Civ. Stat. Art. 179e, Sec. 14.13:	Texas Racing Act (a) A person commits an offense if the person with criminal negligence permits, facilitates, or allows: (1) wagering by a minor at a racetrack facility; or (2) entry by a child to the viewing section of a racetrack facility.

But a large share of the statutes imposing potential jail time (see the attached list) do not contain an express culpable mental state.

Recommendation:

As to those jailable offenses imposing potential jail time that have no express culpable mental state or that do not expressly dispense with a culpable mental state, it is recommended that a culpable

mental state of negligence, reckless, knowing or intentional be added, as appropriate, or the statute be amended to provide that the offense under the statute may be prosecuted without an allegation or proof of a culpable mental state, as appropriate.

Offenses with Potential Jail Time That Have No Culpable Mental State

AGRICULTURE CODE

- 13.455 - Performing device maintenance without service technician license
- 13.456 - Employing or acting as a sole proprietor without service company license
- 14.072 - Operating a public grain warehouse business without a license
- 14.076 - Changing a receipt or scale weight ticket
- 14.077 - Depositing grain without title
- 14.079(2) & (4) - Interfering with sealed warehouse or department inspection or investigation
- 59.047 - Fraudulent denial or obtaining of benefits under the farm and ranch program
- 62.011(a)(3) & (a)(4) - Selling seed in violation of certification standards
- 63.157(a) & (c) - Improper purchase, sale or tampering with ammonium nitrate
- 73.005 - Movement of infected nursery products and other hosts into a citrus zone
- 74.007 - Violating rules re pest control; brings into the state of contaminated material & equipment
- 93.061 - Shipping citrus without valid inspection or mislabeling
- 94.05 - Falsifying inspections for citrus fruit maturity & transport without stamps
- 94.041 - Transporting fruit treated with coloring matter or violating a rule of this chapter
- 102.104 - Operating a vehicle or trailer carrying citrus without identification or certificate
- 103.013 - Failure to pay produce recovery fee
- 131.123 - Labeling or Sale of Honey
- 134.019 - Violating redbfish and speckled trout laws
- 134.020 - Violating exotic species laws
- 144.127 - Reproduction or Destruction of Tattoo Mark on Livestock
- 144.128 - Purchase, Sale or Transportation of Tattooed Livestock without consent
- 146.008(a)(4) & (a)(5) - Transporting animals without permit or with fraudulent permit
- 147.061 - Failure to file or maintain bond
- 147.064 - Appropriation of proceeds of sale
- 149.002 - Sale or possession of horsemeat
- 161.135 - Improper Disposal of Diseased carcass
- 161.146 - Compliance with Livestock market regulation

- 161.147 - Failure to maintain dealer records
- 162.012 - Movement or sale quarantined or diseased cattle
- 163.087 - Improper sale or use of vaccine or antigen
- 164.083 - Failure to dip for Scabies
- 164.084 - Movement of infected, exposed, or quarantined animals
- 164.085 - Refusal to permit entry or to gather animals for inspection
- 164.086 - Failure to disinfect shearing plant
- 164.087 - Failure to properly disinfect quarantined premises
- 164.088 - Importation of sheep without certificate or permit
- 165.042 - Sale of unattenuated hog cholera virus
- 167.144 - Refusal to permit search

ALCOHOLIC BEVERAGE CODE

- 28.06 - Possession of alcoholic beverage not covered by invoice
- 32.19 - Private club registration violations
- 54.12 - Shipping alcohol into Texas without a permit
- 101.04 - Consent to inspection
- 101.41, .42, .43, .45 - Container violations
- 101.61 - Violation of code provision or valid rule of the Commission
- 101.62 - Offensive noise on premises
- 101.69 - False statement in license or permit application
- 101.70 - Common nuisance
- 101.76(b) - Unlawful display or use of permit or license
- 103.05((d) & (e) - Police officer making a false report re seizure or to file report of seizure
- 105.10 - Selling alcohol or allowing consumption during prohibited hours
- 106.15 - Inducing a minor to dance with another for a benefit
- 109.532(e) - Disclosure of criminal history information
- 109.61 - Unauthorized use of electronically readable information from a driver's license
- 201.16 - Violation of provisions relating to tax
- 206.06(d) - Possession of device to forge tax stamps

BUSINESS AND COMMERCE CODE

- 15.22 - Monopoly or price fixing
- 17.12(b) - Deceptive advertising
- 17.461 - Engaging in pyramid promotional scheme
- 17.853 - Misrepresenting goods as authentic Indian arts and crafts
- 17.92 - Conducting a sale in violation of DTPA
- 102.005 - Sex offender owning a sexually-oriented business
- 103.002 - Improperly inducing appraisals by mortgage lender
- 252.003 - Agent wrongfully failing or refusing to issue Bill of Lading
- 506.003 - Reidentifying or attempting to reidentify personal identifying information
- 721.002 - Certain uses of name or picture of member of armed forces prohibited

BUSINESS ORGANIZATIONS CODE

- 12.156 - Refusal of management officer of an AG inspection
- 22.354 - Failure to maintain financial records or to prepare annual report

CIVIL PRACTICE AND REMEDIES CODE

- 122.001 - Terminating employee who performs jury duty
(122.0021)

EDUCATION CODE

- 7.108 - Political contribution or activity
- 7.112 - Representing publisher by former board member
- 11.064 - Filing of financial statement by trustee
- 11.0641 - Filing of financial statement by border-area school board trustee
- 22.901 - Unlawful inquiry into religious affiliation
- 15.002 - Failing to provide proper student ID and records
- 31.152 - Personal hazing
- 39.039 - Political contribution or activity by contractors

- 44.054 - Failure to transfer students and funds
- 51.007 - Failure to follow provisions regarding control of funds for higher education
- 61.304 - Unauthorized granting of decrees and offering of courses
- 61.312 - Unauthorized granting of honorary degrees
- 61.313 - Use of protected term in institution's name
- 66.08 - Entering into prohibited agreement with school official
- 1001.554 - Violating driver safety education provisions

ELECTION CODE

- 2.054 - Coercion of candidate
- 13.005 - Unlawfully acting as agent
- 13.006 - Purportedly acting as an agent
- 13.008 - Performance-based compensation for registering voters
- 18.009 - Unlawful use of information on voter registration
- 18.012 - Unauthorized use of modified computer equipment
- 31.035 - Unlawful contribution to political race by election administrator
- 61.005 - Failure to prevent unauthorized person from handling ballot box
- 66.007 - Revealing information before polls close
- 61.008 - Influencing voter at polling place
- 64.010 - Permitting or preventing deposit of ballot
- 64.011 - Unlawfully depositing ballot
- 66.054 - Failure to deliver election returns and voted ballots
- 66.058 - Unauthorized entry into ballot box
- 84.004 - Unlawfully witnessing application for more than one applicant
- 86.0052 - Compensation for carrier envelope action
- 86.0105 - Compensation for assisting voters
- 123.035 - Contracting for voting system equipment without Secretary of State of approval
- 2252.003 - Failure to file name change
- 253.042 - Unlawful reimbursement of loans
- 253.094 - Unauthorized contributions

- 253.103 - Corporate loans
- 254.001 - Recordkeeping required
- 254.128 - Notice to candidate and office holder of contributions
- 254.129 - Failure to notify of change of specific purpose committee status
- 254.203 - Retention of contributions
- 276.010 - Unlawfully buying and selling balloting materials
- 501.029 - Misrepresentation of petition
- 501.108 - Improper issuance of petition for local option election

ESTATES CODE

- 1104.411 - Unauthorized disclosure of criminal history records

FAMILY CODE

- 162.025 - Placing child for adoption by unauthorized person
- 162.107 - Violation of Interstate Compact on Placement of Children
- 262.1015(g), (h) - Failing to abide by or violating court order removing child from abuser's home

FINANCE CODE

- 14.155 - Disclosure of criminal history information of consumer credit employees
- 31.304 - Disclosing confidential information by bank employee
- 154.401 - Contracting in violation of prepaid funeral services
- 154.402 - Failing to deposit or wrongfully withdrawing money related to prepaid funeral services
- 154.403 - Failure to file annual report for prepaid funeral services or merchandise
- 154.404 - Failing to deliver money to designated agent of prepaid funeral service company
- 154.405 - Failing to deposit money by agent of prepaid funeral service company
- 155.007 - Selling or offering bonds for sale on installment plan
- 156.406 - Acting as residential mortgage loan originator without license or registration
- 157.031 - Acting as a residential mortgage loan originator without license or registration
- 371.304 - Operating a pawnshop without a license
- 393.501 - Violating credit service organization requirements

GOVERNMENT CODE

- 33.051 - Soliciting or accepting referral fee or gift by judge
- 84.002 - Accepting right to publish in print or film the account of a crime
- 154.113 - Shorthand reporting without certification
- 157.107 - Acting or advertising as court-interpreter without a license
- 301.026 - Contempt of legislature
- 302.018 - Contributing to speaker candidate's campaign by elected officer
- 302.033 - Legislative bribery
- 406.017 - Representing self as attorney by notary public
- 411.017 - Unauthorized acts with DPS name or insignia
- 411.065(b) - Violating rule regarding unmanned aircraft in Capital complex
- 411.1386(g) - Unauthorized disclosure of criminal history information re guardianship
- 418.173 - Violating emergency management plan
- 423.004(b) - Possession, display, disclosure, distribution or use of image from drone
- 431.074 - Failure to perform military duty by member of county emergency board
- 433.006 - Violating directive issued under official state of emergency
- 466.304 - Sale of lottery ticket at unauthorized location
- 466.310 - Improper transfer of lottery claims
- 466-311 - Lottery reporting and recording violations
- 467.108 - Representing lottery interest by former official or employee
- 508.083 - Improper representation of inmate applying for parole
- 572.052 - Representation by legislator before state agency
- 572.053 - Voting by legislator on issues with conflict of interest
- 572.056 - Contracting with governmental entity by state officer
- 605.003 - Violation of 8-hour workday requirements
- 669.004 - Withholding from public the terms of head of state agency reassignment
- 2004.005 - Failure to register as representative before state agencies
- 2158.121 - Prohibited acts related to government printing contracts
- 2165.255 - Unauthorized construction on state capitol grounds

- 2306.6733 - Unauthorized representation by former board member re low income credits
- 3101.010 - Thrashing pecans

HEALTH AND SAFETY CODE

- 81.091 - Failure to perform duty related to ophthalmic neonatorum prevention
- 81.102 - Requiring AIDS test
- 81.212 - Evading apprehension or transport of person suspected of communicable disease
- 85.260 - Disclosure of HIV testing
- 142.030 - Unauthorized administration of dangerous drug or controlled substance
- 143.002 - Unauthorized administration of medicine to patient in home
- 143.015 - Violating industrial homework without a permit
- 145.013 - Violating tanning regulations
- 146.0126 - Tongue splitting
- 146,018 - Violating tattooing or body piercing regulations
- 161.012(a) - Giving evidence obtained in illegal health inspection to the government
- 161.0825 - Illegal access to electronically readable persona identification
- 192.029 - Failure to sign affidavit of personal knowledge by parent for delayed birth
- 241.101 - Failure to comply with convalescent or nursing home closing order
- 245.011 - Failure to submit annual report to Dept. of Health by abortion facility
- 245.014 - Operating an abortion facility without a license
- 250.008 - Disclosure of criminal history information about employees of elderly facility
- 311.037 - Disclosure or distribution of confidential patient data
- 365.012 = Illegally dumping litter
- 365.013 - Violating litter processing and treatment rules
- 432.019 - Operating salvage establishment without license
- 437.0165 - Operating food service establishment or mobile food unit without permit
- 439,017 - Manufacturing, distributing or selling DMSO without warning labels
- 464.016(a) & (c) - Operating chemically dependent treatment facility without license
Failure to report abuse or neglect of client in treatment facility
- 464.044 - Operating drug treatment facility without permit

- 481.136 - Unlawful transfer or receipt of chemical precursor; failure to keep sales reports
- 481.138 - Unlawful transfer of receipt of chemical lab apparatus
- 483.042 - Delivery or offer to deliver dangerous drug
- 483.043 - Manufacturing dangerous drug
- 483.046 - Failure to retain prescription by pharmacist
- 483.048 - Unauthorized communication of prescription
- 483.049 - Failure to maintain prescription records
- 483.050 - Refusal to permit a drug inspection
- 483.051 - Using or revealing dangerous drug trade secret
- 483.052 - Violating dangerous drug provisions
- 485.035 - Sale of abusable glue or aerosol paint without permit
- 534.007 - Engaging in activity by former community center employee or officer
- 614.017(e) - Unauthorized disclosure of confidential information related to care
- 672.009(d) - Disclosure of confidential information related to investigation and review
- 711.053 - Various provisions relating to cemetery business
- 712.048(a) - Selling or advertising internment right before fund is established
- 716.351 - Cremating remains without proper authorization or direction
- 751.011 - Promoting mass gathering without permit
- 752.007 - Violating high voltage overhead lines provisions
- 753.011 - Violating flammable liquids provisions
- 755.043 - Unauthorized operation or possession of boiler
- 775.119 - Failure to comply with fire marshal order
- 792.002 - Failure to maintain smoke detector in hotel
- 826.0211 - Distributing information contained in rabies vaccination certificate
- 826.0311 - Distributing information from municipal and county registry
- 841.085 - Violating requirements for civil commitment of sexually violent offenders

HUMAN RESOURCES CODE

- 12.001 - Charging fee to represent applicant before state agency for assistance programs
- 12.002 - Unlawfully using or misappropriating assistance funds

- 22.0033 - Attempting to procure contract with DHS by former officer or employee
- 40.005 - Disclosure of DPRS child welfare records or confidential information
- 40.034 - Attempting to procure contract with DPRS by former officer or employee
- 42.065 - Administering non-prescription medication to child without parental permission
- 42.076(a) - Operating child-care facility or child-placement agency without a license
- 42.076(b) - Operating a family home without a license

INSURANCE CODE

- 33.007 - Prohibited representation by former SBI counsel
- 225.013 - Failure of surplus lines agent to pay tax
- 543.052 - Committing prohibited practice relating to life, health or casualty insurer
- 885.703 - Disclosure of HIV tests results of insured person
- 888.703 - Violating burial association provisions
- 912.801 - Violation of provisions for county mutual insurance company
- 4005.151 - Acting as agent after license suspension or revocation
- 4005.152 - Assisting or conspiring with person whose license has been suspended
- 4101.203 - Working as a adjuster without license; adjusting claims outside area of expertise
- 4102.206 - Violating requirements for public insurance adjusters
- 6002.351 - (151-.153) relating to selling and installation of fire alarm/detection equipment

LABOR CODE

- 51.031 - (.011, .013, .014) Employment of children
- 52.011 - Violating restrictions on vessel work by foreign crew
- 101.123 - Violating labor union regulations by union officer or organizer
- 101.156 - Declaration or publication of an enjoined picket
- 101.202 - Secondary picketing
- 207.074 - (.072, .073) Waiver of right to benefits; prohibited deduction from wages
- 301.081 - Violating record-keeping requirements by employee of Tx Workforce Commission
- 301.085(d) - Disclosure or use of unemployment compensation information
- 402.00125 - Violating conflict of interest by former employees of Worker's Comp Commission

404.056 - Violating conflict of interest provisions by former public counsel of the Commission

LOCAL GOVERNMENT CODE

- 111.012 - Violating budget preparation requirements
- 143.009 - Failure to respond to civil service commission subpoena
- 143.016 - Violating civil service requirements by police officer or fire fighter
- 143.088 - Unlawfully resigning from or retiring from civil service position
- 158.0095 - Failure to appear in response to subpoena from civil service commission
- 158.0355 - Failure to appear in response to subpoena from sheriff's department
- 161.173(f) - Distributing confidential information from county ethics commission investigation
- 180.001 - Coercion of police officer or firefighter in connection with political campaign
- 211.012 - Violating general zoning regulations
- 212.017(e) - Failure to disclose interest in subdivision platting by municipal authority member
- 231.022 - Violating county zoning provisions
- 231.054 - Violating zoning provisions in military zone
- 231.182 - Violating zoning provisions in El Paso Mission Trail historical area
- 231.257 - Violating order or development regulation in Falcon Lake area
- 232.034 - Commissioner's failure to disclose conflict of interest in platting decision
- 232.036(d) - Conveying a subdivision lot without attempt to install utility lines
- 232.078 - Commissioner's failure to disclose conflict of interest in subdivided tract
- 235.006 - Violating explosive requirements set by commissioners court
- 243.010 - Violating regulation of sexually oriented business
- 335.1085 - Financial director's failure to file financial statement
- 352.022 - Failure to comply with fire inspection order

NATURAL RESOURCES CODE

- 11.074 - Herding and line-riding on public land
- 11.075 - Appropriating public land by fencing
- 61.254 - Violation of an order adopted under this chapter
- 88.134 - (88.092,.093,.094) Violating oil producing rules

- 91.458 - (91.452, .457) Saltwater disposal violations
- 191.171 - Violating antiquities committee regulations
- 201.011 - Defacing or harming public cave without a permit
- 201.042 - Unauthorized sale of speleothems

PARKS AND WILDLIFE CODE

- 12.505 - Hunting, fishing or engaging in P & W activity while license suspended
- 43.062 - Failure to obtain permit for trapping and transporting game animals and birds
- 43.157 - Failure to notify game warden of wildlife killing & disposal of carcass
- 43.365(a)(1) - Allowing hunting or killing of breeder deer
- 47.003 - Fishing without commercial finfish fisherman's license
- 61.022 - Computer-assisted remote hunting
- 62.003 - Prohibited hunting from vehicles
- 62.004 - Hunting wild birds, game birds, fowl or game animal at night
- 62.005 - Hunting with unauthorized light
- 62.015 - Hunting or possessing exotic animals
- 62.107 - Controlled killing or attempting to injure dangerous wild animals
- 63.102 - Possessing, transporting, receiving or releasing live wolf
- 63.103 - Selling or possessing live armadillo
- 66.012 - (66.003, .004) Violating fish and aquatic plan rules
- 66.006(c) - Possession of illegal seine, strike net, gill net or trammel net
- 66.007 - Possession or selling of exotic fish, shellfish or aquatic plants
- 66.009 - Use of illegal fishing devices in navigation district
- 66.091 - Fishing in man-made waterway
- 66.015 - Placing fish, shellfish or aquatic plant in state waters without permit
- 66.020(i) - Possessing more than three times the protected fish limit
- 66.2161 - Sale of or purchase of shark fins
- 66.303 - Attempt to take state natural resource by unlicensed alien vessel
- 76.038 - Interfering with buoy or marker at oyster bed
- 76.101 - Taking oysters without a license

- 76.107 - Selling sport oysters
- 76.109 - Taking oysters by night dredging
- 76.116 - Taking oysters from closed areas
- 77.024 - Operating as a shrimper without a license
- 77.061 - Shrimping in outside water during general closed session
- 88.008(d) - Hiring someone to take, possess, or transport endangered plant for sale

PROPERTY CODE

- 12.002 - Filing plat without required documents
- 70.001(f) - Transferring or accepting hot check or invalid credit card for possession of property
- 76.704 - Violating reporting requirements for government property
- 162.032 - Misapplying trust funds
- 221.073 - Disposing of or offering timeshare interest for unregistered timeshare

TAX CODE

- 6.41(I),(J) - Communications with judge or board member about appraisal value
- 6.411 - Ex parte communication by appraisal review directors, members, employees
- 111.007 - Disclosure of federal tax information by comptroller or employees
- 154.503 - Possession of unstamped cigarettes
- 154,506 - Concealing or mutilating cigarette tax stamp
- 154,507 - Misleading State treasurer in enforcing cigarette tax rules
- 154.508 - Refusing to surrender unstamped cigarettes
- 154.509 - Selling cigarettes without valid permit
- 154.512 - Refusing to permit inspection of premises where cigarettes are sold
- 154.513 - Using used or old cigarette stamps
- 154.514 - Illegally selling cigarette stamps
- 154.520 - Making or using counterfeit cigarette stamps
- 155.203 - Possession of cigars or tobacco products with \$50 or less tax due
- 155.204 - Concealing cigar or tobacco product tax violation
- 155.205 - Misleading State treasurer in enforcing cigar or tobacco product tax

- 155.206 - Refusing to surrender unstamped cigar or tobacco products
- 155.207 - Selling cigarettes without valid permit
- 155.210 - Refusing inspection of premises where cigars or tobacco products made or sold
- 155.211 - Possession of cigars or tobacco products with more than \$50 tax due
- 159.005 - Disclosure of confidential controlled substance tax information
- 159.201 - Possessing controlled substance without paying drug tax
- 159.203 - Using or selling previously used drug tax payment certificate
- 171.361 - Disclosure of confidential information on franchise tax reports
- 201.057(h) - Unauthorized disclosure of information about drilling and completion costs

UTILITIES CODE

- 13.043 - Prohibited employment or representation by former Public Utility counsel
- 183.006 - Violating deposit requirements for utility installation

CIVIL STATUTES

- 179e, § 6.01 - Allowing wagering without racetrack license
 - §6.16 - Employing former racing commission employee or racing association member
 - §14.10(a) - Unlawfully influencing horse or greyhound race
 - §14.12 - Conflict of interest my member of racing commission
 - §14.14 - Unlawful horse or greyhound racing
 - §14.15 - Parimutuel racing without a license
 - §14.16 - Racing without license
- 581.29B - Selling unregistered securities
- 581.29G - Making unlawful offer for sale of securities
- 581.29I - Acting as investment advisor without registration
- 4005a - Giving away free pass or frank for transportation
- 4015d - Falsely representing that passenger is entitled to reduced rail rate for officers
- 4413(47e-1) - Blasting or other activity within super collider's interaction region
- 5196b - Discriminating against person seeking employment after participating in strike
- 8656 - Making illegal future contracts

9010 - Peddling printed matter by deaf or mute people

WATER CODE

7.155 - Discharge or spill by operator of facility or vessel

7.156 - Unauthorized installation of or delivery of regulated substance into storage tank

7.161 - Unauthorized handling of solid waste in enclosed containers

11.085(q) - Diverting water from watershed

26.3467 - Installing underground storage tank without certificate of compliance

26.556(e) - Unauthorized discharge of waste in water quality protection area

29.046 - Violating salt water hauler rules

53.122 - Violating sanitary condition in fresh water supply district

61.119 - Conflict of interest by navigation district board member

RECOMMENDED ACTIONS FROM 2016 COMMISSION REPORT

Punishment Issues with Offenses outside the Penal Code

The deliberations of the Commission revealed a disparity and lack of consistency and rationality in the potential sanctions for violations of criminal offenses outside the Penal Code. This problem is one that should be considered when offenses are added or amended and perhaps would be an appropriate subject of further study.

Nowhere is the inconsistency of penalties more apparent than in the Occupation Code. For example, acting as an auctioneer without a license is a Class B misdemeanor (potential jail time up to 180 days) but practicing as a midwife without a license is only a Class C misdemeanor (potential fine only). Or, practicing pharmacy without a license is a Class A misdemeanor (potential jail time up to one year) but practicing radiology without a license is only a Class B misdemeanor.

Moreover, the existence of severe civil and/or administrative penalties for some offenses raises questions concerning whether a criminal sanction should even be included. Indeed, in many cases, a minor criminal penalty seem to be no more than an afterthought.

A comprehensive review of the authorized sanctions for violations of offenses outside the Penal Code, an undertaking beyond the scope of the Commission's mandate, is needed to establish a more coherent and consistent punishment scheme. Such a review might consider whether sanctions are proportionate to the seriousness of the offense, that is, rationally related to the harm or danger to public safety and consistent with the need to deter violations.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Alcoholic Beverage Code	101.64	INDECENT GRAPHIC MATERIAL. No holder of a license or permit may possess or display on the licensed premises a card, calendar, placard, picture, or handbill that is immoral, indecent, lewd, or profane.	None specified	Repeal	Declared unconstitutional by a federal court
Business and Commerce Code	17.30	Misusing reusable container	\$10 - \$100	Civil Penalty	
Business and Commerce Code	17.31	Counterfeting or changing a required mark on food container; misuse of container nearing mark; removing containers or shopping laundry carts	Class C per container	Civil Penalty	
Business and Commerce Code	17.461	Engaging in pyramid promotional scheme (formerly "endless chain scheme," Penal Code § 32.48)	State jail felony	Move (to Penal Code)	Why was this moved from Penal Code in first place?
Business and Commerce Code	204.005	Penalty for violating Chapter 204 - SALE OF PLASTIC BULK MERCHANDISE CONTAINER	Class C: fine not to exceed \$350 if merchandise < \$1000; \$700 for > \$1000; double fine for second or futher) offense(s)	Repeal	Civil penalties already exist

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Business and Commerce Code	522.002	Offense; Penalty (Identity theft by electronic device)	Class B but state jail felony if records included protected health information	Move (to Penal Code)	Should be in Penal Code § 32.51 (Fraudulent use of possession of identifying information)
Business and Commerce Code	504.002	Prohibition on use for solicitation or sale of information (Ch. 504 - PROHIBITED USE OF CRIME VICTIM OR MOTOR VEHICLE ACCIDENT INFORMATION)	Class C unless convicted 3+ times, and then it becomes third degree felony	Repeal	A federal court has declared it unconstitutional
Code of Criminal Procedure	62.102	Failure to comply with sex offender registration requirements	State jail-2nd degree felony; increased to next highest degree if person fraudulently used identifying information	Move (to Penal Code)	
Code of Criminal Procedure	62.203	Failure to comply with requirements for sexually violent predators	2nd degree felony	Move (to Penal Code)	
Education Code	44.051	Interference with operation of Foundation School Program	2nd degree felony	Move (to Penal Code)	This offense enhances conduct under § 37.10 if the governmental record involved was required under Ch. 42 Education Code

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Finance Code	59.0022	Slandering or libeling a bank	State jail felony	Repeal	Financial institutions have same recourse to civil lawsuit as any other business or individual who has been slandered or libeled
Finance Code	89.101	Slandering a savings and loan	State jail felony	Repeal	Financial institutions have same recourse to civil lawsuit as any other business or individual who has been slandered or libeled
Finance Code	119.202	Criminal slander or libel of a savings bank	State jail felony	Repeal	Financial institutions have same recourse to civil lawsuit as any other business or individual who has been slandered or libeled

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Finance Code	122.251	Defaming a credit union's financial condition	3rd degree felony	Repeal	Financial institutions have same recourse to civil lawsuit as any other business or individual who has been slandered or libeled
Finance Code	199.001	Slander or libel of state trust company	State jail felony	Repeal	Financial institutions have same recourse to civil lawsuit as any other business or individual who has been slandered or libeled
Government Code	557.001	Sedition	\$0-20,000 and/or 1-20 years	Move (to Penal Code)	Such a large penalty belongs in the Penal Code
Government Code	557.011	Sabatoge	2-20 years	Move (to Penal Code)	Such a large penalty belongs in the Penal Code

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Government Code	557.012	Capitol Sabotage	2 years-life or death	Move (to Penal Code)	This is lacking "intentionally" or "knowingly" like other capitol offense have. Potential double jeopardy issue with subsection (c).
Government Code	836.101(b)	Falsifying Judicial Retirement System records	Class A - 2nd Degree felony (See § 836.102(b) and Penal Code § 37.10)	Move (to Penal Code)	Refers to penal code anyway
Government Code	836.101(c)	Receiving salary that should have been a Judicial Retirement System deduction.	All penalty ranges available (see 836.102 and Penal Code 31.03)	Move (to Penal Code)	Refers to penal code anyways
Government Code	2054.060	Fraudulently using digital signatures.	See Penal Code Chapters 32 & 33	Move (to Penal Code)	Refers to penal code anyways
Government Code	3101.010	Thrashing pecans; Penalty	Misdemeanor (no class given) punishable by fine (\$5 to \$300), up to three months in county jail, or both	Remove jail time	Strict liability offense with jail term but no culpability; Criminal trespass and theft crimes are already in the Penal Code

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Labor Code	52.022	Providing a hoe with a handle less than four feet long to an employee	Class C	Civil Penalty/Repeal	Include § 52.021 of Labor Code, which describes the offense
Local Govt. Code	615.002	Regulation of Courthouse Parking Lots in Certain Counties	Misdemeanor: \$1 to \$20	Change to Class C because of the fine	
Natural Resources Code	11.074	Bans herding and line-riding on public land	\$100-1000 and mandatory three months to two years in county jail	Eliminate required jail time and change to Class C	
Natural Resources Code	88.134(b)	Violating rules relating to oil production such as measurement	Mandatory minimum of 2 to 4 years in prison	Change to 3rd degree felony	
Natural Resources Code	114.102	Fails to maintain accurate cargo manifest documents	Third degree felony	Reduce to Class A misdemeanor	Clerical issue, similar penalties authorized by other Sections
Occupations Code	205.401	Practicing acupuncture without license	3rd degree felony per day	Remove language "per day"	
Occupations Code	264.151(a)	Practicing dentistry without a license (see § 256.001)	3rd degree per day	Remove language "per day"	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	266.303	Criminal Penalties (Subchapter G - Prohibited Practices, Enforcement, and Penalties, Ch. 266 - Regulation of Dental Laboratories) -- specifically Subsections 266.151 [Registration Required] and 266.301(b) [Filling prescription for dental prosthetic])	3rd degree per day	Modify	Reduce to Class A misdemeanor 1st offense, 3rd degree felony subsequent offense
Occupations Code	1701.553	Criminal penalty for appointment or retention of persons with certain convictions (Ch. 1701 - Law Enforcement Officers)	State jail felony	Modify	Reduce to Class A misdemeanor
Occupations Code	1802.302	Frivolous Claim; Offense (Ch. 1802 - Auctioneers)	Class B misdemeanor	Repeal	Create civil penalty instead
Occupations Code	1805.103	Criminal Penalty (Ch. 1805 - Sale of Secondhand Business Machines)	Class B misdemeanor	Repeal	Should be civil; perhaps entire statute here is obsolete
Occupations Code	2155.002	Criminal Penalties (Ch. 2155 - Hotels and Boarding Houses, failing to post room rate or charging more than posted rate)	Fine \$25 to \$100, jail up to 30 days, or both (fine up to \$100 only if offense was just failing to provide guest a ticket for room rate)	Amend	Remove jail time altogether or change to Class C

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Occupations Code	2156.004	Recordkeeping; offense (Ch. 2156 - Theaters, failing to show bookings to someone wanting to lease venue)	Misdemeanor: \$10 to \$20 per failure to maintain list of bookings and/or show it	Repeal	Potential civil penalty instead of criminal; may fall under DTPA
Occupations Code	2156.005	Discrimination Against Reputable Productions; Offense	Misdemeanor: \$100 to \$500, jail for up to 10 days (per violation)	Repeal	
Occupations Code	2158.003	Criminal Offense (Ch. 2158 - Special Event Parking Charge Limitation)	Class C misdemeanor	Repeal	
Parks and Wildlife Code	32.153	Criminal Penalties (Ch. 32 - Floating Cabins -- specifically violating conduct prohibited by 32.053(b) [APPLICATION FOR PERMIT; REFUND] for signing application under penalty of perjury	Class C misdemeanor; Class B "Parks and Wildlife Code misdemeanor" for more than two convictions under the section	Remove Section 32.053(b) from list of violation	If application was filed but not signed, it is a trivial issue
Parks and Wildlife Code	32.153	Criminal Penalties (Ch. 32 - Floating Cabins -- specifically violating conduct prohibited by 32.057(d) [TRANSFER OF PERMIT] for failing to provide information on new permit holder to department)	Class C misdemeanor; Class B "Parks and Wildlife Code misdemeanor" for more than two convictions under the section	Remove Section 32.057(d) from list of violations	If application was filed but not signed, it is a trivial issue

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Parks and Wildlife Code	62.005	Hunting with Light	"Class A Parks and Wildlife Code Misdemeanor" or a state jail felony if defendant has one or more convictions of offense	Modify	Add language making intentional or knowing violations remain a Class A, but reckless conduct is a Class . Subsequent violations would still apply. (See narrative portion)
Parks and Wildlife Code	76.038	Interference with Buoys or Markers (Ch. 76 - Oysters)	"Class B Parks and Wildlife Code misdemeanor" unless previous conviction within last five years of trial date: then "Class A Parks and Wildlife misdemeanor"; "Parks and Wildlife Code felony" if two prior convictions	Modify	Add language making intentional or knowing violations remain a Class B, but reckless conduct is a Class C. Subsequent violations would still apply. (See narrative portion)

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Parks and Wildlife Code	76.101	Oyster License required (to take oysters from public water)	"Class B Parks and Wildlife Code misdemeanor" unless previous conviction within last five years of trial date: then "Class A Parks and Wildlife misdemeanor"; "Parks and Wildlife Code felony" if two prior convictions	Modify	Add language making intentional or knowing violations remain a Class B, but reckless conduct is a Class C. Subsequent violations would still apply. (See narrative portion)
Parks and Wildlife Code	76.109	Night Dredging Prohibited (Ch. 76 - Oysters)	"Class B Parks and Wildlife Code misdemeanor" unless previous conviction within last five years of trial date: then "Class A Parks and Wildlife misdemeanor"; "Parks and Wildlife Code felony" if two prior convictions; each day a new offense	Modify	Add language making intentional or knowing violations remain a Class B, but reckless conduct is a Class C. Subsequent violations would still apply. (See narrative portion)

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Parks and Wildlife Code	76.116	Oysters from Restricted Areas	"Class A Parks and Wildlife Code misdemeanor" unless previous conviction within last five years of trial date: then "Parks and Wildlife Code felony"; each day a new offense	Modify	Add language making intentional or knowing violations remain a Class A, but reckless conduct is a Class B. Subsequent violations would still apply. (See narrative portion)
Parks and Wildlife Code	77.061	General Closed Season (Ch. 77 - Shrimp)	Fine between \$2500 and \$5000, confinement in county jail between 6 months and a year, or both	Modify	Add language making intentional or knowing violations remain a Class B, but reckless conduct is a Class C. Subsequent violations would still apply. (See narrative portion)
Tax Code	154.513	Previously used or Old Design Stamps (Ch. 154 - Cigarette Tax)	3rd degree felony	Modify	Reduce to Class A misdemeanor for 1st offense, leave 3rd degree felony for subsequent

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Tax Code	155.203	Possession: Tax Due \$50 or Less (Ch. 155 - Cigars and Tobacco Products)	Class A misdemeanor	Modify	Reduce to Class C misdemeanor for 1st offense, leave Class A for subsequent
Tax Code	155.209	Transportation of Tobacco Products	3rd degree felony	Modify	Reduce to Class A misdemeanor for 1st offense, leave 3rd degree felony for subsequent
Tax Code	155.211	Possession: Tax Due more than \$50 (Ch. 155 - Cigars and Tobacco Products)	3rd degree felony	Modify	Reduce to Class A misdemeanor for 1st offense, leave 3rd degree felony for subsequent
Utilities Code	15.030	Offense (for violating this Title - Title 2. Public Utilities Regulatory Act)	Third degree felony	Modify	Reduce to Class A misdemeanor
Utilities Code	105.024	Offense (for violating this Subtitle - Subtitle A. Public Gas Utility Regulatory Act)	Third degree felony	Modify	Reduce to Class A misdemeanor

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Vernon's Civil Statutes	4005a	Free Pass Law (of Title 66 - Free Passes, Franks and Transportation)	Fine between \$500 to \$2000 and potential additional confinement in penitentiary for 6 months to 2 years	Repeal	Antiquated
Vernon's Civil Statutes	4006b	Using Another's Pass (of Title 66 - Free Passes, Franks and Transportation)	Fine between \$100 and \$1000; jail from 30 days to 12 months	Repeal	
Vernon's Civil Statutes	4015d	Reduced Rate for Officers (of Title 66 - Free Passes, Franks and Transportation)	Fine between \$100 and \$500; jail not to exceed six months; or both	Repeal	
Vernon's Civil Statutes	4015e	Collecting Fare from State or Political Subdivision by Officer or Employee Using Free Pass	Misdemeanor: Fine not to exceed \$1000	Repeal	
Vernon's Civil Statutes	4413 (47e.1)	Superconducting super collider facility; activities near site (Sec. 2 - PROHIBITED ACTIVITIES)	None given	Repeal	Super collider project was abandoned
Vernon's Civil Statutes	5196b	Penalty (Discrimination against persons seeking employment on account of his having participated in a strike)	One month to one year	Repeal	Should be a matter for civil employment discrimination claim if it should be illegal to begin with

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Vernon's Civil Statutes	9010	Peddling of printed matter by deaf or mute persons.	Misdemeanor: Fine \$10 to \$50, up to 60 days in jail, or both	Repeal	

OFFENSES NEEDING REVIEW FROM 2016 COMMISSION REPORT

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Alcoholic Beverage Code	54.12	Penalty for Shipping without a permit	Class B (1st offense), Class A (2nd offense), State Jail Felony (3rd Offense)	Review	No mens rea; see narrative portion of report
Alcoholic Beverage Code	101.69	False Statement (on application for permit)	Imprisonment in TDCJ for 2 to 10 years	Review	No mens rea; see narrative portion of report
Business and Commerce Code	17.826	Penalty (found in Subchapter G. LABELING, ADVERTISING, AND SALE OF KOSHER FOODS)	Misdemeanor (fine \$10 to \$200)	Review	"...an offense under this chapter" should probably read as "SUBchapter" (emphasis added)
Business and Commerce Code	251.003	Warehouseman failing to state ownership of goods on receipt	Fine of \$1000 or county jail term of up to one year	Review	Eliminate jail time option or provide civil penalty
Business and Commerce Code	251.004	Warehousman issuing receipt for goods not under control	Fine of up to \$5,000 and imprisonment of up to five years	Review	Eliminate jail time option or provide civil penalty
Business and Commerce Code	251.005	Warehousman issuing duplicate receipt	Fine of up to \$5,000 and imprisonment of up to five years	Review	Eliminate jail time option or provide civil penalty
Business and Commerce Code	251.006	Warehousman wrongfully delivering goods	Fine of up to \$1,000 and up to one year in jail	Review	Eliminate jail time option or provide civil penalty

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Education Code	11.064	Filing of Financial Statement by (school district) -- failure to file	Class B	Review	Has no mens rea; see narrative portion of report
Education Code	22.901	Unlawful Inquiry into religious affiliation (of public school employment applicant)	Class B	Review	Repeal criminal liability? Same section of code assigns civil liability of between \$100 to \$500
Education Code	37.125	Exhibiting firearms on campus, school bus, or school parking lot	3rd degree felony	Review	Enacted in 2007; does passage of campus carry affect this offense? Already covered by Penal Code § 22.07 (Terroristic Threat) and § 42.01 (Disorderly Conduct)
Government Code	154.113	Criminal Penalty (violating § 154.101 [CERTIFICATION OF REPORTERS])	Class A (each day separate offense)	Review	Consider removing a separate offense for every day
Government Code	157.107	Offense; Administrative Penalty (violating Ch. 157 - COURT INTERPRETERS LICENSING or related rules)	Class A	Review	Administrative penalty already attached; add a "knowing" or intent

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Government Code	325.0195	Records Protected from Disclosure (Misuse of confidential information obtained by the Sunset Advisory Committee)	Unspecified.	Review	Specify penalty.
Government Code	411.017	Unauthorized acts with DPS name or insignia (e.g., making false badges or ID cards)	Class A; 3rd degree felony if shipped to Texas from out of state	Review	Why not make both a felony?
Government Code	411.066	Jurisdiction (for § 411.065 OFFENSES [Ch. 411 Dept. of Public Safety of the State of Texas, Subchapter E. Capitol Complex])	Violating § 411.065 is a Class C	Review	Provides for concurrent jurisdiction of muni courts and JP courts of Class C in § 411.065 -- When 411.065 was amended in 2015 to establish a Class B for violation of rules regarding drones over the Capitol, the statute conflicts with the Code of Criminal Procedure since those courts do not have jurisdiction of Class B's.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Government Code	418.173	Penalty for Vioating of Emergency Management Plan	Fine up to \$1000 and jail not to exceed 180 days	Review	State agencies (not the Legislature) will be creating criminal conduct.
Government Code	420.075	Offense (disclosing information confidential under Ch. 420 - SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES)	Class C	Review	Is this punishment adequate?
Government Code	557.022	Restrictions (Subchapter C. COMMUNISM)	None specified	Review	Provides that a "communist" cannot be on a ballot for primary or general election
Health and Safety Code	166.048	Criminal Penalty; Prosecution (intentionally conceals, cancels, defaces, obliterates, or damages another person's [advance] directive without consent)	Class A (or under Ch. 19 of the Penal Code if causing life-sustaining treatment to be withheld and death hastened.)	Review	Similar provision to DNR orders in § 166.097(b) already exists. This should be consistent.
Health and Safety Code	166.049	Pregnant Patients (Ch. 166 Advance Directives)	None specified	Review	
Health and Safety Code	166.098	Pregnant Persons (Ch. 166 Advance Directives)	None specified	Review	

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Health and Safety Code	171.018	Offense (violating Subchapter B INFORMED CONSENT of Chapter 171 ABORTION)	Misdemeanor (fine up to \$10,000)	Review	Other offenses regarding abortion involve jail time
Health and Safety Code	241.057	Criminal Penalty (...operates a hospital without a license)	\$0 to \$100 for first offense, \$0 to \$200 for each subsequent offense; each day a separate offense	Review	Should penalty for unlicensed operation of a hospital be less than operating a convalescent of nursing home without a license (\$1000 first day; \$500 each subsequent day)?
Health and Safety Code	242.074 (c)	NOTIFICATION OF CHANGE IN FINANCIAL CONDITION (filing false information under this section)	"...may be prosecuted under the Penal Code."	Review	No other punishment specified
Health and Safety Code	243.013	Criminal Penalty (for violating § 243.003(a) - License required [under Ch. 243 - Ambulatory Surgical Centers])	Class C	Review	Inconsistent with \$100 to \$500 civil penalty and administrative penalty up to \$5000
Health and Safety Code	244.013	Criminal Penalty (for violating § 244.003(a) - License required [under Ch. 244 - Birthing Centers])	Class C	Review	Inconsistent with \$100 to \$500 civil penalty and administrative penalty

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Health and Safety Code	341.047	Criminal Penalty (for violating §§ 341.031 [Public Drinking Water], 342.032 [Drinking Water Provided by Common Carrier], 341.033 [Protection of Public Water Supplies], 341.035 [Approved Plans Required for Public Water Supplies], 341.0351 [Notification of System Changes], 341.0352 [Advertised Quality of Water Supply], 341.0354 [Highway Signs for Approved System Rating, and 341.036 [Sanitary Defects at Public Drinking Water Supply System])	Class C (unless prior conviction within a year, then Class B); each day separate offense	Review	Class C penalty for providing safe drinking water is adequate?

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Health and Safety Code	365.012	Illegal Dumping; Discarding Lighted Materials; Criminal Penalties	Class C (fine up to \$500, up to 30 days in jail, or both), Class B, Class A, or state jail felony based on weight or volume	Review	Case law has read the culpable mental state of reckless into the illegal dumping statute. Given such severe penalties, strict liability is not appropriate. This statute needs an expressed mental state element. See narrative portion of report.
Health and Safety Code	434.021	Baking Powder	None specified; defines "adulterated" baking powder	Review	No reference back to § 431.021 Prohibited Acts under Ch. 431 - THE , TEXAS FOOD, DRUG, AND COSMETIC ACT; which includes acts with adulterated products.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Health and Safety Code	434.022	Self-rising Flour	None specified; defines "adulterated" self-rising flour	Review	No reference back to § 431.021 Prohibited Acts under Ch. 431 - THE , TEXAS FOOD, DRUG, AND COSMETIC ACT; which includes acts with adulterated products.
Health and Safety Code	462.008	Criminal Penalty; Enforcement (of Ch.. 462 - TREATMENT OF PERSONS WITH CHEMICAL DEPENDENCIES)	For an individual - fine \$50 to \$25,000 (double for prior conviction) and up to 2 years in prison (up to 4 yrs for prior conviction) for each violation and each day of a continuing violation. For a person other than an individual - fine \$500 to \$100,000 (double if prior conviction) for each violation and each day of a continuing violation.	Review	Offense for "unwarranted commitment of a person to a treatment facility." "Unwarranted" is not defined.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Health and Safety Code	571.020	Criminal Penalties (for "unwarranted commitment of a person to a mental health facility"	For an individual - fine \$50 to \$25,000 (double for prior conviction) and up to 2 years in prison (up to 4 yrs for prior conviction) for each violation and each day of a continuing violation. For a person other than an individual - fine \$500 to \$100,000 (double if prior conviction) for each violation and each day of a continuing violation.	Review	Offense for "unwarranted commitment of a person to a mental health facility." "Unwarranted" is not defined.
Health and Safety Code	751.011	Criminal Penalty (for violating § 751.003 - Permit Requirement, Ch. 751 (MASS GATHERINGS)	Fine up to \$1,000; jail up to 90 days; or both	Review	No culpable mental state for an offense that could carry jail time. Perhaps add "knowingly." See narrative portion of report.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Health and Safety Code	752.007	Criminal Penalty (for violating Ch. 752 High Voltage Overhead lines)	Fine \$100 to \$1000; jail up to one year; or both	Review	No culpable mental state for an offense that could carry jail time. Consider Health and Safety Code § 756.044, which states "intentionally or recklessly." See narrative portion of report.
Health and Safety Code	753.011	Criminal Penalty (for violating rule adopted under Ch. 753 - Flammable Liquids)	Class B (each day in violation a separate offense)	Review	No culpable mental state, so does offense imply strict liability? See narrative portion of report.
Health and Safety Code	821.056	Offense and penalty (Ch. 821 Treatment and Disposition of Animals, Subchapter C Euthanasia of Animals)	Class B	Review	No culpable mental state. See narrative portion of report.
Health and Safety Code	825.008	Tampering with Traps; Criminal Penalty	Fine \$50 to \$200	Review	Culpability is "maliciously or willfully" and should be updated to "intentionally."

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Insurance Code	225.013	Failure to pay tax by surplus lines agent	"...punishable as provided by law."	Review	TDCAA manual says this offense is prosecuted under Penal Code § 31.03
Insurance Code	443.010	Cooperation of Officers, Owners of Employees. (in Ch. 443 - Texas Insurer Receivership Act)	Fine up to \$10,000, imprisonment up to one year, or both	Review	No culpable mental state. See narrative portion of report.
Insurance Code	823.501	Offense of violating chapter (Ch. 823 - INSURANCE HOLDING COMPANY SYSTEMS)	Fine up to \$50,000 for each violation if insurer; Fine up to \$10,000 for each violation and imprisonment up to five years for individula.	Review	Change "willfully" to "intentionally" or "knowingly;" also review subsection (f) language allowing payment of fine "in that persons's individual capacity." How do you enforce?

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Insurance Code	823.502	Offense of Subscribing to or making False Statement (under Ch. 823 - INSURANCE HOLDING COMPANY SYSTEMS)	Felony: Fine up to \$10,000, imprisonment up to two years, or both	Review	Strike "willfully" from "willfully and "knowingly;" also review subsection (f) language allowing payment of fine "in that persons's individual capacity." How do you enforce?
Insurance Code	843.464	Criminal Penalty (for violating Ch. 843 - Health Maintenance Organization or rule	Class B	Review	Strike "willfully violates" to "intentionally" or "knowingly violates"
Insurance Code	881.702	General Criminal Penalty (for violating Chapter 881 - STATEWIDE MUTUAL ASSESSMENT COMPANIES)	Misdemeanor: fine up to \$500	Review	Poorly worded. Offense should come from person who "violates this <i>subchapter</i> " instead of "chapter."

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Insurance Code	882.702	Investment and Deposit of Funds; Criminal Penalty (for violating § 882.252 - Investment of Money, in Chapter 882 - Mutual Life Insurance Companies)	Imprisonment in TDCJ for 1 to 5 years	Review	Strike "or willfully" from "knowingly or willingly violates or assents to the violation..."; "assent" also not clear under the statute.
Insurance Code	885.701	False statement; Criminal Penalty (under Ch. 885 - Fraternal Benefit Society)	Fine \$100 to \$500, confinement in jail 30 days to one year, or both	Review	Substitute "intentionally" for "willfully" making a false statement
Insurance Code	885.704	Exception to solicitation offenses	n/a	Review	Based on AG opinion, add "agent or employee" to "member of an existing lodge" that are not prohibited from soliciting members for the lodge.
Insurance Code	886.703	Criminal Penalty (for violating Ch. 886 - Local Mutual Aide Associations)	Misdemeanor: fine up to \$500	Review	Instead of referring to violating the entire chapter, perhaps refer to specific sections.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Insurance Code	887.701	Unlawful conversion; criminal penalty (under Ch. 887 - Provisions Applicable to Certain Mutual Assessment Companies)	Imprisonment in TDCJ for 2 to 10 years	Review	Take out "fraudulently" modifying taking, misapplying, etc. as unnecessary when the offensive conduct is "to the person's own use."
Insurance Code	887.702	Diversion of Special Funds; Criminal Penalty (under Ch. 887 - Provisions Applicable to Certain Mutual Assessment Companies)	Imprisonment in TDCJ for 2 to 10 years	Review	Change "willfully" to "intentionally"
Insurance Code	887.704	Violation of Commissioner Order; Criminal Penalty (under Ch. 887 - Provisions Applicable to Certain Mutual Assessment Companies)	Fine up to \$500, imprisonment up to six months, or both	Review	Change "willfully" to "intentionally"
Insurance Code	887.705	Other Violations; Criminal Penalty (under Ch. 887 - Provisions Applicable to Certain Mutual Assessment Companies)	Fine up to \$500, imprisonment up to six months, or both	Review	No mens rea; see narrative portion of report

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Insurance Code	912.801	Violation of Chapter; Criminal Penalty (Ch. 912 - COUNTY MUTUAL INSURANCE COMPANIES)	Fine up to \$500, imprisonment up to 180 days, or both	Review	No culpable mental state for violation of this chapter, even though a jail term is authorized. Also not clear what provisions of the chapter could be violated. See narrative portion of report.
Insurance Code	912.802	Conversion; Criminal Penalty (Ch. 912 - COUNTY MUTUAL INSURANCE COMPANIES)	Imprisonment in TDCJ up to 2 years	Review	Remove "fraudulently" modifier of "takes or converts <i>to the person's own use...</i> " (emphasis added)
Insurance Code	912.803	Unlawful diversion of funds; Criminal Penalty. (Ch. 912 - COUNTY MUTUAL INSURANCE COMPANIES)	Imprisonment in TDCJ for 2 to 10 years	Review	Change "willfully" to "intentionally"
Insurance Code	912.804	False Affidavit; Criminal Penalty (Ch. 912 - COUNTY MUTUAL INSURANCE COMPANIES)	Fine up to \$500 or imprisonment in TDCJ up to two years	Review	Change "willfully" to "intentionally"

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Insurance Code	4005.152	Agent Assisting of Conspiring with Person Whose License Has Been Suspended or Revoked; Criminal Penalty	Misdemeanor: Fine up to \$1000, jail for up to 6 months, or both	Review	Examine relationship between this offense and Penal Code sections addressing criminal conspiracy and criminal responsibility.
Insurance Code	4101.203	Criminal Penalty (for violating § 4101.051 [License Require] and § 4101.102 (c) [Limited License])	Misdemeanor: fine up to \$500, jail up to six months, or both	Review	No mens rea; see narrative portion of report
Insurance Code	4102.206	Criminal Penalty; Sanctions (for violating Ch. 4102 - PUBLIC INSURANCE ADJUSTERS)	Class B	Review	No mens rea; see narrative portion of report
Insurance Code	4151.309	Criminal Penalty (for violating Ch. 4151 - THIRD PARTY ADMINISTRATORS)	Misdemeanor: Fine \$500 to \$5000	Review	Add "a provision of" to "...if the administrator knowingly violates this chapter..."

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Insurance Code	6002.351	Criminal Penalty (for violating § 6002.151 [FIRM REGISTRATION CERTIFICATE REQUIRED; LIMITED CERTIFICATE] § 6002.152 [BRANCH OFFICE REGISTRATION CERTIFICATE REQUIRED], or § 6002.154 [FIRE ALARM TECHNICIAN, RESIDENTIAL FIRE ALARM SUPERINTENDENT, AND FIRE ALARM PLANNING SUPERINTENDANT] in Ch. 6002 - FIRE DETECTION AND ALARM DEVICE INSTALLATION)	Class B	Review	No mens rea; see narrative portion of report. Possibly modify "violates" with "knowingly" since the punishment is a Class B misdemeanor
Local Govt. Code	374.908	Intentionally violating conflict of interest provisions for urban renewal project by official or employee of municipality	No penalty specified	Review	Specify penalty

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Natural Resources Code	61.127	Criminal Penalties (Ch. 61 - Use and Maintenance of Public Beaches)	Fine between \$50 and \$100 for first conviction; between \$100 and \$200 for 2nd conviction; for subsequent convictions \$200 to \$1000 or confinement in county jail not more than 60 days	Review	Should the statute give the commissioners court the ability to set penalties?
Natural Resources Code	61.224	A person who for himself or ... under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach ... in violation of the provisions of this subchapter shall be fined not less than \$10 nor more than \$200. Each day a violation occurs constitutes a separate offense.	"...shall be fined not less than \$10 nor more than \$200. Each day a violation occurs constitutes a separate offense."	Review	Revise so that it does not apply to a few specks of sand or gravel or single shell by inserting "with intent to sell or an amount that is commercially marketable." ALSO, statute should be amended to provide that "A person who... in violation of the provisions of this subchapter <i>commits an offense</i> and shall be fined..."

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Natural Resources Code	61.254	Criminal Penalty (Ch. 61 - Use and Maintenance of Public Beaches)	Class B misdemeanor	Review	Should add <i>knowingly</i> to "...violates an order..." given the punishment. No mens rea; see narrative portion of report.
Natural Resources Code	85.386	Forging names on permits and tenders (Ch. 85 - Conservation of Oil and Gas)	Between 2 and 5 years in TDCJ	Review	Statute never explicitly provides that forgery is an offense. Add "A person <i>comits an offense and</i> shall be imprisoned..."
Natural Resources Code	85.387	Procuring tenders and permits (Ch. 85 - Conservation of Oil and Gas) - procuring through false statement	Between 2 and 5 years in TDCJ	Review	Statute never explicitly provides an offense. Add "A person <i>comits an offense and</i> shall be imprisoned..."

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Natural Resources Code	85.389	A person who is not the owner or operator of an oil well ... who knowingly destroys, breaks, removes, or otherwise tampers with or attempts to destroy, break, remove, or otherwise tamper with any cap, seal, or other device placed on an oil well ... by the owner or operator for the purpose of controlling or limiting the operation of the well or associated equipment commits an offense.	Third degree felony	Review	Either apply standard property offense value ladder or reduce to Class A misdemeanor

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Natural Resources Code	88.134	Penalties (Ch. 88 - Control of Oil Property)	Misdemeanor with fine up to \$500, confinement up to 6 months in county jail; or both for violating § 88.091 (Access to Property and Records), § 88.092 (Prohibited Interference with Access and Inspection), or § 88.093 (Prohibited Equipment of Enclosure); Felony if any other provision or rule from Chapter 88 with imprisonment from two to four years	Review	Statute says "...person who fails to comply... is considered guilty of a felony..." but does not need the word "considered"
Natural Resources Code	91.002	Criminal Penalty (Ch. 91 - Provisions Generally Applicable) for violating § 91.101 (Rules and Orders [Subchapter D. Prevention of Pollution])	Fine up to \$10,000 per day	Review	Statute provides that a person "who willfully or with criminal negligence violates" rules on pollution prevention in oil and gas production comits an offense. "Willfully" is not necessary; "criminal negligence" is enough.

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Natural Resources Code	117.053	Criminal Penalty for Violation of Chapter and Rules (Ch. 117 - Hazardous Liquid or Carbon Dioxide Pipeline Transportation Industry)	Fine up to \$2 million, up to 5 years in TDCJ, or both	Review	Statute should read "...violates a provision of this chapter..." rather than "...violates this chapter..."
Natural Resources Code	131.267	Criminal Penalty for Violating Permits and Orders (under Ch. 131 - Uranium Surface Mining and Reclamation Act)	Fine up to \$10,000, imprisonment up to one year, or both	Review	Strike "willfully" from statute as "knowingly" will suffice. Also, add "...commits an offense and..." in lieu of "...on conviction by a district court..."
Natural Resources Code	131.268	Criminal Penalty for Corporate Permittee	Fine up to \$10,000, imprisonment up to one year, or both	Review	Strike "willfully" and substitute "...commits an offense..." for "...on conviction by a district court, is..."
Natural Resources Code	131.305	Criminal Penalty (for violating Subchapter H - Discharges, Ch. 131 - Uranium Surface Mining and Reclamation Act)	Fine up to \$10,000 per day	Review	Strike "willfully"; already has "knowingly" and "with criminal negligence"

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Natural Resources Code	134.179	Criminal Penalty for Wilful and Knowing Violation (of Ch. 134 - Texas Surface Coal Mining and Reclamation Act)	Fine up to \$1000, jail not to exceed one year, or both	Review	Strike "willfully"; already has "knowingly"
Natural Resources Code	134.181	Penalty for Director, Officer, or Agent of Corporation (under Ch. 134 - Texas Surface Coal Mining and Reclamation Act)	Subject to administrative penalties, fines, and imprisonment found under § 134.174 (ADMINISTRATIVE PENALTY FOR VIOLATION OF PERMIT CONDITION OF THIS CHAPTER - up to \$10,000 per day) or § 134.179 (CRIMINAL PENALTY FOR WILFUL AND KNOWING VIOLATION with fine up to \$1000, jail not to exceed one year, or both)	Review	Strike "willfully" as "knowingly" is already in statute; add "...commits an offense and..." between "noncompliance" and "is"
Natural Resources Code	141.102	Criminal Penalty (under Subchapter B - Powers and Duties of the Railroad Commission, Ch. 141 - Geothermal Resources)	Fine up to \$10,000 per day	Review	Strike "willfully"; already has "knowingly" and "with criminal negligence"

CODE	SECTION	OFFENSE	PENALTY	SUGGESTED ACTION	SUBMISSION COMMENT
Vernon's Civil Statutes	8651 - 8659	Commodity future contracts regulation and penalties	None given	Review	Consider whether to repeal as outdated or preempted by federal law.