

PENAL CODE

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

Sec. 48.01. SMOKING TOBACCO. (a) In this section, "e-cigarette" has the meaning assigned by Section [161.081](#), Health and Safety Code.

(a-1) A person commits an offense if the person is in possession of a burning tobacco product, smokes tobacco, or operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, intrastate bus, plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance or public place and that an offense is punishable by a fine not to exceed \$500.

(c) All conveyances and public places set out in Subsection (a-1) shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a-1) if the person is in possession of the burning tobacco product, smokes tobacco, or operates the e-cigarette exclusively within an area designated for smoking tobacco or operating an e-cigarette or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco or operating an e-cigarette on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

Added by Acts 1975, 64th Leg., p. 744, ch. 290, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 2, eff. Sept.

1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 30.242, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 39, eff. October 1, 2015.

Sec. 48.015. PROHIBITIONS RELATING TO CERTAIN CIGARETTES.

(a) A person may not acquire, hold, own, possess, or transport for sale or distribution in this state or import or cause to be imported into this state for sale or distribution in this state:

(1) cigarettes that do not comply with all applicable requirements imposed by or under federal law and implementing regulations; or

(2) cigarettes to which stamps may not be affixed under Section 154.0415, Tax Code, other than cigarettes lawfully imported or brought into the state for personal use and cigarettes lawfully sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with 19 U.S.C. Section 1555(b), as amended.

(b) A person who commits an act prohibited by Subsection (a), knowing or having reason to know that the person is doing so, is guilty of a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1104, Sec. 6, eff. Sept. 1, 2001.

Sec. 48.02. PROHIBITION OF THE PURCHASE AND SALE OF HUMAN ORGANS. (a) In this section, "human organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, or any other human organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents. The term does not include human fetal tissue as defined by Section 48.03.

(b) A person commits an offense if he or she knowingly or intentionally offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human organ for valuable consideration.

(c) It is an exception to the application of this section

that the valuable consideration is: (1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services; (2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the organ; or (3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(d) A violation of this section is a Class A misdemeanor. Added by Acts 1985, 69th Leg., ch. 40, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 16, eff. September 1, 2017.

Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL TISSUE. (a) In this section, "human fetal tissue" has the meaning assigned by Section 173.001, Health and Safety Code.

(b) A person commits an offense if the person knowingly offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human fetal tissue for economic benefit.

(c) An offense under this section is a state jail felony.

(d) It is a defense to prosecution under this section that the actor:

(1) is an employee of or under contract with an accredited public or private institution of higher education; and

(2) acquires, receives, or transfers human fetal tissue solely for the purpose of fulfilling a donation authorized by Section 173.005, Health and Safety Code.

(e) This section does not apply to:

(1) human fetal tissue acquired, received, or transferred solely for diagnostic or pathological testing;

(2) human fetal tissue acquired, received, or transferred solely for the purposes of a criminal investigation;

(3) human fetal tissue acquired, received, or transferred solely for the purpose of disposing of the tissue in

accordance with state law or rules applicable to the disposition of human fetal tissue remains;

(4) human fetal tissue or human tissue acquired during pregnancy or at delivery of a child, provided the tissue is acquired by an accredited public or private institution of higher education for use in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research; or

(5) cell lines derived from human fetal tissue or human tissue existing on September 1, 2017, that are used by an accredited public or private institution of higher education in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research.

(f) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 17, eff. September 1, 2017.

Sec. 48.04. PROHIBITION ON PURCHASE AND SALE OF ADULT STEM CELLS FOR CERTAIN INVESTIGATIONAL TREATMENTS. (a) In this section:

(1) "Adult stem cell" means an undifferentiated cell that is:

(A) found in differentiated tissue; and

(B) able to renew itself and differentiate to yield all or nearly all of the specialized cell types of the tissue from which the cell originated.

(2) "Investigational stem cell treatment" means an adult stem cell treatment that:

(A) is under investigation in a clinical trial and being administered to human participants in that trial; and

(B) has not yet been approved for general use by the United States Food and Drug Administration.

(b) A person commits an offense if the person knowingly

offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any adult stem cells for valuable consideration for use in an investigational stem cell treatment.

(c) It is an exception to the application of this section that the valuable consideration is:

(1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services;

(2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the investigational stem cell treatment; or

(3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of adult stem cells in connection with the donation of the adult stem cells.

(d) It is an exception to the application of this section that the actor engaged in conduct authorized under Chapter 162, Health and Safety Code.

(e) A violation of this section is a Class A misdemeanor. Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 4, eff. September 1, 2017.

Redesignated from Penal Code, Section 48.03 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(41), eff. September 1, 2019.

Sec. 48.05. PROHIBITED CAMPING. (a) In this section:

(1) "Camp" means to reside temporarily in a place, with shelter.

(2) "Shelter" includes a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of temporary, semipermanent, or permanent shelter, other than clothing or any handheld device, designed to protect a person from weather conditions that threaten personal health and safety.

(b) A person commits an offense if the person intentionally or knowingly camps in a public place without the effective consent of the officer or agency having the legal duty or authority to manage the public place.

(c) The actor's intent or knowledge may be established

through evidence of activities associated with sustaining a living accommodation that are conducted in a public place, including:

- (1) cooking;
- (2) making a fire;
- (3) storing personal belongings for an extended period;
- (4) digging; or
- (5) sleeping.

(d) Consent given by an officer or agency of a political subdivision is not effective for purposes of Subsection (b), unless given to authorize the person to camp for:

- (1) recreational purposes;
- (2) purposes of sheltering homeless individuals, if the property on which the camping occurs is subject to a plan approved under Subchapter PP, Chapter 2306, Government Code, and the camping occurs in a manner that complies with the plan;
- (3) purposes permitted by a beach access plan that has been approved under Section 61.015, Natural Resources Code, and the camping occurs in a manner that complies with the plan; or
- (4) purposes related to providing emergency shelter during a disaster declared under Section 418.014, Government Code, or a local disaster declared under Section 418.108 of that code.

(e) An offense under this section is a Class C misdemeanor.

(f) This section does not preempt an ordinance, order, rule, or other regulation adopted by a state agency or political subdivision relating to prohibiting camping in a public place or affect the authority of a state agency or political subdivision to adopt or enforce an ordinance, order, rule, or other regulation relating to prohibiting camping in a public place if the ordinance, order, rule, or other regulation:

- (1) is compatible with and equal to or more stringent than the offense prescribed by this section; or
- (2) relates to an issue not specifically addressed by this section.

(g) Except as provided by Subsection (h), before or at the time a peace officer issues a citation to a person for an offense under this section, the peace officer must make a reasonable effort

to:

(1) advise the person of an alternative place at which the person may lawfully camp; and

(2) contact, if reasonable and appropriate, an appropriate official of the political subdivision in which the public place is located, or an appropriate nonprofit organization operating within that political subdivision, and request the official or organization to provide the person with:

(A) information regarding the prevention of human trafficking; or

(B) any other services that would reduce the likelihood of the person suspected of committing the offense continuing to camp in the public place.

(h) Subsection (g) does not apply if the peace officer determines there is an imminent threat to the health or safety of any person to the extent that compliance with that subsection is impracticable.

(i) If the person is arrested or detained solely for an offense under this section, a peace officer enforcing this section shall ensure that all of the person's personal property not designated as contraband under other law is preserved by:

(1) permitting the person to remove all the property from the public place at the time of the person's departure; or

(2) taking custody of the property and allowing the person to retrieve the property after the person is released from custody.

(j) A fee may not be charged for the storage or release of property under Subsection (i)(2).

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 1, eff. September 1, 2021.