

CHAPTER 685

H.B. No. 13

An Act relating to authorizing the court of criminal appeals to promulgate rules of procedure and evidence in criminal cases.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. RULES OF APPELLATE PROCEDURE IN CRIMINAL CASES. Articles of the Code of Criminal Procedure, 1965, that govern posttrial appellate and review procedure in criminal cases are hereby repealed pursuant to Section 4 of this Act. The court of criminal appeals is granted rulemaking power to promulgate rules of posttrial, appellate, and review procedure in criminal cases except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.

SECTION 2. AMENDMENTS; NEW RULES. The court of criminal appeals may promulgate a comprehensive body of rules of posttrial, appellate, and review procedure in criminal cases and from time to time may promulgate a specific rule or rules of posttrial, appellate, or review procedure in criminal cases or an amendment or amendments to a specific rule or rules. Rules and amendments adopted under this section are effective at the time the court of criminal appeals deems expedient in the interest of a proper administration of justice. The rules and amendments to rules remain in effect unless and until disapproved, modified, or changed by the legislature. The clerk of the court of criminal appeals shall file with the secretary of state the rules or amendments to rules promulgated by the court of criminal appeals under this section. The secretary of state shall report the rules or amendments to rules to the next regular session of the legislature by mailing a copy of the rules or amendments to rules to each elected member of the legislature on or before December 1 immediately preceding the session.

SECTION 3. PUBLICATION. The rules of posttrial, appellate, and review procedure in criminal cases shall be published in the Texas Register and in the Texas Bar Journal. The court of criminal appeals may adopt the method it deems expedient for the printing and distribution of the rules.

SECTION 4. REPEAL OF CERTAIN ARTICLES. (a) The repeal of any article listed in Subsection (b) of this section is effective if:

(1) the court promulgates a comprehensive body of rules of posttrial, appellate, and review procedure in criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state a list of articles repealed under this section, the effective date of such repeal being simultaneous with the effective date of the comprehensive body of rules promulgated by the court of criminal appeals pursuant to this Act.

(b) The option granted under Subsection (a) of this section applies only to Articles 36.20, 42.04a, and 42.06 and to articles in Chapters 40, 41, and 44 of the Code of Criminal Procedure, 1965; provided, however, that the following articles of the Code of Criminal Procedure, 1965, shall not be repealed: 44.01, 44.04, 44.10, 44.12 through 44.20, 44.25, 44.251, 44.28, 44.29, 44.35, 44.39, and 44.41 through 44.44.

SECTION 5. RULES OF EVIDENCE IN CRIMINAL CASES. The court of criminal appeals has the full rulemaking power in the promulgation of rules of evidence in the trials of criminal cases, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.

SECTION 6. AMENDMENTS; NEW RULES. The court of criminal appeals may promulgate a comprehensive body of rules of evidence in the trials of criminal cases and from time to time may promulgate a specific rule or rules of evidence or an amendment or amendments to a specific rule or rules. Rules and amendments adopted under this section are effective at the time the court of criminal appeals deems expedient in the interest of a proper administration of justice. The rules and amendments to rules remain in effect unless and until disapproved by the legislature. The secretary of state shall report the rules or amendments to rules to the next regular session of the legislature by mailing a copy of the rules or amendments to rules to each elected member of the legislature on or before December 1 immediately preceding the session.

SECTION 7. PUBLICATION. The rules of evidence in the trials of criminal cases shall be published in the Texas Register and in the Texas Bar Journal. The court of criminal appeals may adopt the method it deems expedient for the printing and distribution of the rules.

SECTION 8. AMENDMENT TO EXISTING LAW. (a) Subsection (a), Article 26.13, Code of Criminal Procedure, 1965, is amended to read as follows:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere; and neither the fact that the defendant had entered a plea of guilty or nolo contendere nor any statements made by him at the hearing on the plea of guilty or nolo contendere may be used against the defendant on the issue of guilt or punishment in any subsequent criminal proceeding; and

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial.

(b) Subsection (a), Section 3, Article 37.07, Code of Criminal Procedure, 1965, is amended to read as follows:

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may, as permitted by the Rules of Evidence, be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

(c) Subsection (a) of this section is effective only if:

(1) the court of criminal appeals promulgates a comprehensive body of rules of evidence in the trial of criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state its designation that Subsection (a), Article 26.13, Code of Criminal Procedure, 1965, is amended under this section.

(d) Subsection (b) of this section is effective only if:

(1) the court of criminal appeals promulgates a comprehensive body of rules of evidence in the trial of criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state its designation that Subsection (a), Section 3, Article 37.07, Code of Criminal Procedure, 1965, is amended under this section.

SECTION 9. REPEAL OF CERTAIN LAWS. (a) The court of criminal appeals may designate for repeal any law listed in Subsection (b) of this section if:

(1) the court promulgates a comprehensive body of rules of evidence in the trial of criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state a list of statutes repealed under this section.

(b) The option granted under Subsection (a) of this section applies only to:

(1) Section 22.065, Penal Code;

(2) Articles 16.05, 36.03, 36.04, 38.01, 38.02, 38.06, 38.09, 38.10, 38.11, 38.111, 38.13, 38.20, 38.24, 38.26, 38.28, and 38.29, Code of Criminal Procedure, 1965; and

(3) Section 26, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes);

Section 3.07, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes);

Article 3714, Revised Statutes;

Article 3715, Revised Statutes;

Article 3715a, Revised Statutes;

Article 3716, Revised Statutes;

Article 3718, Revised Statutes;

Article 3719, Revised Statutes;

Article 3720, Revised Statutes;

Article 3721, Revised Statutes;

Article 3722, Revised Statutes;

Article 3723, Revised Statutes;

Article 3724, Revised Statutes;

Article 3725, Revised Statutes;

Article 3726, Revised Statutes;

Article 3726a, Revised Statutes;

Section 1, Chapter 179, Acts of the 41st Legislature, Regular Session, 1929 (Article 3726b, Vernon's Texas Civil Statutes);

Article 3727, Revised Statutes;

Article 3728, Revised Statutes;

Article 3729, Revised Statutes;

Article 3730, Revised Statutes;

Article 3731, Revised Statutes;

Chapter 471, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3731a, Vernon's Texas Civil Statutes);

Chapter 418, Acts of the 55th Legislature, Regular Session, 1957 (Article 3731b, Vernon's Texas Civil Statutes);

Section 1, Chapter 393, Acts of the 56th Legislature, Regular Session, 1959 (Article 3731c, Vernon's Texas Civil Statutes);

Article 3732, Revised Statutes;

Chapter 109, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 3734a, Vernon's Texas Civil Statutes);

Article 3737, Revised Statutes;

Chapter 203, Acts of the 40th Legislature, Regular Session, 1927 (Article 3737a, Vernon's Texas Civil Statutes);

Chapter 106, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 3737b, Vernon's Texas Civil Statutes);

Section 1, Chapter 449, Acts of the 45th Legislature, Regular Session, 1937 (Article 3737c, Vernon's Texas Civil Statutes);

Chapter 321, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3737e, Vernon's Texas Civil Statutes);

Section 1, Chapter 511, Acts of the 61st Legislature, Regular Session, 1969 (Article 3737f, Vernon's Texas Civil Statutes);

Chapter 364, Acts of the 64th Legislature, Regular Session, 1975 (Article 3737g, Vernon's Texas Civil Statutes);

Section 5.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

Sections 9.01 and 9.02, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

Chapter 239, Acts of the 66th Legislature, Regular Session, 1979 (Article 5561h, Vernon's Texas Civil Statutes); and

Section 151, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

SECTION 10. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 21, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 13 on May 27, 1985, by a non-record vote.; passed by the Senate, with amendments, on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 14, 1985

Effective: August 26, 1985