

CHAPTER 577

S.B. No. 169

An Act AN ACT relating to amendment of an indictment or information and to waiver of the defendant's right to object to a defect, error, or irregularity in an indictment or information; amending Articles 1.14, 28.09, and 28.10, Code of Criminal Procedure, 1965, as amended.

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

SECTION 1. Articles 1.14, 28.09, and 28.10, Code of Criminal Procedure, 1965, as amended, are amended to read as follows:

"Article 1.14. WAIVER OF RIGHTS. (a) The defendant in a criminal prosecution for any offense may waive any rights secured him by law except the right of trial by jury in a capital felony case.

"(b) *If the defendant does not object to a defect, error, or irregularity of form or substance in an indictment or information before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other postconviction proceeding. Nothing in this article prohibits a trial court from requiring that an objection to an indictment or information be made at an earlier time in compliance with Article 28.01 of this code.*"

"Article 28.09. EXCEPTION ON ACCOUNT OF FORM OR SUBSTANCE. If the exception to an indictment or information is sustained, the information or indictment may ~~only on account of form; it shall~~ be amended if permitted by Article 28.10 of this code, ~~if defective;~~ and the cause may proceed upon the ~~such~~ amended indictment or information ~~charge~~.

"Article 28.10. AMENDMENT OF INDICTMENT OR INFORMATION. (a) *After notice to the defendant, a ~~Any~~ matter of form or substance in an indictment or information may be amended at any time before the date the ~~an announcement of ready for~~ trial on ~~upon~~ the merits commences ~~by both parties, but not afterward. No matter of substance can be amended~~. On the request of the defendant, the court shall allow the defendant not less than 10 days, or a shorter period if requested by the defendant, to respond to the amended indictment or information.*

"(b) *A matter of form or substance in an indictment or information may also be amended after the trial on the merits commences if the defendant does not object.*

"(c) *An indictment or information may not be amended over the defendant's objection as to form or substance if the amended indictment or information charges the defendant with an additional or different offense or if the substantial rights of the defendant are prejudiced.*"

SECTION 2. The change in law made by this Act applies only to an indictment or information presented to the court on or after the effective date of this Act. An indictment or information presented before the effective date of this Act is covered by Articles 1.14, 28.09, and 28.10, Code of Criminal Procedure, 1965, as amended, as they existed when the indictment or information was presented, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect December 1, 1985, but only if the constitutional amendment proposed by S.J.R. No. 16, 69th Legislature, Regular Session, 1985, is approved by the voters. If that proposed constitutional amendment is not approved, this Act has no effect.

SECTION 4. 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.

Passed the Senate on March 21, 1985, by a viva-voce vote; passed the House on May 25, 1985, by a non-record vote.

Approved: June 13, 1985

Effective: December 1, 1985, if S.J.R. No. 16 is approved by the voters.