

BILL ANALYSIS

H.B. 2612
By: Meyer
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties have raised concerns about the abuse of certain synthetic substances in Texas. H.B. 2612 seeks to combat this problem by creating certain civil liability for persons who produce, distribute, sell, or provide these synthetic substances to others or who aid in such activities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2612 amends the Health and Safety Code to make a person liable for damages proximately caused by the consumption or ingestion of a synthetic substance by another person and to make a person strictly liable for all damages caused by the consumption or ingestion of a synthetic substance by a minor if in either case the actor produced, distributed, sold, or provided the synthetic substance to the other person or the minor or aided in the production, distribution, sale, or provision of the synthetic substance to the other person or the minor. The bill defines "synthetic substance" as an artificial substance that produces and is intended to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance or controlled substance analogue. The bill makes a person who is found liable under the bill's provisions or other law for any amount of damages arising from the consumption or ingestion by another of a synthetic substance jointly and severally liable with any other person for the entire amount of damages awarded.

H.B. 2612 establishes that conduct for which the bill creates liability is a false, misleading, or deceptive act or practice or an unconscionable action or course of action for purposes of Business & Commerce Code provisions relating to relief for consumers from deceptive trade practices and that such conduct is actionable under the Deceptive Trade Practices-Consumer Protection Act and subject to any remedy prescribed by that act. The bill exempts an action brought under the bill's provisions or an action brought under Business & Commerce Code provisions relating to relief for consumers from deceptive trade practices, based on conduct made actionable, from Civil Practice and Remedies Code provisions relating to proportionate responsibility.

H.B. 2612 authorizes an action brought under the bill's provisions to include a claim for exemplary damages, which may be awarded in accordance with Civil Practice and Remedies

Code provisions relating to standards for the recovery of exemplary damages. The bill exempts an award of exemplary damages in such an action and a claim for exemplary damages in such an action from related statutory provisions regarding limitations on the amount of recovery and damages paid in an action arising from harm resulting from a criminal act, respectively. The bill establishes as an affirmative defense to liability under the bill that the synthetic substance produced, distributed, sold, or provided was approved for use, sale, or distribution by the U.S. Food and Drug Administration or other state or federal regulatory agency with authority to approve a substance for use, sale, or distribution. The bill establishes that it is not a defense to liability that a synthetic substance was in packaging labeled with "Not for Human Consumption" or other wording indicating the substance is not intended to be ingested.

EFFECTIVE DATE

September 1, 2017.