

BILL ANALYSIS

C.S.H.B. 3902
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert the dangers of selling certain synthetic substances without proper explanation of a particular substance's effects and contend that additional enforcement is needed to protect the public from deceptive trade practices relating to the production, sale, distribution, and promotion of such substances. C.S.H.B. 3902 seeks to provide this additional enforcement by authorizing district and county attorneys to act under the Deceptive Trade Practices-Consumer Protection Act with respect to these substances.

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

C.S.H.B. 3902 amends the Business & Commerce Code to subject the making of a deceptive representation or designation about a synthetic substance, and the causing of confusion or misunderstanding as to the effects a synthetic substance causes when consumed or ingested, in the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to or in excess of the effect of a controlled substance or controlled substance analogue to action by a district or county attorney under the Deceptive Trade Practices-Consumer Protection Act to the same extent as such making or causing is subject to action by the consumer protection division of the attorney general's office under the act with certain exceptions.

C.S.H.B. 3902 requires a district or county attorney who accepts assurance of voluntary compliance under the act to file the assurance in the district court in the county in which the alleged violator resides or does business. The bill requires a district or county attorney who executes and serves a civil investigative demand and files a petition to extend the return date for, modify, or set aside the demand for good cause to file the petition in the district court in the county where the parties reside. The bill authorizes a district or county attorney to act under the bill's provisions so long as the consumer protection division does not intend to act with respect to that matter. The bill requires all settlements or penalties collected by a district or county attorney in an action brought by the attorney under the bill's provisions to be divided between the state and the county in which the attorney brought suit, with 50 percent of the amount collected paid to the comptroller of public accounts for deposit to the credit of the basic civil legal services account in the judicial fund administered by the Supreme Court of Texas and with 50 percent of the amount collected paid to the county.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3902 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

(See SECTION 1 below.)

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter E, Chapter 17, Business & Commerce Code, is amended by adding Section 17.463 to read as follows:

Sec. 17.463. PRODUCTION, SALE, DISTRIBUTION, OR PROMOTION OF CERTAIN SYNTHETIC SUBSTANCES.

(a) This section applies only to an act described by Section 17.46(b)(31).

(b) Subject to Subsection (e) and except as otherwise provided by this section, an act to which this section applies is subject to action by a district or county attorney under Sections 17.47, 17.58, 17.60, and 17.61 to the same extent as the act is subject to action by the consumer protection division under those sections.

(c) If a district or county attorney, under the authority of this section, accepts assurance of voluntary compliance under Section 17.58, the district or county attorney must file the assurance of voluntary compliance in the district court in the county in which the alleged violator resides or does business.

(d) If a district or county attorney, under the authority of this section, executes and serves a civil investigative demand and files a petition described by Section 17.61(g), the petition must be filed in the district court in the county where the parties reside.

(e) A district or county attorney may act under this section so long as the consumer protection division does not intend to act with respect to that matter.

(f) Notwithstanding any other law, in an action brought by a district or county attorney under this section, all settlements or penalties collected by the district or county attorney shall be divided between the state and the county in which the attorney brought suit, with:

(1) 50 percent of the amount collected paid to the comptroller for deposit to the credit of

the basic civil legal services account established by Section 51.943, Government Code; and

(2) 50 percent of the amount collected paid to the county.

SECTION 1. Subchapter E, Chapter 17, Business & Commerce Code, is amended by adding Section 17.463 to read as follows:

Sec. 17.463. PRODUCTION, SALE, DISTRIBUTION, OR PROMOTION OF CERTAIN SYNTHETIC SUBSTANCES.

(a) This section applies only to an act described by Section 17.46(b)(30).

(b) Subject to Subsection (e) and except as otherwise provided by this section, an act to which this section applies is subject to action by a district or county attorney under Sections 17.47, 17.58, 17.60, and 17.61 to the same extent as the act is subject to action by the consumer protection division under those sections.

(c) If a district or county attorney, under the authority of this section, accepts assurance of voluntary compliance under Section 17.58, the district or county attorney must file the assurance of voluntary compliance in the district court in the county in which the alleged violator resides or does business.

(d) If a district or county attorney, under the authority of this section, executes and serves a civil investigative demand and files a petition described by Section 17.61(g), the petition must be filed in the district court in the county where the parties reside.

(e) A district or county attorney may act under this section so long as the consumer protection division does not intend to act with respect to that matter.

(f) Notwithstanding any other law, in an action brought by a district or county attorney under this section, all settlements or penalties collected by the district or county attorney shall be divided between the state and the county in which the attorney brought suit, with:

(1) 50 percent of the amount collected paid to the state for deposit in the general revenue fund; and

(2) 50 percent of the amount collected paid to the county.

SECTION 2. Subchapter E, Chapter 17, Business & Commerce Code, is amended by adding Section 17.463 to read as follows:

Sec. 17.463. PRODUCTION, SALE, DISTRIBUTION, OR PROMOTION OF CERTAIN SYNTHETIC SUBSTANCES.

(a) This section applies only to an act described by Section 17.46(b)(30).

(b) Subject to Subsection (e) and except as otherwise provided by this section, an act to which this section applies is subject to action by a district or county attorney under Sections 17.47, 17.58, 17.60, and 17.61 to the same extent as the act is subject to action by the consumer protection division under those sections.

(c) If a district or county attorney, under the authority of this section, accepts assurance of voluntary compliance under Section 17.58, the district or county attorney must file the assurance of voluntary compliance in the district court in the county in which the alleged violator resides or does business.

(d) If a district or county attorney, under the authority of this section, executes and serves a civil investigative demand and files a petition described by Section 17.61(g), the petition must be filed in the district court in the county where the parties reside.

(e) A district or county attorney may act under this section so long as the consumer protection division does not intend to act with respect to that matter.

(f) Notwithstanding any other law, in an action brought by a district or county attorney under this section, all settlements or penalties collected by the district or county attorney shall be divided between the state and the county in which the attorney brought suit, with:

(1) 50 percent of the amount collected paid to the comptroller for deposit to the credit of the basic civil legal services account established by Section 51.943, Government Code; and

(2) 50 percent of the amount collected paid to the county.

SECTION 2. This Act applies only to conduct that occurs on or after the effective date of this Act.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 3. Same as introduced version.

SECTION 4. (a) Section 1 of this Act takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Section 2 of this Act takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

SECTION 5. Same as introduced version.