

SUBJECT: Revising regulation of certain chemical precursors

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Capelo, Laubenberg, Truitt, Dawson, McReynolds, Naishtat,  
Taylor, Zedler

0 nays

1 absent — Coleman

WITNESSES: None

BACKGROUND: The 77th Legislature in 2001 enacted HB 3351 by Keffer, et al., amending the Controlled Substances Act (Health and Safety Code, ch. 481) to regulate the immediate precursors and certain other chemicals used in illicit manufacture of controlled substances.

Sec. 481.077(a) requires a person who sells, transfers, or furnishes a chemical precursor to make an accurate record of the transaction and to maintain it for up to two years after the date of purchase. This requirement does not apply to a nonnarcotic product that may be sold with a prescription or over the counter without a prescription under federal law. For purposes of this section, the director of the Department of Public Safety (DPS) may name an additional chemical substance as a precursor to protect the public health and welfare and may exempt a precursor from the section's requirements if the director determines that the chemical does not jeopardize public health and is not used in the illicit manufacture of controlled substances.

Sec. 481.078(a) requires a seller of a chemical precursor, subject to sec. 481.077(a), and certain recipients of chemical precursors to obtain a transfer permit from DPS. A person who sells or receives a chemical precursor without a permit or who fails to record a sale or transfer commits a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000), unless the person has been convicted previously of such an offense, in which case the new offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

Sec. 481.124 makes it an offense to possess or transport anhydrous ammonia, an immediate precursor, or a substance subject to sec. 481.077 with intent to manufacture a controlled substance illegally. The offense ranges from a Class A misdemeanor to a second-degree felony, depending on the controlled substance intended to be manufactured.

**DIGEST:**

HB 1629 would specify that Health and Safety Code, sec. 481.077 does not apply to sale or transfer of a nonnarcotic product that includes ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and is sold by prescription or over the counter in compliance with federal laws.

It would be an offense to possess or transport, with intent to manufacture a controlled substance, a chemical precursor or an additional chemical substance named by the DPS director. It would not be an offense to possess or transport a substance that the DPS director had removed from the list of chemical precursors.

The act would take effect on September 1, 2003.

**SUPPORTERS  
SAY:**

HB 1629 would clarify the law relating to chemical precursors. Current law does not specify which substances are exempt from the recordkeeping and permit requirements, and it is unclear as to whether retail stores need a permit to sell items on this list. The bill would make it clear that a pharmacy could sell Sudafed, which contains pseudoephedrine, to customers without a permit. However, under other portions of this statute, if a person were to buy large amounts of Sudafed, the seller would need to obtain a permit from DPS. A manufacturer, distributor, or producer of legal drugs who complied with federal law would not have to report such sales to DPS or apply for a permit.

HB 1629 would allow prosecutors to use the law in the way it was intended to be used. Because current law defines an offense if a person possesses or transports a chemical substance regulated under sec. 481.077, it is unclear whether it is a crime to possess ephedrine, one of the most common substances found in methamphetamine laboratories. Prosecutors need the clarification that this bill would provide.

The bill would clarify that it is not a crime to possess or transport a chemical precursor that the DPS director has removed from the list. DPS periodically

reviews the list and may add or subtract substances based on their level of abuse in society.

**OPPONENTS  
SAY:**

HB 1629 could increase paperwork for producers, manufacturers, and distributors of over-the-counter medications, who might have to fill out additional reports to comply with this bill. Also, ephedrine is a dangerous drug and should be taken off the market or at least regulated.