

SUBJECT: Updating controlled substances listed in Texas law

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Keel, Riddle, Ellis, Hodge, Talton
0 nays
4 absent — Denny, Dunnam, P. Moreno, Pena

WITNESSES: For — None
Against — None
On — Joel Budge, Department of Public Safety Crime Lab - Austin

BACKGROUND: The Code of Federal Regulations, Title 21, parts 1300-1399, regulate the manufacture, possession, and distribution of controlled substances. When the federal government adds new substances to its schedules, it contacts the Texas Department of Health (TDH) to provide an update. TDH then files a rule proposal within 30 days to add the substances to the schedules in the Texas Administrative Code. TDH gives formal notice to the Texas Department of Public Safety (DPS), the state’s drug enforcement agency, which then informs the Legislature of changes to the federal code.

DIGEST: CSHB 2192 would amend Health and Safety Code, ch. 481, known as the Texas Controlled Substances Act, to align it with recent changes to the Code of Federal Regulations.

The bill would amend current law by authorizing the director of DPS, rather than the commissioner of public health, to designate immediate precursor substances (i.e., principal compounds commonly used in the manufacture of controlled substances).

CSHB 2192 would add an opium derivative to Penalty Group 1, and would add two hallucinogens and a substance similar to amphetamine to Penalty Group 2.

The bill would amend Code of Criminal Procedure, art. 18.02, to specify that a search warrant may be issued to search for and seize a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of Texas law.

CSHB 2192 would specify that the reasonable time during which the DPS director may enter premises to make inspections would mean any time during normal business hours.

The bill would take effect on September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2192 is necessary to address inconsistencies between the Texas Controlled Substances Act and recently amended federal regulations. It would update the list of illegal controlled substances, adding four drugs that are similar in composition and effect to substances that already are proscribed under Texas law.

Also, it appropriately would transfer rule-making authority with regard to immediate precursors to the director of DPS from the commissioner of public health because the illegal manufacture of drugs is a law enforcement issue, as opposed to a health issue.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The bill as introduced differs from the committee substitute in that the original would have:

- eliminated requirements for law enforcement agencies to report monthly all arrests made for drug offenses to the director of DPS;
- increased the punishment from a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for a fraud offense involving a Schedule V controlled substance; and
- deleted language regarding the burden of proof for a controlled substance violation.

A similar bill, CSHB 2668 by Allen, also on today's General State Calendar, would establish a model of progressive sanctions for drug offenders convicted of state jail felony offenses involving possession of small amounts of certain controlled substances.