

- SUBJECT:** Criminalizing the conversion of controlled substances
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendments
- VOTE:** 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Riddle, Vaught
- 0 nays
- 2 absent — Christian, Vo
- SENATE VOTE:** On final passage, April 17 — 28-0
- WITNESSES:** For — (*Registered, but did not testify:* Marc Chavez, Lubbock County District Attorney’s Office; Teresa Clingman, Midland County District Attorney’s Office; Katrina Daniels, Bexar County District Attorney’s Office; Henry Garza; James Jones, Houston Police Department; Kevin Petroff, Harris County District Attorney’s Office)
- Against — (*Registered, but did not testify:* Matt Simpson, ACLU of Texas)
- On — (*Registered, but did not testify:* Jorge Aguilar, Johnny Hatcher, DPS)
- BACKGROUND:** Under Health and Safety Code, sec. 481.061, a person who is not registered with DPS to possess controlled substances may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state. Under sec. 481.062(a)(1)-(2), the following are not required to register: an agent or employee of a registered manufacturer, distributor, analyzer, or dispenser of the controlled substance acting in the usual course of business employment; or a common or contract carrier, a warehouse, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment.

DIGEST: SB 912 would amend Health and Safety Code, ch. 481, adding sec. 481.1285 to establish the offense of diversion of a controlled substance by registrants, dispensers, and certain other persons.

A person would commit an offense if the person knowingly converted to the person's own use or benefit a controlled substance to which the person had access by virtue of the person's profession or employment. The offense would be punishable as a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

A person also would commit an offense if the person knowingly diverted to the unlawful use or benefit of another person a controlled substance to which the person had access by virtue of the person's profession or employment. The offense would be punishable as third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The offense would apply only to a person who was registered and allowed to possess controlled substances, a dispenser, or a person who, pursuant to sec. 481.1285(a)(1)-(2), was not required to register.

If conduct that constituted the offense of diversion of a controlled substance by registrants, dispensers, and certain other persons also constituted an offense under any other law, the actor could be prosecuted under either law or both.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

SB 912 would help deter individuals who were allowed to possess controlled substances from diverting them to inappropriate uses. Law enforcement officials say that some of the most difficult populations to oversee with respect to controlled substances are those who are allowed to possess them. This is especially true of manufacturers, retailers, physicians, pharmacists, and those who warehouse and distribute controlled substances. Controlled substances are diverted by:

- illegal prescriptions, written by physicians or someone employed by the physician committing forgery by written document or calling in a prescription;
- actual theft of controlled substances by employees in a physicians office or pharmacy;
- theft at storage sites or while in transit by contract carriers; and

- theft from pharmacies or other sites where the thief was provided information by employees who may or may not have participated directly in the theft.

According to the fiscal note, SB 912 would not pose a significant cost to the state.

**OPPONENTS
SAY:**

Creating new crimes would not deter individuals from diverting controlled substances. SB 912 would further the “get tough” approach to eradicating the scourge of illegal drug use, but this does not work, as is evidenced by decades of increasingly harsh drug laws that have failed to stem the growth of the drug trade in the United States. A much better approach would be to dry up the market through education and addiction treatment.

Texas cannot afford to increase its already strong drug laws. While the bill is not expected to pose a significant fiscal impact on the state, the impact of all the newly created criminal offenses and enhancements to existing offenses would increase the cost of the Texas criminal justice system. The Legislature should create new offenses and enhancements only sparingly, if at all.