

## **BILL ANALYSIS**

Senate Research Center  
77R6613 DLF-D

S.B. 1080  
By: Moncrief  
Health & Human Services  
3/20/2001  
As Filed

### **DIGEST AND PURPOSE**

Currently, the Texas Department of Health has the responsibility to regulate the sale, reconditioning, and further distribution of distressed food, drugs medical devices and cosmetics. Frequently the department finds food and cosmetics that are not salvageable being offered for sale. The department also finds medical devices being offered for sale that have not been reconditioned or have not been reconditioned as necessary to meet the department's specifications. As proposed, S.B. 1080 amends Chapter 432, Health and Safety Code, to allow the Texas Department of Health to detain adulterated or misbranded salvaged food, drug, or cosmetic devices being held or offered for sale.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 431A, Health and Safety Code, by adding Section 431.008, as follows:

Sec. 431.008. **APPLICABILITY OF CHAPTER TO DISTRESSED OR RECONDITIONED MERCHANDISE AND CERTAIN LICENSED ENTITIES.** (a) Provides that this chapter applies to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432 or that has been subject to reconditioning in accordance with Chapter 432.

(b) Provides that except as provided by Subsection (c), this chapter applies to the conduct of a person licensed under Chapter 432.

(c) Provides that a person who holds a license under Chapter 432 and is engaging in conduct within the scope of that license is not required to hold a license as a wholesale drug distributor under Subchapter I, a food wholesaler under Subchapter J, or a device distributor under Subchapter L.

SECTION 2. Amends Chapter 431B, Health and Safety Code, by adding Section 431.023, as follows:

Sec. 431.023. **LIMITED EXEMPTION FOR DISTRESSED FOOD, DRUGS, DEVICES, OR COSMETICS.** Provides that in relation to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432, Sections 431.021(a), (c), and (d) do not prohibit certain actions.

SECTION 3. Amends Section 431.048, Health and Safety Code, by adding Subsection (e), to provide that the Commissioner of Health (commissioner) or an authorized agent may not detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a

person licensed under Chapter 432 and that is being held for the purpose of reconditioning in accordance with Chapter 432, unless the commissioner or an authorized agent finds or has probable cause to believe that the article cannot be adequately reconditioned in accordance with that chapter.

SECTION 4. Amends Section 431.059, Health and Safety Code, by adding Subsection (e), to provide that it is an affirmative defense to prosecution under Subsection (a) that the conduct charged is exempt, in accordance with Section 431.023, from the application of Section 431.021.

SECTION 5. Amends Section 431.2021, Health and Safety Code, by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Provides that a person who holds a license under Chapter 432 and who is engaging only in conduct within the scope of that license is not required to be licensed under this subchapter. Redesignates existing Subsection (b) as Subsection (c).

SECTION 6. Amends Section 431.2211, Health and Safety Code, as follows:

Sec. 431.2211. APPLICATION OF SUBCHAPTER. (a) Provides that a person is not required to hold a license under this subchapter if the person meets certain requirements.

(b) Provides that an exemption from the licensing requirements under this section does not exempt the person from the other provisions of this subchapter or the rules adopted by the board to administer and enforce those provisions.

SECTION 7. Amends Section 432.003(6), Health and Safety Code, to redefine “distressed merchandise.”

SECTION 8. Amends Chapter 432, Health and Safety Code, by adding Section 432.026, as follows:

Sec. 432.026. DETAINED OR EMBARGOED ARTICLE. Authorizes the Texas Department of Health (department) in accordance with Chapter 431C, to detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under this chapter and that is being held for the purpose of reconditioning in accordance with this chapter if the department makes the finding required by Section 431.048(e).

SECTION 9. Amends Section 483.041(c), Health and Safety Code, as follows:

(c) Provides that Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by certain persons or an agent or employee of the person: a documented midwife who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 203.353, Occupations Code, or a salvage broker or salvage operator licensed under Chapter 432. Deletes language regarding Article 4512i (Texas Midwifery Act).

SECTION 10. (a) Provides that the change in law made by this Act by the addition of Section 431.059(e), Health and Safety Code, applies only to the punishment for an offense committed on or after the effective date of this Act. Provides that for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) Makes application of this Act prospective.

SECTION 11. Effective date: upon passage or September 1, 2001.