

BILL ANALYSIS

Senate Research Center
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S.B. 753
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Criminal Justice
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DIGEST AND PURPOSE

Currently, the Texas Controlled Substance Act addresses substance abuse and sets forth criminal penalties for such abuse. Over the last few years, federal law has been amended to reclassify certain controlled substances and add new controlled substances to the federal penalty groups resulting in inconsistencies between Texas' current statutes and the recently amended federal law. As proposed, S.B. 753 revises and updates provisions of the Texas Controlled Substance Act relating to controlled substance penalty groups, the possession of controlled substances, prescriptions, and certain penalties, and makes other non-substantive and conforming changes.

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 Section 481.002, Health and Safety Code, by amending Subdivision (26) and adding Subdivisions (51) and (53), to redefine "marihuana" and define "chemical precursor" and "chemical laboratory apparatus."

SECTION 2. Amends Section 481.032(a), Health and Safety Code, to delete existing text referencing Schedule I-A.

SECTION 3. Amends Section 481.062(a), Health and Safety Code, to provide that certain specific persons are not required to register and are authorized to possess a controlled substance under this chapter, including an officer or employee of this state, another state, a political subdivision of this state or another state, or the United States who is lawfully engaged in the enforcement of a law relating to a controlled substance or drug or to a customs law and authorized to possess the controlled substance in the discharge of the person's official duties.

SECTION 4. Amends Section 481.063(h), Health and Safety Code, to provide that Chapter 2001 (Administrative Procedure), Government Code, does not apply to a denial of a registration under Subsection (e)(2)(A) or (b), (e)(3), (e)(4), or (e)(9). Deletes existing text pertaining to suspension or revocation.

SECTION 5. Amends Section 481.064(a), Health and Safety Code, to authorize the director of the Department of Public Safety (department) or an employee of the department designated by the director (director) to charge a nonrefundable fee, rather than an annual registration fee, of not more than \$25 before processing an application for annual registration.

SECTION 6. Amends Sections 481.066(g) and (i), Health and Safety Code, to provide that Chapter 2001(Administrative Procedure), Government Code, does not apply to a cancellation, suspension, probation, or revocation of a registration for a cause described by certain specific sections. Requires the notice to be sent by certified, rather than registered mail, return receipt requested, to the most

current address of the applicant or registrant contained in department files, rather than in the files of the department.

SECTION 7. Amends Section 481.067, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

Deletes existing text pertaining to retention of records and inventories. Requires a record required by this section to be made at the time of the transaction that is the basis of the record. Requires a record or inventory required by this section to be kept or maintained for at least two years after the date the record or inventory is made.

SECTION 8. Amends Section 481.068(b), Health and Safety Code, to make exceptions as provided by Sections 481.074 and 481.075, rather than Sections 481.074(b) and 481.075(d). Replaces the reference to the “Department of Public Safety” with the “department.”

SECTION 9. Amends Section 481.073(a), Health and Safety Code, to make conforming changes.

SECTION 10. Amends Sections 481.074(b), (c), and (f), Health and Safety Code, to delete existing text pertaining to the dispensing of a controlled substance. Requires the prescribing practitioner, not later than the seventh day after the date a prescribing practitioner authorizes, rather than not later than 72 hours after authorizing, an emergency oral or telephonically communicated prescription, to cause a written prescription, completed in the manner required by Section 481.075, to be delivered in person or mailed to the dispensing pharmacist at the pharmacy where the prescription was dispensed. Requires the dispensing pharmacy, on receipt of the prescription, to file the transcription of the telephonically communicated prescription and the pharmacy copy and to send information to the director as required by Section 481.075. Deletes existing text pertaining to information required by the director. Provides that a prescription that is partially filled and does not contain the notation “terminally ill” or “LTCF patient” is considered, rather than is required to be deemed, to have been filled in violation of this chapter, rather than Act. Requires the pharmacist, rather than provides that the pharmacist is, to determine, before any subsequent partial filling, that the additional partial filling is necessary. Provides that Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness are, rather than shall be, valid for a period not to exceed 60 days after, rather than 30 days from, the issue date unless sooner terminated by discontinuance of the medication.

SECTION 11. Amends Sections 481.075(e), (g), and (i), Health and Safety Code, to require each official prescription form used to prescribe a Schedule II controlled substance to contain certain specific information. Requires the prescribing practitioner, except for an oral prescription, rather than for oral prescriptions, prescribed under Section 481.074(b), to take certain enumerated actions.

SECTION 12. Amends Section 481.077, Health and Safety Code, as follows:

(a) Requires a person who sells, transfers, or otherwise furnishes a chemical precursor to another person, except as provided by Subsection (1), to make an accurate and legible record of the transaction and maintain the record for at least two years after the date for the transaction. Deletes existing text pertaining to certain precursor substances.

(b) Authorizes the director by rule to name an additional chemical substance as a chemical precursor for purposes of Subsection (a) if the director determines that public health and welfare are jeopardized by evidenced proliferation or use of the chemical substance in the illicit manufacture of a controlled substance or controlled substance analogue, or exempt a chemical precursor from the requirements of Subsection (a) if the director determines that the chemical precursor, rather than substance, does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue. Makes conforming and nonsubstantive changes.

(d) Requires a manufacturer, wholesaler, retailer, or other person, before selling, transferring, or otherwise furnishing to a person in this state a chemical precursor, rather than substance, subject to Subsection (a), to obtain certain specific information from certain recipients.

(e) - (l) Make conforming and nonsubstantive changes.

SECTION 13. Amends Sections 481.078(a) and (b), Health and Safety Code, to make conforming changes.

SECTION 14. Amends Section 481.080, Health and Safety Code, to delete the previously existing text of Subsection (a). Reletters Subsection (b) as Subsection (a) and redesignates the subsequent subsections. Makes conforming and nonsubstantive changes.

SECTION 15. Amends Section 481.081(a), Health and Safety Code, to make a conforming change.

SECTION 16. Amends Section 481.102, Health and Safety Code, to respecify the contents of Penalty Group 1.

SECTION 17. Amends Section 481.103(a), Health and Safety Code, to respecify the contents of Penalty Group 2.

SECTION 18. Amends Section 481.104(a), Health and Safety Code, to respecify the contents of Penalty Group 3. Makes a nonsubstantive change.

SECTION 19. Amends Section 481.105, Health and Safety Code, to to respecify the contents of Penalty Group 4.

SECTION 20. Amends Section 481.122, Health and Safety Code, as follows:

Sec. 481.122. New heading: **OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO CHILD.** (a) Provides that a person commits an offense if the person knowingly delivers a controlled substance listed in Penalty Group 1, 1-A, 2, or 3 or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a persons who meets certain specific criteria. Deletes existing text pertaining to exceptions provided by this chapter.

(b) Sets forth certain conditions that are an affirmative defense to prosecution under this section.

(d) Defines “child.”

(e) Authorizes the actor, if conduct that is an offense under this section is also an offense under another section of this chapter, to be prosecuted under either section or both.

SECTION 21. Amends Section 481.126(a), Health and Safety Code, to provide that a person commits an offense if the person takes certain specific actions, rather than knowingly or intentionally takes certain specific actions.

SECTION 22. Amends Section 481.128(a), Health and Safety Code, to delete existing text pertaining to prescription stickers. Provides that a registrant or dispenser commits an offense if the registrant or dispenser knowingly refuses or fails to return an official prescription form, rather than a prescription sticker, as required by Section 481.075(k).

SECTION 23. Amends Section 481.129(a), Health and Safety Code, to provide that a person

commits an offense if the person knowingly issues a prescription bearing a forged or fictitious signature, or possesses, obtains, or attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance by certain specific actions. Makes a conforming change.

SECTION 24. Amends Section 481.136(a), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 25. Amends Section 481.137(a), Health and Safety Code, to make conforming changes.

SECTION 26. Amends Section 481.138(a), Health and Safety Code, to make conforming changes.

SECTION 27. Amends Section 481.139(a), Health and Safety Code, to make conforming changes.

SECTION 28. Amends Section 481.151, Health and Safety Code, to delete the definition of “department” and to redefine “controlled substance property.”

SECTION 29. Reenacts and amends Section 481.160, Health and Safety Code, as amended by Chapters 14, 141, and 285, Acts of the 72nd Legislature, Regular Session, 1991, to authorize, if a controlled substance property or plant is forfeited under this code or under Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure, the law enforcement agency that seized the property or plant or to which the property or plant is forfeited to summarily destroy the property or plant without a court order before the disposition of a case arising out of the forfeiture if the agency ensures that certain conditions are met, including that photographs are taken that reasonably depict, rather than demonstrate, the total amount of the property or plant. Authorizes certain specific items, if those items create a health or environmental hazard, rather than hazards, or are not capable of being safely stored are forfeited, to be disposed of under Subsection (a) or to be seized and summarily forfeited and destroyed, rather than immediately destroyed, by a law enforcement agency without a court order before the disposition of a case arising out of the forfeiture if current environmental protection standards are followed. Deletes existing text pertaining to all controlled substance property. Makes conforming and nonsubstantive changes.

SECTION 30. Amends Section 552.118, Government Code, to provide that information is excepted from the requirements of Section 552.021 if it is certain information, including other information collected under Section 481.075 of that code.

SECTION 31. Repealer: Section 481.132 (Multiple Prosecutions), Health and Safety Code.

SECTION 32. (a) Effective date: September 1, 2001.

(b) Makes application of the changes in law made by this Act to Sections 481.063 and 481.066, Health and Safety Code, prospective.

(c) Makes application of the changes in law made by this Act to Section 481.064, Health and Safety Code, prospective.

(d) Makes application of the changes in law made by this Act to Sections 481.122, 481.126, 481.128, 481.129, and 481.139, Health and Safety Code, prospective.

(e) Makes application of the repeal of Section 481.132, Health and Safety Code, by this Act, prospective.

(f) Sets forth provisions for the prospective application of Subsections (d) and (e) of this section.