

## **BILL ANALYSIS**

Senate Research Center

H.B. 2192  
By: Keel (Van de Putte)  
Administration  
5/20/2003  
Committee Report (Amended)

### **DIGEST AND PURPOSE**

Over the last few years, federal law has been amended to add new controlled substances to the federal penalty groups, resulting in inconsistencies between Texas' current statutes and recently amended federal law. H.B. 2192 revises and updates provisions of the Texas Controlled Substances Act relating to controlled substance penalty groups.

### **RULEMAKING AUTHORITY**

Rulemaking authority is transferred from the commissioner of public health to the director of the Department of Public Safety in SECTION 1 (Section 481.002(22), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 481.002(22), Health and Safety Code, to redefine "immediate precursor."

SECTION 2. Amends Section 481.034(d), Health and Safety Code, to require the commissioner of public health (commissioner), in making a determination regarding a substance, to consider certain factors, including whether the substance is a controlled substance analogue, chemical precursor, or an immediate precursor of a substance controlled under this chapter.

SECTION 3. Amends Section 481.077, Health and Safety Code, by adding Subsection (b-1), to provide that a substance that is a precursor of the chemical precursor or the immediate precursor is not subject to control solely because it is a precursor of the chemical precursor or the immediate precursor, if the director of the Texas Department of Public Safety (director) names a chemical substance as a chemical precursor for purposes of Subsection (a) or designates a substance as an immediate precursor.

SECTION 4. Amends Section 481.102, Health and Safety Code, to include Dihydroetorphine in the list of controlled substances in Penalty Group 1. Makes nonsubstantive changes.

SECTION 5. Amends Section 481.103(a), Health and Safety Code, to include 2, 5-dimethoxy-4-(n)-propylthiophenethylamine (trade or other name: 2C-T-7); N-benzylpiperazine (some trade or other names: BZP; 1-benzylpiperazine); and 1-(3-trifluoromethylphenyl) piperazine (trade or other name: TFMPP) in the list of controlled substances in Penalty Group 2. Deletes Ketamine from the list of Penalty Group 2 substances. Makes conforming changes.

SECTION 6. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.106, as follows:

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE. Provides that for the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, and 2 include a controlled substance analogue that has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group; or is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

SECTION 7. Amends Section 481.123, Health and Safety Code, as follows:

Sec. 481.123. New heading: DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING CONTROLLED SUBSTANCE ANALOGUE. (a) Provides that it is an affirmative defense to the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance analogue that the analogue was not in any part intended for human consumption; was a substance for which there is an approved new drug application under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355); or was a substance for which an exemption for investigational use has been granted under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the actor's conduct with respect to the substance is in accord with the exemption.

(b) Redesignates Subsection (h) as Subsection (b).

Deletes Subsections (c)-(f) and (i)-(l).

SECTION 8. Amends Sections 481.181(a) and (b), Health and Safety Code, as follows:

(a) Defines “reasonable time.” Requires the director to state the purpose of the entry; display to the owner, operator, or agent in charge of the premises appropriate credentials; and deliver a written notice of inspection authority.

(b) Authorizes the director to take certain actions.

SECTION 9. Amends Section 481.182, Health and Safety Code, as follows:

Sec. 481.182. New heading: EVIDENTIARY RULES RELATING TO OFFER OF DELIVERY. Provides that for the purpose of establishing a delivery under this chapter, proof of an offer to sell must be corroborated by a person other than the person to whom the offer is made, or by evidence other than a statement of the person to whom the offer is made. Deletes text referencing search warrants.

SECTION 10. Amends Section 481.183, Health and Safety Code, as follows:

Sec. 481.183. New heading: EVIDENTIARY RULES RELATING TO DRUG PARAPHERNALIA. (a) Deletes text requiring corroborated evidence in regard to the delivery of controlled substances. Redesignates existing Subsection (b) as (a).

(b) Redesignates Subsection (c) as (b).

SECTION 11. Amends Section 481.184(c), Health and Safety Code, to stipulate that this chapter does not impose a liability on an authorized state, county or municipal officer engaged in the lawful performance of official, rather than the officer's, duties.

SECTION 12. Amends Section 481.186(b), Health and Safety Code, to authorize the director to rely on certain information received from the Federal Drug Enforcement Administration or, rather than and, a state agency. Makes a nonsubstantive change.

SECTION 13. Amends Article 18.02, Code of Criminal Procedure, to authorize a search warrant to be issued to search for and seize certain drug-related items.

SECTION 14. Repealer: Article 481.034(f), Health and Safety Code (regarding establishment and modification of schedules by the commissioner).

SECTION 15. Effective date: September 1, 2003.  
Makes application of this Act prospective.

## **LIST OF AMENDMENTS**

Committee Amendment No. 1:

Amend H.B. 2192 by adding the following new Section 15 and renumber all subsequent sections accordingly:

SECTION 15. Section 431.112. Repeal subsections (j) and (k) as added by the enrolled version of S.B. 1400, passed during the regular session of the 78th Texas Legislature.