

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 164
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The manufacture, delivery, and consumption of methamphetamines is a growing epidemic in Texas. In 2000, the Texas Commission on Alcohol and Drug Abuse (TCADA) reported that 1,821 people were admitted into Texas treatment centers for methamphetamine abuse; in 2004, that number rose to 11,238, illustrating the dramatic trend of rising use.

The monetary and human costs of methamphetamine use are high. The manufacture of methamphetamine exposes those around it, including children, to toxic chemicals, as well as a significant danger of fire or explosion. Those who use methamphetamines tax our state's public health and welfare resources. The cleanup of seized methamphetamine labs and training for narcotics officers cost the state additional funds. Additionally, peace officers often sustain serious and life threatening injuries from encountering methamphetamine labs.

C.S.H.B. 164 addresses these issues by authorizing certain state officers to take possession of a child that has been permitted to remain on premises used for the manufacture of methamphetamine, regulating over-the-counter sales of pseudoephedrine, and placing new requirements and responsibilities on non-prescription drug wholesalers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the director of the Department of Public Safety in SECTION 10 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 99.003, Civil Practice and Remedies Code, to increase damages owed by a person who manufactures methamphetamine and exposes the drug or its by-products to an individual to \$20,000, rather than \$10,000.

SECTION 1.04. Amends Section 262.104, Family Code, as follows:

Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER. (a) Creates this subsection from existing text. Makes a conforming change.

(b) Authorizes an authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer to take possession of a child under Subsection (a) on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.

SECTION 3. Amends Subchapter C, Chapter 481, Health and Safety Code, by adding Section 481.0721, as follows:

Sec. 481.0721. OVER-THE-COUNTER SALES OF EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. (a) Defines "ephedrine," "pseudoephedrine," and "norpseudoephedrine."

(b) Authorizes a business establishment to engage in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine only if the establishment meets certain requirements.

(c) Requires a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as the only active ingredient to maintain those products behind the pharmacy counter.

(d) Requires a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine combined with at least one other active ingredient to maintain those products according to certain standards.

(e) Requires a business establishment, before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, to take certain precautions.

(f) Requires the business establishment to maintain each record made under Subsection (e)(2) for at least two years after the date the record is made and to make each record available on request by the department or the Texas State Board of Pharmacy.

SECTION 4. Amends Section 481.077(1), Health and Safety Code, to provide that this section does not apply to the sale or transfer of any compound, mixture, or preparation containing certain substances, including norpseudoephedrine that is in liquid, liquid capsule, or gel capsule form. Deletes existing text relating to phenylpropanolamine and substances sold with a prescription or over the counter.

SECTION 5. Amends Subchapter C, Chapter 481, Health and Safety Code, by adding Section 481.0771, as follows:

Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE. (a) Requires a wholesaler who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer to, before delivering the product, obtain from the retailer the retailer's address, area code, and telephone number and make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) Requires the wholesaler to make all records available to the director in accordance with department rule, including certain information.

(c) Requires a wholesaler to submit to the director a report of the order in accordance with department rule, not later than five business days after receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, that requests delivery of a suspicious quantity of the product as determined by department rule.

(d) Authorizes a wholesaler who, with reckless disregard for the duty to report, fails to report as required by Subsection (c) to be subject to disciplinary action in accordance with department rule.

SECTION 6. Amends Section 481.124(b), Health and Safety Code, to include glassware, a plastic or metal container, tubing, a hose, or another item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine amongst the items that, if an actor possess or transports, for purposes of this section, an intent to unlawfully manufacture the controlled substance of methamphetamine is presumed.

SECTION 7. Amends Subchapter D, chapter 481, Health and Safety Code, by adding Section 481.1245, as follows:

Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) Sets forth actions which constitute an offense.

(b) Provides that an offense under this section is a felony of the third degree.

SECTION 8. Amends Section 22.041, Penal Code, by adding Subsection (c-1), to provide that, for purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person manufactured the controlled substance methamphetamine in the presence of the child.

SECTION 9. Repealer: Chapter 504 (Anhydrous Ammonia), Health and Safety Code.

SECTION 10. (a) Makes application of Section 99.003, Civil Practice and Remedies Code, as amended by this Act, prospective.

(b) Makes application of the changes in law made by this Act in amending Section 481.124(b), Health and Safety Code, in adding Section 481.1245, Health and Safety Code, and Section 22.041(c-1), Penal Code, and in repealing Chapter 504, Health and Safety Code, prospective to September 1, 2005. Provides that, for purposes of this section, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.

(c) Requires the director of the Department of Public Safety of the State of Texas to adopt any rules necessary to administer and enforce Section 481.0771, Health and Safety Code, as added by this Act, not later than September 1, 2005.

SECTION 11. Effective date: August 1, 2005, or September 1, 2005.