

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 1212  
By: Price et al. (Schwertner)  
Health & Human Services  
5/15/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In recent years, there has been a significant increase in the production, evolution, and sale of synthetic drugs. Informed observers explain that the term "synthetic drugs" is used to describe a wide range of ever-changing man-made chemical products created specifically to mimic the effects of illicit drugs. Recent reports show that the products are often marketed as harmless fragrances and legally sold in convenience stores and online under the guise of incense or potpourri but that the drugs can be as dangerous as many illicit drugs with the same potential to cause adverse life-altering or lethal consequences. Additional concern surrounds the fact that these drugs are generally not detectable on drug tests.

Several states have taken steps to ban the substances but have had little success with those bans because the manufacturers change the compounds constantly. Since these drugs evolve so rapidly, there is a need for Texas to have the ability to designate and regulate abusable synthetic substances in a timely manner. C.S.H.B 1212 seeks to provide this authority.

The committee substitute changes the way in which the commissioner of the Department of State Health Services can emergency schedule a substance.

C.S.H.B. 1212 amends current law relating to the prosecution and punishment of certain offenses under the Texas Controlled Substances Act and the regulation and scheduling of certain substances and creates criminal offenses.

### **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 431, Health and Safety Code, by adding Subchapter G-1, as follows:

#### **SUBCHAPTER G-1. ABUSABLE SYNTHETIC SUBSTANCES**

Sec. 431.171. DESIGNATION OF CONSUMER COMMODITY AS ABUSABLE SYNTHETIC SUBSTANCE. (a) Authorizes the commissioner of health (commissioner) to designate a consumer commodity as an abusable synthetic substance if the commissioner determines that the consumer commodity is likely an abusable synthetic substance and the importation, manufacture, distribution, or retail sale of the commodity poses a threat to public health.

(b) Authorizes the commissioner, in determining whether a consumer commodity is an abusable synthetic substance, to consider:

(1) whether the commodity is sold at a price higher than similar commodities are ordinarily sold;

- (2) any evidence of clandestine importation, manufacture, distribution, or diversion from legitimate channels;
- (3) any evidence suggesting the product is intended for human consumption, regardless of any consumption prohibitions or warnings on the packaging of the commodity; or
- (4) whether any of the following factors suggest the commodity is an abusable synthetic substance intended for illicit drug use:
  - (A) the appearance of the packaging of the commodity;
  - (B) oral or written statements or representations of a person who sells, manufactures, distributes, or imports the commodity;
  - (C) the methods by which the commodity is distributed; and
  - (D) the manner in which the commodity is sold to the public.

Sec. 431.172. **APPLICABILITY OF CHAPTER TO ABUSABLE SYNTHETIC SUBSTANCE.** Provides that a commodity classified as an abusable synthetic substance by the commissioner under Section 431.171 is subject to the provisions of this chapter that apply to food and cosmetics, including provisions relating to adulteration, packaging, misbranding, and inspection, and all enforcement actions under Subchapter C (Enforcement).

SECTION 2. Amends Sections 481.002(5) and (6), Health and Safety Code, to redefine “controlled substance” and “controlled substance analogue.”

SECTION 3. Amends Section 481.036(c), Health and Safety Code, as follows:

(c) Authorizes the commissioner of public health (commissioner) to determine that an imminent hazard to the public safety exists if the commissioner makes findings with respect to each of the factors listed in Sections 481.034(d)(4) (requiring the commissioner, in making a determination regarding a substance, to consider the history and current pattern of its abuse), (5) (requiring the commissioner, in making a determination regarding a substance, to consider the scope, duration, and significance of its abuse), and (6) (requiring the commissioner, in making a determination regarding a substance, to consider the risk to the public health) that indicate that the substance poses a danger to health and safety if not immediately controlled. Makes no further change.

SECTION 4. Amends Section 481.106, Health and Safety Code, as follows:

Sec. 481.106. **CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE.** Adds a reference to Penalty Group 2-A and makes no further change.

SECTION 5. Amends Section 481.123(a), Health and Safety Code, as follows:

(a) Deletes existing text providing 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. Makes nonsubstantive changes.

SECTION 6. Amends Subtitle C, Title 6, Health and Safety Code, by adding Chapter 488, as follows:

#### CHAPTER 488. HAZARDOUS CONTROLLED SUBSTANCE EMERGENCY SCHEDULING

Sec. 488.001. **DEFINITIONS.** Defines “commissioner” and “controlled substance.”

Sec. 488.002. DESIGNATION OF HAZARDOUS CONTROLLED SUBSTANCE; CRITERIA. Authorizes the commissioner, when the commissioner of public health (commissioner) under Section 481.032 (Schedules) modifies Schedule I to add a controlled substance, to, at that time designate the substance as a hazardous controlled substance if the commissioner:

- (1) finds that the substance is chemically similar in structure or effect to a controlled substance listed in a penalty group under Subchapter D (Offenses and Penalties), Chapter 481 (Texas Controlled Substances Act), or poses an imminent danger to life or health; and
- (2) receives approval for the hazardous controlled substance designation from the governor, lieutenant governor, and attorney general.

Sec. 488.003. EMERGENCY SCHEDULING. (a) Requires the commissioner to publish a list of the controlled substances that are designated as hazardous controlled substances by filing a certified copy of the list with the secretary of state for publication in the Texas Register at the time the commissioner files a copy of the schedules under Section 481.036 (Publication of Schedules).

- (b) Provides that the designation of a substance as a hazardous controlled substance takes effect on the date the modification that added the substance to Schedule I takes effect according to Section 481.036(c).

Sec. 488.004. OFFENSE: MANUFACTURE OR DELIVERY OF HAZARDOUS CONTROLLED SUBSTANCE. (a) Provides that a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance designated as a hazardous controlled substance under this chapter.

- (b) Provides that an offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 grams.
- (c) Provides that an offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.
- (d) Provides that an offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.
- (e) Provides that an offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Sec. 488.005. OFFENSE: POSSESSION OF HAZARDOUS CONTROLLED SUBSTANCE. (a) Provides that a person commits an offense if the person knowingly possesses a controlled substance designated as a hazardous controlled substance under this chapter.

- (b) Provides that an offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.
- (c) Provides that an offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) Provides that an offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) Provides that an offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Sec. 488.006. EFFECT ON OTHER PROVISIONS OF SUBTITLE. Provides that, if conduct that is an offense under this chapter is also an offense under another provision of this subtitle, the actor may be prosecuted under either this chapter or the other provision or both.

Sec. 488.007. APPLICABILITY. Provides that this chapter does not apply to a controlled substance that is listed in a penalty group under Subchapter D, Chapter 481.

Sec. 488.008. EXPIRATION. Provides that the designation of a controlled substance as a hazardous controlled substance expires on September 1 of each odd-numbered year for any designation in effect before January 1 of that year.

SECTION 7. Makes application of this Act prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8. Effective date: September 1, 2015.