

## **BILL ANALYSIS**

C.S.H.B. 2192  
By: Keel  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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 add new controlled substances to the federal penalty groups resulting in inconsistencies between Texas' current statutes and the recently amended federal law. C.S.H.B. 2192 revises and updates provisions of the Texas Controlled Substance Act relating to controlled substance penalty groups, controlled substance analogues, other punishments, and rulemaking power concerning immediate precursors, and makes other nonsubstantive and conforming changes.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, department, or agency, although it does transfer existing rulemaking authority for designating an immediate precursor from the commissioner of public health to the director of the Department of Public Safety.

### **ANALYSIS**

SECTION 1. Amends Section 481.002(22), Health and Safety Code, to indicate the transfer of rulemaking authority for designating an immediate precursor from the commissioner of public health to the director of the Department of Public Safety (director).

SECTION 2. Amends Section 481.034(d), Health and Safety Code, to clarify the grounds to be considered by the commissioner of public health when deciding whether or how to schedule a controlled substance.

SECTION 3. Amends Section 481.077, Health and Safety Code, by adding Subsection (b-1) to provide that, if the director names a new substance to be an immediate precursor or chemical precursor to a pre-existing controlled substance, this by itself does not also automatically control a mere precursor to the new substance.

SECTION 4. Amends Section 481.102, Health and Safety Code, to respecify the contents of Penalty Group 1, adding a new federally scheduled substance, dihydroetorphine, and making conforming amendments.

SECTION 5. Amends Section 481.103(a), Health and Safety Code, to respecify the contents of Penalty Group 2, adding new federally scheduled substances (2C-T-7, BZP, and TFMPP) and making conforming amendments, including deletion of ketamine, which was added to Penalty Group 1 by another Act of the 77th Legislature.

SECTION 6. Amends Subchapter D, Chapter 481, Health and Safety Code, to add Section 481.106, which clarifies that a prosecution for a manufacture, delivery, or possession offense involving Penalty Group 1, 1-A, or 2 also includes their respective analogues.

SECTION 7. Amends Section 481.123, Health and Safety Code, to clarify certain defensive issues and make conforming amendments for prosecutions involving controlled substance analogues.

SECTION 8. Amends Section 481.181(a) and (b), Health and Safety Code, to clarify that the ‘reasonable time’ permitted for an inspection of controlled substance premises is normal business hours or when a regulated activity is occurring on the controlled premises and to make conforming changes.

SECTION 9. Amends Sections 481.182, Health and Safety Code, to delete the surplus search warrant authorization and make conforming amendments.

SECTION 10. Amends Sections 481.183, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 11. Amends Section 481.184, Health and Safety Code, to make nonsubstantive changes.

SECTION 12. Amends Section 481.186(b), Health and Safety Code, to make a conforming and nonsubstantive change.

SECTION 13. Amends Article 18.02, Code of Criminal Procedure, to make a conforming change to the grounds for issuance of a drug search warrant.

SECTION 14. Repealer: Section 481.034(f), Health and Safety Code, to conform to the changes made in SECTIONS 1 through 3 of H.B. 2192.

SECTION 15. (a) Effective date: September 1, 2003.

(b) Makes prospective the application of the changes in criminal law made by H.B. 2192.

**EFFECTIVE DATE**

September 1, 2003.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute differs from the original by restoring language to existing law which required each law enforcement agency to report monthly all arrests made for drug offenses to the director of the Department of Public Safety. In addition, the substitute restores language to existing law relating to the burden of proof for a controlled substance violation. Furthermore, the substitute removes language proposed in the original which increased the punishment one level from a Class A misdemeanor to a state jail felony for a fraud offense involving a Schedule V controlled substance (such as codeine syrup). The substitute makes conforming and nonsubstantive changes.