AN ACT

relating to the regulation of controlled substances under the Texas Controlled Substances Act and to the prosecution of certain offenses under that Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 431.002(8), Health and Safety Code, is amended to read as follows:

(8) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), or The [~~Section 8,~~] Virus-Serum-Toxin Act (21 U.S.C. 151 et seq. [~~158~~]);

(C) a drug subject to the provisions of Section

431.113(c)(1) [~~or 431.112(k),~~] or Section 503(b)(1) [~~or 506~~] of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

SECTION 2. Section 431.112, Health and Safety Code, is amended to read as follows:

Sec. 431.112. MISBRANDED DRUG OR DEVICE. A drug or device shall be deemed to be misbranded:

(a)(1) if its labeling is false or misleading in any particular; or

(2) if its labeling or packaging fails to conform with the requirements of Section 431.181.

(b) if in a package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the secretary under the federal Act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such

conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) [~~if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be designated as habit forming, by regulations issued by the secretary under Section 502(d) of the federal Act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement, "Warning: May be habit forming",~~

[~~(e)~~] (1) if it is a drug, unless:

(A) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in Subdivision (3)) of the drug, if any; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine,

hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph shall apply only to prescription drugs; and

(B) for any prescription drug the established name of the drug or ingredient, as the case may be, on the label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of Paragraph (A)(ii) or this paragraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(2) if it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name (as defined in Subdivision (4)) prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device, except that to the extent compliance with this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(3) as used in Subdivision (1), the term "established name," with respect to a drug or ingredient thereof, means:

(A) the applicable official name designated

pursuant to Section 508 of the federal Act; or

(B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then the common or usual name, if any, of such drug or of such ingredient; provided further, that where Paragraph (B) applies to an article recognized in the United States Pharmacopoeia National Formulary, the official title used in the United States Pharmacopoeia National Formulary shall apply;

(4) as used in Subdivision (2), the term "established name" with respect to a device means:

(A) the applicable official name of the device designated pursuant to Section 508 of the federal Act;

(B) if there is no such name and such device is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then any common or usual name of such device;

(e) [~~(f)~~] unless its labeling bears:

(1) adequate directions for use; and

(2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in such manner and form, as are necessary for the protection of users unless the drug or device has been exempted from those requirements by the

regulations adopted by the secretary;

(f) [~~(g)~~] if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein unless the method of packing has been modified with the consent of the secretary. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling. If there is an inconsistency between the requirements of this subsection and those of Subsection (d) [~~(e)~~] as to the name by which the drug or its ingredients shall be designated, the requirements of Subsection (d) [~~(e)~~] prevail;

(g) [~~(h)~~] if it has been found by the secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health;

(h) [~~(i)~~] if:

(1) it is a drug and its container is so made, formed, or filled as to be misleading; or

(2) it is an imitation of another drug; or

(3) it is offered for sale under the name of another drug;

(i) [~~(j)~~] if it is dangerous to health when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

[~~(k) if it is, or purports to be, or is represented as a drug~~

~~composed wholly or partly of insulin, unless:~~

[~~(1) it is from a batch with respect to which a certificate or release has been issued pursuant to Section 506 of the federal Act; and~~

[~~(2) such certificate or release is in effect with respect to such drug;~~

[~~(1) if it is, or purports to be, or is represented as a drug (except a drug for use in animals other than man) composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless:~~

[~~(1) it is from a batch with respect to which a certificate or release has been issued pursuant to Section 507 of the federal Act; and~~

[~~(2) the certificate or release is in effect with respect to the drug; provided, that this subdivision shall not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(c) or (d) of the federal Act;~~]

(j) [~~(m)~~] if it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, as may be contained in rules issued under Section 431.161(b);

(k) [~~(n)~~] in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the

manufacturer, packer, or distributor with respect to that drug a true statement of:

(1) the established name as defined in Subsection (d) [~~(e)~~], printed prominently and in type at least half as large as that used for any trade or brand name;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Subsection (d) [~~(e)~~]; and

(3) other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations issued under Section 701(e) of the federal Act;

(l) [~~(o)~~] if it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not registered under Section 510 of the federal Act, if it was not included in a list required by Section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or Section 510(k) of the federal Act, or if it does not bear symbols from the uniform system for identification of devices prescribed under Section 510(e) of the federal Act as required by regulation;

(m) [~~(p)~~] if it is a drug and its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the federal [~~Federal~~] Poison Prevention Packaging Act of 1970 (15 [~~21~~] U.S.C. 1472 or 1473);

(n) [~~(q)~~] if a trademark, trade name, or other identifying mark, imprint or device of another, or any likeness of the foregoing has been placed thereon or on its container with intent to defraud;

(o) [~~(r)~~] in the case of any restricted device distributed or offered for sale in this state, if:

(1) its advertising is false or misleading in any particular; or

(2) it is sold, distributed, or used in violation of regulations prescribed under Section 520(e) of the federal Act;

(p) [~~(s)~~] in the case of any restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to that device:

(1) a true statement of the device's established name as defined in Section 502(e) of the federal Act, printed prominently and in type at least half as large as that used for any trade or brand name thereof; and

(2) a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications and in the case of specific devices made subject to regulations issued under the federal Act, a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations under the federal Act;

(q) [~~(t)~~] if it is a device subject to a performance standard established under Section 514 of the federal Act, unless it bears such labeling as may be prescribed in such performance standard; or

(r) [~~(u)~~] if it is a device and there was a failure or

refusal:

(1) to comply with any requirement prescribed under Section 518 of the federal Act respecting the device; or

(2) to furnish material required by or under Section 519 of the federal Act respecting the device.

SECTION 3. Section 431.113(c)(2), Health and Safety Code, is amended to read as follows:

(2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of Section 431.112, except Sections 431.112(a)(1), (h)(2), and (h)(3), [~~(i)(2), (i)(3), (k), and (l),~~] and the packaging requirements of Sections 431.112(f), (g), and (m) [~~431.112(g), (h), and (p)~~], if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drugs dispensed in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of Subdivision (1).

SECTION 4. Section 481.002(22), Health and Safety Code, is amended to read as follows:

(22) "Immediate precursor" means a substance the director [~~commissioner~~] finds to be and by rule designates as being:

(A) a principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

(B) a substance that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(C) a substance the control of which is necessary to prevent, curtail, or limit the manufacture of a controlled substance.

SECTION 5. Section 481.034(d), Health and Safety Code, is amended to read as follows:

(d) In making a determination regarding a substance, the commissioner shall consider:

(1) the actual or relative potential for its abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of its abuse;

(5) the scope, duration, and significance of its abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychological or physiological dependence liability; and

(8) whether the substance is a controlled substance analogue, chemical precursor, or an immediate precursor of a substance [~~already~~] controlled under this chapter.

SECTION 6. Section 481.077, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) If the director names a chemical substance as a chemical precursor for purposes of Subsection (a) or designates a substance as an immediate precursor, 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.

SECTION 7. Section 481.102, Health and Safety Code, is amended to read as follows:

Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;

Allylprodine;

Alphacetylmethadol;

Benzethidine;

Betaprodine;

Clonitazene;

Diampromide;

Diethylthiambutene;

Difenoxin not listed in Penalty Group 3 or 4;

Dimenoxadol;

Dimethylthiambutene;

Dioxaphetyl butyrate;

Dipipanone;

Ethylmethylthiambutene;

Etonitazene;

Etoxeridine;

Furethidine;

Hydroxypethidine;

Ketobemidone;

Levophenacylmorphan;

Meprodine;

Methadol;

Moramide;

Morpheridine;

Noracymethadol;

Norlevorphanol;

Normethadone;

Norpipanone;

Phenadoxone;

Phenampromide;

Phenomorphan;

Phenoperidine;

Piritramide;

Proheptazine;

Properidine;

Propiram;

Sufentanil;

Tilidine; and

Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;

Acetyldihydrocodeine;

Benzylmorphine;

Codeine methylbromide;

Codeine-N-Oxide;

Cyprenorphine;

Desomorphine;

Dihydromorphine;

Drotebanol;

Etorphine, except hydrochloride salt;

Heroin;

Hydromorphinol;

Methyldesorphine;

Methyldihydromorphine;

Monoacetylmorphine;

Morphine methylbromide;

Morphine methylsulfonate;

Morphine-N-Oxide;

Myrophine;

Nicocodeine;

Nicomorphine;

Normorphine;

Pholcodine; and

Thebacon;

(3) the following substances, however produced, except those narcotic drugs listed in another group:

(A) Opium and opiate not listed in Penalty Group 3 or 4, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine derived butorphanol, nalmefene and its salts, naloxone and its salts, and naltrexone and its salts, but including:

Codeine not listed in Penalty Group 3 or 4;

Dihydroetorphine;

Ethylmorphine not listed in Penalty Group 3 or 4;

Granulated opium;

Hydrocodone not listed in Penalty Group 3;

Hydromorphone;

Metopon;

Morphine not listed in Penalty Group 3;

Opium extracts;

Opium fluid extracts;

Oxycodone;

Oxymorphone;

Powdered opium;

Raw opium;

Thebaine; and

Tincture of opium;

(B) a salt, compound, isomer, derivative, or

preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves;

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(E) concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy;

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl] -N-phenylpropanamide);

Alphaprodine;

Anileridine;

Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl] -N-phenylpropanamide);

Beta-hydroxy-3-methylfentanyl;

Bezitramide;

Carfentanil;

Dihydrocodeine not listed in Penalty Group 3 or 4;

Diphenoxylate not listed in Penalty Group 3 or 4;

Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;

Isomethadone;

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N- phenylpropanamide);

3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N- phenylpropanamide);

Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane- carboxylic acid;

Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4- piperidinylpropanamide);

PEPAP

(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

Pethidine (Meperidine);

Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4 carboxylate;

Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan;

Racemorphan;

Remifentanil; and

Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide);

(5) Flunitrazepam ([~~some~~] trade or other name [~~names~~]: Rohypnol);

(6) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine;

(8) Phencyclidine, including its salts; [~~and~~]

(9) Gamma hydroxybutyric acid (some trade or other names: gamma hydroxybutyrate, GHB), including its salts; and [~~.~~]

(10) Ketamine.

SECTION 8. Section 481.103(a), Health and Safety Code, is amended to read as follows:

(a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

alpha-ethyltryptamine;

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo- 2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

4-bromo-2, 5-dimethoxyphenethylamine;

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5- indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy- alpha-methylphenethylamine; 2, 5-DMA);

2, 5-dimethoxy-4-ethylamphetamine ([~~some~~] trade or other name [~~names~~]: DOET);

2, 5-dimethoxy-4-(n)-propylthiophenethylamine (trade or other name: 2C-T-7);

Dimethyltryptamine ([~~some~~] trade or [~~and~~] other name [~~names~~]: DMT);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug

Administration approved drug product (some trade or other names for Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6, 9-trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)- tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1- phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

[~~Ketamine;~~]

Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha- methylphenethylamine; paramethoxyamphetamine; PMA);

1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4- methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");

3,4-methylenedioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

Nabilone (Another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6- dimethyl-9H-dibenzo[b,d] pyran-9-one;

N-benzylpiperazine (some trade or other names: BZP; 1-benzylpiperazine);

N-ethyl-3-piperidyl benzilate;

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10- tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexanecarbonitrile (PCC);

Psilocin;

Psilocybin;

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol,

and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;

Thiophene Analog of Phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP);

1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other name [~~names~~]: TCPy);

1-(3-trifluoromethylphenyl)piperazine (trade or other name: TFMPP); and

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (some trade or other names: Phenyl-2-propanone; P2P, Benzymethyl ketone, methyl benzyl ketone); and

(3) unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

Aminorex (some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone);

Etorphine Hydrochloride;

Fenethylline and its salts;

Mecloqualone and its salts;

Methaqualone and its salts;

Methcathinone (some trade or other names: 2-methylamino-propiophenone; alpha-(methylamino)propriophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropriophenone; monomethylpropion; ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR 1431);

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers; and

N,N-dimethylamphetamine (some trade or other names: N,N,alpha- trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers, and salts of optical isomers.

SECTION 9. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.106 to read as follows:

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE. 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:

(1) has a chemical structure substantially similar to

the chemical structure of a controlled substance listed in the applicable penalty group; or

(2) is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

SECTION 10. Section 481.123, Health and Safety Code, is amended to read as follows:

Sec. 481.123. DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING [~~: DELIVERY, MANUFACTURE, OR POSSESSION OF~~] CONTROLLED SUBSTANCE ANALOGUE. (a) It is an affirmative defense to the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of [~~For the purposes of this chapter,~~] a controlled substance analogue that [~~is considered to be a controlled substance listed in Penalty Group 1 or 1-A if~~] the analogue:

(1) was not in any part [~~in whole or in part is~~] intended for human consumption;

(2) was [~~and:~~

[~~(1) the chemical structure of the analogue is substantially similar to the chemical structure of a controlled substance listed in Schedule I or Penalty Group 1 or 1-A; or~~

[~~(2) the analogue is specifically designed to produce an effect substantially similar to or greater than the effect of a controlled substance listed in Schedule I or Penalty Group 1 or 1-A.~~

[~~(b) For the purposes of this chapter, a controlled substance analogue is considered to be a controlled substance listed in Penalty Group 2 if the analogue in whole or in part is~~

~~intended for human consumption and:~~

[~~(1) the chemical structure of the analogue is substantially similar to the chemical structure of a controlled substance listed in Schedule II or Penalty Group 2; or~~

[~~(2) the analogue is specifically designed to produce an effect substantially similar to or greater than the effect of a controlled substance listed in Schedule II or Penalty Group 2.~~

[~~(c) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance analogue described by Subsection (a).~~

[~~(d) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance analogue described by Subsection (a).~~

[~~(e) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance analogue described by Subsection (b).~~

[~~(f) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance analogue described by Subsection (b).~~

[~~(g) This section does not apply to:~~

[~~(1) a controlled substance;~~

[~~(2)~~] 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

(3) 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 [~~to the extent that the substance is possessed, manufactured, or delivered by a particular person under the exemption and the person's~~] conduct with respect to the substance is in accord with the exemption[~~; or~~

[~~(4) a substance, to the extent the substance is not intended for human consumption, before an exemption under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), takes effect with regard to the substance~~].

(b) [~~(h)~~] For the purposes of this section, Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355) applies to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

[~~(i) An offense under Subsection (c) is punishable in the same manner as if the controlled substance analogue were a controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver under Section 481.112.~~

[~~(j) An offense under Subsection (d) is punishable in the same manner as if the controlled substance analogue were a controlled substance possessed under Section 481.115.~~

[~~(k) An offense under Subsection (e) is punishable in the same manner as if the controlled substance analogue were a controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver under Section 481.113.~~

[~~(l) An offense under Subsection (f) is punishable in the same manner as if the controlled substance analogue were a~~

~~controlled substance possessed under Section 481.116.~~]

SECTION 11. Sections 481.181(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The director may enter controlled premises at any reasonable time and inspect the premises and items described by Subsection (b) in order to inspect, copy, and verify the correctness of a record, report, or other document required to be made or kept under this chapter and to perform other functions under this chapter. For purposes of this subsection, "reasonable time" means any time during the normal business hours of the person or activity regulated under this chapter or any time an activity regulated under this chapter is occurring on the premises. The director shall:

(1) state the purpose of the entry;

(2) display [~~and present~~] to the owner, operator, or agent in charge of the premises appropriate credentials; and

(3) deliver to the owner, operator, or agent in charge of the premises a written notice of inspection authority.

(b) The director may:

(1) inspect and copy a record, report, or other document required to be made or kept under this chapter;

(2) inspect, within reasonable limits and in a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished drugs, other substances, and materials, containers, labels, records, files, papers, processes, controls, and facilities as appropriate to verify a record, report, or document required to be kept under this chapter or to administer

this chapter;

(3) examine and inventory stock of a controlled substance and obtain samples of the controlled substance;

(4) examine a hypodermic syringe, needle, pipe, or other instrument, device, contrivance, equipment, control, container, label, or facility relating to a possible violation of this chapter; and

(5) examine a material used, intended to be used, or capable of being used to dilute or adulterate a controlled substance.

SECTION 12. Section 481.182, Health and Safety Code, is amended to read as follows:

Sec. 481.182. EVIDENTIARY RULES RELATING TO OFFER OF DELIVERY. For the purpose of establishing a delivery under this chapter, proof of an offer to sell must be corroborated by:

(1) a person other than the person to whom the offer is made; or

(2) evidence other than a statement of the person to whom the offer is made. [~~SEARCH WARRANTS. A search warrant may be issued to search for and seize a controlled substance possessed or manufactured in violation of this chapter. The application for the issuance of and the execution of a search warrant under this section must conform to applicable provisions of the Code of Criminal Procedure.~~]

SECTION 13. Section 481.183, Health and Safety Code, is amended to read as follows:

Sec. 481.183. EVIDENTIARY RULES RELATING TO [~~DELIVERY OR~~]

DRUG PARAPHERNALIA. (a) [~~For the purpose of establishing the delivery of a controlled substance, counterfeit substance, or drug paraphernalia, proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.~~

[~~(b)~~] In considering whether an item is drug paraphernalia under this chapter, a court or other authority shall consider, in addition to all other logically relevant factors, and subject to rules of evidence:

(1) statements by an owner or person in control of the object concerning its use;

(2) the existence of any residue of a controlled substance on the object;

(3) direct or circumstantial evidence of the intent of an owner or other person in control of the object to deliver it to a person whom the person knows or should reasonably know intends to use the object to facilitate a violation of this chapter;

(4) oral or written instructions provided with the object concerning its use;

(5) descriptive material accompanying the object that explains or depicts its use;

(6) the manner in which the object is displayed for sale;

(7) whether the owner or person in control of the object is a supplier of similar or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) direct or circumstantial evidence of the ratio of

sales of the object to the total sales of the business enterprise;

(9) the existence and scope of uses for the object in the community;

(10) the physical design characteristics of the item; and

(11) expert testimony concerning the item's use.

(b) [~~(c)~~] The innocence of an owner or other person in charge of an object as to a direct violation of this chapter does not prevent a finding that the object is intended or designed for use as drug paraphernalia.

SECTION 14. Section 481.184(c), Health and Safety Code, is amended to read as follows:

(c) This chapter does not impose a liability on an authorized state, county, or municipal officer engaged in the lawful performance of official [~~the officer's~~] duties.

SECTION 15. Section 481.186(b), Health and Safety Code, is amended to read as follows:

(b) In the exercise of regulatory functions under this chapter, the director may rely on results, information, and evidence relating to the regulatory functions of this chapter received from the Federal Drug Enforcement Administration or a [~~and~~] state agency [~~agencies~~].

SECTION 16. Article 18.02, Code of Criminal Procedure, is amended to read as follows:

Art. 18.02. GROUNDS FOR ISSUANCE. A search warrant may be issued to search for and seize:

(1) property acquired by theft or in any other manner

which makes its acquisition a penal offense;

(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;

(3) arms and munitions kept or prepared for the purposes of insurrection or riot;

(4) weapons prohibited by the Penal Code;

(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

(7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia [~~drugs~~] kept, prepared, or manufactured in violation of the laws of this state;

(8) any property the possession of which is prohibited by law;

(9) implements or instruments used in the commission of a crime;

(10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense;

(11) persons; or

(12) contraband subject to forfeiture under Chapter 59 of this code.

SECTION 17. Article 481.034(f), Health and Safety Code, is

repealed.

SECTION 18. To the extent of any conflict between Sections 431.002(8), 431.112, and 431.113(c)(2), Health and Safety Code, and those provisions as amended by Sections 1, 4, and 5 of S.B. No. 1400, Acts of the 78th Legislature, Regular Session, 2003, this Act prevails.

SECTION 19. (a) This Act takes effect September 1, 2003.

(b) The change in law made by this Act applies only to an offense committed on or after September 1, 2003. An offense committed before September 1, 2003, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2003, if any element of the offense was committed before that date.

President of the Senate

Speaker of the House

I certify that H.B. No. 2192 was passed by the House on May 2, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2192 on May 23, 2003, by a non-record vote; and that the House adopted H.C.R. No. 273 authorizing certain corrections in H.B. No. 2192 on May 29, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 2192 was passed by the Senate, with amendments, on May 22, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 273 authorizing certain corrections in H.B. No. 2192 on May 29, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor