

1-1 By: Keel, Hopson, et al. H.B. No. 2192  
1-2 (Senate Sponsor - Van de Putte)  
1-3 (In the Senate - Received from the House May 5, 2003;  
1-4 May 7, 2003, read first time and referred to Committee on  
1-5 Administration; May 20, 2003, reported favorably, as amended, by  
1-6 the following vote: Yeas 7, Nays 0; May 20, 2003, sent to printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Van de Putte

1-8 Amend H.B. 2192 by adding the following new Section 15 and renumber  
1-9 all subsequent sections accordingly:

1-10 SECTION 15. Section 431.112, Repeal subsections (j) and (k)  
1-11 as added by the enrolled version of S.B. 1400, passed during the  
1-12 regular session of the 78th Texas Legislature.

1-13 A BILL TO BE ENTITLED  
1-14 AN ACT

1-15 relating to the regulation of controlled substances under the Texas  
1-16 Controlled Substances Act and to the prosecution of certain  
1-17 offenses under that Act.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. Section 481.002(22), Health and Safety Code, is  
1-20 amended to read as follows:

1-21 (22) "Immediate precursor" means a substance the  
1-22 director [commissioner] finds to be and by rule designates as  
1-23 being:

1-24 (A) a principal compound commonly used or  
1-25 produced primarily for use in the manufacture of a controlled  
1-26 substance;

1-27 (B) a substance that is an immediate chemical  
1-28 intermediary used or likely to be used in the manufacture of a  
1-29 controlled substance; and

1-30 (C) a substance the control of which is necessary  
1-31 to prevent, curtail, or limit the manufacture of a controlled  
1-32 substance.

1-33 SECTION 2. Section 481.034(d), Health and Safety Code, is  
1-34 amended to read as follows:

1-35 (d) In making a determination regarding a substance, the  
1-36 commissioner shall consider:

1-37 (1) the actual or relative potential for its abuse;

1-38 (2) the scientific evidence of its pharmacological  
1-39 effect, if known;

1-40 (3) the state of current scientific knowledge  
1-41 regarding the substance;

1-42 (4) the history and current pattern of its abuse;

1-43 (5) the scope, duration, and significance of its  
1-44 abuse;

1-45 (6) the risk to the public health;

1-46 (7) the potential of the substance to produce  
1-47 psychological or physiological dependence liability; and

1-48 (8) whether the substance is a controlled substance  
1-49 analogue, chemical precursor, or an immediate precursor of a  
1-50 substance [already] controlled under this chapter.

1-51 SECTION 3. Section 481.077, Health and Safety Code, is  
1-52 amended by adding Subsection (b-1) to read as follows:

1-53 (b-1) If the director names a chemical substance as a  
1-54 chemical precursor for purposes of Subsection (a) or designates a  
1-55 substance as an immediate precursor, a substance that is a  
1-56 precursor of the chemical precursor or the immediate precursor is  
1-57 not subject to control solely because it is a precursor of the  
1-58 chemical precursor or the immediate precursor.

1-59 SECTION 4. Section 481.102, Health and Safety Code, is  
1-60 amended to read as follows:

1-61 Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

1-62 (1) the following opiates, including their isomers,

2-1 esters, ethers, salts, and salts of isomers, esters, and ethers,  
 2-2 unless specifically excepted, if the existence of these isomers,  
 2-3 esters, ethers, and salts is possible within the specific chemical  
 2-4 designation:

- 2-5 Alfentanil;
- 2-6 Allylprodine;
- 2-7 Alphacetylmethadol;
- 2-8 Benzethidine;
- 2-9 Betaprodine;
- 2-10 Clonitazene;
- 2-11 Diampromide;
- 2-12 Diethylthiambutene;
- 2-13 Difenoxin not listed in Penalty Group 3 or 4;
- 2-14 Dimenoxadol;
- 2-15 Dimethylthiambutene;
- 2-16 Dioxaphetyl butyrate;
- 2-17 Dipipanone;
- 2-18 Ethylmethylthiambutene;
- 2-19 Etonitazene;
- 2-20 Etoxadine;
- 2-21 Furethidine;
- 2-22 Hydroxypethidine;
- 2-23 Ketobemidone;
- 2-24 Levophenacymorphan;
- 2-25 Meprodine;
- 2-26 Methadol;
- 2-27 Moramide;
- 2-28 Morpheridine;
- 2-29 Noracymethadol;
- 2-30 Norlevorphanol;
- 2-31 Normethadone;
- 2-32 Norpipanone;
- 2-33 Phenadoxone;
- 2-34 Phenampromide;
- 2-35 Phenomorphan;
- 2-36 Phenoperidine;
- 2-37 Piritramide;
- 2-38 Proheptazine;
- 2-39 Properidine;
- 2-40 Propiram;
- 2-41 Sufentanil;
- 2-42 Tilidine; and
- 2-43 Trimeperidine;

2-44 (2) the following opium derivatives, their salts,  
 2-45 isomers, and salts of isomers, unless specifically excepted, if the  
 2-46 existence of these salts, isomers, and salts of isomers is possible  
 2-47 within the specific chemical designation:

- 2-48 Acetorphine;
- 2-49 Acetyldihydrocodeine;
- 2-50 Benzylmorphine;
- 2-51 Codeine methylbromide;
- 2-52 Codeine-N-Oxide;
- 2-53 Cyprenorphine;
- 2-54 Desomorphine;
- 2-55 Dihydromorphine;
- 2-56 Drotebanol;
- 2-57 Etorphine, except hydrochloride salt;
- 2-58 Heroin;
- 2-59 Hydromorphanol;
- 2-60 Methyldesorphine;
- 2-61 Methyldihydromorphine;
- 2-62 Monoacetylmorphine;
- 2-63 Morphine methylbromide;
- 2-64 Morphine methylsulfonate;
- 2-65 Morphine-N-Oxide;
- 2-66 Myrophine;
- 2-67 Nicocodeine;
- 2-68 Nicomorphine;
- 2-69 Normorphine;

3-1 Pholcodine; and  
 3-2 Thebacon;  
 3-3 (3) the following substances, however produced,  
 3-4 except those narcotic drugs listed in another group:  
 3-5 (A) Opium and opiate not listed in Penalty Group  
 3-6 3 or 4, and a salt, compound, derivative, or preparation of opium or  
 3-7 opiate, other than thebaine derived butorphanol, nalmeferne and its  
 3-8 salts, naloxone and its salts, and naltrexone and its salts, but  
 3-9 including:  
 3-10 Codeine not listed in Penalty Group 3 or 4;  
 3-11 Dihydroetorphine;  
 3-12 Ethylmorphine not listed in Penalty Group 3  
 3-13 or 4;  
 3-14 Granulated opium;  
 3-15 Hydrocodone not listed in Penalty Group 3;  
 3-16 Hydromorphone;  
 3-17 Metopon;  
 3-18 Morphine not listed in Penalty Group 3;  
 3-19 Opium extracts;  
 3-20 Opium fluid extracts;  
 3-21 Oxycodone;  
 3-22 Oxymorphone;  
 3-23 Powdered opium;  
 3-24 Raw opium;  
 3-25 Thebaine; and  
 3-26 Tincture of opium;  
 3-27 (B) a salt, compound, isomer, derivative, or  
 3-28 preparation of a substance that is chemically equivalent or  
 3-29 identical to a substance described by Paragraph (A), other than the  
 3-30 isoquinoline alkaloids of opium;  
 3-31 (C) Opium poppy and poppy straw;  
 3-32 (D) Cocaine, including:  
 3-33 (i) its salts, its optical, position, and  
 3-34 geometric isomers, and the salts of those isomers;  
 3-35 (ii) coca leaves and a salt, compound,  
 3-36 derivative, or preparation of coca leaves;  
 3-37 (iii) a salt, compound, derivative, or  
 3-38 preparation of a salt, compound, or derivative that is chemically  
 3-39 equivalent or identical to a substance described by Subparagraph  
 3-40 (i) or (ii), other than decocainized coca leaves or extractions of  
 3-41 coca leaves that do not contain cocaine or ecgonine; and  
 3-42 (E) concentrate of poppy straw, meaning the crude  
 3-43 extract of poppy straw in liquid, solid, or powder form that  
 3-44 contains the phenanthrine alkaloids of the opium poppy;  
 3-45 (4) the following opiates, including their isomers,  
 3-46 esters, ethers, salts, and salts of isomers, if the existence of  
 3-47 these isomers, esters, ethers, and salts is possible within the  
 3-48 specific chemical designation:  
 3-49 Acetyl-alpha-methylfentanyl  
 3-50 (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);  
 3-51 Alpha-methylthiofentanyl  
 3-52 (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]  
 3-53 -N-phenylpropanamide);  
 3-54 Alphaprodine;  
 3-55 Anileridine;  
 3-56 Beta-hydroxyfentanyl  
 3-57 (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]  
 3-58 -N-phenylpropanamide);  
 3-59 Beta-hydroxy-3-methylfentanyl;  
 3-60 Bezitramide;  
 3-61 Carfentanil;  
 3-62 Dihydrocodeine not listed in Penalty Group 3 or 4;  
 3-63 Diphenoxylate not listed in Penalty Group 3 or 4;  
 3-64 Fentanyl or alpha-methylfentanyl, or any other  
 3-65 derivative of Fentanyl;  
 3-66 Isomethadone;  
 3-67 Levomethorphan;  
 3-68 Levorphanol;  
 3-69 Metazocine;

4-1 Methadone;  
 4-2 Methadone-Intermediate,  
 4-3 4-cyano-2-dimethylamino-4, 4-diphenyl butane;  
 4-4 3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-  
 4-5 4-piperidyl]-N- phenylpropanamide);  
 4-6 3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)  
 4-7 ethyl-4-piperidinyll]-N- phenylpropanamide);  
 4-8 Moramide-Intermediate, 2-methyl-3-morpholino-1,  
 4-9 1-diphenyl-propane- carboxylic acid;  
 4-10 Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-  
 4-11 (2-phenylethyl)-4- piperidinyllpropanamide);  
 4-12 PEPAP  
 4-13 (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);  
 4-14 Pethidine (Meperidine);  
 4-15 Pethidine-Intermediate-A,  
 4-16 4-cyano-1-methyl-4-phenylpiperidine;  
 4-17 Pethidine-Intermediate-B,  
 4-18 ethyl-4-phenylpiperidine-4 carboxylate;  
 4-19 Pethidine-Intermediate-C,  
 4-20 1-methyl-4-phenylpiperidine-4-carboxylic acid;  
 4-21 Phenazocine;  
 4-22 Piminodine;  
 4-23 Racemethorphan;  
 4-24 Racemorphan;  
 4-25 Remifentanil; and  
 4-26 Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-  
 4-27 piperidinyll]- propanamide);  
 4-28 (5) Flunitrazepam (~~[some]~~ trade or other name [~~names~~]:  
 4-29 Rohypnol);  
 4-30 (6) Methamphetamine, including its salts, optical  
 4-31 isomers, and salts of optical isomers;  
 4-32 (7) Phenylacetone and methylamine, if possessed  
 4-33 together with intent to manufacture methamphetamine;  
 4-34 (8) Phencyclidine, including its salts; ~~[and]~~  
 4-35 (9) Gamma hydroxybutyric acid (some trade or other  
 4-36 names: gamma hydroxybutyrate, GHB), including its salts; and [~~-~~]  
 4-37 (10) Ketamine.  
 4-38 SECTION 5. Section 481.103(a), Health and Safety Code, is  
 4-39 amended to read as follows:  
 4-40 (a) Penalty Group 2 consists of:  
 4-41 (1) any quantity of the following hallucinogenic  
 4-42 substances, their salts, isomers, and salts of isomers, unless  
 4-43 specifically excepted, if the existence of these salts, isomers,  
 4-44 and salts of isomers is possible within the specific chemical  
 4-45 designation:  
 4-46 alpha-ethyltryptamine;  
 4-47 4-bromo-2, 5-dimethoxyamphetamine (some trade or  
 4-48 other names: 4-bromo- 2, 5-dimethoxy-alpha-methylphenethylamine;  
 4-49 4-bromo-2, 5-DMA);  
 4-50 4-bromo-2, 5-dimethoxyphenethylamine;  
 4-51 Bufotenine (some trade and other names:  
 4-52 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;  
 4-53 3-(2-dimethylaminoethyl)-5- indolol; N, N-dimethylserotonin;  
 4-54 5-hydroxy-N, N-dimethyltryptamine; mappine);  
 4-55 Diethyltryptamine (some trade and other names: N,  
 4-56 N-Diethyltryptamine, DET);  
 4-57 2, 5-dimethoxyamphetamine (some trade or other  
 4-58 names: 2, 5-dimethoxy- alpha-methylphenethylamine; 2, 5-DMA);  
 4-59 2, 5-dimethoxy-4-ethylamphetamine (~~[some]~~ trade  
 4-60 or other name [~~names~~]: DOET);  
 4-61 2, 5-dimethoxy-4-(n)-propylthiophenethylamine  
 4-62 (trade or other name: 2C-T-7);  
 4-63 Dimethyltryptamine (~~[some]~~ trade or [~~and~~] other  
 4-64 name [~~names~~]: DMT);  
 4-65 Dronabinol (synthetic) in sesame oil and  
 4-66 encapsulated in a soft gelatin capsule in a U.S. Food and Drug  
 4-67 Administration approved drug product (some trade or other names for  
 4-68 Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6,  
 4-69 9-trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-1-ol or

5-1 (-)-delta-9-(trans)- tetrahydrocannabinol);  
 5-2 Ethylamine Analog of Phencyclidine (some trade or  
 5-3 other names: N-ethyl-1-phenylcyclohexylamine,  
 5-4 (1-phenylcyclohexyl) ethylamine, N-(1- phenylcyclohexyl)  
 5-5 ethylamine, cyclohexamine, PCE);  
 5-6 Ibogaine (some trade or other names: 7-Ethyl-6,  
 5-7 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,  
 5-8 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole;  
 5-9 tabernanthe iboga.);  
 5-10 [~~Ketamine~~];  
 5-11 Mescaline;  
 5-12 5-methoxy-3, 4-methylenedioxy amphetamine;  
 5-13 4-methoxyamphetamine (some trade or other names:  
 5-14 4-methoxy-alpha- methylphenethylamine; paramethoxyamphetamine;  
 5-15 PMA);  
 5-16 1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP,  
 5-17 PPMP);  
 5-18 4-methyl-2, 5-dimethoxyamphetamine (some trade  
 5-19 and other names: 4- methyl-2,  
 5-20 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");  
 5-21 3,4-methylenedioxy methamphetamine (MDMA, MDM);  
 5-22 3,4-methylenedioxy amphetamine;  
 5-23 3,4-methylenedioxy N-ethylamphetamine (Also  
 5-24 known as N-ethyl MDA);  
 5-25 Nabilone (Another name for nabilone:  
 5-26 (+)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-hexahydro-1-  
 5-27 hydroxy-6,6- dimethyl-9H-dibenzo[b,d] pyran-9-one;  
 5-28 N-benzylpiperazine (some trade or other names:  
 5-29 BZP; 1-benzylpiperazine);  
 5-30 N-ethyl-3-piperidyl benzilate;  
 5-31 N-hydroxy-3,4-methylenedioxyamphetamine (Also  
 5-32 known as N-hydroxy MDA);  
 5-33 4-methylaminorex;  
 5-34 N-methyl-3-piperidyl benzilate;  
 5-35 Parahexyl (some trade or other names:  
 5-36 3-Hexyl-1-hydroxy-7, 8, 9, 10- tetrahydro-6, 6,  
 5-37 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);  
 5-38 1-Phenylcyclohexylamine;  
 5-39 1-Piperidinocyclohexanecarbonitrile (PCC);  
 5-40 Psilocin;  
 5-41 Psilocybin;  
 5-42 Pyrrolidine Analog of Phencyclidine (some trade  
 5-43 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);  
 5-44 Tetrahydrocannabinols, other than marihuana, and  
 5-45 synthetic equivalents of the substances contained in the plant, or  
 5-46 in the resinous extractives of Cannabis, or synthetic substances,  
 5-47 derivatives, and their isomers with similar chemical structure and  
 5-48 pharmacological activity such as:  
 5-49 delta-1 cis or trans tetrahydrocannabinol,  
 5-50 and their optical isomers;  
 5-51 delta-6 cis or trans tetrahydrocannabinol,  
 5-52 and their optical isomers;  
 5-53 delta-3, 4 cis or trans  
 5-54 tetrahydrocannabinol, and its optical isomers;  
 5-55 compounds of these structures, regardless of  
 5-56 numerical designation of atomic positions, since nomenclature of  
 5-57 these substances is not internationally standardized;  
 5-58 Thiophene Analog of Phencyclidine (some trade or  
 5-59 other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl  
 5-60 Analog of Phencyclidine; TPCP, TCP);  
 5-61 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some  
 5-62 trade or other name [~~names~~]: TCPy);  
 5-63 1-(3-trifluoromethylphenyl)piperazine (trade or  
 5-64 other name: TFMPP); and  
 5-65 3,4,5-trimethoxy amphetamine;  
 5-66 (2) Phenylacetone (some trade or other names:  
 5-67 Phenyl-2-propanone; P2P, Benzylmethyl ketone, methyl benzyl  
 5-68 ketone); and  
 5-69 (3) unless specifically excepted or unless listed in

6-1 another Penalty Group, a material, compound, mixture, or  
6-2 preparation that contains any quantity of the following substances  
6-3 having a potential for abuse associated with a depressant or  
6-4 stimulant effect on the central nervous system:

6-5 Aminorex (some trade or other names: aminoxaphen;

6-6 2-amino-5-phenyl-2-oxazoline;

6-7 4,5-dihydro-5-phenyl-2-oxazolamine);

6-8 Amphetamine, its salts, optical isomers, and  
6-9 salts of optical isomers;

6-10 Cathinone (some trade or other names:

6-11 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone,

6-12 2-aminopropiophenone);

6-13 Etorphine Hydrochloride;

6-14 Fenethylamine and its salts;

6-15 Mecloqualone and its salts;

6-16 Methaqualone and its salts;

6-17 Methcathinone (some trade or other names:

6-18 2-methylamino-propiofenone; alpha-(methylamino)propiofenone;

6-19 2-(methylamino)-1-phenylpropan-1-one;

6-20 alpha-N-methylaminopropiophenone; monomethylpropion;

6-21 ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422;

6-22 AL-463; and UR 1431);

6-23 N-Ethylamphetamine, its salts, optical isomers,  
6-24 and salts of optical isomers; and

6-25 N,N-dimethylamphetamine (some trade or other  
6-26 names: N,N,alpha-trimethylbenzeneethaneamine;

6-27 N,N,alpha-trimethylphenethylamine), its salts, optical isomers,

6-28 and salts of optical isomers.

6-29 SECTION 6. Subchapter D, Chapter 481, Health and Safety  
6-30 Code, is amended by adding Section 481.106 to read as follows:

6-31 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE  
6-32 ANALOGUE. For the purposes of the prosecution of an offense under  
6-33 this subchapter involving the manufacture, delivery, or possession  
6-34 of a controlled substance, Penalty Groups 1, 1-A, and 2 include a  
6-35 controlled substance analogue that:

6-36 (1) has a chemical structure substantially similar to  
6-37 the chemical structure of a controlled substance listed in the  
6-38 applicable penalty group; or

6-39 (2) is specifically designed to produce an effect  
6-40 substantially similar to, or greater than, a controlled substance  
6-41 listed in the applicable penalty group.

6-42 SECTION 7. Section 481.123, Health and Safety Code, is  
6-43 amended to read as follows:

6-44 Sec. 481.123. DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING  
6-45 [~~DELIVERY, MANUFACTURE, OR POSSESSION OF~~] CONTROLLED SUBSTANCE  
6-46 ANALOGUE. (a) It is an affirmative defense to the prosecution of  
6-47 an offense under this subchapter involving the manufacture,  
6-48 delivery, or possession of [For the purposes of this chapter,] a  
6-49 controlled substance analogue that [is considered to be a  
6-50 controlled substance listed in Penalty Group 1 or 1-A if] the  
6-51 analogue:

6-52 (1) was not in any part [in whole or in part is]  
6-53 intended for human consumption;

6-54 (2) was [and:

6-55 (1) the chemical structure of the analogue is  
6-56 substantially similar to the chemical structure of a controlled  
6-57 substance listed in Schedule I or Penalty Group 1 or 1-A; or

6-58 (2) the analogue is specifically designed to produce  
6-59 an effect substantially similar to or greater than the effect of a  
6-60 controlled substance listed in Schedule I or Penalty Group 1 or 1-A.

6-61 [(b) For the purposes of this chapter, a controlled  
6-62 substance analogue is considered to be a controlled substance  
6-63 listed in Penalty Group 2 if the analogue in whole or in part is  
6-64 intended for human consumption and:

6-65 (1) the chemical structure of the analogue is  
6-66 substantially similar to the chemical structure of a controlled  
6-67 substance listed in Schedule II or Penalty Group 2; or

6-68 (2) the analogue is specifically designed to produce  
6-69 an effect substantially similar to or greater than the effect of a

7-1 ~~controlled substance listed in Schedule II or Penalty Group 2.~~

7-2 [~~(c) Except as authorized by this chapter, a person commits~~  
7-3 ~~an offense if the person knowingly or intentionally manufactures,~~  
7-4 ~~delivers, or possesses with intent to manufacture or deliver a~~  
7-5 ~~controlled substance analogue described by Subsection (a).~~

7-6 [~~(d) Except as authorized by this chapter, a person commits~~  
7-7 ~~an offense if the person knowingly or intentionally possesses a~~  
7-8 ~~controlled substance analogue described by Subsection (a).~~

7-9 [~~(e) Except as authorized by this chapter, a person commits~~  
7-10 ~~an offense if the person knowingly or intentionally manufactures,~~  
7-11 ~~delivers, or possesses with intent to manufacture or deliver a~~  
7-12 ~~controlled substance analogue described by Subsection (b).~~

7-13 [~~(f) Except as authorized by this chapter, a person commits~~  
7-14 ~~an offense if the person knowingly or intentionally possesses a~~  
7-15 ~~controlled substance analogue described by Subsection (b).~~

7-16 [~~(g) This section does not apply to:~~

7-17 [~~(1) a controlled substance,~~

7-18 [~~(2)] a substance for which there is an approved new~~

7-19 drug application under Section 505 of the Federal Food, Drug, and

7-20 Cosmetic Act (21 U.S.C. Section 355); or

7-21 (3) was a substance for which an exemption for

7-22 investigational use has been granted under Section 505 of the

7-23 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the

7-24 actor's [~~to the extent that the substance is possessed,~~

7-25 ~~manufactured, or delivered by a particular person under the~~

7-26 ~~exemption and the person's] conduct with respect to the substance~~

7-27 is in accord with the exemption[~~, or~~

7-28 [~~(4) a substance, to the extent the substance is not~~

7-29 ~~intended for human consumption, before an exemption under Section~~

7-30 ~~505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section~~

7-31 ~~355), takes effect with regard to the substance].~~

7-32 (b) [~~(h)] For the purposes of this section, Section 505 of~~

7-33 ~~the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355)~~

7-34 ~~applies to the introduction or delivery for introduction of any new~~

7-35 ~~drug into intrastate, interstate, or foreign commerce.~~

7-36 [~~(i) An offense under Subsection (c) is punishable in the~~

7-37 ~~same manner as if the controlled substance analogue were a~~

7-38 ~~controlled substance manufactured, delivered, or possessed with~~

7-39 ~~intent to manufacture or deliver under Section 481.112.~~

7-40 [~~(j) An offense under Subsection (d) is punishable in the~~

7-41 ~~same manner as if the controlled substance analogue were a~~

7-42 ~~controlled substance possessed under Section 481.115.~~

7-43 [~~(k) An offense under Subsection (e) is punishable in the~~

7-44 ~~same manner as if the controlled substance analogue were a~~

7-45 ~~controlled substance manufactured, delivered, or possessed with~~

7-46 ~~intent to manufacture or deliver under Section 481.113.~~

7-47 [~~(l) An offense under Subsection (f) is punishable in the~~

7-48 ~~same manner as if the controlled substance analogue were a~~

7-49 ~~controlled substance possessed under Section 481.116.]~~

7-50 SECTION 8. Sections 481.181(a) and (b), Health and Safety

7-51 Code, are amended to read as follows:

7-52 (a) The director may enter controlled premises at any

7-53 reasonable time and inspect the premises and items described by

7-54 Subsection (b) in order to inspect, copy, and verify the

7-55 correctness of a record, report, or other document required to be

7-56 made or kept under this chapter and to perform other functions under

7-57 this chapter. For purposes of this subsection, "reasonable time"

7-58 means any time during the normal business hours of the person or

7-59 activity regulated under this chapter or any time an activity

7-60 regulated under this chapter is occurring on the premises. The

7-61 director shall:

7-62 (1) state the purpose of the entry;

7-63 (2) display [and present] to the owner, operator, or

7-64 agent in charge of the premises appropriate credentials; and

7-65 (3) deliver to the owner, operator, or agent in charge

7-66 of the premises a written notice of inspection authority.

7-67 (b) The director may:

7-68 (1) inspect and copy a record, report, or other

7-69 document required to be made or kept under this chapter;

8-1 (2) inspect, within reasonable limits and in a  
 8-2 reasonable manner, the controlled premises and all pertinent  
 8-3 equipment, finished and unfinished drugs, other substances, and  
 8-4 materials, containers, labels, records, files, papers, processes,  
 8-5 controls, and facilities as appropriate to verify a record, report,  
 8-6 or document required to be kept under this chapter or to administer  
 8-7 this chapter;

8-8 (3) examine and inventory stock of a controlled  
 8-9 substance and obtain samples of the controlled substance;

8-10 (4) examine a hypodermic syringe, needle, pipe, or  
 8-11 other instrument, device, contrivance, equipment, control,  
 8-12 container, label, or facility relating to a possible violation of  
 8-13 this chapter; and

8-14 (5) examine a material used, intended to be used, or  
 8-15 capable of being used to dilute or adulterate a controlled  
 8-16 substance.

8-17 SECTION 9. Section 481.182, Health and Safety Code, is  
 8-18 amended to read as follows:

8-19 Sec. 481.182. EVIDENTIARY RULES RELATING TO OFFER OF  
 8-20 DELIVERY. For the purpose of establishing a delivery under this  
 8-21 chapter, proof of an offer to sell must be corroborated by:

8-22 (1) a person other than the person to whom the offer is  
 8-23 made; or

8-24 (2) evidence other than a statement of the person to  
 8-25 whom the offer is made. [~~SEARCH WARRANTS. A search warrant may be~~  
 8-26 ~~issued to search for and seize a controlled substance possessed or~~  
 8-27 ~~manufactured in violation of this chapter. The application for the~~  
 8-28 ~~issuance of and the execution of a search warrant under this section~~  
 8-29 ~~must conform to applicable provisions of the Code of Criminal~~  
 8-30 ~~Procedure.]~~

8-31 SECTION 10. Section 481.183, Health and Safety Code, is  
 8-32 amended to read as follows:

8-33 Sec. 481.183. EVIDENTIARY RULES RELATING TO [~~DELIVERY OR~~]  
 8-34 ~~DRUG PARAPHERNALIA.~~ (a) [~~For the purpose of establishing the~~  
 8-35 ~~delivery of a controlled substance, counterfeit substance, or drug~~  
 8-36 ~~paraphernalia, proof of an offer to sell must be corroborated by a~~  
 8-37 ~~person other than the offeree or by evidence other than a statement~~  
 8-38 ~~of the offeree.~~

8-39 [~~(b)~~] In considering whether an item is drug paraphernalia  
 8-40 under this chapter, a court or other authority shall consider, in  
 8-41 addition to all other logically relevant factors, and subject to  
 8-42 rules of evidence:

8-43 (1) statements by an owner or person in control of the  
 8-44 object concerning its use;

8-45 (2) the existence of any residue of a controlled  
 8-46 substance on the object;

8-47 (3) direct or circumstantial evidence of the intent of  
 8-48 an owner or other person in control of the object to deliver it to a  
 8-49 person whom the person knows or should reasonably know intends to  
 8-50 use the object to facilitate a violation of this chapter;

8-51 (4) oral or written instructions provided with the  
 8-52 object concerning its use;

8-53 (5) descriptive material accompanying the object that  
 8-54 explains or depicts its use;

8-55 (6) the manner in which the object is displayed for  
 8-56 sale;

8-57 (7) whether the owner or person in control of the  
 8-58 object is a supplier of similar or related items to the community,  
 8-59 such as a licensed distributor or dealer of tobacco products;

8-60 (8) direct or circumstantial evidence of the ratio of  
 8-61 sales of the object to the total sales of the business enterprise;

8-62 (9) the existence and scope of uses for the object in  
 8-63 the community;

8-64 (10) the physical design characteristics of the item;  
 8-65 and

8-66 (11) expert testimony concerning the item's use.

8-67 (b) [~~(c)~~] The innocence of an owner or other person in  
 8-68 charge of an object as to a direct violation of this chapter does  
 8-69 not prevent a finding that the object is intended or designed for



9-1 use as drug paraphernalia.

9-2 SECTION 11. Section 481.184(c), Health and Safety Code, is  
9-3 amended to read as follows:

9-4 (c) This chapter does not impose a liability on an  
9-5 authorized state, county, or municipal officer engaged in the  
9-6 lawful performance of official ~~[the officer's]~~ duties.

9-7 SECTION 12. Section 481.186(b), Health and Safety Code, is  
9-8 amended to read as follows:

9-9 (b) In the exercise of regulatory functions under this  
9-10 chapter, the director may rely on results, information, and  
9-11 evidence relating to the regulatory functions of this chapter  
9-12 received from the Federal Drug Enforcement Administration or a  
9-13 ~~[and]~~ state agency ~~[agencies]~~.

9-14 SECTION 13. Article 18.02, Code of Criminal Procedure, is  
9-15 amended to read as follows:

9-16 Art. 18.02. GROUNDS FOR ISSUANCE. A search warrant may be  
9-17 issued to search for and seize:

9-18 (1) property acquired by theft or in any other manner  
9-19 which makes its acquisition a penal offense;

9-20 (2) property specially designed, made, or adapted for  
9-21 or commonly used in the commission of an offense;

9-22 (3) arms and munitions kept or prepared for the  
9-23 purposes of insurrection or riot;

9-24 (4) weapons prohibited by the Penal Code;

9-25 (5) gambling devices or equipment, altered gambling  
9-26 equipment, or gambling paraphernalia;

9-27 (6) obscene materials kept or prepared for commercial  
9-28 distribution or exhibition, subject to the additional rules set  
9-29 forth by law;

9-30 (7) a drug, controlled substance, immediate  
9-31 precursor, chemical precursor, or other controlled substance  
9-32 property, including an apparatus or paraphernalia ~~[drugs]~~ kept,  
9-33 prepared, or manufactured in violation of the laws of this state;

9-34 (8) any property the possession of which is prohibited  
9-35 by law;

9-36 (9) implements or instruments used in the commission  
9-37 of a crime;

9-38 (10) property or items, except the personal writings  
9-39 by the accused, constituting evidence of an offense or constituting  
9-40 evidence tending to show that a particular person committed an  
9-41 offense;

9-42 (11) persons; or

9-43 (12) contraband subject to forfeiture under Chapter 59  
9-44 of this code.

9-45 SECTION 14. Article 481.034(f), Health and Safety Code, is  
9-46 repealed.

9-47 SECTION 15. (a) This Act takes effect September 1, 2003.

9-48 (b) The change in law made by this Act applies only to an  
9-49 offense committed on or after September 1, 2003. An offense  
9-50 committed before September 1, 2003, is covered by the law in effect  
9-51 when the offense was committed, and the former law is continued in  
9-52 effect for that purpose. For purposes of this subsection, an  
9-53 offense was committed before September 1, 2003, if any element of  
9-54 the offense was committed before that date.

9-55 \* \* \* \* \*