

By: Van de Putte

S.B. No. 1187

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of controlled substances under the Texas
3 Controlled Substances Act and to the prosecution of certain
4 offenses under that Act.

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

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

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

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

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

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

20 SECTION 2. Section 481.034(d), Health and Safety Code, is
21 amended to read as follows:

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

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

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

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

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

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

8 (6) the risk to the public health;

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

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

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

16 (b-1) If the director names a chemical substance as a
17 chemical precursor for purposes of Subsection (a) or designates a
18 substance as an immediate precursor, a substance that is a
19 precursor of the chemical precursor or the immediate precursor is
20 not subject to control solely because it is a precursor of the
21 chemical precursor or the immediate precursor.

22 SECTION 4. Section 481.102, Health and Safety Code, is
23 amended to read as follows:

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

25 (1) the following opiates, including their isomers,
26 esters, ethers, salts, and salts of isomers, esters, and ethers,
27 unless specifically excepted, if the existence of these isomers,

1 esters, ethers, and salts is possible within the specific chemical
2 designation:

- 3 Alfentanil;
- 4 Allylprodine;
- 5 Alphacetylmethadol;
- 6 Benzethidine;
- 7 Betaprodine;
- 8 Clonitazene;
- 9 Diampromide;
- 10 Diethylthiambutene;
- 11 Difenoquin not listed in Penalty Group 3 or 4;
- 12 Dimenoxadol;
- 13 Dimethylthiambutene;
- 14 Dioxaphetyl butyrate;
- 15 Dipipanone;
- 16 Ethylmethylthiambutene;
- 17 Etonitazene;
- 18 Etoxadine;
- 19 Furethidine;
- 20 Hydroxypethidine;
- 21 Ketobemidone;
- 22 Levophenacetylmorphan;
- 23 Meprodine;
- 24 Methadol;
- 25 Moramide;
- 26 Morpheridine;
- 27 Noracymethadol;

1 Norlevorphanol;
2 Normethadone;
3 Norpipanone;
4 Phenadoxone;
5 Phenampromide;
6 Phenomorphan;
7 Phenoperidine;
8 Piritramide;
9 Proheptazine;
10 Properidine;
11 Propiram;
12 Sufentanil;
13 Tilidine; and
14 Trimeperidine;

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

19 Acetorphine;
20 Acetyldihydrocodeine;
21 Benzylmorphine;
22 Codeine methylbromide;
23 Codeine-N-Oxide;
24 Cyprenorphine;
25 Desomorphine;
26 Dihydromorphine;
27 Drotebanol;

- 1 Etorphine, except hydrochloride salt;
- 2 Heroin;
- 3 Hydromorphenol;
- 4 Methyldesorphine;
- 5 Methyldihydromorphine;
- 6 Monoacetylmorphine;
- 7 Morphine methylbromide;
- 8 Morphine methylsulfonate;
- 9 Morphine-N-Oxide;
- 10 Myrophine;
- 11 Nicocodeine;
- 12 Nicomorphine;
- 13 Normorphine;
- 14 Pholcodine; and
- 15 Thebacon;

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

18 (A) Opium and opiate not listed in Penalty Group
19 3 or 4, and a salt, compound, derivative, or preparation of opium or
20 opiate, other than thebaine derived butorphanol, nalmeffene and its
21 salts, naloxone and its salts, and naltrexone and its salts, but
22 including:

- 23 Codeine not listed in Penalty Group 3 or 4;
- 24 Dihydroetorphine;
- 25 Ethylmorphine not listed in Penalty Group 3
26 or 4;
- 27 Granulated opium;

1 Hydrocodone not listed in Penalty Group 3;
2 Hydromorphone;
3 Metopon;
4 Morphine not listed in Penalty Group 3;
5 Opium extracts;
6 Opium fluid extracts;
7 Oxycodone;
8 Oxymorphone;
9 Powdered opium;
10 Raw opium;
11 Thebaine; and
12 Tincture of opium;

13 (B) a salt, compound, isomer, derivative, or
14 preparation of a substance that is chemically equivalent or
15 identical to a substance described by Paragraph (A), other than the
16 isoquinoline alkaloids of opium;

17 (C) Opium poppy and poppy straw;

18 (D) Cocaine, including:

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

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

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

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

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

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

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

13 Alphaprodine;

14 Anileridine;

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

18 Beta-hydroxy-3-methylfentanyl;

19 Bezitramide;

20 Carfentanil;

21 Dihydrocodeine not listed in Penalty Group 3 or 4;

22 Diphenoxylate not listed in Penalty Group 3 or 4;

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

25 Isomethadone;

26 Levomethorphan;

27 Levorphanol;

1 Metazocine;
2 Methadone;
3 Methadone-Intermediate,
4 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
5 3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-
6 4-piperidyl]-N- phenylpropanamide);
7 3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)
8 ethyl-4-piperidinyl]-N- phenylpropanamide);
9 Moramide-Intermediate, 2-methyl-3-morpholino-1,
10 1-diphenyl-propane- carboxylic acid;
11 Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-
12 (2-phenylethyl)-4- piperidinylpropanamide);
13 PEPAP
14 (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
15 Pethidine (Meperidine);
16 Pethidine-Intermediate-A,
17 4-cyano-1-methyl-4-phenylpiperidine;
18 Pethidine-Intermediate-B,
19 ethyl-4-phenylpiperidine-4 carboxylate;
20 Pethidine-Intermediate-C,
21 1-methyl-4-phenylpiperidine-4-carboxylic acid;
22 Phenazocine;
23 Piminodine;
24 Racemethorphan;
25 Racemorphan;
26 Remifentanil; and
27 Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-

1 piperidinyl]- propanamide);

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

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

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

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

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

11 (10) Ketamine.

12 SECTION 5. Section 481.103(a), Health and Safety Code, is
13 amended to read as follows:

14 (a) Penalty Group 2 consists of:

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

20 alpha-ethyltryptamine;

21 4-bromo-2, 5-dimethoxyamphetamine (some trade or
22 other names: 4-bromo- 2, 5-dimethoxy-alpha-methylphenethylamine;
23 4-bromo-2, 5-DMA);

24 4-bromo-2, 5-dimethoxyphenethylamine;

25 Bufotenine (some trade and other names:

26 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;

27 3-(2-dimethylaminoethyl)-5- indolol; N, N-dimethylserotonin;

1 5-hydroxy-N, N-dimethyltryptamine; mappine);
2 Diethyltryptamine (some trade and other names: N,
3 N-Diethyltryptamine, DET);
4 2, 5-dimethoxyamphetamine (some trade or other
5 names: 2, 5-dimethoxy- alpha-methylphenethylamine; 2, 5-DMA);
6 2, 5-dimethoxy-4-ethylamphetamine (~~some~~ trade
7 or other name [~~names~~]: DOET);
8 2, 5-dimethoxy-4-(n)-propylthiophenethylamine
9 (trade or other name: 2C-T-7);
10 Dimethyltryptamine (~~some~~ trade or [~~and~~ other
11 name [~~names~~]: DMT);
12 Dronabinol (synthetic) in sesame oil and
13 encapsulated in a soft gelatin capsule in a U.S. Food and Drug
14 Administration approved drug product (some trade or other names for
15 Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6,
16 9-trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-1-ol or
17 (-)-delta-9-(trans)- tetrahydrocannabinol);
18 Ethylamine Analog of Phencyclidine (some trade or
19 other names: N-ethyl-1-phenylcyclohexylamine,
20 (1-phenylcyclohexyl) ethylamine, N-(1- phenylcyclohexyl)
21 ethylamine, cyclohexamine, PCE);
22 Ibogaine (some trade or other names: 7-Ethyl-6,
23 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
24 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole;
25 tabernanthe iboga.);
26 [~~Ketamine,~~
27 Mescaline;

1 5-methoxy-3, 4-methylenedioxy amphetamine;
2 4-methoxyamphetamine (some trade or other names:
3 4-methoxy-alpha- methylphenethylamine; paramethoxyamphetamine;
4 PMA);
5 1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP,
6 PPMP);
7 4-methyl-2, 5-dimethoxyamphetamine (some trade
8 and other names: 4- methyl-2,
9 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");
10 3,4-methylenedioxy methamphetamine (MDMA, MDM);
11 3,4-methylenedioxy amphetamine;
12 3,4-methylenedioxy N-ethylamphetamine (Also
13 known as N-ethyl MDA);
14 Nabilone (Another name for nabilone:
15 (+)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-hexahydro-1-
16 hydroxy-6,6- dimethyl-9H-dibenzo[b,d] pyran-9-one;
17 N-benzylpiperazine (some trade or other names:
18 BZP; 1-benzylpiperazine));
19 N-ethyl-3-piperidyl benzilate;
20 N-hydroxy-3,4-methylenedioxyamphetamine (Also
21 known as N-hydroxy MDA);
22 4-methylaminorex;
23 N-methyl-3-piperidyl benzilate;
24 Parahexyl (some trade or other names:
25 3-Hexyl-1-hydroxy-7, 8, 9, 10- tetrahydro-6, 6,
26 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);
27 1-Phenylcyclohexylamine;

1 1-Piperidinocyclohexanecarbonitrile (PCC);
2 Psilocin;
3 Psilocybin;
4 Pyrrolidine Analog of Phencyclidine (some trade
5 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);
6 Tetrahydrocannabinols, other than marihuana, and
7 synthetic equivalents of the substances contained in the plant, or
8 in the resinous extractives of Cannabis, or synthetic substances,
9 derivatives, and their isomers with similar chemical structure and
10 pharmacological activity such as:
11 delta-1 cis or trans tetrahydrocannabinol,
12 and their optical isomers;
13 delta-6 cis or trans tetrahydrocannabinol,
14 and their optical isomers;
15 delta-3, 4 cis or trans
16 tetrahydrocannabinol, and its optical isomers;
17 compounds of these structures, regardless of
18 numerical designation of atomic positions, since nomenclature of
19 these substances is not internationally standardized;
20 Thiophene Analog of Phencyclidine (some trade or
21 other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl
22 Analog of Phencyclidine; TPCP, TCP);
23 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some
24 trade or other name names: TCPy);
25 1-(3-trifluoromethylphenyl)piperazine (trade or
26 other name: TFMPP); and
27 3,4,5-trimethoxy amphetamine;

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

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

9 Aminorex (some trade or other names: aminoxaphen;
10 2-amino-5-phenyl-2-oxazoline;
11 4,5-dihydro-5-phenyl-2-oxazolamine);

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

14 Cathinone (some trade or other names:
15 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone,
16 2-aminopropiophenone);

17 Etorphine Hydrochloride;

18 Fenethylamine and its salts;

19 Mecloqualone and its salts;

20 Methaqualone and its salts;

21 Methcathinone (some trade or other names:
22 2-methylamino-propionophenone; alpha-(methylamino)propionophenone;
23 2-(methylamino)-1-phenylpropan-1-one;
24 alpha-N-methylaminopropionophenone; monomethylpropion;
25 ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422;
26 AL-463; and UR 1431);

27 N-Ethylamphetamine, its salts, optical isomers,

1 and salts of optical isomers; and

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

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

8 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE
9 ANALOGUE. For the purposes of the prosecution of an offense under
10 this subchapter involving the manufacture, delivery, or possession
11 of a controlled substance, Penalty Groups 1, 1-A, and 2 include a
12 controlled substance analogue that:

13 (1) has a chemical structure substantially similar to
14 the chemical structure of a controlled substance listed in the
15 applicable penalty group; or

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

19 SECTION 7. Section 481.123, Health and Safety Code, is
20 amended to read as follows:

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

1 analogue:

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

4 (2) was [~~and:~~

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

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

11 [~~(b) For the purposes of this chapter, a controlled~~
12 ~~substance analogue is considered to be a controlled substance~~
13 ~~listed in Penalty Group 2 if the analogue in whole or in part is~~
14 ~~intended for human consumption and:~~

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

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

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

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

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

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

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

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

10 ~~[(2)] a substance for which there is an approved new~~
11 ~~drug application under Section 505 of the Federal Food, Drug, and~~
12 ~~Cosmetic Act (21 U.S.C. Section 355); or~~

13 (3) was a substance for which an exemption for
14 investigational use has been granted under Section 505 of the
15 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the
16 actor's ~~[to the extent that the substance is possessed,~~
17 ~~manufactured, or delivered by a particular person under the~~
18 ~~exemption and the person's]~~ conduct with respect to the substance
19 is in accord with the exemption~~[, or~~

20 ~~[(4) a substance, to the extent the substance is not~~
21 ~~intended for human consumption, before an exemption under Section~~
22 ~~505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section~~
23 ~~355), takes effect with regard to the substance].~~

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

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

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

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

12 ~~[(l) An offense under Subsection (f) is punishable in the~~
13 ~~same manner as if the controlled substance analogue were a~~
14 ~~controlled substance possessed under Section 481.116.]~~

15 SECTION 8. Section 481.129(d), Health and Safety Code, is
16 amended to read as follows:

17 (d) An offense under Subsection (a) is:

18 (1) a felony of the second degree if the controlled
19 substance that is the subject of the offense is listed in Schedule I
20 or II;

21 (2) a felony of the third degree if the controlled
22 substance that is the subject of the offense is listed in Schedule
23 III or IV; and

24 (3) a state jail felony [~~Class A misdemeanor~~] if the
25 controlled substance that is the subject of the offense is listed in
26 Schedule V.

27 SECTION 9. Sections 481.181(a) and (b), Health and Safety

1 Code, are amended to read as follows:

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

- 12 (1) state the purpose of the entry;
- 13 (2) display [~~and present~~] to the owner, operator, or
14 agent in charge of the premises appropriate credentials; and
- 15 (3) deliver to the owner, operator, or agent in charge
16 of the premises a written notice of inspection authority.

17 (b) The director may:

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

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

27 (3) examine and inventory stock of a controlled

1 substance and obtain samples of the controlled substance;

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

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

9 SECTION 10. Section 481.182, Health and Safety Code, is
10 amended to read as follows:

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

14 (1) a person other than the person making the offer; or

15 (2) evidence other than a statement of the person

16 making the offer. [~~SEARCH WARRANTS. A search warrant may be issued~~
17 ~~to search for and seize a controlled substance possessed or~~
18 ~~manufactured in violation of this chapter. The application for the~~
19 ~~issuance of and the execution of a search warrant under this section~~
20 ~~must conform to applicable provisions of the Code of Criminal~~
21 ~~Procedure.~~]

22 SECTION 11. Section 481.183, Health and Safety Code, is
23 amended to read as follows:

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

25 DRUG PARAPHERNALIA. (a) [~~For the purpose of establishing the~~

26 ~~delivery of a controlled substance, counterfeit substance, or drug~~

27 ~~paraphernalia, proof of an offer to sell must be corroborated by a~~

1 ~~person other than the offeree or by evidence other than a statement~~
2 ~~of the offeree.~~

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

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

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

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

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

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

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

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

24 (8) direct or circumstantial evidence of the ratio of
25 sales of the object to the total sales of the business enterprise;

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

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

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

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

8 SECTION 12. Section 481.184, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 481.184. BURDEN OF PROOF[~~, LIABILITIES~~]. (a) Except
11 as provided by Subsection (b), it is a defense to prosecution under
12 this chapter that the actor's conduct complied with [~~The state is~~
13 ~~not required to negate~~] an exemption or exception provided by this
14 chapter [~~in a complaint, information, indictment, or other pleading~~
15 ~~or in any trial, hearing, or other proceeding under this chapter. A~~
16 ~~person claiming the benefit of an exemption or exception has the~~
17 ~~burden of going forward with the evidence with respect to the~~
18 ~~exemption or exception~~].

19 (b) It is an affirmative defense to prosecution under this
20 chapter that the actor's conduct was authorized by:

21 (1) a rule adopted under this chapter; or

22 (2) [In the absence of proof that a person is the duly
23 ~~authorized holder of]~~ an appropriate registration, permit, or order
24 form issued under this chapter with respect to which the actor is
25 the duly authorized holder [~~, the person is presumed not to be the~~
26 ~~holder of the registration or form. The presumption is subject to~~
27 ~~rebuttal by a person charged with an offense under this chapter~~].

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

4 SECTION 13. Section 481.185, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 481.185. LIABILITY. This chapter does not impose
7 liability on an authorized state, county, or municipal officer
8 engaged in the lawful performance of official duties. [~~ARREST~~
9 ~~REPORTS.~~ (a) ~~Each law enforcement agency in this state shall file~~
10 ~~monthly with the director a report of all arrests made for drug~~
11 ~~offenses and quantities of controlled substances seized during the~~
12 ~~preceding month. The agency shall make the report on a form~~
13 ~~provided by the director and shall provide the information required~~
14 ~~by the form.~~

15 ~~[(b) The director shall publish an annual summary of all~~
16 ~~drug arrests and controlled substances seized in the state.]~~

17 SECTION 14. Section 481.186(b), Health and Safety Code, is
18 amended to read as follows:

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

24 SECTION 15. Article 18.02, Code of Criminal Procedure, is
25 amended to read as follows:

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

- 1 (1) property acquired by theft or in any other manner
2 which makes its acquisition a penal offense;
- 3 (2) property specially designed, made, or adapted for
4 or commonly used in the commission of an offense;
- 5 (3) arms and munitions kept or prepared for the
6 purposes of insurrection or riot;
- 7 (4) weapons prohibited by the Penal Code;
- 8 (5) gambling devices or equipment, altered gambling
9 equipment, or gambling paraphernalia;
- 10 (6) obscene materials kept or prepared for commercial
11 distribution or exhibition, subject to the additional rules set
12 forth by law;
- 13 (7) a drug, controlled substance, immediate
14 precursor, chemical precursor, or other controlled substance
15 property, including an apparatus or paraphernalia [~~drugs~~] kept,
16 prepared, or manufactured in violation of the laws of this state;
- 17 (8) any property the possession of which is prohibited
18 by law;
- 19 (9) implements or instruments used in the commission
20 of a crime;
- 21 (10) property or items, except the personal writings
22 by the accused, constituting evidence of an offense or constituting
23 evidence tending to show that a particular person committed an
24 offense;
- 25 (11) persons; or
- 26 (12) contraband subject to forfeiture under Chapter 59
27 of this code.

1 SECTION 16. Article 481.034(f), Health and Safety Code, is
2 repealed.

3 SECTION 17. (a) This Act takes effect September 1, 2003.

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