

## **BILL ANALYSIS**

C.S.H.B. 164  
By: Berman  
Law Enforcement  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The manufacture, delivery, and consumption of methamphetamines is a growing epidemic in Texas. In 2000, the Texas Commission on Alcohol and Drug Abuse (TCADA) reports that 1,821 people were admitted into Texas treatment centers for methamphetamine abuse; in 2004, that number rose to 11,238, illustrating the dramatic trend of rising use.

The monetary and human costs of methamphetamine use are high. The manufacture of methamphetamine exposes those around it, including children, to toxic chemicals, as well as a significant danger of fire or explosion. Those who use methamphetamines tax our state's public health and welfare resources. The cleanup of seized methamphetamine labs and training for narcotics officers cost the state additional funds. Additionally, peace officers often sustain serious and life threatening injuries from encountering meth labs.

C.S.H.B. 164 addresses these issues by authorizing certain state officers to take possession of a child that has been permitted to remain on premises used for the manufacture of methamphetamine, regulating over-the-counter sales of pseudoephedrine, and placing new requirements and responsibilities on non-prescription drug wholesalers.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 2.01 of this bill, the State Health Services Council, the commissioner of State Health Services and the Department of State Health Services in SECTION 2.02 of this bill, the director of the Department of Public Safety in SECTION 2.03 of this bill, the State Health Services Council in SECTION 2.04 of this bill, and to the executive commissioner of the Health and Human Services Commission in SECTIONS 3.05, 3.06, and 3.09 of this bill.

### **ANALYSIS**

C.S.H.B. 164 amends Section 481.124(b), Health and Safety Code to provide that, for purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports at least three of the following items:

- (1) an item of equipment subject to regulation under Section 481.080, if the person is not registered under Section 481.063; or
- (2) glassware, a plastic or metal container, tubing, a hose, or other item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.

The bill amends Section 481.136(a), Health and Safety Code, to provide that a person commits an offense if the person sells, transfers, furnishes, or receives a chemical precursor subject to Section 481.077(a) and the person:

- ‡ does not comply with Section 481.077 or 481.0771;
- ‡ knowingly makes a false statement in a report or record required by Section 481.077, 481.0771, or 481.078; or
- ‡ knowingly violates a rule adopted under Section 481.077, 481.0771, or 481.078.

The bill amends Section 99.003, Civil Practice and Remedies Code, to provide that a person who manufactures methamphetamine is strictly liable for any exposure by an individual to the

manufacturing process, including exposure to the methamphetamine itself or any of the by-products or waste products incident to the manufacture, for the greater of actual damages for personal injury, death, or property damage as a result of the exposure or \$20,000 for each incident of exposure.

The bill amends Section 262.104, Family Code, by adding Subsection (b) to provide that an authorized representative of the Department of Family and Protective Services (DFPS), a law enforcement officer, or a juvenile probation officer may take possession of a child under Subsection (a) on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.

The bill amends Section 22.041, Penal Code by adding Subsection (c-1) to provide that for the purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person manufactured the controlled substance methamphetamine in the presence of the child.

The bill provides that Sections 481.124 and 481.136, Health and Safety Code, as amended by this Act, and Section 22.041(c-1), Penal Code, as added by this Act, apply prospectively from September 1, 2005, and that Section 99.003, Civil Practice and Remedies Code, as amended by this Act, applies only to a cause of action that accrues on or after that date.

The bill adds Section 481.0771, Health and Safety Code, as follows:

- Adds Subsection (a) to require a wholesaler who sells, transfers, or otherwise furnishes pseudoephedrine to a retailer to make available to the director of the Department of Public Safety or an employee of the department designated by the director all records of the transaction in accordance with department rule.
- Adds Subsection (b) to require a wholesaler to submit to the director of the Department of Public Safety or an employee of the department designated by the director a report of an order for pseudoephedrine not later than five business days after receipt of the order, in accordance with department rule, if the order requests delivery of a suspicious quantity of pseudoephedrine as determined by department rule.
- Adds Subsection (c) to provide that a wholesaler who, with reckless disregard for the duty to report under Subsection (b), fails to report as required by that subsection may be subject to disciplinary action in accordance with department rule.

The bill adds Chapter 486 to the Health and Safety Code, as follows:

- Adds Section 486.001 to define, for purposes of this chapter:
  - (1) "Commissioner" as the commissioner of state health services,
  - (2) "Council" as the State Health Services Council,
  - (3) "Department" as the Department of State Health Services,
  - (4) "Pseudoephedrine" as any compound, mixture, or preparation containing any detectable amount of pseudoephedrine, including its salts, optical isomers, and salts of optical isomers, but not any compounds, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form and in which pseudoephedrine is not the only active ingredient, and
  - (5) "Sale" to include a conveyance, exchange, barter, or trade.
  - ! Provides that a term used in this chapter that is not defined by Subsection (a) has the meaning assigned by Section 481.002.
- Adds Section 486.002 to provide that this chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.
- Adds Section 486.003 to require the State Health Services Council to adopt rules necessary to implement and enforce this Chapter.
- Adds Section 486.004 as follows:
  - ! Adds subsection (a) to provide that the department shall collect fees for the issuance of a certificate of authority under this chapter and an inspection performed in enforcing this chapter and rules adopted under it.
  - ! Adds subsection (b) to require the commissioner, by rule, to set the fees in amounts that allow the department to recover the biennial expenditures of state

funds by the department in reviewing applications for a certificate of authority, issuing certificates, inspecting and auditing certified businesses, and otherwise implementing and enforcing this chapter.

! Adds subsection (c) to require that fees collected under this section be deposited to the credit of a special account in the general revenue fund and appropriated to the department to implement and enforce this chapter.

- Adds Section 486.011 to provide that a business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of pseudoephedrine.
- Adds Section 486.012 as follows:
  - ! Adds Subsection (a) to provide that a business that does not operate a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of pseudoephedrine only if the establishment holds a certificate of authority issued under this section.
  - ! Adds Subsection (b) to authorize the department to issue a certificate of authority to engage in over-the-counter sales of pseudoephedrine to a business establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy if the establishment applies to the department for the certificate in accordance with department rule and complies with the requirements established by the department for issuance of a certificate.
  - ! Adds Subsection (c) to require the department to establish, by rule, requirements for the issuance of a certificate of authority under this section. Requires the rules to include a consideration by the department of whether the establishment complies with the requirements of the Texas State Board of Pharmacy for the issuance of a license to operate a pharmacy, sells a wide variety of pharmaceutical products, and employs sales techniques and other measures designed to deter the theft of products containing pseudoephedrine and other items used in the manufacture of methamphetamine.
  - ! Adds Subsection (d) to authorize the department to inspect or audit a business establishment that is issued a certificate of authority under this section at any time the department determines necessary.
- Adds Section 486.013 to require a business that engages in over-the-counter sales of pseudoephedrine to display it in a manner that makes it accessible to a patron of the business establishment only with the assistance of an employee of the establishment.
- Adds Section 486.014 to require that a business, before completing an over-the-counter sale of pseudoephedrine:
  - (1) require the person purchasing pseudoephedrine to display a driver's license or other form of identification containing the person's photograph and indicating that the person is 16 years of age or older and sign for the purchase;
  - (2) make a record of the sale, including the name of the person purchasing the pseudoephedrine, the date of purchase, and the number of grams purchased; and
  - (3) take actions necessary to prevent a person who makes over-the-counter purchases of one or more products containing pseudoephedrine from obtaining from the establishment in a single transaction more than two packages of a product containing pseudoephedrine or more than six grams.
- Adds Section 486.015 to require a business that sells pseudoephedrine over-the-counter to maintain all records made under Section 486.014(2) in a secure centralized location until at least the second anniversary of the date the record is made.
- Adds Section 486.021 to authorize the department to impose an administrative penalty on a person who violates Chapter 486.
- Adds Section 486.022, as follows:
  - ! Adds Subsection (a) to provide that the amount of the penalty may not exceed \$1,000 for each violation; provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty; provides that the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$10,000.
  - ! Adds Subsection (b) to require that the amount of the penalty be based on the following factors:
    - (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
    - (2) the threat to health or safety caused by the violation;

- (3) the history of previous violations;
  - (4) the amount necessary to deter a future violation;
  - (5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and
  - (6) any other matter that justice may require.
- Adds Section 486.023 to require the department, if it initially determines that a violation occurred, to give written notice of the report by certified mail to the person, and require that the notice include a brief summary of the alleged violation, state the amount of the recommended penalty, and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.
- Adds Section 486.024 to provide that before the 21st day after the date the person receives notice under Section 486.023, the person in writing may accept the determination and recommended penalty or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both; requires the commissioner by order to approve the determination if the person accepts the determination and recommended penalty or fails to respond to the notice.
- Adds Section 486.025 to require the commissioner to refer matters upon which a hearing has been requested to the State Office of Administrative Hearings and to provide notice and hearing procedures.
- Adds Section 486.026 to provide procedures for decision and notice of the commissioner's order and the right to judicial review after the administrative hearing.
- Adds Section 486.027 to require a person to either pay the penalty or file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both, before the 31st day after the date the order under Section 486.026 imposing an administrative penalty becomes final.
- Adds Section 486.028 to provide for the stay of enforcement of a penalty while judicial review is pending if certain conditions are met.
- Adds Section 486.029 to provide that if the person does not pay the penalty and the enforcement is not stayed, the penalty may be collected, and the attorney general may sue to collect the penalty.
- Adds Section 486.030 to provide that if the court sustains a finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the penalty, and that if the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.
- Adds Section 486.031 to require that if the penalty is not upheld or the amount is reduced by the court, the court shall order, when judgment becomes final, that the appropriate amount plus interest accrued at the Federal Reserve rate from the date the penalty is paid to the date the penalty is remitted be remitted to the person before the 31st day after the date the judgment becomes final.
- Adds Section 486.032 to provide for release of supersedeas bond if the penalty is not upheld by the court.
- Adds Section 486.033 to provide that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

The bill requires the director of the Department of Public Safety to adopt any rules necessary to administer and enforce Section 481.0771, Health and Safety Code, as added by this Act, not later than September 1, 2006, and requires the State Health Services Council to adopt rules to implement and enforce Chapter 486, Health and Safety Code, as added by this Act, not later than September 1, 2006.

The bill amends the heading of Subchapter I, Chapter 431, Health and Safety Code.

The bill amends Section 431.201, Health and Safety Code, as follows:

- Defines "nonprescription drug" as any drug that is not a prescription drug as defined by Section 431.401;
- Defines "place of business" as each location at which a drug for wholesale distribution is located;
- Amends the definition of "wholesale distribution" to include distribution by a repackager, broker, or warehouse.

The bill adds Section 431.2011 to the Health and Safety Code to provide that Subchapter I, Chapter 431, Health and Safety Code, applies only to the wholesale distribution of nonprescription drugs.

The bill amends Section 431.202, Health and Safety Code, as follows:

- Amends the title.
- Amends Subsection (a) to prohibit a person from engaging in the wholesale distribution of nonprescription drugs in this state unless the person holds a wholesale drug distribution license issued by the Texas Department of Health under this subchapter or Subchapter N.
- Amends Subsection (b) to require an applicant for a license under this subchapter to submit an application to the department on the form prescribed by the department or electronically on the TexasOnline Internet website.
- Adds Subsection (c) to provide that a license issued under this subchapter expires on the second anniversary of the date of issuance.

The bill amends Section 431.204, Health and Safety Code, as follows:

- Provides that the Department of Health shall collect fees for a wholesale drug distributor's license that is filed, renewed, or amended, as well as fees for an inspection performed in enforcing this subchapter and rules adopted under it.
- Provides that the executive commissioner of the Health and Human Services Commission by rule shall set the fees in amount that allow the department to recover the biennial expenditures of state funds by the department in reviewing, acting on, amending, and renewing licenses, inspecting a licensed facility, and implementing and enforcing this subchapter and rules or orders adopted or licenses issued under it.
- Provides that fees collected under this section shall be appropriated to the department to carry out the administration and enforcement of this chapter.

The bill amends Section 431.206, Health and Safety Code, as follows:

- Requires a licensee to notify the department in writing of the licensee's intent to change the location of a licensed place of business not fewer than 30 days in advance of the change.
- Requires the licensee, not more than 10 days after the completion of the change of location, to notify the department in writing to confirm completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.
- Provides that the notice and confirmation required by this section are deemed adequate if the licensee sends the notices by certified mail, return receipt requested, to the central office of the department or submits them electronically through the TexasOnline internet website.

The bill amends Section 431.207, Health and Safety Code, as follows:

- Authorizes the commissioner of state health services to refuse an application for a license or suspend or revoke a license under certain circumstances.
- Provides that the commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:
  - ‡ has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;
  - ‡ has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Texas Dangerous Drugs Act);
  - ‡ has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or
  - ‡ fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.
- Requires the executive commissioner of the Health and Human Services Commission by rule to establish minimum standards require for the issuance or renewal of a license under this subchapter.

- Provides that the refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

The bill amends Section 431.021, Health and Safety Code, to provide that the following acts and the causing of the following acts within this state are unlawful and prohibited:

- ! engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N, as applicable;
- ! making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department under this subchapter;
- ! failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department; or
- ! performing, causing the performance of, or aiding and abetting the performance of an act described by Subdivision (x) (engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices without the proper license).

The bill repeals Sections 431.2021 and 431.205, Health and Safety Code.

The bill requires the executive commissioner of the Health and Human Services Commission to adopt the rules necessary to implement the changes in law made by Article 3 by amending Subchapter I, Chapter 431, Health and Safety Code, by not later than January 1, 2006.

The bill requires the Department of State Health Services to prescribe the forms required to implement the changes in law made by Article 3 by the amendment of Subchapter I, Chapter 431, Health and Safety Code, by not later than January 1, 2006.

The bill provides that the change in law made by Article 3 applies only to an offense committed on or after March 1, 2006.

The bill provides that Article 3 takes effect only if Senate Bill 1685 or another similar bill of the Regular Session of the 79th Legislature adding Subchapter N, Chapter 431, Health and Safety Code, regulating wholesale prescription drug distributors is enacted and becomes law; provides that if Senate Bill 1685 or another similar bill of the Regular Session of the 79th Legislature adding Subchapter N, Chapter 431, Health and Safety Code, regulating wholesale prescription drug distributors does not become law, Article 3 does not take effect.

The bill provides that subject to the above paragraph, Article 3 takes effect on the date designated by Section 4.01 of this Act, except that Sections 3.01-3.07 of Article 3 take effect March 1, 2006.

The bill makes conforming and non-substantive changes.

### **EFFECTIVE DATE**

June 1, 2005, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The original bill amends Section 481.112 of the Health and Safety Code by enhancing the penalty for the manufacture, delivery, or possession with intent to deliver methamphetamine. The committee substitute does not amend this Section.

The original bill adds Section 481.1122 to the Health and Safety Code to enhance the penalty for if it is shown at trial for the manufacture of methamphetamine that a child younger than 18 years

old was present on the premises where the offense was committed. The committee substitute does not add this section.

The original bill amends Section 481.124, Health and Safety Code, to provide that an offense under this section is a felony of the second degree if the controlled substance is listed in Penalty Group 1 or 1-A, except as provided by Subsection (d-1); adds Subsection (d-1) to provide that an offense under this section is a felony of the first degree if it is shown at the punishment phase of the trial that the person committed the offense with the intent to unlawfully manufacture methamphetamine and, when the offense was committed, a child younger than 18 years of age was either present on the premises where the defendant was in possession of the chemical or in or on a vehicle in or on which the defendant was transporting the chemical. The substitute does not include these provisions.

The substitute amends Section 481.124(b), Health and Safety Code, to provide that, for purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports at least three of certain items typically used in the manufacture of methamphetamine. The original bill does not make this change.

The substitute amends Section 481.136(a), Health and Safety Code, to provide that a person commits an offense if the person sells, transfers, furnishes, or receives a chemical precursor subject to Section 481.077(a) and the person does not comply with Section 481.077 or 481.0771; knowingly makes a false statement in a report or record required by Section 481.077, 481.0771, or 481.078; or knowingly violates a rule adopted under Section 481.077, 481.0771, or 481.078. The original bill does not make this change.

The original bill adds Section 504.003 to the Health and Safety Code to provide that if it is shown at the punishment phase of a trial for an offense under Section 504.001 or 504.002 that the person committed the offense with the intent to facilitate the manufacture of methamphetamine, the offense is a second degree felony. The committee substitute does not add this section.

The original bill amends Article 17.15, Code of Criminal Procedure, to require a judge, magistrate, or officer who requires bail in an amount less than an established amount for certain offenses involving methamphetamines, to include in the record of the proceedings a writing explaining why the lesser amount was required. The original bill also amends Article 37.07, Code of Criminal Procedure, to provide that if the jury sentences a defendant in a case involving the manufacture of methamphetamine, the court shall charge the jury as provided by Section 4(b) or 4(c), except that the judge shall amend the charge to accurately reflect the defendant's eligibility for parole as provided in Section 508.145 of the Government Code, as amended by this Act. The committee substitute does not amend the Code of Criminal Procedure.

The original bill amends Section 262.104 of the Family Code to require an authorized representative of the Department of Protective and Regulatory Services, law enforcement officer, or juvenile probation officer to take possession of a child without a court order if that person has knowledge or information that the parent or person in possession of the child has allowed the child to stay on premises used for the manufacture of methamphetamine. The committee substitute amends this section to allow one of those authorized persons to take possession of a child on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.

The original bill amends Section 508.145 of the Government Code to limit eligibility for parole for those inmates who have been convicted of an offense involving the manufacture of methamphetamine. The committee substitute does not amend this section.

The original bill adds Chapter 468, METHAMPHETAMINE WATCH PROGRAM, to the Health and Safety Code. The committee substitute does not add this chapter.

The original bill adds Section 481.0771, Health and Safety Code, to require a wholesaler who sells, transfers, or otherwise furnishes pseudoephedrine to a retailer, before delivering the drug,

to obtain from the retailer a copy of the retailer's license to operate a pharmacy and the retailer's address, area code, and telephone number, and make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction. The original bill requires that the wholesaler submit a monthly report to the department, in accordance with department rule, that includes certain information regarding pseudoephedrine sales. The original bill requires the wholesaler to report orders for pseudoephedrine received from a retailer not licensed to operate a pharmacy. The committee substitute does not make these requirements, but requires a wholesaler who sells, transfers, or otherwise furnishes pseudoephedrine to a retailer to make available to the director of the Department of Public Safety or an employee of the department designated by the director all records of the transaction in accordance with department rule.

The original bill, in Section 486.001, Health and Safety Code, defines "Board" as the Texas State Board of Pharmacy and "Executive director" as the executive director of the Texas State Board of Pharmacy. The substitute does not include these definitions.

The original bill requires the Texas State Board of Pharmacy to adopt rules necessary to implement and enforce Chapter 486, Subchapter C: REGULATED SALES. The substitute does not make this requirement. The substitute requires the State Health Services Council to adopt rules necessary to implement and enforce Chapter 486. The original bill does not make this requirement.

The original bill adds Section 486.011 to prohibit over-the-counter sale of pseudoephedrine by any business that does not operate a licensed pharmacy. The committee substitute provides that a business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of pseudoephedrine. Additionally, the substitute adds Section 486.012 to provide that an establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of pseudoephedrine only if the establishment holds a certificate of authority issued under this section, makes provisions regarding the issuance of certificates of authority, and authorizes the department to inspect or audit a business that is issued a certificate of authority at any time the department deems necessary. The original bill does not make these provisions.

The original bill provides that Chapter 486, Subchapter C (REGULATED SALES), applies only to a business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy. The committee substitute does not so provide.

The original bill requires that, before completing an over-the-counter sale of pseudoephedrine, a business establishment shall require the person purchasing pseudoephedrine to display a driver's license or other identification containing the person's photo and sign for the purchase, and shall take action as necessary to ensure that a person does not purchase more than nine grams of pseudoephedrine from the establishment in any 30-day period. The substitute requires that a business, before completing an over-the-counter sale of pseudoephedrine shall require the purchaser to display a driver's license or other photo identification indicating that the person is 16 or older and sign for the purchase, and shall take actions necessary to prevent a person from obtaining in a single transaction more than two packages of a product containing pseudoephedrine or more than six grams of pseudoephedrine.

The original bill provides that the total amount of the penalty assessed for a violation of Subchapter B, Chapter 486, Health and Safety Code, continuing or occurring on separate days may not exceed \$5,000. The substitute provides that the total amount of the penalty imposed for a violation under the same provision continuing or occurring on separate days may not exceed \$10,000.

The original bill requires the director of the Department of Public Safety to adopt any rules necessary to administer and enforce Section 481.0771, Health and Safety Code, as added by this Act, not later than September 1, 2005, and requires the State Health Services Council to adopt rules to implement and enforce Subchapter B, Chapter 486, Health and Safety Code, as added by this Act, not later than September 1, 2005. The substitute requires the adoption of rules necessary to administer and enforce Section 481.0771 and Chapter 486, Health and Safety Code as added by this act, not later than September 1, 2006.



The original bill provides that Sections 481.112 and 481.124, Health and Safety Code, as amended by the Act, and Sections 481.1122 and 504.003, Health and Safety Code, as added by the Act, apply only to an offense committed on or after September 1, 2005; that Articles 17.15 and 37.07, Code of Criminal Procedure, and Section 508.145, Government Code, as amended by the Act, apply only to a defendant charged with or an inmate serving a sentence for an offense committed on or after September 1, 2005; that Section 99.003, Civil Practice and Remedies Code, as amended by the Act, and Section 468.004, Health and Safety Code, as added by the Act, apply only to a cause of action that accrues on or after September 1, 2005. The substitute does not provide these dates.

The original bill requires the Department of State Health Services and the governor's criminal justice division to take necessary action to carry out Chapter 486, Health and Safety Code, as added by this Act, not later than September 1, 2005. The substitute does not include this language.

The original bill requires the State Board of Pharmacy to adopt rules to implement and enforce Subchapter C, Chapter 486, as added by this Act, not later than September 1, 2005. The substitute does not require the State Board of Pharmacy to adopt rules.

The original bill provided that the Act takes effect upon passage, or if it does not receive the necessary vote, the Act takes effect September 1, 2005. The substitute provides that the Act takes effect on June 1, 2005, or, if it does not receive the necessary vote, the Act takes effect September 1, 2005.

The committee substitute amends Section 22.041, Penal Code, by adding Subsection (c-1) to provide that for the purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person manufactured the controlled substance methamphetamine in the presence of the child. The original bill did not make this change.

The committee substitute provides that Sections 481.124 and 481.136, Health and Safety Code, and Section 22.041(c-1), Penal Code, as added by this Act, apply only to an offense committed on or after September 1, 2005. The original bill does not so provide.

The substitute adds Section 486.004 to the Health and Safety Code to provide for the establishment, collection and deposit of fees for the administration of Chapter 486 (PSEUDOEPHEDRINE). The original bill does not include these provisions.

The substitute amends Subchapter I, Chapter 431, Health and Safety Code, as follows:

- Amends the title of Subchapter I.
- Amends Section 431.201, Health and Safety Code, to define "nonprescription drug" and amend the definition of "wholesale distribution".
- Adds Section 431.2011 to the Health and Safety Code to provide that Subchapter I, Chapter 431, Health and Safety Code, applies only to the wholesale distribution of nonprescription drugs.
- Amends Section 431.202, Health and Safety Code, to amend the title; prohibits a person from engaging in the wholesale distribution of nonprescription drugs in this state without a certain license; requires an applicant for a license under this subchapter to submit an application to the department on the form prescribed by the department or electronically on the TexasOnline Internet website; provides that a license issued under this subchapter expires on the second anniversary of the date of issuance.
- Amends Section 431.204, Health and Safety Code, to provide that the Department of Health shall collect fees for a wholesale drug distributor's license that is filed, renewed, or amended, as well as fees for an inspection performed in enforcing this subchapter and rules adopted under it; provide that the executive commissioner of the Health and Human Services Commission by rule shall set the fees in a certain amount; provides that fees collected under this section shall be appropriated to the department to carry out the administration and enforcement of this chapter.
- Amends Section 431.206, Health and Safety Code, to require a licensee to notify the department in writing of the licensee's intent to change the location of a licensed place of business not fewer than 30 days in advance of the change; requires the licensee to

confirm completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent; provides that notice and confirmation required by this section are deemed adequate if submitted in a certain fashion.

- Amends Section 431.207, Health and Safety Code, as follows:
  - ‡ Provides that the commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:
    - (1) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;
    - (2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Texas Dangerous Drugs Act);
    - (3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or
    - (4) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.
  - ‡ Provides that the commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or licensee fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.
  - ‡ Requires the executive commissioner of the Health and Human Services Commission by rule to establish minimum standards require for the issuance or renewal of a license under this subchapter.
  - ‡ Provides that the refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.
- Amends Section 431.021, Health and Safety Code, to provide that the following acts and the causing of the following acts within this state are unlawful are prohibited:
  - ‡ engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N, as applicable;
  - ‡ making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department under this subchapter;
  - ‡ failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department; or
  - ‡ performing, causing the performance of, or aiding and abetting the performance of an act described by Subdivision (x).

The original bill does not amend Subchapter I, Chapter 431, Health and Safety Code.

The substitute repeals Section 431.2021 and 431.205, Health and Safety Code, which are not repealed by the original bill.

The substitute requires the executive commissioner of the Health and Human Services Commission to adopt the rules necessary to implement the changes in law made by this article by amending Subchapter I, Chapter 431, Health and Safety Code, by not later than January 1, 2006. The original does not provide this requirement.

The substitute requires the Department of State Health Services to prescribe the forms required to implement the changes in law made by this article by the amendment of Subchapter I, Chapter 431, Health and Safety Code, by not later than January 1, 2006. The original does not make this requirement.

The substitute provides that the change in law made by Article 3 of the bill applies only to an offense committed on or after March 1, 2006. The original does not so provide.

The substitute provides that Article 3 of the bill takes effect only if Senate Bill 1685 or another similar bill of the Regular Session of the 79th Legislature adding Subchapter N, Chapter 431,

Health and Safety Code, regulating wholesale prescription drug distributors is enacted and becomes law; provides that if Senate Bill 1685 or another similar bill of the Regular Session of the 79th Legislature adding Subchapter N, Chapter 431, Health and Safety Code, regulating wholesale prescription drug distributors does not become law, this article does not take effect. The original does not so provide.

The substitute provides that subject to the above, Article 3 of the bill takes effect on the date designated by Section 4.01 of the Act, except that Sections 3.01-3.07 of Article 3 take effect March 1, 2006. The original did not so provide.