

## BILL ANALYSIS

Senate Research Center  
79R15482 PEP-D

C.S.S.B. 107  
By: Estes  
Health & Human Services  
5/4/2005  
Committee Report (Substituted)

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently a person can purchase certain kinds of pseudoephedrine over-the-counter without a prescription. Pseudoephedrine is the single ingredient that "cooks" of methamphetamine must have to produce methamphetamine.

C.S.S.B. 107 limits over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine by requiring a business establishment to implement safeguards, such as requiring identification for purchases and making the substances available only with the assistance of an employee. This law will not apply to a product dispensed or delivered by a pharmacist according to a prescription issued by a physician. This bill also regulates certain equipment associated with the manufacture of methamphetamine and regulates wholesale nonprescription drug distributors under the Texas Food, Drug, and Cosmetic Act.

### RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Health is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 3.05 (Section 431.204, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3.06 (Section 431.207, Health and Safety Code) and SECTION 3.09 of this bill.

### SECTION BY SECTION ANALYSIS

#### ARTICLE 1. CRIMINAL CONSEQUENCES OF ENGAGING IN CONDUCT RELATED TO THE MANUFACTURE OF METHAMPHETAMINE

SECTION 1.01. Amends Section 481.124(b), Health and Safety Code, to provide that intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports at least three of the following items: an item of equipment subject to regulation under Section 481.080 (Chemical Laboratory Apparatus Record-Keeping Requirements and Penalties), if the person is not registered under Section 481.063 (Registration Application; Issuance or Denial), or 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. Makes nonsubstantive changes.

SECTION 1.02. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1245, as follows:

Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) Provides that a person commits an offense if the person possesses or transports anhydrous ammonia in a container or receptacle that is not designed or manufactured to hold or transport anhydrous ammonia; uses, transfers, or sells a container or receptacle that is designed or manufactured to hold anhydrous ammonia without the express consent of the owner of the container or receptacle; or tampers with equipment that is manufactured or used to hold, apply, or transport anhydrous ammonia without the express consent of the owner of the equipment.

(b) Provides that an offense under this section is a felony of the third degree.

SECTION 1.03. Repealer: Chapter 504 (Anhydrous Ammonia), Health and Safety Code.

SECTION 1.04. Makes application of this article prospective.

ARTICLE 2. REGULATION OF  
CHEMICAL PRECURSORS TO METHAMPHETAMINE UNDER  
THE CONTROLLED SUBSTANCES ACT

SECTION 2.01. Amends Subchapter B, Chapter 481, Health and Safety Code, by adding Section 481.037, as follows:

Sec. 481.037. DESIGNATION OF EPHEDRINE, PSEUDOEPHEDRINE, OR NORPSEUDOEPHEDRINE. (a) Defines "ephedrine," "pseudoephedrine," and "norpseudoephedrine."

(b) Provides that notwithstanding Section 481.033 (Exclusion from Schedules and Application of Act) or any other provisions of this subchapter, Schedule V includes ephedrine, pseudoephedrine, and norpseudoephedrine.

SECTION 2.02. Amends Subchapter C, Chapter 481, Health and Safety Code, by adding Section 481.0721, as follows:

Sec. 481.0721. OVER-THE-COUNTER SALES OF EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. (a) Provides that this section applies to any product containing ephedrine, pseudoephedrine, or norpseudoephedrine added to Schedule V by Section 481.037.

(b) Authorizes a business, notwithstanding Section 481.074 (Prescriptions), to engage in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine if the pharmacy meets certain criteria.

(c) Requires a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine to maintain those products in a secure location accessible to a patron of the establishment only with the assistance of an employee of the establishment and ensure that those products are sold to a patron of the establishment only by an employee who possesses a certain license.

(d) Requires the business establishment, before completing an over-the-counter sale of ephedrine, pseudoephedrine, or norpseudoephedrine, to require the person purchasing the product to display certain identification and sign for the purchase, make a record of the sale including certain information, and take actions necessary to prevent a person from obtaining more than a certain amount of the substance in a given time period.

(e) Requires the business establishment to obtain the record made under Subsection (d) for at least two years after the date the record is made. Requires the business establishment to make each record available on request of the Department of Public Safety or the Texas State Board of Pharmacy.

SECTION 2.03. Amends Section 481.077(l), Health and Safety Code, to provide that this section (Chemical Precursor Records and Reports) does not apply to the sale or transfer of any compound, mixture, or preparation containing ephedrine, pseudoephedrine, or norpseudoephedrine that is in liquid, liquid capsule, or liquid gel capsule form. Deletes existing text providing that this section does not apply to the sale or transfer of a nonnarcotic product that includes ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and is sold with a prescription or over the counter in accordance with a federal statute or rule. Makes nonsubstantive changes.

ARTICLE 3. REGULATION OF WHOLESALE NONPRESCRIPTION DRUG  
DISTRIBUTORS  
UNDER THE TEXAS FOOD, DRUG, AND COSMETIC ACT

SECTION 3.01. Amends the heading to Subchapter I, Chapter 431, Health and Safety Code, to read as follows:

SUBCHAPTER I. WHOLESALE DISTRIBUTORS  
OF NONPRESCRIPTION DRUGS

SECTION 3.02. Amends Section 431.201, Health and Safety Code, to define "nonprescription drug" and redefine "wholesale distribution." Makes nonsubstantive changes.

SECTION 3.03. Amends Subchapter I, Chapter 431, Health and Safety Code, by adding Section 431.2011, as follows:

Sec. 431.2011. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to the wholesale distribution of nonprescription drugs.

SECTION 3.04. Amends Section 431.202, Health and Safety Code, as follows:

[While the statutory reference in this section is to the Texas Department of Health, the following amendment affects the Department of State Health Services, as the successor agency to the Texas Department of Health.]

Sec. 431.202. New heading: LICENSE REQUIRED. (a) Prohibits a person from engaging in wholesale distribution in this state unless the person holds a wholesale drug distribution license issued by the Texas Department of Health (department of health) under this subchapter or Subchapter N. Deletes existing text prohibiting a person from engaging in wholesale distribution of drugs in this state unless the person has filed with the commissioner of health a signed and verified license statement on a form furnished by the commissioner.

(b) Requires an applicant for a license under this subchapter to submit an application to the department of health in a certain manner. Deletes existing text requiring the license statement to be filed annually.

(c) Provides that a license issued under this subchapter expires on the second anniversary of the date of issuance.

SECTION 3.05. Amends Section 431.204, Health and Safety Code, as follows:

[While the statutory reference in this section is to the Texas Department of Health, the following amendments affect the Department of State Health Services, as the successor agency to the Texas Department of Health.]

(a) Requires the department of health, rather than the Texas Board of Health, to collect certain fees.

(b) Requires the executive commissioner of the Health and Human Services Commission, rather than the Texas Board of Health, to set the fees by rule, in amounts that allow the department of health to recover the biennial expenditures, rather than at least 50 percent of the annual expenditures, of state funds related to licensing and enforcement of this chapter. Deletes existing text authorizing the Texas Board of Health to charge annual fees. Makes nonsubstantive changes.

(c) Requires, rather than authorizes, fees collected under this section to be appropriated to the department of health to carry out the administration and enforcement of this chapter, rather than only to carry out this chapter. Redesignated from existing Subsection (d).

SECTION 3.06. Amends Sections 431.206 and 431.207, Health and Safety Code, as follows:

[While the statutory reference in these sections is to the Texas Department of Health, the following amendments affect the Department of State Health Services, as the successor agency to the Texas Department of Health.]

Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Requires the licensee to notify the department of health, rather than the commissioner of health or the commissioner of health's designee, in writing of the licensee's intent to change the location of a licensed place of business. Creates this subsection from existing text.

(b) Creates this subsection from existing text.

(c) Requires the licensee, not more than 10 days after the completion of the change of location, to notify the department of health in writing to confirm the completion of, rather than verify, 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. Deletes existing text requiring the licensee to notify the department of health of the address of the new location and the name and residence address of the individual in charge of the business at the new address. Makes a conforming change. Creates this subsection from existing text.

(d) Provides that the notice and confirmation required by this section are deemed adequate if the licensee submits the notices electronically through the TexasOnline Internet website. Makes conforming and nonsubstantive changes.

Sec. 431.207. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) Authorizes the commissioner of state health services, rather than the commissioner of health, to refuse an application for a license or 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 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 of health. Makes a conforming change.

(b) Requires the executive commissioner of the Health and Human Services Commission by rule to establish minimum standards required for the issuance or renewal of a license under this subchapter. Deletes existing text authorizing the commissioner of health to refuse an application for a license or suspend or revoke a license under certain conditions.

(c) Provides that the refusal to license an application or the suspension or revocation of a license by the department of health rather than the commissioner of health, and the appeal from that action are governed by certain procedures. Deletes the Texas Board of Health's formal hearing procedures as those which govern the refusal to license an applicant or the suspension or revocation of the license.

SECTION 3.07. Amends Section 431.021, Health and Safety Code, to prohibit engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer or devices in this state without obtaining a license issued by the department of health under Subchapter I, L, or N, as applicable, rather than without filing a licensing statement with the commissioner of health as required by Section 431.202 or having a license as required by Section 431.272, as applicable. Prohibits making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed or requested by the department of health, rather than to be filed with the Texas Board of Health, the commissioner of health, or the department of health. Prohibits 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 of health. Prohibits performing, causing the performance of, or aiding and abetting the performance of engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without a license. [While the statutory reference in this section is to the Texas Department of Health, this amendment affects the Department of State Health Services, as the successor agency to the Texas Department of Health.]

SECTION 3.08. Repealer: Sections 431.2021 (Exemption from Licensing) and 431.205 (Expiration Date), Health and Safety Code.

SECTION 3.09. 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, not later than January 1, 2006.

SECTION 3.10. 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, not later than January 1, 2006.

SECTION 3.11. Makes application of this article prospective to March 1, 2006.

SECTION 3.12. (a) Provides, subject to Subsection (b) of this section, that this article takes effect on the date designated by Section 4.01 of this Act, except that Sections 3.01-3.07 of this article take effect March 1, 2006.

(b) Makes application of this article contingent on the passage of S.B. 1685 or a similar bill of the Regular Session of the 79th Legislature, adding Subchapter N, Chapter 431, Health and Safety Code, regulating wholesale prescription drug distributors.

#### ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date: upon passage or September 1, 2005.