

1-1 By: Estes, et al. S.B. No. 107
1-2 (In the Senate - Filed November 22, 2004; February 1, 2005,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; May 6, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 107 By: Janek

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to prohibitions on engaging in conduct related to the
1-11 manufacture of methamphetamine and to the regulation and wholesale
1-12 distribution of certain chemical substances; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. CRIMINAL CONSEQUENCES OF ENGAGING IN CONDUCT
1-15 RELATED TO THE MANUFACTURE OF METHAMPHETAMINE

1-16 SECTION 1.01. Subsection (b), Section 481.124, Health and
1-17 Safety Code, is amended to read as follows:

1-18 (b) For purposes of this section, an intent to unlawfully
1-19 manufacture the controlled substance methamphetamine is presumed
1-20 if the actor possesses or transports:

1-21 (1) anhydrous ammonia in a container or receptacle
1-22 that is not designed and manufactured to lawfully hold or transport
1-23 anhydrous ammonia;

1-24 (2) lithium metal removed from a battery and immersed
1-25 in kerosene, mineral spirits, or similar liquid that prevents or
1-26 retards hydration; or

1-27 (3) in one container, vehicle, or building,
1-28 phenylacetic acid, or more than nine grams, three containers
1-29 packaged for retail sale, or 300 tablets or capsules of a product
1-30 containing ephedrine or pseudoephedrine, and:

1-31 (A) anhydrous ammonia;

1-32 (B) at least three of the following categories of
1-33 substances commonly used in the manufacture of methamphetamine:

1-34 (i) lithium or sodium metal or red
1-35 phosphorus, iodine, or iodine crystals;

1-36 (ii) lye, sulfuric acid, hydrochloric acid,
1-37 or muriatic acid;

1-38 (iii) an organic solvent, including ethyl
1-39 ether, alcohol, or acetone;

1-40 (iv) a petroleum distillate, including
1-41 naphtha, paint thinner, or charcoal lighter fluid; or

1-42 (v) aquarium, rock, or table salt; or

1-43 (C) at least three of the following items:

1-44 (i) an item of equipment subject to
1-45 regulation under Section 481.080, if the person is not registered
1-46 under Section 481.063; or

1-47 (ii) glassware, a plastic or metal
1-48 container, tubing, a hose, or other item specially designed,
1-49 assembled, or adapted for use in the manufacture, processing,
1-50 analyzing, storing, or concealing of methamphetamine.

1-51 SECTION 1.02. Subchapter D, Chapter 481, Health and Safety
1-52 Code, is amended by adding Section 481.1245 to read as follows:

1-53 Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF
1-54 ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) A
1-55 person commits an offense if the person:

1-56 (1) possesses or transports anhydrous ammonia in a
1-57 container or receptacle that is not designed or manufactured to
1-58 hold or transport anhydrous ammonia;

1-59 (2) uses, transfers, or sells a container or
1-60 receptacle that is designed or manufactured to hold anhydrous
1-61 ammonia without the express consent of the owner of the container or
1-62 receptacle; or

1-63 (3) tampers with equipment that is manufactured or

2-1 used to hold, apply, or transport anhydrous ammonia without the
2-2 express consent of the owner of the equipment.

2-3 (b) An offense under this section is a felony of the third
2-4 degree.

2-5 SECTION 1.03. Chapter 504, Health and Safety Code, is
2-6 repealed.

2-7 SECTION 1.04. The changes in law made by this article apply
2-8 only to an offense committed on or after the effective date of this
2-9 Act. An offense committed before the effective date of this Act is
2-10 governed by the law in effect when the offense was committed, and
2-11 the former law is continued in effect for that purpose. For
2-12 purposes of this section, an offense was committed before the
2-13 effective date of this Act if any element of the offense was
2-14 committed before that date.

2-15 ARTICLE 2. REGULATION OF
2-16 CHEMICAL PRECURSORS TO METHAMPHETAMINE UNDER
2-17 THE CONTROLLED SUBSTANCES ACT

2-18 SECTION 2.01. Subchapter B, Chapter 481, Health and Safety
2-19 Code, is amended by adding Section 481.037 to read as follows:

2-20 Sec. 481.037. DESIGNATION OF EPHEDRINE, PSEUDOEPHEDRINE,
2-21 AND NORPSEUDOEPHEDRINE. (a) In this section, "ephedrine,"
2-22 "pseudoephedrine," and "norpseudoephedrine" mean any compound,
2-23 mixture, or preparation containing any detectable amount of that
2-24 substance, including its salts, optical isomers, and salts of
2-25 optical isomers. The term does not include any compound, mixture,
2-26 or preparation that is in liquid, liquid capsule, or liquid gel
2-27 capsule form.

2-28 (b) Notwithstanding Section 481.033 or any other provision
2-29 of this subchapter, Schedule V includes:

- 2-30 (1) ephedrine;
- 2-31 (2) pseudoephedrine; and
- 2-32 (3) norpseudoephedrine.

2-33 SECTION 2.02. Subchapter C, Chapter 481, Health and Safety
2-34 Code, is amended by adding Section 481.0721 to read as follows:

2-35 Sec. 481.0721. OVER-THE-COUNTER SALES OF EPHEDRINE,
2-36 PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. (a) This section
2-37 applies to any product containing ephedrine, pseudoephedrine, or
2-38 norpseudoephedrine added to Schedule V by Section 481.037.

2-39 (b) Notwithstanding Section 481.074, a business
2-40 establishment may engage in over-the-counter sales of products
2-41 containing ephedrine, pseudoephedrine, or norpseudoephedrine if
2-42 the establishment:

- 2-43 (1) operates a pharmacy licensed by the Texas State
2-44 Board of Pharmacy;
- 2-45 (2) engages only in direct retail sales to patrons of
2-46 the establishment for the patrons' personal use; and
- 2-47 (3) complies with the requirements of this section.

2-48 (c) A business establishment that engages in
2-49 over-the-counter sales of products containing ephedrine,
2-50 pseudoephedrine, or norpseudoephedrine shall:

- 2-51 (1) maintain those products in a secure location
2-52 accessible to a patron of the establishment only with the
2-53 assistance of an employee of the establishment; and
- 2-54 (2) ensure that those products are sold to a patron of
2-55 the establishment only by an employee of the establishment who is
2-56 licensed under Chapter 557, 558, or 568, Occupations Code.

2-57 (d) Before completing an over-the-counter sale of a product
2-58 containing ephedrine, pseudoephedrine, or norpseudoephedrine, a
2-59 business establishment shall:

- 2-60 (1) require the person purchasing the product to:
 - 2-61 (A) display a driver's license or other form of
2-62 identification containing the person's photograph and date of
2-63 birth; and
 - 2-64 (B) sign for the purchase;
- 2-65 (2) make a record of the sale, including the name and
2-66 date of birth of the person making the purchase, the date of
2-67 purchase, and the item and number of grams purchased; and
- 2-68 (3) take actions necessary to prevent a person who
2-69 makes over-the-counter purchases of one or more products containing

3-1 ephedrine, pseudoephedrine, or norpseudoephedrine from obtaining
3-2 from the establishment more than:

3-3 (A) three grams of those substances in a single
3-4 transaction; or

3-5 (B) nine grams of those substances in any 30-day
3-6 period.

3-7 (e) The business establishment shall maintain each record
3-8 made under Subsection (d)(2) for at least two years after the date
3-9 the record is made and shall make each record available on request
3-10 by the department or the Texas State Board of Pharmacy.

3-11 SECTION 2.03. Subsection (1), Section 481.077, Health and
3-12 Safety Code, is amended to read as follows:

3-13 (1) This section does not apply to the sale or transfer of
3-14 any compound, mixture, or preparation containing [a nonnarcotic
3-15 product that:

3-16 [~~(1)~~ includes:

3-17 [~~(A)~~] ephedrine, [~~+~~

3-18 [~~(B)~~] pseudoephedrine, or [~~+~~

3-19 [~~(C)~~] norpseudoephedrine that is in liquid,
3-20 liquid capsule, or liquid gel capsule form [~~+~~ or

3-21 [~~(D)~~] phenylpropanolamine; and

3-22 [~~(2)~~ is sold with a prescription or over the counter in
3-23 accordance with a federal statute or rule].

3-24 ARTICLE 3. REGULATION OF WHOLESALE NONPRESCRIPTION DRUG
3-25 DISTRIBUTORS

3-26 UNDER THE TEXAS FOOD, DRUG, AND COSMETIC ACT

3-27 SECTION 3.01. The heading to Subchapter I, Chapter 431,
3-28 Health and Safety Code, is amended to read as follows:

3-29 SUBCHAPTER I. WHOLESALE [~~DRUG~~] DISTRIBUTORS
3-30 OF NONPRESCRIPTION DRUGS

3-31 SECTION 3.02. Section 431.201, Health and Safety Code, is
3-32 amended to read as follows:

3-33 Sec. 431.201. DEFINITIONS. In this subchapter:

3-34 (1) "Nonprescription drug" means any drug that is not
3-35 a prescription drug as defined by Section 431.401.

3-36 (2) "Place of business" means each location at which a
3-37 drug for wholesale distribution is located.

3-38 (3) "Wholesale distribution" means distribution to a
3-39 person other than a consumer or patient, and includes distribution
3-40 by a manufacturer, repackager [~~repacker~~], own label distributor,
3-41 broker, jobber, warehouse, or wholesaler.

3-42 [~~(2)~~ "Place of business" means each location at which
3-43 a drug for wholesale distribution is located.]

3-44 SECTION 3.03. Subchapter I, Chapter 431, Health and Safety
3-45 Code, is amended by adding Section 431.2011 to read as follows:

3-46 Sec. 431.2011. APPLICABILITY OF SUBCHAPTER. This
3-47 subchapter applies only to the wholesale distribution of
3-48 nonprescription drugs.

3-49 SECTION 3.04. Section 431.202, Health and Safety Code, is
3-50 amended to read as follows:

3-51 Sec. 431.202. LICENSE [~~STATEMENT~~] REQUIRED. (a) A person
3-52 may not engage in wholesale distribution of nonprescription drugs
3-53 in this state unless the person holds a wholesale drug distribution
3-54 license issued by the department under this subchapter or
3-55 Subchapter N [~~has filed with the commissioner a signed and verified~~
3-56 license statement on a form furnished by the commissioner].

3-57 (b) An applicant for a license under this subchapter must
3-58 submit an application to the department on the form prescribed by
3-59 the department or electronically on the TexasOnline Internet
3-60 website [~~The license statement must be filed annually].~~

3-61 (c) A license issued under this subchapter expires on the
3-62 second anniversary of the date of issuance.

3-63 SECTION 3.05. Section 431.204, Health and Safety Code, is
3-64 amended to read as follows:

3-65 Sec. 431.204. FEES. (a) The department [~~board~~] shall
3-66 collect fees for:

3-67 (1) a license that is filed or renewed;

3-68 (2) a license that is amended, including a
3-69 notification of a change in the location of a licensed place of

4-1 business required under Section 431.206; and

4-2 (3) an inspection performed in enforcing this
4-3 subchapter and rules adopted under this subchapter.

4-4 (b) The executive commissioner of the Health and Human
4-5 Services Commission ~~[board may charge annual fees.~~

4-6 ~~[(c) The board]~~ by rule shall set the fees in amounts that
4-7 allow the department to recover ~~[at least 50 percent of]~~ the
4-8 biennial ~~[annual]~~ expenditures of state funds by the department in:

4-9 (1) reviewing and acting on a license;

4-10 (2) amending and renewing a license;

4-11 (3) inspecting a licensed facility; and

4-12 (4) implementing and enforcing this subchapter,
4-13 including a rule or order adopted or a license issued under this
4-14 subchapter.

4-15 (c) ~~[(d)]~~ Fees collected under this section shall be
4-16 deposited to the credit of the food and drug registration fee
4-17 account of the general revenue fund and ~~[may be]~~ appropriated to the
4-18 department ~~[only]~~ to carry out the administration and enforcement
4-19 of this chapter.

4-20 SECTION 3.06. Sections 431.206 and 431.207, Health and
4-21 Safety Code, are amended to read as follows:

4-22 Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS.

4-23 (a) Not fewer than 30 days in advance of the change, the licensee
4-24 shall notify the department ~~[commissioner or the commissioner's~~
4-25 ~~designee]~~ in writing of the licensee's intent to change the
4-26 location of a licensed place of business.

4-27 (b) The notice shall include the address of the new
4-28 location, and the name and residence address of the individual in
4-29 charge of the business at the new location.

4-30 (c) Not more than 10 days after the completion of the change
4-31 of location, the licensee shall notify the department ~~[commissioner~~
4-32 ~~or the commissioner's designee]~~ in writing to confirm the
4-33 completion of ~~[verify]~~ the change of location and provide
4-34 verification of the information previously provided or correct and
4-35 confirm any information that has changed since providing the notice
4-36 of intent ~~[, the address of the new location, and the name and~~
4-37 ~~residence address of the individual in charge of the business at the~~
4-38 ~~new address].~~

4-39 (d) The notice and confirmation required by this section are
4-40 [Notice will be] deemed adequate if the licensee sends ~~[provides]~~
4-41 the ~~[intent and verification]~~ notices ~~[to the commissioner or the~~
4-42 ~~commissioner's designee]~~ by certified mail, return receipt
4-43 requested, ~~[mailed]~~ to the central office of the department or
4-44 submits them electronically through the TexasOnline Internet
4-45 website.

4-46 Sec. 431.207. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION
4-47 OF LICENSE. (a) The commissioner of state health services may
4-48 refuse an application for a license or may suspend or revoke a
4-49 license if the applicant or licensee:

4-50 (1) has been convicted of a felony or misdemeanor that
4-51 involves moral turpitude;

4-52 (2) is an association, partnership, or corporation and
4-53 the managing officer has been convicted of a felony or misdemeanor
4-54 that involves moral turpitude;

4-55 (3) has been convicted in a state or federal court of
4-56 the illegal use, sale, or transportation of intoxicating liquors,
4-57 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
4-58 compounds or derivatives, or any other dangerous or habit-forming
4-59 drugs;

4-60 (4) is an association, partnership, or corporation and
4-61 the managing officer has been convicted in a state or federal court
4-62 of the illegal use, sale, or transportation of intoxicating
4-63 liquors, narcotic drugs, barbiturates, amphetamines,
4-64 desoxyephedrine, their compounds or derivatives, or any other
4-65 dangerous or habit-forming drugs; ~~[or]~~

4-66 (5) has not complied with this chapter or the ~~[board's]~~
4-67 rules implementing this chapter;

4-68 (6) has violated Section 431.021(1)(3), relating to
4-69 the counterfeiting of a drug or the sale or holding for sale of a

5-1 counterfeit drug;
 5-2 (7) has violated Chapter 481 (Texas Controlled
 5-3 Substances Act) or 483 (Texas Dangerous Drug Act);

5-4 (8) has violated the rules of the public safety
 5-5 director of the Department of Public Safety, including being
 5-6 responsible for a significant discrepancy in the records that state
 5-7 law requires the applicant or licensee to maintain; or

5-8 (9) fails to complete a license application or submits
 5-9 an application that contains false, misleading, or incorrect
 5-10 information or contains information that cannot be verified by the
 5-11 department.

5-12 (b) The executive commissioner of the Health and Human
 5-13 Services Commission by rule shall establish minimum standards
 5-14 required for the issuance or renewal of a license under this
 5-15 subchapter [may refuse an application for a license or may suspend
 5-16 or revoke a license if the commissioner determines from evidence
 5-17 presented during a hearing that the applicant or licensee:

5-18 ~~[(1) has violated Section 431.021(1)(3), relating to~~
 5-19 ~~the counterfeiting of a drug or the sale or holding for sale of a~~
 5-20 ~~counterfeit drug;~~

5-21 ~~[(2) has violated Chapter 481 (Texas Controlled~~
 5-22 ~~Substances Act) or 483 (Dangerous Drugs); or~~

5-23 ~~[(3) has violated the rules of the director of the~~
 5-24 ~~Department of Public Safety, including being responsible for a~~
 5-25 ~~significant discrepancy in the records that state law requires the~~
 5-26 ~~applicant or licensee to maintain].~~

5-27 (c) The refusal to license an applicant or the suspension or
 5-28 revocation of a license by the department [~~commissioner~~] and the
 5-29 appeal from that action are governed by [~~the board's formal hearing~~
 5-30 ~~procedures and~~] the procedures for a contested case hearing under
 5-31 Chapter 2001, Government Code.

5-32 SECTION 3.07. Section 431.021, Health and Safety Code, is
 5-33 amended to read as follows:

5-34 Sec. 431.021. PROHIBITED ACTS. The following acts and the
 5-35 causing of the following acts within this state are unlawful and
 5-36 prohibited:

5-37 (a) the introduction or delivery for introduction into
 5-38 commerce of any food, drug, device, or cosmetic that is adulterated
 5-39 or misbranded;

5-40 (b) the adulteration or misbranding of any food, drug,
 5-41 device, or cosmetic in commerce;

5-42 (c) the receipt in commerce of any food, drug, device,
 5-43 or cosmetic that is adulterated or misbranded, and the delivery or
 5-44 proffered delivery thereof for pay or otherwise;

5-45 (d) the distribution in commerce of a consumer
 5-46 commodity, if such commodity is contained in a package, or if there
 5-47 is affixed to that commodity a label that does not conform to the
 5-48 provisions of this chapter and of rules adopted under the authority
 5-49 of this chapter; provided, however, that this prohibition shall not
 5-50 apply to persons engaged in business as wholesale or retail
 5-51 distributors of consumer commodities except to the extent that such
 5-52 persons:

5-53 (1) are engaged in the packaging or labeling of
 5-54 such commodities; or

5-55 (2) prescribe or specify by any means the manner
 5-56 in which such commodities are packaged or labeled;

5-57 (e) the introduction or delivery for introduction into
 5-58 commerce of any article in violation of Section 431.084, 431.114,
 5-59 or 431.115;

5-60 (f) the dissemination of any false advertisement;

5-61 (g) the refusal to permit entry or inspection, or to
 5-62 permit the taking of a sample or to permit access to or copying of
 5-63 any record as authorized by Sections 431.042-431.044; or the
 5-64 failure to establish or maintain any record or make any report
 5-65 required under Section 512(j), (l), or (m) of the federal Act, or
 5-66 the refusal to permit access to or verification or copying of any
 5-67 such required record;

5-68 (h) the manufacture within this state of any food,
 5-69 drug, device, or cosmetic that is adulterated or misbranded;

6-1 (i) the giving of a guaranty or undertaking referred
 6-2 to in Section 431.059, which guaranty or undertaking is false,
 6-3 except by a person who relied on a guaranty or undertaking to the
 6-4 same effect signed by, and containing the name and address of the
 6-5 person residing in this state from whom the person received in good
 6-6 faith the food, drug, device, or cosmetic; or the giving of a
 6-7 guaranty or undertaking referred to in Section 431.059, which
 6-8 guaranty or undertaking is false;

6-9 (j) the use, removal, or disposal of a detained or
 6-10 embargoed article in violation of Section 431.048;

6-11 (k) the alteration, mutilation, destruction,
 6-12 obliteration, or removal of the whole or any part of the labeling
 6-13 of, or the doing of any other act with respect to a food, drug,
 6-14 device, or cosmetic, if such act is done while such article is held
 6-15 for sale after shipment in commerce and results in such article
 6-16 being adulterated or misbranded;

6-17 (l)(1) forging, counterfeiting, simulating, or
 6-18 falsely representing, or without proper authority using any mark,
 6-19 stamp, tag, label, or other identification device authorized or
 6-20 required by rules adopted under this chapter or the regulations
 6-21 promulgated under the provisions of the federal Act;

6-22 (2) making, selling, disposing of, or keeping in
 6-23 possession, control, or custody, or concealing any punch, die,
 6-24 plate, stone, or other thing designed to print, imprint, or
 6-25 reproduce the trademark, trade name, or other identifying mark,
 6-26 imprint, or device of another or any likeness of any of the
 6-27 foregoing on any drug or container or labeling thereof so as to
 6-28 render such drug a counterfeit drug;

6-29 (3) the doing of any act that causes a drug to be
 6-30 a counterfeit drug, or the sale or dispensing, or the holding for
 6-31 sale or dispensing, of a counterfeit drug;

6-32 (m) the using by any person to the person's own
 6-33 advantage, or revealing, other than to the commissioner, an
 6-34 authorized agent, a health authority or to the courts when relevant
 6-35 in any judicial proceeding under this chapter, of any information
 6-36 acquired under the authority of this chapter concerning any method
 6-37 or process that as a trade secret is entitled to protection;

6-38 (n) the using, on the labeling of any drug or device or
 6-39 in any advertising relating to such drug or device, of any
 6-40 representation or suggestion that approval of an application with
 6-41 respect to such drug or device is in effect under Section 431.114 or
 6-42 Section 505, 515, or 520(g) of the federal Act, as the case may be,
 6-43 or that such drug or device complies with the provisions of such
 6-44 sections;

6-45 (o) the using, in labeling, advertising or other sales
 6-46 promotion of any reference to any report or analysis furnished in
 6-47 compliance with Sections 431.042-431.044 or Section 704 of the
 6-48 federal Act;

6-49 (p) in the case of a prescription drug distributed or
 6-50 offered for sale in this state, the failure of the manufacturer,
 6-51 packer, or distributor of the drug to maintain for transmittal, or
 6-52 to transmit, to any practitioner licensed by applicable law to
 6-53 administer such drug who makes written request for information as
 6-54 to such drug, true and correct copies of all printed matter that is
 6-55 required to be included in any package in which that drug is
 6-56 distributed or sold, or such other printed matter as is approved
 6-57 under the federal Act. Nothing in this subsection shall be
 6-58 construed to exempt any person from any labeling requirement
 6-59 imposed by or under other provisions of this chapter;

6-60 (q)(1) placing or causing to be placed on any drug or
 6-61 device or container of any drug or device, with intent to defraud,
 6-62 the trade name or other identifying mark, or imprint of another or
 6-63 any likeness of any of the foregoing;

6-64 (2) selling, dispensing, disposing of or causing
 6-65 to be sold, dispensed, or disposed of, or concealing or keeping in
 6-66 possession, control, or custody, with intent to sell, dispense, or
 6-67 dispose of, any drug, device, or any container of any drug or
 6-68 device, with knowledge that the trade name or other identifying
 6-69 mark or imprint of another or any likeness of any of the foregoing

7-1 has been placed thereon in a manner prohibited by Subdivision (1) of
7-2 this subsection; or
7-3 (3) making, selling, disposing of, causing to be
7-4 made, sold, or disposed of, keeping in possession, control, or
7-5 custody, or concealing with intent to defraud any punch, die,
7-6 plate, stone, or other thing designed to print, imprint, or
7-7 reproduce the trademark, trade name, or other identifying mark,
7-8 imprint, or device of another or any likeness of any of the
7-9 foregoing on any drug or container or labeling of any drug or
7-10 container so as to render such drug a counterfeit drug;
7-11 (r) dispensing or causing to be dispensed a different
7-12 drug in place of the drug ordered or prescribed without the express
7-13 permission in each case of the person ordering or prescribing;
7-14 (s) the failure to register in accordance with Section
7-15 510 of the federal Act, the failure to provide any information
7-16 required by Section 510(j) or (k) of the federal Act, or the failure
7-17 to provide a notice required by Section 510(j)(2) of the federal
7-18 Act;
7-19 (t)(1) the failure or refusal to:
7-20 (A) comply with any requirement prescribed
7-21 under Section 518 or 520(g) of the federal Act; or
7-22 (B) furnish any notification or other
7-23 material or information required by or under Section 519 or 520(g)
7-24 of the federal Act;
7-25 (2) with respect to any device, the submission of
7-26 any report that is required by or under this chapter that is false
7-27 or misleading in any material respect;
7-28 (u) the movement of a device in violation of an order
7-29 under Section 304(g) of the federal Act or the removal or alteration
7-30 of any mark or label required by the order to identify the device as
7-31 detained;
7-32 (v) the failure to provide the notice required by
7-33 Section 412(b) or 412(c), the failure to make the reports required
7-34 by Section 412(d)(1)(B), or the failure to meet the requirements
7-35 prescribed under Section 412(d)(2) of the federal Act;
7-36 (w) except as provided under Subchapter M of this
7-37 chapter and Section 562.1085, Occupations Code, the acceptance by a
7-38 person of an unused prescription or drug, in whole or in part, for
7-39 the purpose of resale, after the prescription or drug has been
7-40 originally dispensed, or sold;
7-41 (x) engaging in the wholesale distribution of drugs or
7-42 operating as a distributor or manufacturer of devices in this state
7-43 without obtaining a license issued by the department under
7-44 Subchapter I, L, or N [filing a licensing statement with the
7-45 commissioner as required by Section 431.202 or having a license as
7-46 required by Section 431.272], as applicable;
7-47 (y) engaging in the manufacture of food in this state
7-48 or operating as a warehouse operator in this state without having a
7-49 license as required by Section 431.222 or operating as a food
7-50 wholesaler in this state without having a license under Section
7-51 431.222 or being registered under Section 431.2211, as appropriate;
7-52 (z) unless approved by the United States Food and Drug
7-53 Administration pursuant to the federal Act, the sale, delivery,
7-54 holding, or offering for sale of a self-testing kit designed to
7-55 indicate whether a person has a human immunodeficiency virus
7-56 infection, acquired immune deficiency syndrome, or a related
7-57 disorder or condition; ~~or~~
7-58 (aa) making a false statement or false representation
7-59 in an application for a license or in a statement, report, or other
7-60 instrument to be filed with or requested by the department [the
7-61 board, the commissioner, or the department] under this chapter;
7-62 (bb) failing to comply with a requirement or request
7-63 to provide information or failing to submit an application,
7-64 statement, report, or other instrument required by the department;
7-65 or
7-66 (cc) performing, causing the performance of, or aiding
7-67 and abetting the performance of an act described by Subdivision
7-68 (x).
7-69

SECTION 3.08. Sections 431.2021 and 431.205, Health and

8-1 Safety Code, are repealed.

8-2 SECTION 3.09. Not later than January 1, 2006, the executive
8-3 commissioner of the Health and Human Services Commission shall
8-4 adopt the rules necessary to implement the changes in law made by
8-5 this article by amending Subchapter I, Chapter 431, Health and
8-6 Safety Code.

8-7 SECTION 3.10. Not later than January 1, 2006, the
8-8 Department of State Health Services shall prescribe the forms
8-9 required to implement the changes in law made by this article by the
8-10 amendment of Subchapter I, Chapter 431, Health and Safety Code.

8-11 SECTION 3.11. The change in law made by this article applies
8-12 only to an offense committed on or after March 1, 2006. An offense
8-13 committed before that date is covered by the law in effect when the
8-14 offense was committed, and the former law is continued in effect for
8-15 that purpose. For purposes of this section, an offense was
8-16 committed before March 1, 2006, if any element of the offense was
8-17 committed before that date.

8-18 SECTION 3.12. (a) Subject to Subsection (b) of this
8-19 section, this article takes effect on the date designated by
8-20 Section 4.01 of this Act, except that Sections 3.01 through 3.07 of
8-21 this article take effect March 1, 2006.

8-22 (b) This article takes effect only if Senate Bill 1685 or
8-23 another similar bill of the Regular Session of the 79th Legislature
8-24 adding Subchapter N, Chapter 431, Health and Safety Code,
8-25 regulating wholesale prescription drug distributors is enacted and
8-26 becomes law. If Senate Bill 1685 or another similar bill of the
8-27 Regular Session of the 79th Legislature adding Subchapter N,
8-28 Chapter 431, Health and Safety Code, regulating wholesale
8-29 prescription drug distributors does not become law, this article
8-30 does not take effect.

8-31 ARTICLE 4. EFFECTIVE DATE

8-32 SECTION 4.01. This Act takes effect on June 1, 2005, if it
8-33 receives a vote of two-thirds of all the members elected to each
8-34 house, as provided by Section 39, Article III, Texas Constitution.
8-35 If this Act does not receive the vote necessary to take effect on
8-36 that date, this Act takes effect September 1, 2005.

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