

## **BILL ANALYSIS**

Senate Research Center

S.B. 158  
By: Williams  
Criminal Justice  
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Enrolled

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

The abuse of prescription drugs is a serious public health issue and the increasing diversion of prescription drugs is a cause for concern. One of the causes of diversion is doctor shopping. Doctor shopping is typically defined as a patient actively seeking doctors who will prescribe certain types of medications, usually opiates, depressants, and stimulants. Fifteen other states currently have legislation that specifically addresses the problem.

S.B. 158 creates criminal penalties for patients who visit multiple practitioners and do not disclose that they are already receiving controlled substances. In other words, a person commits an offense if they have intent to obtain controlled substances that are not medically necessary for the person using misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact.

S.B. 158 amends current law relating to offenses involving the fraudulent or unlawful obtaining, delivering, dispensing, distributing, or diverting of a controlled substance, and provides penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1285, as follows:

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) Provides that this section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) (relating to persons not required to register under this chapter including an agent or employee of a registered manufacturer, distributor, analyzer, or dispenser of the controlled substance acting in the usual course of business or employment) or (2) (relating to persons not required to register under this chapter including a common or contract carrier, a warehouseman, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment), is not required to register under this subchapter.

(b) Provides that person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) Provides that an offense under Subsection (b)(1) is a state jail felony. Provides that an offense under Subsection (b)(2) is a felony of the third degree.

(d) Authorizes, if conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor to be prosecuted under this section, the other law, or both.

SECTION 2. Amends Section 481.129, Health and Safety Code, by adding Subsections (a-1) and (d-1), as follows:

(a-1) Provides that a person commits an offense if the person, with intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. Provides that for the purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(d-1) Provides that an offense under Subsection (a-1) is:

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

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

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

SECTION 3. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1)-(5) Makes no changes to these subdivisions;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code;

(6)-(14) Makes no changes to these subdivisions; or

(15)-(16) Redesignates existing Subdivisions (14) as Subdivisions (15) and (16).

SECTION 4. Reenacts Sections 71.02(b) and (c), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, and makes no further changes.

SECTION 5. Reenacts Section 71.05(a), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, and amends it to make nonsubstantive changes.

SECTION 6. Amends Section 71.05(c), Penal Code, to provide that evidence that the defendant withdrew from the combination before commission of an offense listed in Section 71.02(a) and

made substantial effort to prevent the commission of an offense listed in Section 71.02(a) shall be admissible as mitigation at the hearing on punishment if the actor has been found guilty under Section 71.02 (Engaging in Organized Criminal Activity), and provides that in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02. Makes nonsubstantive changes.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. Effective date: September 1, 2011.