

AN ACT

relating to offenses involving the fraudulent or unlawful obtaining, delivering, dispensing, distributing, or diverting of a controlled substance; providing penalties.

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

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1285 to read as follows:

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A 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) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor

1 may be prosecuted under this section, the other law, or both.

2 SECTION 2. Section 481.129, Health and Safety Code, is  
3 amended by adding Subsections (a-1) and (d-1) to read as follows:

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

15 (d-1) An offense under Subsection (a-1) is:

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

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

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

24 SECTION 3. Subsection (a), Section 71.02, Penal Code, as  
25 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357  
26 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is  
27 reenacted and amended to read as follows:

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

6           (1) murder, capital murder, arson, aggravated  
7 robbery, robbery, burglary, theft, aggravated kidnapping,  
8 kidnapping, aggravated assault, aggravated sexual assault, sexual  
9 assault, forgery, deadly conduct, assault punishable as a Class A  
10 misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
11 motor vehicle;

12           (2) any gambling offense punishable as a Class A  
13 misdemeanor;

14           (3) promotion of prostitution, aggravated promotion  
15 of prostitution, or compelling prostitution;

16           (4) unlawful manufacture, transportation, repair, or  
17 sale of firearms or prohibited weapons;

18           (5) unlawful manufacture, delivery, dispensation, or  
19 distribution of a controlled substance or dangerous drug, or  
20 unlawful possession of a controlled substance or dangerous drug  
21 through forgery, fraud, misrepresentation, or deception;

22           (5-a) causing the unlawful delivery, dispensation, or  
23 distribution of a controlled substance or dangerous drug in  
24 violation of Subtitle B, Title 3, Occupations Code;

25           (6) any unlawful wholesale promotion or possession of  
26 any obscene material or obscene device with the intent to wholesale  
27 promote the same;

- 1           (7) any offense under Subchapter B, Chapter 43,  
2 depicting or involving conduct by or directed toward a child  
3 younger than 18 years of age;
- 4           (8) any felony offense under Chapter 32;
- 5           (9) any offense under Chapter 36;
- 6           (10) any offense under Chapter 34 or 35;
- 7           (11) any offense under Section 37.11(a);
- 8           (12) any offense under Chapter 20A;
- 9           (13) any offense under Section 37.10; [~~or~~]
- 10           (14) any offense under Section 38.06, 38.07, 38.09, or  
11 38.11;i
- 12           (15) [~~(14)~~] any offense under Section 42.10; or
- 13           (16) [~~(14)~~] any offense under Section 46.06(a)(1) or  
14 46.14.

15           SECTION 4. Subsections (b) and (c), Section 71.02, Penal  
16 Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067),  
17 Acts of the 73rd Legislature, Regular Session, 1993, are reenacted  
18 to read as follows:

19           (b) Except as provided in Subsections (c) and (d), an  
20 offense under this section is one category higher than the most  
21 serious offense listed in Subsection (a) that was committed, and if  
22 the most serious offense is a Class A misdemeanor, the offense is a  
23 state jail felony, except that if the most serious offense is a  
24 felony of the first degree, the offense is a felony of the first  
25 degree.

26           (c) Conspiring to commit an offense under this section is of  
27 the same degree as the most serious offense listed in Subsection (a)

1 that the person conspired to commit.

2 SECTION 5. Subsection (a), Section 71.05, Penal Code, as  
3 amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the  
4 73rd Legislature, Regular Session, 1993, is reenacted and amended  
5 to read as follows:

6 (a) It is an affirmative defense to prosecution under  
7 Section 71.02 that under circumstances manifesting a voluntary and  
8 complete renunciation of the actor's [~~his~~] criminal objective, the  
9 actor withdrew from the combination before commission of an offense  
10 listed in [~~Subsection (a) of~~] Section 71.02(a) [~~71.02~~] and took  
11 further affirmative action that prevented the commission of the  
12 offense.

13 SECTION 6. Subsection (c), Section 71.05, Penal Code, is  
14 amended to read as follows:

15 (c) Evidence that the defendant withdrew from the  
16 combination before commission of an offense listed in [~~Subdivisions~~  
17 ~~(1) through (7) or Subdivision (10) of Subsection (a) of~~] Section  
18 71.02(a) [~~71.02 of this code~~] and made substantial effort to  
19 prevent the commission of an offense listed in [~~Subdivisions (1)~~  
20 ~~through (7) or Subdivision (10) of Subsection (a) of~~] Section  
21 71.02(a) [~~71.02 of this code~~] shall be admissible as mitigation at  
22 the hearing on punishment if the actor [~~he~~] has been found guilty  
23 under Section 71.02 [~~of this code~~], and in the event of a finding of  
24 renunciation under this subsection, the punishment shall be one  
25 grade lower than that provided under Section 71.02 [~~of this code~~].

26 SECTION 7. The change in law made by this Act applies only  
27 to an offense committed on or after the effective date of this Act.

1 An offense committed before the effective date of this Act is  
2 covered by the law in effect when the offense was committed, and the  
3 former law is continued in effect for that purpose. For purposes of  
4 this section, an offense was committed before the effective date of  
5 this Act if any element of the offense occurred before that date.

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

10 SECTION 9. This Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 158 passed the Senate on March 30, 2011, by the following vote: Yeas 31, Nays 0; May 26, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2011, House granted request of the Senate; May 28, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 158 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 145, Nays 2, two present not voting; May 27, 2011, House granted request of the Senate for appointment of Conference Committee; May 29, 2011, House adopted Conference Committee Report by the following vote: Yeas 146, Nays 2, one present not voting.

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Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor