

BILL ANALYSIS

C.S.H.B. 3238
By: McClendon
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Spouses of intravenous drug users, as well as first responders and law enforcement personnel, may come into contact with infected needles through accidental encounters or in the performance of their duties. Interested parties report that preventing the spread of infectious diseases from infected needles costs far less when compared with funding treatment after infection. Such parties assert that a disease prevention outreach program could assist in prevention efforts by properly disposing of used needles as medical waste, thus reducing the number of contaminated needles used or shared and decreasing the contraction of bloodborne infectious diseases by other persons who may be unaware of their exposure. Under these programs, trained personnel and volunteers offer safe distribution of clean needles and safe kits, providing a choice to use a clean needle and potentially curb the spread of needle-borne infectious disease.

Interested parties contend that through the power of education and compassion, safe needle exchange outreach programs succeed in reducing the cases of HIV/AIDS and hepatitis among program participants and help participants take personal responsibility and make informed decisions about their own health care and the health of others. C.S.H.B. 3238 seeks to reduce the spread of infectious diseases by enabling Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb Counties and hospital districts in those counties to establish and operate an infectious disease control outreach pilot program.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 3238 amends the Health and Safety Code to add temporary provisions, set to expire September 1, 2023, authorizing a county, a hospital district in the county, or an organization that contracts with a county or a hospital district to operate a disease control pilot program in Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb Counties in order to prevent the spread of HIV, hepatitis B, hepatitis C, and other infectious and communicable diseases. The bill authorizes the pilot programs to include disease control outreach programs that provide for the anonymous exchange of used hypodermic needles and syringes for an equal number of new

hypodermic needles and syringes, to offer education on the transmission and prevention of communicable diseases, and to assist program participants in obtaining health care and other physical and mental health-related services.

C.S.H.B. 3238 authorizes a county, a hospital district, or other organization operating such a disease control pilot program to charge a participant in the program a fee for each hypodermic needle or syringe used in the program not to exceed 150 percent of the actual cost of the hypodermic needle or syringe. The bill requires a county, a hospital district, or other organization operating such a disease control pilot program to annually provide the Department of State Health Services with information on the effectiveness of the program, the program's impact on reducing the spread of communicable diseases, and the program's effect on injected drug use in the area served by the county or hospital district.

C.S.H.B. 3238 authorizes a person licensed as a wholesale drug distributor or device distributor under the Texas Food, Drug, and Cosmetic Act to distribute hypodermic needles and syringes to a disease control pilot program and requires an operator of a disease control pilot program to store hypodermic needles and syringes in a proper and secure manner. The bill authorizes only authorized employees or volunteers of a disease control pilot program to have access to the hypodermic needles and syringes, which may be included in safe kits made available by the outreach program. The bill defines "safe kit" to mean a package given by a disease control pilot program to a program participant that may include alcohol swabs, a condom, cotton swabs, a hypodermic needle or syringe, and a tourniquet. The bill authorizes program clients to obtain hypodermic needles and syringes and safe kits only from an authorized employee or volunteer of the pilot program and requires the operator of a disease control pilot program to store and dispose of used hypodermic needles and syringes in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC). The bill authorizes a county or hospital district, except to the extent specifically prohibited by law, to use public money and to solicit or accept gifts, grants, or donations to fund such a disease control pilot program.

C.S.H.B. 3238 authorizes a person to dispense or deliver a hypodermic needle or syringe if that person dispenses or delivers the needle or syringe for a medical purpose, which the bill defines as including the exchange of a hypodermic needle or syringe for a used hypodermic needle or syringe in a program described by the bill's provisions. The bill makes it an exception to the offense of possession or delivery of drug paraphernalia that the person manufactures hypodermic needles or syringes for delivery to a disease control pilot program established under the bill's provisions or that the person is an employee, volunteer, duly authorized agent, or participant of a disease control pilot program and uses, possesses, or delivers a hypodermic needle or syringe as part of the program.

C.S.H.B. 3238 amends the Government Code to revise a provision relating to guidance provided by HHSC to an obsolete pilot program established by the local health authority of Bexar County to instead apply the provision to a county and the hospital districts of Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb Counties in establishing a pilot program as provided by the bill.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3238 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The legislature finds that because drug abuse has been a tragedy for many Texas families, it is imperative that individuals addicted to drugs receive education and treatment for addiction. Working with community-based and faith-based organizations creates a network of support for Texas families and the opportunity to intervene in drug addiction. Members of community-based and faith-based organizations have a strong desire to compassionately work to preserve lives and offer help to those stricken with disease and drug addiction.

Allowing for the operation of disease control pilot programs will reduce the transmission of blood borne diseases, such as hepatitis C, hepatitis B, and HIV/AIDS, and provide clients with referrals to appropriate health and social services. A pilot program created under this Act may provide necessary access to primary health care, ensure safe and sterile disposal of used syringes and needles, and protect the public health. In addition, pilot program goals may include reduced rates of intravenous drug use and a reduced number of injuries to innocent victims, first responders, and law enforcement due to needle sticks from improperly disposed-of needles. Additionally, it is the intent of the legislature that there will be increased access to drug treatment centers, an increased likelihood of successful treatment for addiction, and increased protection of public health and safety.

SECTION 2. Chapter 81, Health and Safety Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. COUNTY PROGRAMS TO REDUCE RISK OF CERTAIN COMMUNICABLE DISEASES

Sec. 81.401. DISEASE CONTROL
PROGRAMS. (a) A county, county hospital
district or an organization that contracts
with a county or a county hospital district

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Substantially the same as introduced version.

SECTION 3. Chapter 81, Health and Safety Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PILOT PROGRAMS TO REDUCE RISK OF CERTAIN COMMUNICABLE DISEASES

Sec. 81.401. APPLICABILITY OF
SUBCHAPTER. This subchapter applies
only to Bexar, Dallas, El Paso, Harris,
Nueces, Travis, and Webb Counties and
hospital districts in those counties.

Sec. 81.402. DISEASE CONTROL PILOT
PROGRAMS. (a) A county, a hospital
district in the county, or an organization that
contracts with a county or hospital district to

charged with protecting the public health may operate a disease control pilot program in Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb Counties, established by the county or county hospital district and funded by the county or county hospital district in addition to any revenue sources generated by appropriately documented grants, gifts and donations, in order to prevent the spread of HIV, hepatitis B, hepatitis C, and other infectious and communicable diseases. The pilot programs may include disease control outreach programs that provide for the anonymous exchange of used hypodermic needles and syringes in association with addiction recovery and restoration efforts. As part of their outreach services, these programs are authorized to:

- (1) provide for the anonymous exchange of used hypodermic needles and syringes for an equal number of new hypodermic needles and syringes;
- (2) offer education on the transmission and prevention of communicable diseases, including HIV, hepatitis B, and hepatitis C; and
- (3) assist program participants in obtaining

health-related services, including substance abuse treatment services and blood borne disease testing.

(b) A county, county hospital district, or an organization that contracts with a county or a county hospital district operating a disease control pilot program authorized by this subchapter, may charge a participant in the program a fee for each hypodermic needle or syringe used in the program, not to exceed 150 percent of the actual cost of the hypodermic needle or syringe.

(c) A county, county hospital district, or an organization that contracts with a county or a county hospital district operating a disease control pilot program authorized by this subchapter, shall annually provide the department with information on the effectiveness of the outreach program, the program's impact on reducing the spread of communicable diseases, including HIV, hepatitis B, and hepatitis C, and the outcomes and impact on injected drug use in the area served by the county or county hospital district.

operate a program under this subchapter may establish a disease control pilot program to prevent the spread of HIV, hepatitis B, hepatitis C, and other infectious and communicable diseases.

The program may include disease control outreach programs that:

- (1) provide for the anonymous exchange of used hypodermic needles and syringes for an equal number of new hypodermic needles and syringes;
- (2) offer education on the transmission and prevention of communicable diseases, including HIV, hepatitis B, and hepatitis C; and
- (3) assist program participants in obtaining

health care and other physical and mental health-related services, including substance abuse treatment services and bloodborne disease testing.

(b) A county, hospital district, or other organization operating a disease control pilot program authorized by this subchapter may charge a participant in the program a fee for each hypodermic needle or syringe used in the program not to exceed 150 percent of the actual cost of the hypodermic needle or syringe.

(c) A county, hospital district, or other organization operating a disease control pilot program authorized by this subchapter shall annually provide the department with information on:

- (1) the effectiveness of the program;
- (2) the program's impact on reducing the spread of communicable diseases, including HIV, hepatitis B, and hepatitis C; and
- (3) the program's effect on injected drug use in the area served by the county or hospital district.

Sec. 81.402. DISTRIBUTION OF NEEDLES AND SYRINGES TO PROGRAM. A person licensed as a wholesale drug distributor or device distributor under Chapter 431 may distribute hypodermic needles and syringes to a disease control pilot program authorized by this subchapter.

Sec. 81.403. HANDLING OF NEEDLES AND SYRINGES.

(a) The operator of a disease control pilot program shall store hypodermic needles and syringes in a proper and secure manner. Only authorized employees or volunteers of the disease control pilot program may have access to the hypodermic needles and syringes, which may be included in safe kits made available by the outreach program. Program clients may obtain hypodermic needles and syringes and safe kits only from an authorized employee or volunteer of the pilot program.

(b) The operator of a disease control pilot program authorized by this subchapter shall store and dispose of used hypodermic needles and syringes in accordance with board rule.

SECTION 3. Section 481.125, Health and Safety Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) Notwithstanding the other provisions of

Sec. 81.403. DISTRIBUTION OF NEEDLES AND SYRINGES TO PILOT PROGRAM. A person licensed as a wholesale drug distributor or device distributor under Chapter 431 may distribute hypodermic needles and syringes to a disease control pilot program authorized by this subchapter.

Sec. 81.404. HANDLING OF NEEDLES AND SYRINGES. (a) In this section, "safe kit" means a package given by a disease control pilot program to a program participant that may include:

(1) alcohol swabs;

(2) a condom;

(3) cotton swabs;

(4) a hypodermic needle or syringe; and

(5) a tourniquet.

(b) The operator of a disease control pilot program shall store hypodermic needles and syringes in a proper and secure manner. Only authorized employees or volunteers of the program may have access to the hypodermic needles and syringes. The hypodermic needles and syringes may be included in safe kits made available through the program. Program clients may obtain hypodermic needles and syringes and safe kits only from an authorized employee or volunteer.

(c) The operator of a disease control pilot program authorized by this subchapter shall store and dispose of used hypodermic needles and syringes in accordance with department rule.

Sec. 81.405. FUNDING. (a) Except to the extent specifically prohibited by law, a county or hospital district may use public money to fund a disease control pilot program under Section 81.402(a).

(b) Except to the extent specifically prohibited by law, a county or hospital district may solicit or accept gifts, grants, or donations to fund a disease control pilot program under Section 81.402(a).

Sec. 81.406. EXPIRATION. This subchapter expires on September 1, 2023.

SECTION 4. Section 481.125, Health and Safety Code, is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) It is an exception to the application of

this section, a person may dispense or deliver a hypodermic needle or syringe if that person dispenses or delivers the needle or syringe for a medical purpose. For the purposes of this subsection, "medical purpose" includes the exchange of a hypodermic needle or syringe for a used hypodermic needle or syringe in a program described by Chapter 81, SUBCHAPTER J, Health and Safety Code, and Section 531.0972, Government Code.

(h) It is an exception to the application of Subsections (a) and (b) that:

(1) the person manufactures hypodermic needles or syringes that are delivered ~~or are to be delivered through~~ a disease control pilot program established under Subchapter J, Chapter 81; or

(2) the person:

(A) uses, possesses, or delivers hypodermic needles or syringes that are delivered to a disease control pilot program ~~or are to be delivered by or through such a program~~ established under Subchapter J, Chapter 81; and

(B) ~~demonstrates or presents evidence that the person is an employee, volunteer, duly authorized agent, or participant of the disease control pilot program.~~

SECTION 4. Section 531.0972, Government Code, is amended to read as follows:

Sec. 531.0972. PILOT PROGRAM TO PREVENT THE SPREAD OF CERTAIN INFECTIOUS OR COMMUNICABLE DISEASES. The commission may provide guidance to the county, county hospital district ~~or an organization that contracts with a county or a county hospital district~~ [authority] of Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb Counties [County] in establishing a pilot program in each county, ~~which is funded in whole or in part by the county~~ to prevent the spread of HIV, hepatitis B, hepatitis C, and other infectious and communicable diseases. The program may include a disease control pilot program that provides for the anonymous exchange of used hypodermic needles and syringes ~~in association with addiction recovery and restoration outreach efforts,~~

Subsections (a) and (b) that the person dispenses or delivers a hypodermic needle or syringe for a medical purpose.

For the purposes of this subsection, "medical purpose" includes the exchange of a hypodermic needle or syringe for a used hypodermic needle or syringe in a program described by Subchapter J, Chapter 81.

(h) It is an exception to the application of Subsections (a) and (b) that

the person manufactures hypodermic needles or syringes for delivery to a disease control pilot program described by Subchapter J, Chapter 81.

(i) It is an exception to the application of Subsections (a) and (b) that the person is an employee, volunteer, duly authorized agent, or participant of a disease control pilot program described by Subchapter J, Chapter 81, and uses, possesses, or delivers a hypodermic needle or syringe as part of the program.

SECTION 2. Section 531.0972, Government Code, is amended to read as follows:

Sec. 531.0972. PILOT PROGRAM TO PREVENT THE SPREAD OF CERTAIN INFECTIOUS OR COMMUNICABLE DISEASES. The commission may provide guidance to the counties and the hospital districts in those counties that establish [the local health authority of Bexar County in establishing]

a pilot program under Subchapter J, Chapter 81, Health and Safety Code, ~~funded by the county~~

to prevent the spread of HIV, hepatitis B, hepatitis C, and other infectious and communicable diseases. The program may include a disease control program that provides for the anonymous exchange of used hypodermic needles and syringes.

SECTION 5. (a) The change to Section 481.125, Health and Safety Code, made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.