

BILL ANALYSIS

Senate Research Center

H.B. 1212
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, there has been a significant increase in the production, evolution, and sale of synthetic drugs. Informed observers explain that the term "synthetic drugs" is used to describe a wide range of ever-changing man-made chemical products created specifically to mimic the effects of illicit drugs. Recent reports show that the products are often marketed as harmless fragrances and legally sold in convenience stores and online under the guise of incense or potpourri but that the drugs can be as dangerous as many illicit drugs with the same potential to cause adverse life-altering or lethal consequences. Additional concern surrounds the fact that these drugs are generally not detectable on drug tests.

Several states have taken steps to ban the substances but have had little success with those bans because the manufacturers change the compounds constantly. Since these drugs evolve so rapidly, there is a need for Texas to have the ability to designate and regulate abusable synthetic substances in a timely manner. H.B 1212 seeks to provide this authority.

H.B. 1212 amends current law relating to the designation and regulation of abusable synthetic substances, the emergency scheduling of certain controlled substances, the prosecution and punishment of certain offenses involving a controlled substance or controlled substance analogue, and the offense of falsification of drug test results.

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 Chapter 431, Health and Safety Code, by adding Subchapter G-1, as follows:

SUBCHAPTER G-1. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 431.171. DESIGNATION OF CONSUMER COMMODITY AS ABUSABLE SYNTHETIC SUBSTANCE. (a) Authorizes the commissioner of health (commissioner) to designate a consumer commodity as an abusable synthetic substance if the commissioner determines that the consumer commodity is likely an abusable synthetic substance and the importation, manufacture, distribution, or retail sale of the commodity poses a threat to public health.

(b) Authorizes the commissioner, in determining whether a consumer commodity is an abusable synthetic substance, to consider:

- (1) whether the commodity is sold at a price higher than similar commodities are ordinarily sold;
- (2) any evidence of clandestine importation, manufacture, distribution, or diversion from legitimate channels;

(3) any evidence suggesting the product is intended for human consumption, regardless of any consumption prohibitions or warnings on the packaging of the commodity; or

(4) whether any of the following factors suggest the commodity is an abusable synthetic substance intended for illicit drug use:

(A) the appearance of the packaging of the commodity;

(B) oral or written statements or representations of a person who sells, manufactures, distributes, or imports the commodity;

(C) the methods by which the commodity is distributed; and

(D) the manner in which the commodity is sold to the public.

Sec. 431.172. **APPLICABILITY OF CHAPTER TO ABUSABLE SYNTHETIC SUBSTANCE.** Provides that a commodity classified as an abusable synthetic substance by the commissioner under Section 431.171 is subject to the provisions of this chapter that apply to food and cosmetics, including provisions relating to adulteration, packaging, misbranding, and inspection, and all enforcement actions under Subchapter C (Enforcement).

SECTION 2. Amends Sections 481.002(5) and (6), Health and Safety Code, to redefine “controlled substance” and “controlled substance analogue.”

SECTION 3. Amends Subchapter B, Chapter 481, Health and Safety Code, by adding Section 481.0355, as follows:

Sec. 481.0355. **EMERGENCY SCHEDULING.** (a) Authorizes the commissioner of public health (commissioner) to emergency schedule a substance as a controlled substance if the commissioner determines the action is necessary to avoid an imminent hazard to the public safety, the substance is not already scheduled, and no exemption or approval is in effect for the substance under Section 505, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355).

(b) Requires the commissioner, in determining whether a substance poses an imminent hazard to the public safety, to consider, in addition to the factors provided by Section 481.034(d) (requiring the commissioner, in making a determination regarding a substance, to consider factors as set forth):

(1) the scope, duration, and symptoms of abuse;

(2) the degree of detriment that abuse of the substance may cause;

(3) whether the substance has been temporarily scheduled under federal law; and

(4) whether the substance has been temporarily or permanently scheduled under the law of another state.

(c) Provides that, if the commissioner emergency schedules a substance as a controlled substance under this section, an emergency exists for purposes of Section 481.036(c) (authorizing an action by the commissioner that establishes or modifies a schedule under this subchapter to take effect not earlier than the 21st day after the date on which the schedule or modification is published in the Texas Register unless an emergency exists as set forth) and the action takes effect on the date the schedule is published in the Texas Register.

(d) Provides that an emergency scheduling under this section expires on September 1 of each odd-numbered year for any scheduling that occurs before January 1 of that year.

(e) Requires the commissioner to post notice about each emergency scheduling under this section on the Internet website of the Department of State Health Services.

SECTION 4. Amends Section 481.106, Health and Safety Code, as follows:

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE.
Adds a reference to Penalty Group 2-A and makes no further change.

SECTION 5. Amends Section 481.123(a), Health and Safety Code, as follows:

(a) Deletes existing text providing that it is an affirmative defense to the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance analogue that the analogue was not in any part intended for human consumption. Makes nonsubstantive changes.

SECTION 6. Amends Sections 481.133(a), (b), and (c), Health and Safety Code, as follows:

(a) Provides that a person commits an offense if the person knowingly or intentionally uses or possesses with intent to use any device or substance, including synthetic urine, designed to falsify drug test results. Makes nonsubstantive changes.

(b) Provides that a person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver a device or substance, including synthetic urine, designed to falsify drug test results. Makes nonsubstantive changes.

(c) Defines “synthetic urine” and makes nonsubstantive changes.

SECTION 7. Makes application of this Act prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8. Effective date: September 1, 2015.