BILL ANALYSIS

H.B. 1212
By: Price
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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, including Texas, have taken steps to ban the substances but have had little success with those bans because the manufacturers change the compounds constantly. Observers contend that these drugs evolve so rapidly that there is a need for Texas to have the ability to designate and regulate abusable synthetic substances at all times, not just through legislation passed during a legislative session. H.B. 1212 seeks to provide for this authority.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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.

H.B. 1212 amends the Health and Safety Code to authorize the commissioner of state health services 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, and retail sale of the commodity poses a threat to public health. The bill requires the commissioner, in determining whether a consumer

commodity is an abusable synthetic substance, to consider whether the commodity is sold at a price higher than similar commodities are ordinarily sold; any evidence of clandestine importation, manufacture, distribution, or diversion from legitimate channels; any evidence suggesting the product is intended for human consumption, regardless of any consumption prohibitions or warnings on the packaging of the commodity; and whether certain specified factors suggest the commodity is an abusable synthetic substance intended for illicit drug use. The bill subjects a commodity classified as an abusable synthetic substance to provisions of the Texas Food, Drug, and Cosmetic Act applicable to food and cosmetics, including provisions relating to adulteration, packaging, misbranding, and inspection, and all enforcement provisions under the Texas Food, Drug, and Cosmetic Act.

H.B. 1212 authorizes the commissioner of state health services 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 the federal Food, Drug, and Cosmetic Act. The bill requires the commissioner, in determining whether a substance poses an imminent hazard to the public safety, to consider in addition to other factors for establishing and modifying schedules the scope, duration, and symptoms of abuse; the degree of detriment that abuse of the substance may cause; whether the substance has been temporarily scheduled under federal law; and whether the substance has been temporarily or permanently scheduled under the law of another state. The bill establishes that, if the commissioner emergency schedules a substance as a controlled substance, an emergency exists for purposes of publishing the schedule in the Texas Register and the action takes effect on the date the schedule is published in the Texas Register. The bill specifies that such an emergency scheduling expires on September 1 of each odd-numbered year for any scheduling that occurs before January 1 of that year. The bill requires the commissioner to post notice about each emergency scheduling on the Department of State Health Services website.

H.B. 1212 establishes a defense to prosecution for the Class B misdemeanor offense involving a person who knowingly or intentionally possesses a controlled substance listed in a schedule under the Texas Controlled Substances Act but not listed in a penalty group if the actor requested emergency medical assistance in response to the possible controlled substance overdose of the actor or another person. The bill removes from the affirmative defense to the prosecution of an offense involving the manufacture, delivery, or possession of a controlled substance analogue the condition that the analogue was not in any part intended for human consumption.

H.B. 1212 includes, for purposes of the Texas Controlled Substances Act, a substance, including a drug, an adulterant, and a dilutant, listed in Penalty Group 2-A in the definition of "controlled substance" and a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Penalty Group 2-A or a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Penalty Group 2-A in the definition of "controlled substance analogue."

EFFECTIVE DATE

September 1, 2015.