

## **BILL ANALYSIS**

C.S.H.B. 4077  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Abusable volatile chemicals are restricted vapor products that have the potential to affect a person's central nervous system, create or induce in a person a condition of intoxication, or change, distort, or disturb a person's eyesight, thinking process, balance, or coordination when inhaled, ingested, or otherwise introduced into a person's body. Under current law, a person may not sell an abusable volatile chemical at retail unless the person or the person's employer holds an applicable permit. Interested parties report that people are abusing carbon dioxide sold in canister form in a similar manner to the abuse of nitrous oxide, which is included in the list of restricted abusable volatile chemicals. These parties cite their specific concerns regarding a recent increase in the abuse of carbon dioxide by minors. C.S.H.B. 4077 seeks to curb this abuse.

### **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**

C.S.H.B. 4077 amends the Health and Safety Code to include in the definition of "abusable volatile chemical," for purposes of substance abuse regulation and crimes, carbon dioxide in the form of a compressed gas propellant contained in a cartridge, tank, canister, or cylinder that is not a beverage subject to the Federal Alcohol Administration Act, a food, drug, or cosmetic subject to the Texas Food, Drug, and Cosmetic Act or the Federal Food, Drug, and Cosmetic Act, or a pesticide subject to Agriculture Code provisions regulating pesticides and herbicides or the Federal Environmental Pesticide Control Act of 1972. The bill establishes that statutory provisions governing criminal and administrative penalties for violations involving abusable volatile chemicals apply in respect to an act or omission involving carbon dioxide only if that act or omission occurs on or after January 1, 2016.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4077 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

Section 1. Section. 485.001, Health and Safety Code, is amended by adding (1)(c) to read as follows:

- (1) "Abusable volatile chemical" means:
  - (a) a chemical, including aerosol paint, that:
    - (i) is packaged in a container subject to the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and regulations adopted under that Act and is labeled with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under that Act or those regulations;
    - (ii) when inhaled, ingested, or otherwise introduced into a person's body, may:
      - (a) affect the person's central nervous system;
      - (b) create or induce in the person a condition of intoxication, hallucination, or elation; or
      - (c) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination; and is not:

- (a) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;
- (b) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or
- (c) a beverage subject to the Federal Alcohol Administration Act (27 U. S.C. Section 201 et seq.), as amended; or
- (B) nitrous oxide that is not:
  - (i) a pesticide subject to Chapter 76, Agriculture Code, or to U.S.C. Section 136 et seq.), as amended;
  - (ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or
  - (iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 485.001(1), Health and Safety Code, is amended to read as follows:

- (1) "Abusable volatile chemical" means:
  - (A) a chemical, including aerosol paint, that:
    - (i) is packaged in a container subject to the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and regulations adopted under that Act and is labeled with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under that Act or those regulations;
    - (ii) when inhaled, ingested, or otherwise introduced into a person's body, may:
      - (a) affect the person's central nervous system;
      - (b) create or induce in the person a condition of intoxication, hallucination, or elation; or
      - (c) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination; and

- (iii) is not:
  - (a) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;
  - (b) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or
  - (c) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended; [ø]
- (B) nitrous oxide that is not:
  - (i) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;
  - (ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or
  - (iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C.

Section 201 et seq.), as amended.  
(C) carbon dioxide in the form of a compressed gas propellant contained in a cartridge, tank, canister or cylinder, that is not:  
(i) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;  
(ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or  
(iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended.

No equivalent provision.

SECTION 2. This Act takes effect September 1, 2015.

Section 201 et seq.), as amended; or  
(C) carbon dioxide in the form of a compressed gas propellant contained in a cartridge, tank, canister, or cylinder, that is not:  
(i) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;  
(ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or  
(iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended.

SECTION 2. Subchapters C and D, Chapter 485, Health and Safety Code, apply in respect to an act or omission involving carbon dioxide, as added by this Act to the definition of "abusable volatile chemical" in Section 485.001, Health and Safety Code, only if that act or omission occurs on or after January 1, 2016.

SECTION 3. Same as introduced version.