

BILL ANALYSIS

Senate Research Center
84R25362 JSC-D

C.S.S.B. 1582
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4/29/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, more than 300 synthetic designer drugs with names such as "Spice," "N-bombe," and "K2," have gained popularity in the United States. These synthetic drugs are created and altered rapidly, and are designed to have a pharmacological effect similar to a Schedule I or II controlled substance that is regulated under federal law. While new designer synthetic drugs are now routinely added by the legislature to the list of substances prohibited under the Texas Controlled Substances Act, rapid permutations in drug design prevent the act from being timely updated to reflect a changing supply market. Consequently, newer synthetic drugs that can be harmful for human consumption remain on the market for long periods of time before being banned by a subsequent legislature.

C.S.S.B. 1582 creates an emergency scheduling process whereby the commissioner of the Department of State Health Services (DSHS) may designate a substance as a hazardous controlled substance as Schedule I. This would allow the commissioner to temporarily ban specific synthetic drugs during the legislative interim. The bill includes qualifications by which the commissioner may place a controlled substance as Schedule I, including that the drug is chemically similar in structure or effect to a controlled substance or poses an immediate danger to life or health, and receives approval of placement on the schedule by the governor, lieutenant governor, and attorney general.

The bill further instructs the process for publishing the list, and adds language that incrementally increases offenses if a person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance that has been designated as a hazardous controlled substance. The designation of a controlled substance as a hazardous controlled substance expires on September 1 of each odd-numbered year for any designation in effect before January 1 of that year. This change allows for synthetic drugs to be banned temporarily until the next legislature convenes to consider their placement within the Controlled Substances Act.

The committee substitute adds "the scheduling of controlled substances" and "emergency scheduling" of controlled substances to the caption and changes "providing penalties" to "creating criminal offenses" in the caption.

C.S.S.B. 1582 adds that this bill shall be known as the Montana Brown Act. The Texas Controlled Substances Act requires the commissioner to consider eight criteria for the purposes of scheduling a controlled substance. The committee substitute authorizes the commissioner to use three out of those eight criteria, specifically Sections 481.034(d)(4), (5), and (6) of the Health and Safety Code, as justification for the purposes of emergency scheduling synthetic drugs. These sections require that DSHS make findings for the history and current pattern of the substance's abuse; the scope, duration, and significance of the substance's abuse; and the risk to the public health.

C.S.S.B. 1582 amends current law relating to the scheduling of controlled substances and the designation and emergency scheduling of certain substances as hazardous controlled substances and creates criminal offenses.

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. Provides that this Act shall be known as the Montana Brown Act.

SECTION 2. Amends Section 481.036(c), Health and Safety Code, to authorize the commissioner of public health (commissioner) to determine that an imminent hazard to the public safety exists if the commissioner makes findings with respect to each of the factors listed in Sections 481.034(d)(4) (requiring the commissioner to consider the history and current pattern of its abuse in making a determination regarding a substance), (5) (requiring the commissioner to consider the scope, duration, and significance of its abuse in making a determination regarding a substance), and (6) (requiring the commissioner to consider the risk to the public health in making a determination regarding a substance) that indicate that the substance poses a danger to health and safety if not immediately controlled. Makes no further change.

SECTION 3. Amends Subtitle C, Title 6, Health and Safety Code, by adding Chapter 488, as follows:

CHAPTER 488. HAZARDOUS CONTROLLED SUBSTANCE EMERGENCY SCHEDULING

Sec. 488.001. DEFINITIONS. Defines "commissioner" and "controlled substance" in this chapter.

Sec. 488.002. DESIGNATION OF HAZARDOUS CONTROLLED SUBSTANCE; CRITERIA. Authorizes the commissioner of public health (commissioner), when the commissioner under Section 481.032 (Schedules) modifies Schedule I to add a controlled substance, to, at that time, designate the substance as a hazardous controlled substance if the commissioner:

(1) finds that the substance:

(A) is chemically similar in structure or effect to a controlled substance listed in a penalty group under Subchapter D (Offenses and Penalties), Chapter 481 (Texas Controlled Substances Act); or

(B) poses an imminent danger to life or health; and

(2) receives approval for the hazardous controlled substance designation from the governor, lieutenant governor, and attorney general.

Sec. 488.003. EMERGENCY SCHEDULING. (a) Requires the commissioner to publish a list of the controlled substances that are designated as hazardous controlled substances by filing a certified copy of the list with the secretary of state for publication in the Texas Register at the time the commissioner files a copy of the schedules under Section 481.036 (Publication of Schedules).

(b) Provides that the designation of a substance as a hazardous controlled substance takes effect on the date the modification that added the substance to Schedule I takes effect according to 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 that necessitates earlier action to avoid an imminent hazard to the public safety).

Sec. 488.004. OFFENSE: MANUFACTURE OR DELIVERY OF HAZARDOUS CONTROLLED SUBSTANCE. (a) Provides that a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance designated as a hazardous controlled substance under this chapter.

(b) Provides that an offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) Provides that an offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) Provides that an offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) Provides that an offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Sec. 488.005. OFFENSE: POSSESSION OF HAZARDOUS CONTROLLED SUBSTANCE. (a) Provides that a person commits an offense if the person knowingly possesses a controlled substance designated as a hazardous controlled substance under this chapter.

(b) Provides that an offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) Provides that an offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) Provides that an offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) Provides that an offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Sec. 488.006. EFFECT ON OTHER PROVISIONS OF SUBTITLE. Provides that, if conduct that is an offense under this chapter is also an offense under another provision of this subtitle, the actor may be prosecuted under either this chapter or the other provision or both.

Sec. 488.007. APPLICABILITY. Provides that this chapter does not apply to a controlled substance that is listed in a penalty group under Subchapter D, Chapter 481.

Sec. 488.008. EXPIRATION. Provides that the designation of a controlled substance as a hazardous controlled substance expires on September 1 of each odd-numbered year for any designation in effect before January 1 of that year.

SECTION 4. Effective date: September 1, 2015.