

By: Price, Coleman, Naishtat, Zerwas,
Bonnen of Galveston, et al.

H.B. No. 1212

A BILL TO BE ENTITLED

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 431, Health and Safety Code, is amended by adding Subchapter G-1 to read as follows:

SUBCHAPTER G-1. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 431.171. DESIGNATION OF CONSUMER COMMODITY AS ABUSABLE SYNTHETIC SUBSTANCE. (a) The commissioner may 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) In determining whether a consumer commodity is an abusable synthetic substance, the commissioner may 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

1 for human consumption, regardless of any consumption prohibitions
2 or warnings on the packaging of the commodity; or

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

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

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

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

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

15 Sec. 431.172. APPLICABILITY OF CHAPTER TO ABUSABLE
16 SYNTHETIC SUBSTANCE. A commodity classified as an abusable
17 synthetic substance by the commissioner under Section 431.171 is
18 subject to:

19 (1) the provisions of this chapter that apply to food
20 and cosmetics, including provisions relating to adulteration,
21 packaging, misbranding, and inspection; and

22 (2) all enforcement actions under Subchapter C.

23 SECTION 2. Sections 481.002(5) and (6), Health and Safety
24 Code, are amended to read as follows:

25 (5) "Controlled substance" means a substance,
26 including a drug, an adulterant, and a dilutant, listed in
27 Schedules I through V or Penalty Group [~~Groups~~] 1, 1-A, [~~or~~] 2, 2-A,

1 3, or ~~[through]~~ 4. The term includes the aggregate weight of any
2 mixture, solution, or other substance containing a controlled
3 substance.

4 (6) "Controlled substance analogue" means:

5 (A) a substance with a chemical structure
6 substantially similar to the chemical structure of a controlled
7 substance in Schedule I or II or Penalty Group 1, 1-A, ~~[or]~~ 2, or
8 2-A; or

9 (B) a substance specifically designed to produce
10 an effect substantially similar to, or greater than, the effect of a
11 controlled substance in Schedule I or II or Penalty Group 1, 1-A,
12 ~~[or]~~ 2, or 2-A.

13 SECTION 3. Subchapter B, Chapter 481, Health and Safety
14 Code, is amended by adding Section 481.0355 to read as follows:

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

22 (b) In determining whether a substance poses an imminent
23 hazard to the public safety, the commissioner shall consider, in
24 addition to the factors provided by Section 481.034(d):

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

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

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

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

5 (c) If the commissioner emergency schedules a substance as a
6 controlled substance under this section, an emergency exists for
7 purposes of Section 481.036(c) and the action takes effect on the
8 date the schedule is published in the Texas Register.

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

12 (e) The commissioner shall post notice about each emergency
13 scheduling under this section on the Internet website of the
14 Department of State Health Services.

15 SECTION 4. Section 481.106, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE
18 ANALOGUE. For the purposes of the prosecution of an offense under
19 this subchapter involving the manufacture, delivery, or possession
20 of a controlled substance, Penalty Groups 1, 1-A, ~~and~~ 2, and 2-A
21 include a controlled substance analogue that:

22 (1) has a chemical structure substantially similar to
23 the chemical structure of a controlled substance listed in the
24 applicable penalty group; or

25 (2) is specifically designed to produce an effect
26 substantially similar to, or greater than, a controlled substance
27 listed in the applicable penalty group.

1 SECTION 5. Section 481.123(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) It is an affirmative defense to the prosecution of an
4 offense under this subchapter involving the manufacture, delivery,
5 or possession of a controlled substance analogue that the analogue:

6 (1) ~~[was not in any part intended for human~~
7 ~~consumption,~~

8 [~~2~~] was a substance for which there is an approved
9 new drug application under Section 505 of the Federal Food, Drug,
10 and Cosmetic Act (21 U.S.C. Section 355); or

11 (2) [~~3~~] was a substance for which an exemption for
12 investigational use has been granted under Section 505 of the
13 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the
14 actor's conduct with respect to the substance is in accord with the
15 exemption.

16 SECTION 6. Sections 481.133(a), (b), and (c), Health and
17 Safety Code, are amended to read as follows:

18 (a) A person commits an offense if the person knowingly or
19 intentionally uses or possesses with intent to use any device or
20 substance, including synthetic urine, [~~or device~~] designed to
21 falsify drug test results.

22 (b) A person commits an offense if the person knowingly or
23 intentionally delivers, possesses with intent to deliver, or
24 manufactures with intent to deliver a device or substance,
25 including synthetic urine, [~~or device~~] designed to falsify drug
26 test results.

27 (c) In this section:

1 (1) "Drug [~~,"drug]~~ test" means a lawfully
2 administered test designed to detect the presence of a controlled
3 substance or marihuana.

4 (2) "Synthetic urine" means a substance intended to
5 mimic and be substituted for human urine in a drug test.

6 SECTION 7. The change in law made by this Act applies only
7 to an offense committed on or after the effective date of this Act.
8 An offense committed before the effective date of this Act is
9 governed by the law in effect on the date the offense was committed,
10 and the former law is continued in effect for that purpose. For
11 purposes of this section, an offense was committed before the
12 effective date of this Act if any element of the offense occurred
13 before that date.

14 SECTION 8. This Act takes effect September 1, 2015.