

1 AN ACT

2 relating to the prosecution and punishment of certain offenses
3 under the Texas Controlled Substances Act and the regulation and
4 scheduling of certain substances.

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

6 SECTION 1. This Act shall be known as the Montana Brown and
7 Jesse High Act.

8 SECTION 2. Chapter 431, Health and Safety Code, is amended
9 by adding Subchapter G-1 to read as follows:

10 SUBCHAPTER G-1. ABUSABLE SYNTHETIC SUBSTANCES

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

18 (b) In determining whether a consumer commodity is an
19 abusable synthetic substance, the commissioner may consider:

20 (1) whether the commodity is sold at a price higher
21 than similar commodities are ordinarily sold;

22 (2) any evidence of clandestine importation,
23 manufacture, distribution, or diversion from legitimate channels;

24 (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 3. 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 4. 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) Except as
16 otherwise provided by Subsection (b) and subject to Subsection (c),
17 the commissioner may emergency schedule a substance as a controlled
18 substance if the commissioner determines the action is necessary to
19 avoid an imminent hazard to the public safety.

20 (b) The commissioner may not emergency schedule a substance
21 as a controlled substance under this section if:

22 (1) the substance is already scheduled;

23 (2) an exemption or approval is in effect for the
24 substance under Section 505, Federal Food, Drug, and Cosmetic Act
25 (21 U.S.C. Section 355); or

26 (3) the substance is an over-the-counter drug that
27 qualifies for recognition as safe and effective under conditions

1 established by federal regulations of the United States Food and
2 Drug Administration governing over-the-counter drugs.

3 (c) Before emergency scheduling a substance as a controlled
4 substance under this section, the commissioner shall consult with
5 the Department of Public Safety regarding the chemical structure of
6 compounds contained in that substance, and may emergency schedule
7 the substance only in accordance with any recommendations provided
8 by the department.

9 (d) In determining whether a substance poses an imminent
10 hazard to the public safety, the commissioner shall consider, in
11 addition to the factors provided by Section [481.034](#)(d):

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

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

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

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

19 (e) If the commissioner emergency schedules a substance as a
20 controlled substance under this section, an emergency exists for
21 purposes of Section [481.036](#)(c) and the action takes effect on the
22 date the schedule is published in the Texas Register.

23 (f) An emergency scheduling under this section expires on
24 September 1 of each odd-numbered year for any scheduling that
25 occurs before January 1 of that year.

26 (g) The commissioner shall post notice about each emergency
27 scheduling under this section on the Internet website of the

1 Department of State Health Services.

2 SECTION 5. Section 481.106, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE
5 ANALOGUE. For the purposes of the prosecution of an offense under
6 this subchapter involving the manufacture, delivery, or possession
7 of a controlled substance, Penalty Groups 1, 1-A, ~~and~~ 2, and 2-A
8 include a controlled substance analogue that:

9 (1) has a chemical structure substantially similar to
10 the chemical structure of a controlled substance listed in the
11 applicable penalty group; or

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

15 SECTION 6. Section 481.123(a), Health and Safety Code, is
16 amended to read as follows:

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

20 (1) ~~[was not in any part intended for human~~
21 ~~consumption,~~

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

25 (2) ~~[(3)]~~ was a substance for which an exemption for
26 investigational use has been granted under Section 505 of the
27 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the

1 actor's conduct with respect to the substance is in accord with the
2 exemption.

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1212 was passed by the House on April 30, 2015, by the following vote: Yeas 135, Nays 4, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1212 on May 26, 2015, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1212 was passed by the Senate, with amendments, on May 21, 2015, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor