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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, and the prosecution and punishment of certain offenses involving a controlled substance or controlled substance analogue.

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 under Subsection (b) 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.

(b) In determining whether a consumer commodity is an abusable synthetic substance, the commissioner shall 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 for human consumption, regardless of any consumption prohibitions

1 or warnings on the packaging of the commodity; and

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

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

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

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

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

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

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

21 (2) all enforcement actions under Subchapter C.

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

24 (5) "Controlled substance" means a substance,
25 including a drug, an adulterant, and a dilutant, listed in
26 Schedules I through V or Penalty Group [~~Groups~~] 1, 1-A, [~~or~~] 2, 2-A,
27 3, or [~~through~~] 4. The term includes the aggregate weight of any

1 mixture, solution, or other substance containing a controlled
2 substance.

3 (6) "Controlled substance analogue" means:

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

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

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

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

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

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

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

27 (3) whether the substance has been temporarily

1 scheduled under federal law; and

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

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

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

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

14 SECTION 4. Section 481.119, Health and Safety Code, is
15 amended by adding Subsection (c) to read as follows:

16 (c) It is a defense to prosecution for an offense under
17 Subsection (b) that the actor requested emergency medical
18 assistance in response to the possible controlled substance
19 overdose of the actor or another person.

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

22 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE
23 ANALOGUE. For the purposes of the prosecution of an offense under
24 this subchapter involving the manufacture, delivery, or possession
25 of a controlled substance, Penalty Groups 1, 1-A, ~~and~~ 2, and 2-A
26 include a controlled substance analogue that:

27 (1) has a chemical structure substantially similar to

1 the chemical structure of a controlled substance listed in the
2 applicable penalty group; or

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

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

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

11 (1) ~~[was not in any part intended for human~~
12 ~~consumption,~~

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

16 (2) [~~(3)~~] was a substance for which an exemption for
17 investigational use has been granted under Section 505 of the
18 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the
19 actor's conduct with respect to the substance is in accord with the
20 exemption.

21 SECTION 7. The change in law made by this Act applies only
22 to an offense committed on or after the effective date of this Act.
23 An offense committed before the effective date of this Act is
24 governed by the law in effect on the date the offense was committed,
25 and the former law is continued in effect for that purpose. For
26 purposes of this section, an offense was committed before the
27 effective date of this Act if any element of the offense occurred

1 before that date.

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