

1-1 By: Price, et al. (Senate Sponsor - Schwertner) H.B. No. 1212  
 1-2 (In the Senate - Received from the House May 4, 2015;  
 1-3 May 5, 2015, read first time and referred to Committee on Health  
 1-4 and Human Services; May 18, 2015, reported adversely, with  
 1-5 favorable Committee Substitute by the following vote: Yeas 9,  
 1-6 Nays 0; May 18, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1212 By: Estes

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the prosecution and punishment of certain offenses  
 1-22 under the Texas Controlled Substances Act and the regulation and  
 1-23 scheduling of certain substances; creating criminal offenses.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Chapter 431, Health and Safety Code, is amended  
 1-26 by adding Subchapter G-1 to read as follows:

1-27 SUBCHAPTER G-1. ABUSABLE SYNTHETIC SUBSTANCES

1-28 Sec. 431.171. DESIGNATION OF CONSUMER COMMODITY AS ABUSABLE  
 1-29 SYNTHETIC SUBSTANCE. (a) The commissioner may designate a consumer  
 1-30 commodity as an abusable synthetic substance if the commissioner  
 1-31 determines that the consumer commodity is likely an abusable  
 1-32 synthetic substance and the importation, manufacture,  
 1-33 distribution, or retail sale of the commodity poses a threat to  
 1-34 public health.

1-35 (b) In determining whether a consumer commodity is an  
 1-36 abusable synthetic substance, the commissioner may consider:

1-37 (1) whether the commodity is sold at a price higher  
 1-38 than similar commodities are ordinarily sold;

1-39 (2) any evidence of clandestine importation,  
 1-40 manufacture, distribution, or diversion from legitimate channels;

1-41 (3) any evidence suggesting the product is intended  
 1-42 for human consumption, regardless of any consumption prohibitions  
 1-43 or warnings on the packaging of the commodity; or

1-44 (4) whether any of the following factors suggest the  
 1-45 commodity is an abusable synthetic substance intended for illicit  
 1-46 drug use:

1-47 (A) the appearance of the packaging of the  
 1-48 commodity;

1-49 (B) oral or written statements or  
 1-50 representations of a person who sells, manufactures, distributes,  
 1-51 or imports the commodity;

1-52 (C) the methods by which the commodity is  
 1-53 distributed; and

1-54 (D) the manner in which the commodity is sold to  
 1-55 the public.

1-56 Sec. 431.172. APPLICABILITY OF CHAPTER TO ABUSABLE  
 1-57 SYNTHETIC SUBSTANCE. A commodity classified as an abusable  
 1-58 synthetic substance by the commissioner under Section 431.171 is  
 1-59 subject to:

1-60 (1) the provisions of this chapter that apply to food

2-1 and cosmetics, including provisions relating to adulteration,  
2-2 packaging, misbranding, and inspection; and

2-3 (2) all enforcement actions under Subchapter C.

2-4 SECTION 2. Sections 481.002(5) and (6), Health and Safety  
2-5 Code, are amended to read as follows:

2-6 (5) "Controlled substance" means a substance,  
2-7 including a drug, an adulterant, and a dilutant, listed in  
2-8 Schedules I through V or Penalty Group ~~[Groups]~~ 1, 1-A, ~~[or]~~ 2, 2-A,  
2-9 3, or ~~[through]~~ 4. The term includes the aggregate weight of any  
2-10 mixture, solution, or other substance containing a controlled  
2-11 substance.

2-12 (6) "Controlled substance analogue" means:

2-13 (A) a substance with a chemical structure  
2-14 substantially similar to the chemical structure of a controlled  
2-15 substance in Schedule I or II or Penalty Group 1, 1-A, ~~[or]~~ 2, or  
2-16 2-A; or

2-17 (B) a substance specifically designed to produce  
2-18 an effect substantially similar to, or greater than, the effect of a  
2-19 controlled substance in Schedule I or II or Penalty Group 1, 1-A,  
2-20 ~~[or]~~ 2, or 2-A.

2-21 SECTION 3. Section 481.036(c), Health and Safety Code, is  
2-22 amended to read as follows:

2-23 (c) An action by the commissioner that establishes or  
2-24 modifies a schedule under this subchapter may take effect not  
2-25 earlier than the 21st day after the date on which the schedule or  
2-26 modification is published in the Texas Register unless an emergency  
2-27 exists that necessitates earlier action to avoid an imminent hazard  
2-28 to the public safety. The commissioner may determine that an  
2-29 imminent hazard to the public safety exists if the commissioner  
2-30 makes findings with respect to each of the factors listed in  
2-31 Sections 481.034(d)(4), (5), and (6) that indicate that the  
2-32 substance poses a danger to health and safety if not immediately  
2-33 controlled.

2-34 SECTION 4. Section 481.106, Health and Safety Code, is  
2-35 amended to read as follows:

2-36 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE  
2-37 ANALOGUE. For the purposes of the prosecution of an offense under  
2-38 this subchapter involving the manufacture, delivery, or possession  
2-39 of a controlled substance, Penalty Groups 1, 1-A, ~~[and]~~ 2, and 2-A  
2-40 include a controlled substance analogue that:

2-41 (1) has a chemical structure substantially similar to  
2-42 the chemical structure of a controlled substance listed in the  
2-43 applicable penalty group; or

2-44 (2) is specifically designed to produce an effect  
2-45 substantially similar to, or greater than, a controlled substance  
2-46 listed in the applicable penalty group.

2-47 SECTION 5. Section 481.123(a), Health and Safety Code, is  
2-48 amended to read as follows:

2-49 (a) It is an affirmative defense to the prosecution of an  
2-50 offense under this subchapter involving the manufacture, delivery,  
2-51 or possession of a controlled substance analogue that the analogue:

2-52 (1) ~~[was not in any part intended for human~~  
2-53 ~~consumption;~~

2-54 ~~[(2)]~~ was a substance for which there is an approved  
2-55 new drug application under Section 505 of the Federal Food, Drug,  
2-56 and Cosmetic Act (21 U.S.C. Section 355); or

2-57 (2) ~~[(3)]~~ was a substance for which an exemption for  
2-58 investigational use has been granted under Section 505 of the  
2-59 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the  
2-60 actor's conduct with respect to the substance is in accord with the  
2-61 exemption.

2-62 SECTION 6. Subtitle C, Title 6, Health and Safety Code, is  
2-63 amended by adding Chapter 488 to read as follows:

2-64 CHAPTER 488. HAZARDOUS CONTROLLED SUBSTANCE EMERGENCY SCHEDULING

2-65 Sec. 488.001. DEFINITIONS. In this chapter, "commissioner"  
2-66 and "controlled substance" have the meanings assigned by Chapter  
2-67 481.

2-68 Sec. 488.002. DESIGNATION OF HAZARDOUS CONTROLLED  
2-69 SUBSTANCE; CRITERIA. When the commissioner under Section 481.032

3-1 modifies Schedule I to add a controlled substance, the commissioner  
3-2 at that time may designate the substance as a hazardous controlled  
3-3 substance if the commissioner:

3-4 (1) finds that the substance:  
3-5 (A) is chemically similar in structure or effect  
3-6 to a controlled substance listed in a penalty group under  
3-7 Subchapter D, Chapter 481; or

3-8 (B) poses an imminent danger to life or health;  
3-9 and

3-10 (2) receives approval for the hazardous controlled  
3-11 substance designation from the governor, lieutenant governor, and  
3-12 attorney general.

3-13 Sec. 488.003. EMERGENCY SCHEDULING. (a) The commissioner  
3-14 shall publish a list of the controlled substances that are  
3-15 designated as hazardous controlled substances by filing a certified  
3-16 copy of the list with the secretary of state for publication in the  
3-17 Texas Register at the time the commissioner files a copy of the  
3-18 schedules under Section 481.036.

3-19 (b) The designation of a substance as a hazardous controlled  
3-20 substance takes effect on the date the modification that added the  
3-21 substance to Schedule I takes effect according to Section  
3-22 481.036(c).

3-23 Sec. 488.004. OFFENSE: MANUFACTURE OR DELIVERY OF  
3-24 HAZARDOUS CONTROLLED SUBSTANCE. (a) A person commits an offense  
3-25 if the person knowingly manufactures, delivers, or possesses with  
3-26 intent to deliver a controlled substance designated as a hazardous  
3-27 controlled substance under this chapter.

3-28 (b) An offense under Subsection (a) is a Class A misdemeanor  
3-29 if the amount of the controlled substance to which the offense  
3-30 applies is, by aggregate weight, including adulterants or  
3-31 dilutants, less than 28 grams.

3-32 (c) An offense under Subsection (a) is a state jail felony  
3-33 if the amount of the controlled substance to which the offense  
3-34 applies is, by aggregate weight, including adulterants or  
3-35 dilutants, 28 grams or more but less than 200 grams.

3-36 (d) An offense under Subsection (a) is a felony of the third  
3-37 degree if the amount of the controlled substance to which the  
3-38 offense applies is, by aggregate weight, including adulterants or  
3-39 dilutants, 200 grams or more but less than 400 grams.

3-40 (e) An offense under Subsection (a) is a felony of the  
3-41 second degree if the amount of the controlled substance to which the  
3-42 offense applies is, by aggregate weight, including adulterants or  
3-43 dilutants, 400 grams or more.

3-44 Sec. 488.005. OFFENSE: POSSESSION OF HAZARDOUS CONTROLLED  
3-45 SUBSTANCE. (a) A person commits an offense if the person  
3-46 knowingly possesses a controlled substance designated as a  
3-47 hazardous controlled substance under this chapter.

3-48 (b) An offense under Subsection (a) is a Class B misdemeanor  
3-49 if the amount of the controlled substance possessed is, by  
3-50 aggregate weight, including adulterants or dilutants, less than 28  
3-51 grams.

3-52 (c) An offense under Subsection (a) is a Class A misdemeanor  
3-53 if the amount of the controlled substance possessed is, by  
3-54 aggregate weight, including adulterants or dilutants, 28 grams or  
3-55 more but less than 200 grams.

3-56 (d) An offense under Subsection (a) is a state jail felony  
3-57 if the amount of the controlled substance possessed is, by  
3-58 aggregate weight, including adulterants or dilutants, 200 grams or  
3-59 more but less than 400 grams.

3-60 (e) An offense under Subsection (a) is a felony of the third  
3-61 degree if the amount of the controlled substance possessed is, by  
3-62 aggregate weight, including adulterants or dilutants, 400 grams or  
3-63 more.

3-64 Sec. 488.006. EFFECT ON OTHER PROVISIONS OF SUBTITLE. If  
3-65 conduct that is an offense under this chapter is also an offense  
3-66 under another provision of this subtitle, the actor may be  
3-67 prosecuted under either this chapter or the other provision or  
3-68 both.

3-69 Sec. 488.007. APPLICABILITY. This chapter does not apply

4-1 to a controlled substance that is listed in a penalty group under  
4-2 Subchapter D, Chapter 481.

4-3 Sec. 488.008. EXPIRATION. The designation of a controlled  
4-4 substance as a hazardous controlled substance expires on September  
4-5 1 of each odd-numbered year for any designation in effect before  
4-6 January 1 of that year.

4-7 SECTION 7. The change in law made by this Act applies only  
4-8 to an offense committed on or after the effective date of this Act.  
4-9 An offense committed before the effective date of this Act is  
4-10 governed by the law in effect on the date the offense was committed,  
4-11 and the former law is continued in effect for that purpose. For  
4-12 purposes of this section, an offense was committed before the  
4-13 effective date of this Act if any element of the offense occurred  
4-14 before that date.

4-15 SECTION 8. This Act takes effect September 1, 2015.

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