

By: Perry, et al.

S.B. No. 461

A BILL TO BE ENTITLED

AN ACT

relating to false or misleading packaging, labeling, or advertising of certain abusable synthetic substances; providing civil penalties; creating a criminal offense.

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

SECTION 1. Subtitle C, Title 6, Health and Safety Code, is amended by adding Chapter 484 to read as follows:

CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 484.001. DEFINITIONS. In this chapter:

(1) "Abusable synthetic substance" means a substance that:

(A) is not otherwise regulated under this title or under federal law;

(B) is intended to mimic a controlled substance or controlled substance analogue; and

(C) when inhaled, ingested, or otherwise introduced into a person's body:

(i) produces an effect on the central nervous system similar to the effect produced by a controlled substance or controlled substance analogue;

(ii) creates a condition of intoxication, hallucination, or elation similar to a condition produced by a controlled substance or controlled substance analogue; or

(iii) changes, distorts, or disturbs the

1 person's eyesight, thinking process, balance, or coordination in a
2 manner similar to a controlled substance or controlled substance
3 analogue.

4 (2) "Business" includes trade and commerce and
5 advertising, selling, and buying service or property.

6 (3) "Mislabeled" means varying from the standard of
7 truth or disclosure in labeling prescribed by law or set by
8 established commercial usage.

9 (4) "Sell" and "sale" include offer for sale,
10 advertise for sale, expose for sale, keep for the purpose of sale,
11 deliver for or after sale, solicit and offer to buy, and every
12 disposition for value.

13 Sec. 484.002. PROHIBITED ACTS. (a) A person commits an
14 offense if in the course of business the person knowingly produces,
15 distributes, sells, or offers for sale a mislabeled abusable
16 synthetic substance.

17 (b) An offense under this section is a Class C misdemeanor,
18 except that the offense is a Class A misdemeanor if it is shown on
19 the trial of the offense that the actor has previously been
20 convicted of an offense under this section or of an offense under
21 Section 32.42(b)(4), Penal Code, and the adulterated or mislabeled
22 commodity was an abusable synthetic substance.

23 (c) If conduct constituting an offense under this section
24 also constitutes an offense under another provision of law, the
25 person may be prosecuted under either this section or the other
26 provision.

27 Sec. 484.003. CIVIL PENALTY. (a) The attorney general or

1 a district, county, or city attorney may institute an action in
2 district court to collect a civil penalty from a person who in the
3 course of business produces, distributes, sells, or offers for sale
4 a mislabeled abusable synthetic substance.

5 (b) The civil penalty may not exceed \$25,000 a day for each
6 offense. Each day an offense is committed constitutes a separate
7 violation for purposes of the penalty assessment.

8 (c) The court shall consider the following in determining
9 the amount of the penalty:

10 (1) the person's history of any previous offenses
11 under Section 484.002 or under Section 32.42(b)(4), Penal Code,
12 relating to the sale of a mislabeled abusable synthetic substance;

13 (2) the seriousness of the offense;

14 (3) any hazard posed to the public health and safety by
15 the offense; and

16 (4) demonstrations of good faith by the person
17 charged.

18 (d) Venue for a suit brought under this section is in the
19 city or county in which the offense occurred or in Travis County.

20 (e) A civil penalty recovered in a suit instituted by a
21 local government under this section shall be paid to that local
22 government.

23 Sec. 484.004. AFFIRMATIVE DEFENSE. It is an affirmative
24 defense to prosecution or liability under this chapter that:

25 (1) the abusable synthetic substance was approved for
26 use, sale, or distribution by the United States Food and Drug
27 Administration or other state or federal regulatory agency with

1 authority to approve the substance's use, sale, or distribution;
2 and

3 (2) the abusable synthetic substance was lawfully
4 produced, distributed, sold, or offered for sale by the person who
5 is the subject of the criminal or civil action.

6 Sec. 484.005. NO DEFENSE. In a prosecution or civil action
7 under this chapter, the fact that the abusable synthetic substance
8 was in packaging labeled with "Not for Human Consumption," or other
9 wording indicating the substance is not intended to be ingested, is
10 not a defense.

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