

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 criminal and civil penalties.

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; and

(B) when inhaled, ingested, or otherwise introduced into a person's body, produces an effect on the central nervous system, creates a condition of intoxication, hallucination, or elation, or changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination.

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

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

(4) "Sell" and "sale" include offer for sale,

1 advertise for sale, expose for sale, keep for the purpose of sale,
2 deliver for or after sale, solicit and offer to buy, and every
3 disposition for value.

4 Sec. 484.002. PROHIBITED ACTS. (a) A person commits an
5 offense if in the course of business the person sells a mislabeled
6 abusable synthetic substance.

7 (b) An offense under this section is a Class C misdemeanor,
8 except that the offense is a Class A misdemeanor if it is shown on
9 the trial of the offense that the actor has previously been
10 convicted of an offense under this section or of an offense under
11 Section 32.42(b)(4), Penal Code, and the adulterated or mislabeled
12 commodity was an abusable synthetic substance.

13 (c) If conduct constituting an offense under this section
14 also constitutes an offense under another provision of law, the
15 person may be prosecuted under either this section or the other
16 provision.

17 Sec. 484.003. CIVIL PENALTY. (a) The attorney general or a
18 district, county, or city attorney may institute an action in
19 district court to collect a civil penalty from a person who commits
20 an offense under Section 484.002.

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

24 (c) The court shall consider the following in determining
25 the amount of the penalty:

26 (1) the person's history of any previous offenses
27 under Section 484.002 or under Section 32.42(b)(4), Penal Code,

1 relating to the sale of a mislabeled abusable synthetic substance;
2 (2) the seriousness of the offense;
3 (3) any hazard posed to the public health and safety by
4 the offense; and
5 (4) demonstrations of good faith by the person
6 charged.

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

9 (e) A civil penalty recovered in a suit instituted by a
10 local government under this section shall be paid to that local
11 government.

12 Sec. 484.004. NO DEFENSE. In a prosecution or civil action
13 under this chapter, the fact that the abusable synthetic substance
14 was in packaging labeled with "Not for Human Consumption," or other
15 wording indicating the substance is not intended to be ingested, is
16 not a defense.

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