

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Price, Coleman, Naishtat, Zerwas,  
Bonnen of Galveston, et al.

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, the prosecution and punishment of certain offenses involving a controlled substance or controlled substance analogue, and the offense of falsification of drug test results.

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 that the consumer commodity is likely an abusable synthetic substance and the importation, manufacture, distribution, or 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 may 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  
or warnings on the packaging of the commodity; or

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

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

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

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

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

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

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

(2) all enforcement actions under Subchapter C.

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

(5) "Controlled substance" means a substance,  
including a drug, an adulterant, and a dilutant, listed in  
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 3. 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) The commissioner  
16 may emergency schedule a substance as a controlled substance if the  
17 commissioner determines the action is necessary to avoid an  
18 imminent hazard to the public safety, the substance is not already  
19 scheduled, and no exemption or approval is in effect for the  
20 substance under Section 505, Federal Food, Drug, and Cosmetic Act  
21 (21 U.S.C. Section 355).

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

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

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

1           (3) whether the substance has been temporarily  
2 scheduled under federal law; and

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

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

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

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

15           SECTION 4. Section 481.106, Health and Safety Code, is  
16 amended to read as follows:

17           Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE  
18 ANALOGUE. For the purposes of the prosecution of an offense under  
19 this subchapter involving the manufacture, delivery, or possession  
20 of a controlled substance, Penalty Groups 1, 1-A, ~~and~~ 2, and 2-A  
21 include a controlled substance analogue that:

22           (1) has a chemical structure substantially similar to  
23 the chemical structure of a controlled substance listed in the  
24 applicable penalty group; or

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

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

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

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

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

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

SECTION 6. Sections 481.133(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use any device or substance, including synthetic urine, ~~[or device]~~ designed to falsify drug test results.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver a device or substance, including synthetic urine, ~~[or device]~~ designed to falsify drug test results.

(c) In this section:

1           (1) "Drug [~~,"~~~~"drug~~] test" means a lawfully  
2 administered test designed to detect the presence of a controlled  
3 substance or marihuana.

4           (2) "Synthetic urine" means a substance intended to  
5 mimic and be substituted for human urine in a drug test.

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

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

ADOPTED

MAY 21 2015

*Letay Shaw*  
Secretary of the Senate

By:

*C. Johnson*

H.B. No. 1212

Substitute the following for H.B. No. 1212:

By:

*Ed*

C.S. H.B. No. 1212

A BILL TO BE ENTITLED

AN ACT

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

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 that the consumer commodity is likely an abusable synthetic substance and the importation, manufacture, distribution, or 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 may 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 or warnings on the packaging of the commodity; or

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

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

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

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

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

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

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

20           (2) all enforcement actions under Subchapter C.

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

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



1 substance.

2 (6) "Controlled substance analogue" means:

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

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

11 SECTION 3. Section 481.036(c), Health and Safety Code, is  
12 amended to read as follows:

13 (c) An action by the commissioner that establishes or  
14 modifies a schedule under this subchapter may take effect not  
15 earlier than the 21st day after the date on which the schedule or  
16 modification is published in the Texas Register unless an emergency  
17 exists that necessitates earlier action to avoid an imminent hazard  
18 to the public safety. The commissioner may determine that an  
19 imminent hazard to the public safety exists if the commissioner  
20 makes findings with respect to each of the factors listed in  
21 Sections 481.034(d)(4), (5), and (6) that indicate that the  
22 substance poses a danger to health and safety if not immediately  
23 controlled.

24 SECTION 4. Section 481.106, Health and Safety Code, is  
25 amended to read as follows:

26 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE  
27 ANALOGUE. For the purposes of the prosecution of an offense under

1 this subchapter involving the manufacture, delivery, or possession  
2 of a controlled substance, Penalty Groups 1, 1-A, ~~[and]~~ 2, and 2-A  
3 include a controlled substance analogue that:

4 (1) has a chemical structure substantially similar to  
5 the chemical structure of a controlled substance listed in the  
6 applicable penalty group; or

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

10 SECTION 5. Section 481.123(a), Health and Safety Code, is  
11 amended to read as follows:

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

15 (1) ~~[was not in any part intended for human~~  
16 ~~consumption,~~

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

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

25 SECTION 6. Subtitle C, Title 6, Health and Safety Code, is  
26 amended by adding Chapter 488 to read as follows:

1 CHAPTER 488. HAZARDOUS CONTROLLED SUBSTANCE EMERGENCY SCHEDULING  
2 Sec. 488.001. DEFINITIONS. In this chapter, "commissioner"  
3 and "controlled substance" have the meanings assigned by Chapter  
4 481.

5 Sec. 488.002. DESIGNATION OF HAZARDOUS CONTROLLED  
6 SUBSTANCE; CRITERIA. When the commissioner under Section 481.032  
7 modifies Schedule I to add a controlled substance, the commissioner  
8 at that time may designate the substance as a hazardous controlled  
9 substance if the commissioner:

10 (1) finds that the substance:

11 (A) is chemically similar in structure or effect  
12 to a controlled substance listed in a penalty group under  
13 Subchapter D, Chapter 481; or

14 (B) poses an imminent danger to life or health;  
15 and

16 (2) receives approval for the hazardous controlled  
17 substance designation from the governor, lieutenant governor, and  
18 attorney general.

19 Sec. 488.003. EMERGENCY SCHEDULING. (a) The commissioner  
20 shall publish a list of the controlled substances that are  
21 designated as hazardous controlled substances by filing a certified  
22 copy of the list with the secretary of state for publication in the  
23 Texas Register at the time the commissioner files a copy of the  
24 schedules under Section 481.036.

25 (b) The designation of a substance as a hazardous controlled  
26 substance takes effect on the date the modification that added the  
27 substance to Schedule I takes effect according to Section

1 481.036(c).

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

7 (b) An offense under Subsection (a) is a Class A misdemeanor  
8 if the amount of the controlled substance to which the offense  
9 applies is, by aggregate weight, including adulterants or  
10 dilutants, less than 28 grams.

11 (c) An offense under Subsection (a) is a state jail felony  
12 if the amount of the controlled substance to which the offense  
13 applies is, by aggregate weight, including adulterants or  
14 dilutants, 28 grams or more but less than 200 grams.

15 (d) An offense under Subsection (a) is a felony of the third  
16 degree if the amount of the controlled substance to which the  
17 offense applies is, by aggregate weight, including adulterants or  
18 dilutants, 200 grams or more but less than 400 grams.

19 (e) An offense under Subsection (a) is a felony of the  
20 second degree if the amount of the controlled substance to which the  
21 offense applies is, by aggregate weight, including adulterants or  
22 dilutants, 400 grams or more.

23 Sec. 488.005. OFFENSE: POSSESSION OF HAZARDOUS CONTROLLED  
24 SUBSTANCE. (a) A person commits an offense if the person  
25 knowingly possesses a controlled substance designated as a  
26 hazardous controlled substance under this chapter.

27 (b) An offense under Subsection (a) is a Class B misdemeanor

1 if the amount of the controlled substance possessed is, by  
2 aggregate weight, including adulterants or dilutants, less than 28  
3 grams.

4 (c) An offense under Subsection (a) is a Class A misdemeanor  
5 if the amount of the controlled substance possessed is, by  
6 aggregate weight, including adulterants or dilutants, 28 grams or  
7 more but less than 200 grams.

8 (d) An offense under Subsection (a) is a state jail felony  
9 if the amount of the controlled substance possessed is, by  
10 aggregate weight, including adulterants or dilutants, 200 grams or  
11 more but less than 400 grams.

12 (e) An offense under Subsection (a) is a felony of the third  
13 degree if the amount of the controlled substance possessed is, by  
14 aggregate weight, including adulterants or dilutants, 400 grams or  
15 more.

16 Sec. 488.006. EFFECT ON OTHER PROVISIONS OF SUBTITLE. If  
17 conduct that is an offense under this chapter is also an offense  
18 under another provision of this subtitle, the actor may be  
19 prosecuted under either this chapter or the other provision or  
20 both.

21 Sec. 488.007. APPLICABILITY. This chapter does not apply  
22 to a controlled substance that is listed in a penalty group under  
23 Subchapter D, Chapter 481.

24 Sec. 488.008. EXPIRATION. The designation of a controlled  
25 substance as a hazardous controlled substance expires on September  
26 1 of each odd-numbered year for any designation in effect before  
27 January 1 of that year.

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

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

ADOPTED

MAY 21 2015

FLOOR AMENDMENT NO. 1

*Letay Spaw*  
Secretary of the Senate

BY: *C. Schmitt*

1 Amend C.S.H.B. No. 1212 (senate committee report) as  
2 follows:

3 (1) Strike SECTION 3 of the bill (page 2, lines 21 through  
4 33).

5 (2) Add the following appropriately numbered SECTIONS to  
6 the bill:

7 SECTION \_\_\_\_\_. This Act shall be known as the Montana Brown  
8 and Jesse High Act.

9 SECTION \_\_\_\_\_. Subchapter B, Chapter 481, Health and Safety  
10 Code, is amended by adding Section 481.0355 to read as follows:

11 Sec. 481.0355. EMERGENCY SCHEDULING. (a) Except as  
12 otherwise provided by Subsection (b) and subject to Subsection (c),  
13 the commissioner may emergency schedule a substance as a controlled  
14 substance if the commissioner determines the action is necessary to  
15 avoid an imminent hazard to the public safety.

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

18 (1) the substance is already scheduled;

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

22 (3) the substance is an over-the-counter drug that  
23 qualifies for recognition as safe and effective under conditions  
24 established by federal regulations of the United States Food and  
25 Drug Administration governing over-the-counter drugs.

26 (c) Before emergency scheduling a substance as a controlled  
27 substance under this section, the commissioner shall consult with  
28 the Department of Public Safety regarding the chemical structure of  
29 compounds contained in that substance, and may emergency schedule

1 the substance only in accordance with any recommendations provided  
2 by the department.

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

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

7 (2) the degree of detriment that abuse of the  
8 substance may cause;

9 (3) whether the substance has been temporarily  
10 scheduled under federal law; and

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

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

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

20 (g) The commissioner shall post notice about each emergency  
21 scheduling under this section on the Internet website of the  
22 Department of State Health Services.

23 (3) Strike SECTION 6 of the bill (page 2, line 62, through  
24 page 4, line 6).

25 (4) Renumber SECTIONS of the bill appropriately.



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 22, 2015**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (Relating to the prosecution and punishment of certain offenses under the Texas Controlled Substances Act and the regulation and scheduling of certain substances; creating criminal offenses.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Health and Safety Code to authorize the Commissioner of Health at the Department of State Health Services (DSHS) to designate a commodity as an abusable synthetic substance, which would be regulated in the same manner as other commodities under Chapter 431 of the Health and Safety Code. The bill would authorize the Commissioner of Health to emergency schedule a substance as a controlled substance in certain circumstances for a limited amount of time. The bill would classify certain substances as a controlled substance and controlled substance analogue.

The Department of Public Safety (DPS) indicates that implementing provisions of the bill related to the emergency scheduling of a substance would require the agency to purchase drug reference standards for each of its 13 drug testing laboratories annually and make certain, one-time system modifications. It is assumed that associated costs could be absorbed within available resources. DSHS indicates that activities related to the designation of a commodity as an abusable synthetic substance, the emergency scheduling of a substance as a controlled substance, and related enforcement activities could be accomplished by utilizing existing resources.

The manufacture, distribution, and retail sale of abusable synthetic substances would be sanctioned under Section 431.059 of the Health and Safety Code, which provides that a first offense is a Class A misdemeanor, and a second offense is a state jail felony. Persons who abuse the substances would be sanctioned under Section 481.119 of the Health and Safety Code, which provides that an offense is a Class A or B misdemeanor, depending upon the circumstances. No significant impact to state correctional populations is expected from the bill.

**Local Government Impact**

The bill would modify misdemeanor offenses. Changes in costs associated with enforcement, prosecution, and confinement are not anticipated to have a significant fiscal impact. Changes in revenue from fines imposed and collected are not anticipated to have a significant fiscal impact.

**Source Agencies:** 405 Department of Public Safety, 537 State Health Services, Department of

**LBB Staff:** UP, ADe, JPo, NB, WP, VJC, KVe, RC

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 16, 2015**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (Relating to the prosecution and punishment of certain offenses under the Texas Controlled Substances Act and the regulation and scheduling of certain substances; creating criminal offenses.), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Health and Safety Code to authorize the Commissioner of Health at the Department of State Health Services (DSHS) to designate a commodity as an abusable synthetic substance, which would be regulated in the same manner as other commodities under Chapter 431 of the Health and Safety Code. The bill would also authorize the Commissioner of Health to designate for a period of time a substance as a hazardous controlled substance in certain circumstances. The bill would require that a list of substances designated as hazardous controlled substances be published in the Texas Register. The bill would make it an offense to manufacture, deliver, or possess a substance designated as a hazardous controlled substance. In addition, the bill would classify certain substances as a controlled substance and controlled substance analogue. DSHS indicates that the provisions of the bill could be implemented using existing resources.

Depending upon the circumstances, the new offenses would be punished as a Class A or B misdemeanor or a state jail, third, or second degree felony. This analysis assumes that the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

**Local Government Impact**

The bill would create misdemeanor offenses. Changes in costs associated with enforcement, prosecution, and confinement are not anticipated to have a significant fiscal impact. Changes in revenue from fines imposed and collected are not anticipated to have a significant fiscal impact.

**Source Agencies:** 405 Department of Public Safety, 537 State Health Services, Department of

**LBB Staff:** UP, NB, WP, ADe, VJC, KVe, JPo

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 7, 2015

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (Relating to the designation and regulation of abusable synthetic substances, the emergency scheduling of certain controlled substances, the prosecution and punishment of certain offenses involving a controlled substance or controlled substance analogue, and the offense of falsification of drug test results.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1212, As Engrossed: a negative impact of (\$2,379,000) through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	(\$2,379,000)
2017	\$0
2018	\$0
2019	\$0
2020	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2016	(\$2,379,000)
2017	\$0
2018	\$0
2019	\$0
2020	\$0

**Fiscal Analysis**

The bill would amend the Health and Safety Code to authorize the Commissioner of Health at the Department of State Health Services (DSHS) to designate a commodity as an abusable synthetic substance, which would be regulated in the same manner as other commodities under Chapter 431 of the Health and Safety Code. The bill would authorize the Commissioner of Health to emergency schedule a substance as a controlled substance in certain circumstances. The bill would classify certain substances as a controlled substance and controlled substance analogue.

**Methodology**

The Department of Public Safety (DPS) indicates that implementing provisions of the bill related to the emergency scheduling of a substance would cost \$2.4 million in General Revenue and All Funds for fiscal year 2016. Implementation would require the agency to purchase equipment that costs \$183,000 per unit for each of its 13 drug testing laboratories. DPS would also need to purchase drug reference standards. It is assumed that costs related to the purchase of drug reference standards could be absorbed by the agency.

DSHS indicates that any activities related to the designation of a commodity as an abusable synthetic substance, the emergency scheduling of a substance as a controlled substance, and related enforcement activities could be reasonably absorbed within existing resources.

The manufacture, distribution, and retail sale of abusable synthetic substances would be sanctioned under Section 431.059 of the Health and Safety Code, which provides that a first offense is a Class A misdemeanor, and a second offense is a state jail felony. Persons who abuse the substances would be sanctioned under Section 481.119 of the Health and Safety Code, which provides that an offense is a Class A or B misdemeanor, depending upon the circumstances. No significant impact to state correctional populations is expected from the bill.

**Technology**

DPS indicates there would be technology costs for system modifications. It is assumed that these costs could be absorbed by the agency.

**Local Government Impact**

The bill would modify misdemeanor offenses. Changes in costs associated with enforcement, prosecution, and confinement are not anticipated to have a significant fiscal impact. Changes in revenue from fines imposed and collected are not anticipated to have a significant fiscal impact.

**Source Agencies:** 405 Department of Public Safety, 537 State Health Services, Department of  
of

**LBB Staff:** UP, NB, WP, ADe, VJC, JPo, RC

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 6, 2015

**TO:** Honorable Myra Crownover, Chair, House Committee on Public Health

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (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.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1212, As Introduced: a negative impact of (\$2,379,000) through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	(\$2,379,000)
2017	\$0
2018	\$0
2019	\$0
2020	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2016	(\$2,379,000)
2017	\$0
2018	\$0
2019	\$0
2020	\$0

**Fiscal Analysis**

The bill would amend the Health and Safety Code to authorize the Commissioner of Health at the Department of State Health Services (DSHS) to designate a commodity as an abusable synthetic substance, which would be regulated in the same manner as other commodities under Chapter 431 of the Health and Safety Code. The bill would authorize the Commissioner of Health to emergency schedule a substance as a controlled substance in certain circumstances. The bill would classify certain substances as a controlled substance and controlled substance analogue.

**Methodology**

The Department of Public Safety (DPS) indicates that implementing provisions of the bill related to the emergency scheduling of a substance would cost \$2.4 million in General Revenue and All Funds for fiscal year 2016. Implementation would require the agency to purchase equipment that costs \$183,000 per unit for each of its 13 drug testing laboratories. DPS would also need to purchase drug reference standards. It is assumed that costs related to the purchase of drug reference standards could be absorbed by the agency.

DSHS indicates that any activities related to the designation of a commodity as an abusable synthetic substance, the emergency scheduling of a substance as a controlled substance, and related enforcement activities could be reasonably absorbed within existing resources.

The manufacture, distribution, and retail sale of abusable synthetic substances would be sanctioned under Section 431.059 of the Health and Safety Code, which provides that a first offense is a Class A misdemeanor, and a second offense is a state jail felony. Persons who abuse the substances would be sanctioned under Section 481.119 of the Health and Safety Code, which provides that an offense is a Class A or B misdemeanor, depending upon the circumstances. No significant impact to state correctional populations is expected from the bill.

**Technology**

DPS indicates there would be technology costs for system modifications. It is assumed that these costs could be absorbed by the agency.

**Local Government Impact**

The bill would modify misdemeanor offenses. Changes in costs associated with enforcement, prosecution, and confinement are not anticipated to have a significant fiscal impact. Changes in revenue from fines imposed and collected are not anticipated to have a significant fiscal impact.

**Source Agencies:** 405 Department of Public Safety, 537 State Health Services, Department of

**LBB Staff:** UP, NB, WP, ADe, VJC, JPo, RC

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**84TH LEGISLATIVE REGULAR SESSION**

**May 22, 2015**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (Relating to the prosecution and punishment of certain offenses under the Texas Controlled Substances Act and the regulation and scheduling of certain substances; creating criminal offenses. ), **As Passed 2nd House**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Health and Safety Code to authorize the Commissioner of Health and Human Services to designate certain consumer commodities as abusable synthetic substances. Depending upon the circumstances, the manufacture, distribution, and retail sale of these substances would be punished as a state jail felony.

A state jail felony is punishable by confinement in a state jail for 180 days to two years and an optional fine not to exceed \$10,000.

Creating a new offense is expected to result in increased demands upon the correctional resources of the state due to additional persons placed under felony community supervision or admitted into state correctional institutions. This analysis assumes implementing the provisions of the bill would not result in a significant impact on state correctional populations, programs, or workloads.

**Source Agencies:**

**LBB Staff:** UP, JPo, LM, ESi



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**84TH LEGISLATIVE REGULAR SESSION**

**May 16, 2015**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (Relating to the prosecution and punishment of certain offenses under the Texas Controlled Substances Act and the regulation and scheduling of certain substances; creating criminal offenses.), **Committee Report 2nd House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Health and Safety Code to authorize the Commissioner of Health and Human Services to designate certain consumer commodities as abusable synthetic substances. Depending upon the circumstances, the manufacture, distribution, and retail sale of these substances would be punished as a state jail felony. The bill would also amend the Health and Safety Code to permit certain Schedule I controlled substances to be designated as hazardous controlled substances. The bill would create the offenses of possession and manufacture or delivery of a hazardous controlled substance, both of which would be punishable at various misdemeanor or felony levels, with punishment based on the substance amount.

A second degree felony is punishable by confinement in prison for two to 20 years, a third degree felony by confinement in prison for two to ten years, and a state jail felony by confinement in a state jail for 180 days to two years. In addition to confinement certain felony level offenses are subject to an optional fine not to exceed \$10,000.

Creating a new offense is expected to result in increased demands upon the correctional resources of the state due to additional persons placed under felony community supervision or admitted into state correctional institutions. This analysis assumes implementing the provisions of the bill would not result in a significant impact on state correctional populations, programs, or workloads.

**Source Agencies:**

**LBB Staff:** UP, LM, JPo

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**84TH LEGISLATIVE REGULAR SESSION**

**May 18, 2015**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (Relating to the designation and regulation of abusable synthetic substances, the emergency scheduling of certain controlled substances, the prosecution and punishment of certain offenses involving a controlled substance or controlled substance analogue, and the offense of falsification of drug test results.), **As Engrossed**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Health and Safety Code to authorize the Commissioner of Health and Human Services to designate certain consumer commodities as abusable synthetic substances. Depending upon the circumstances, the manufacture, distribution, and retail sale of these substances would be punished as a state jail felony.

A state jail felony is punishable by confinement in a state jail for 180 days to two years and an optional fine not to exceed \$10,000.

Creating a new offense is expected to increase correctional supervision and/or incarceration populations and thereby increase demands on county and/or state correctional resources. This analysis assumes implementing the provisions of the bill would not result in a significant impact on state correctional agencies, programs, or workloads.

**Source Agencies:**

**LBB Staff:** UP, LM, ESi

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**84TH LEGISLATIVE REGULAR SESSION**

**April 6, 2015**

**TO:** Honorable Myra Crownover, Chair, House Committee on Public Health

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1212** by Price (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.), **As Introduced**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Health and Safety Code to authorize the Commissioner of Health and Human Services to designate certain consumer commodities as abusable synthetic substances. Depending upon the circumstances, the manufacture, distribution, and retail sale of these substances would be punished as a state jail felony.

A state jail felony is punishable by confinement in a state jail for 180 days to two years and an optional fine not to exceed \$10,000.

Creating a new offense is expected to increase correctional supervision and/or incarceration populations and thereby increase demands on county and/or state correctional resources. This analysis assumes implementing the provisions of the bill would not result in a significant impact on state correctional agencies, programs, or workloads.

**Source Agencies:**

**LBB Staff:** UP, LM, JPo