

**House Bill 1212**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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

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SECTION \_\_. This Act shall be known as the Montana Brown and Jesse High Act. [FA1(2)]

SECTION 1. Same as House version.

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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, 3, or ~~through~~ 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(6) "Controlled substance analogue" means:

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

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

SECTION 3. Subchapter B, Chapter 481, Health and Safety

SECTION 2. Same as House version.

SECTION \_\_. Subchapter B, Chapter 481, Health and Safety

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Code, is amended by adding Section 481.0355 to read as follows:

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

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

- (1) the scope, duration, and symptoms of abuse;
- (2) the degree of detriment that abuse of the substance may cause;
- (3) whether the substance has been temporarily scheduled under federal law; and

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Code, is amended by adding Section 481.0355 to read as follows:

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

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

- (1) the substance is already scheduled;
- (2) an exemption or approval is in effect for the substance under Section 505, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355); or
- (3) the substance is an over-the-counter drug that qualifies for recognition as safe and effective under conditions established by federal regulations of the United States Food and Drug Administration governing over-the-counter drugs.

(c) Before emergency scheduling a substance as a controlled substance under this section, the commissioner shall consult with the Department of Public Safety regarding the chemical structure of compounds contained in that substance, and may emergency schedule the substance only in accordance with any recommendations provided by the department.

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

- (1) the scope, duration, and symptoms of abuse;
- (2) the degree of detriment that abuse of the substance may cause;
- (3) whether the substance has been temporarily scheduled under federal law; and

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

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

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

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

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

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

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

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

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

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

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

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

(g) The commissioner shall post notice about each emergency scheduling under this section on the Internet website of the Department of State Health Services. [FA1(1),(2)]

SECTION 4. Same as House version.

SECTION 5. Same as House version.

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

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

~~No equivalent provision.~~ [Deleted by FA1(3)]

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

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

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SECTION 7. Same as House version.

SECTION 8. Same as House version.

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