

## **BILL ANALYSIS**

Senate Research Center  
85R12319 GCB-F

H.B. 2804  
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Criminal Justice  
5/17/2017  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties have raised concerns regarding the ability of the commissioner of state health services, in coordination with the Department of Public Safety, to timely emergency schedule certain substances as controlled substances under the Texas Controlled Substances Act to avoid an imminent hazard to the public safety. H.B. 2804 revises procedures for the emergency scheduling of such substances.

H.B. 2804 removes the requirement that the commissioner consider certain additional factors provided by the Texas Controlled Substances Act in determining whether a substance poses an imminent hazard to the public safety. The bill authorizes the commissioner to extend the emergency scheduling of a substance by up to one year by publishing the extension in the Texas Register. The bill requires the commissioner to post notice about each extension of an emergency scheduling of a substance as a controlled substance on the Department of State Health Services website. The bill requires the commissioner, not later than December 1 of each even-numbered year, to submit a report about each emergency scheduling action taken during the preceding two-year period to the governor, the lieutenant governor, the speaker of the house of representatives, and each legislative standing committee with primary jurisdiction over DPS and each legislative standing committee with primary jurisdiction over criminal justice matters.

H.B. 2804 amends current law relating to the emergency scheduling of certain controlled substances for the purpose of the prosecution and punishment of certain offenses under the Texas Controlled Substances Act and expands the application of certain criminal offenses.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 481.0355, Health and Safety Code, to read as follows:

Sec. 481.0355. EMERGENCY SCHEDULING; LEGISLATIVE REPORT.

SECTION 2. Amends Section 481.0355, Health and Safety Code, by amending Subsections (c), (d), (f), and (g), and adding Subsections (f-1) and (h), as follows:

(c) Requires the commissioner of state health services (commissioner), before emergency scheduling a substance as a controlled substance, to consult with the Department of Public Safety (DPS), rather than to consult with DPS regarding the chemical structure of compounds contained in that substance, and authorizes the commissioner to emergency schedule the substance only in accordance with any recommendations provided by the Department of State Health Services (DSHS).

(d) Requires the commissioner, in determining whether a substance poses an imminent hazard to the public safety, to consider the scope, duration, symptoms, or significance of abuse, rather than to consider, in addition to the factors provided by Section 481.034(d)

(relating to requiring the commissioner to consider certain factors in making a determination regarding a substance), the scope, duration, and symptoms of abuse.

(f) Creates an exception under Subsection (f-1).

(f-1) Authorizes the commissioner to extend the emergency scheduling of a substance not more than once and for a period not to exceed one year by publishing the extension in the Texas Register. Provides that, if the commissioner extends the emergency scheduling of a substance, an emergency exists for purposes of Section 481.036(c) (relating to authorizing an action by the commissioner that establishes or modifies a schedule to take effect on a certain date) and the action takes effect on the date the extension is published in the Texas Register.

(g) Requires the commissioner to post notice about each emergency scheduling of a substance or each extension of an emergency scheduling of a substance under this section, rather than about each emergency scheduling under this section, on the Internet website of DSHS.

(h) Requires the commissioner, not later than December 1 of each even-numbered year, to submit a report about each emergency scheduling action taken under this section during the preceding two-year period to the governor, the lieutenant governor, the speaker of the house of representatives, and each legislative standing committee with primary jurisdiction over DSHS and each legislative standing committee with primary jurisdiction over criminal justice matters.

SECTION 3. (a) Provides that Sections 481.0355(c) and (d), Health and Safety Code, as amended by this Act, apply only to a controlled substance emergency scheduled under that section on or after the effective date of this Act.

(b) Provides that Section 481.0355(f-1), Health and Safety Code, as added by this Act, applies to an extension that occurs on or after the effective date of this Act, regardless of whether the controlled substance was emergency scheduled under Section 481.0355, Health and Safety Code, before, on, or after that date.

SECTION 4. Effective date: September 1, 2017.