

By: Meyer, Fallon

H.B. No. 2612

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to civil liability of a person who produces, distributes,  
3 sells, or provides or aids in the production, distribution, sale,  
4 or provision of certain synthetic substances to another person for  
5 damages caused by the other person and to certain actions and  
6 investigations under the Deceptive Trade Practices-Consumer  
7 Protection Act.

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

9 SECTION 1. Subchapter D, Chapter 481, Health and Safety  
10 Code, is amended by adding Section 481.1191 to read as follows:

11 Sec. 481.1191. CIVIL LIABILITY FOR ENGAGING IN OR AIDING IN  
12 PRODUCTION, DISTRIBUTION, SALE, OR PROVISION OF SYNTHETIC  
13 SUBSTANCES. (a) In this section:

14 (1) "Minor" means a person younger than 18 years of  
15 age.

16 (2) "Synthetic substance" means an artificial  
17 substance that produces and is intended by the manufacturer to  
18 produce when consumed or ingested an effect similar to or in excess  
19 of the effect produced by the consumption or ingestion of a  
20 controlled substance or controlled substance analogue, as those  
21 terms are defined by Section 481.002.

22 (b) A person is liable for damages proximately caused by the  
23 consumption or ingestion of a synthetic substance by another person  
24 if the actor:

1           (1) produced, distributed, sold, or provided the  
2 synthetic substance to the other person; or

3           (2) aided in the production, distribution, sale, or  
4 provision of the synthetic substance to the other person.

5           (c) A person is strictly liable for all damages caused by  
6 the consumption or ingestion of a synthetic substance by a minor if  
7 the actor:

8           (1) produced, distributed, sold, or provided the  
9 synthetic substance to the minor; or

10           (2) aided in the production, distribution, sale, or  
11 provision of the synthetic substance to the minor.

12           (d) A person who is found liable under this section or other  
13 law for any amount of damages arising from the consumption or  
14 ingestion by another of a synthetic substance is jointly and  
15 severally liable with any other person for the entire amount of  
16 damages awarded.

17           (e) Chapter 33, Civil Practice and Remedies Code, does not  
18 apply to an action brought under this section or an action brought  
19 under Section 17.50, Business & Commerce Code, based on conduct  
20 made actionable under Subsection (f) of this section.

21           (f) Conduct for which Subsection (b) or (c) creates  
22 liability is a false, misleading, or deceptive act or practice or an  
23 unconscionable action or course of action for purposes of Section  
24 17.50, Business & Commerce Code, and that conduct is:

25           (1) actionable under Subchapter E, Chapter 17,  
26 Business & Commerce Code; and

27           (2) subject to any remedy prescribed by that

1 subchapter.

2 (g) An action brought under this section may include a claim  
3 for exemplary damages, which may be awarded in accordance with  
4 Section 41.003, Civil Practice and Remedies Code.

5 (h) Section 41.008, Civil Practice and Remedies Code, does  
6 not apply to the award of exemplary damages in an action brought  
7 under this section.

8 (i) Section 41.005, Civil Practice and Remedies Code, does  
9 not apply to a claim for exemplary damages in an action brought  
10 under this section.

11 (j) It is an affirmative defense to liability under this  
12 section that the synthetic substance produced, distributed, sold,  
13 or provided was approved for use, sale, or distribution by the  
14 United States Food and Drug Administration or other state or  
15 federal regulatory agency with authority to approve a substance for  
16 use, sale, or distribution.

17 (k) It is not a defense to liability under this section that  
18 a synthetic substance was in packaging labeled with "Not for Human  
19 Consumption" or other wording indicating the substance is not  
20 intended to be ingested.

21 SECTION 2. Subchapter E, Chapter 17, Business & Commerce  
22 Code, is amended by adding Section 17.463 to read as follows:

23 Sec. 17.463. PRODUCTION, SALE, DISTRIBUTION, OR PROMOTION  
24 OF CERTAIN SYNTHETIC SUBSTANCES. (a) This section applies only to  
25 an act described by Section 17.46(b)(31).

26 (b) Subject to Subsection (e) and except as otherwise  
27 provided by this section, an act to which this section applies is

1 subject to action by a district or county attorney under Sections  
2 17.47, 17.58, 17.60, and 17.61 to the same extent as the act is  
3 subject to action by the consumer protection division under those  
4 sections.

5 (c) If a district or county attorney, under the authority of  
6 this section, accepts assurance of voluntary compliance under  
7 Section 17.58, the district or county attorney must file the  
8 assurance of voluntary compliance in the district court in the  
9 county in which the alleged violator resides or does business.

10 (d) If a district or county attorney, under the authority of  
11 this section, executes and serves a civil investigative demand and  
12 files a petition described by Section 17.61(g), the petition must  
13 be filed in the district court in the county where the parties  
14 reside.

15 (e) A district or county attorney may act under this section  
16 so long as the consumer protection division does not intend to act  
17 with respect to that matter. Further, consistent with Section  
18 17.48(b) of this subchapter, the consumer protection division  
19 shall, upon request and to the extent it has the resources  
20 available, provide assistance to a district or county attorney in  
21 any action taken under this subchapter. A district or county  
22 attorney may institute a suit described by this section on or after  
23 the 90th day after the date the attorney general receives the notice  
24 required by Section 17.48 unless before the 90th day after the date  
25 the notice is received the attorney general responds that it is  
26 actively investigating or litigating at least one of the alleged  
27 violations set forth in the notice. The consumer protection

1 division shall notify the district or county attorney it no longer  
2 intends to actively investigate or litigate an alleged violation  
3 within a reasonable time of such determination.

4 (f) Notwithstanding any other law, in an action brought by a  
5 district or county attorney under this section, all settlements or  
6 penalties collected by the district or county attorney shall be  
7 divided between the state and the county in which the attorney  
8 brought suit, with:

9 (1) 50 percent of the amount collected paid to the  
10 comptroller for deposit to the credit of the basic civil legal  
11 services account established by Section 51.943, Government Code;  
12 and

13 (2) 50 percent of the amount collected paid to the  
14 county shall be deposited by the county in a segregated account and  
15 the funds shall be used only for law enforcement, public health  
16 programs, or drug abuse prevention programs.

17 SECTION 3. This Act applies only to a cause of action that  
18 accrues on or after the effective date of this Act. A cause of  
19 action that accrued before the effective date of this Act is  
20 governed by the law applicable to the cause of action immediately  
21 before the effective date of this Act, and that law is continued in  
22 effect for that purpose.

23 SECTION 4. This Act takes effect September 1, 2017.