

By: Meyer

H.B. No. 2612

A BILL TO BE ENTITLED

AN ACT

relating to civil liability of a person who produces, distributes, sells, or provides or aids in the production, distribution, sale, or provision of certain synthetic substances to another person for damages caused by the other person.

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

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

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

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

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

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

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

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

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

6 (1) produced, distributed, sold, or provided the
7 synthetic substance to the minor; or

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

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

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

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

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

25 (2) subject to any remedy prescribed by that
26 subchapter.

27 (g) An action brought under this section may include a claim

1 for exemplary damages, which may be awarded in accordance with
2 Section 41.003, Civil Practice and Remedies Code.

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

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

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

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

19 SECTION 2. This Act applies only to a cause of action that
20 accrues on or after the effective date of this Act. A cause of
21 action that accrued before the effective date of this Act is
22 governed by the law applicable to the cause of action immediately
23 before the effective date of this Act, and that law is continued in
24 effect for that purpose.

25 SECTION 3. This Act takes effect September 1, 2017.