

1-1 By: Meyer, Fallon (Senate Sponsor - Huffman) H.B. No. 2612
 1-2 (In the Senate - Received from the House May 10, 2017;
 1-3 May 11, 2017, read first time and referred to Committee on State
 1-4 Affairs; May 18, 2017, reported favorably by the following vote:
 1-5 Yeas 9, Nays 0; May 18, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to civil liability of a person who produces, distributes,
 1-20 sells, or provides or aids in the production, distribution, sale,
 1-21 or provision of certain synthetic substances to another person for
 1-22 damages caused by the other person and to certain actions and
 1-23 investigations under the Deceptive Trade Practices-Consumer
 1-24 Protection Act.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Subchapter D, Chapter 481, Health and Safety
 1-27 Code, is amended by adding Section 481.1191 to read as follows:

1-28 Sec. 481.1191. CIVIL LIABILITY FOR ENGAGING IN OR AIDING IN
 1-29 PRODUCTION, DISTRIBUTION, SALE, OR PROVISION OF SYNTHETIC
 1-30 SUBSTANCES. (a) In this section:

1-31 (1) "Minor" means a person younger than 18 years of
 1-32 age.

1-33 (2) "Synthetic substance" means an artificial
 1-34 substance that produces and is intended by the manufacturer to
 1-35 produce when consumed or ingested an effect similar to or in excess
 1-36 of the effect produced by the consumption or ingestion of a
 1-37 controlled substance or controlled substance analogue, as those
 1-38 terms are defined by Section 481.002.

1-39 (b) A person is liable for damages proximately caused by the
 1-40 consumption or ingestion of a synthetic substance by another person
 1-41 if the actor:

1-42 (1) produced, distributed, sold, or provided the
 1-43 synthetic substance to the other person; or

1-44 (2) aided in the production, distribution, sale, or
 1-45 provision of the synthetic substance to the other person.

1-46 (c) A person is strictly liable for all damages caused by
 1-47 the consumption or ingestion of a synthetic substance by a minor if
 1-48 the actor:

1-49 (1) produced, distributed, sold, or provided the
 1-50 synthetic substance to the minor; or

1-51 (2) aided in the production, distribution, sale, or
 1-52 provision of the synthetic substance to the minor.

1-53 (d) A person who is found liable under this section or other
 1-54 law for any amount of damages arising from the consumption or
 1-55 ingestion by another of a synthetic substance is jointly and
 1-56 severally liable with any other person for the entire amount of
 1-57 damages awarded.

1-58 (e) Chapter 33, Civil Practice and Remedies Code, does not
 1-59 apply to an action brought under this section or an action brought
 1-60 under Section 17.50, Business & Commerce Code, based on conduct
 1-61 made actionable under Subsection (f) of this section.

2-1 (f) Conduct for which Subsection (b) or (c) creates
 2-2 liability is a false, misleading, or deceptive act or practice or an
 2-3 unconscionable action or course of action for purposes of Section
 2-4 17.50, Business & Commerce Code, and that conduct is:

2-5 (1) actionable under Subchapter E, Chapter 17,
 2-6 Business & Commerce Code; and

2-7 (2) subject to any remedy prescribed by that
 2-8 subchapter.

2-9 (g) An action brought under this section may include a claim
 2-10 for exemplary damages, which may be awarded in accordance with
 2-11 Section 41.003, Civil Practice and Remedies Code.

2-12 (h) Section 41.008, Civil Practice and Remedies Code, does
 2-13 not apply to the award of exemplary damages in an action brought
 2-14 under this section.

2-15 (i) Section 41.005, Civil Practice and Remedies Code, does
 2-16 not apply to a claim for exemplary damages in an action brought
 2-17 under this section.

2-18 (j) It is an affirmative defense to liability under this
 2-19 section that the synthetic substance produced, distributed, sold,
 2-20 or provided was approved for use, sale, or distribution by the
 2-21 United States Food and Drug Administration or other state or
 2-22 federal regulatory agency with authority to approve a substance for
 2-23 use, sale, or distribution.

2-24 (k) It is not a defense to liability under this section that
 2-25 a synthetic substance was in packaging labeled with "Not for Human
 2-26 Consumption" or other wording indicating the substance is not
 2-27 intended to be ingested.

2-28 SECTION 2. Subchapter E, Chapter 17, Business & Commerce
 2-29 Code, is amended by adding Section 17.463 to read as follows:

2-30 Sec. 17.463. PRODUCTION, SALE, DISTRIBUTION, OR PROMOTION
 2-31 OF CERTAIN SYNTHETIC SUBSTANCES. (a) This section applies only to
 2-32 an act described by Section 17.46(b)(31).

2-33 (b) Subject to Subsection (e) and except as otherwise
 2-34 provided by this section, an act to which this section applies is
 2-35 subject to action by a district or county attorney under Sections
 2-36 17.47, 17.58, 17.60, and 17.61 to the same extent as the act is
 2-37 subject to action by the consumer protection division under those
 2-38 sections.

2-39 (c) If a district or county attorney, under the authority of
 2-40 this section, accepts assurance of voluntary compliance under
 2-41 Section 17.58, the district or county attorney must file the
 2-42 assurance of voluntary compliance in the district court in the
 2-43 county in which the alleged violator resides or does business.

2-44 (d) If a district or county attorney, under the authority of
 2-45 this section, executes and serves a civil investigative demand and
 2-46 files a petition described by Section 17.61(g), the petition must
 2-47 be filed in the district court in the county where the parties
 2-48 reside.

2-49 (e) A district or county attorney may act under this section
 2-50 so long as the consumer protection division does not intend to act
 2-51 with respect to that matter. Further, consistent with Section
 2-52 17.48(b) of this subchapter, the consumer protection division
 2-53 shall, upon request and to the extent it has the resources
 2-54 available, provide assistance to a district or county attorney in
 2-55 any action taken under this subchapter. A district or county
 2-56 attorney may institute a suit described by this section on or after
 2-57 the 90th day after the date the attorney general receives the notice
 2-58 required by Section 17.48 unless before the 90th day after the date
 2-59 the notice is received the attorney general responds that it is
 2-60 actively investigating or litigating at least one of the alleged
 2-61 violations set forth in the notice. The consumer protection
 2-62 division shall notify the district or county attorney it no longer
 2-63 intends to actively investigate or litigate an alleged violation
 2-64 within a reasonable time of such determination.

2-65 (f) Notwithstanding any other law, in an action brought by a
 2-66 district or county attorney under this section, all settlements or
 2-67 penalties collected by the district or county attorney shall be
 2-68 divided between the state and the county in which the attorney
 2-69 brought suit, with:

3-1 (1) 50 percent of the amount collected paid to the
3-2 comptroller for deposit to the credit of the basic civil legal
3-3 services account established by Section 51.943, Government Code;
3-4 and

3-5 (2) 50 percent of the amount collected paid to the
3-6 county shall be deposited by the county in a segregated account and
3-7 the funds shall be used only for law enforcement, public health
3-8 programs, or drug abuse prevention programs.

3-9 SECTION 3. This Act applies only to a cause of action that
3-10 accrues on or after the effective date of this Act. A cause of
3-11 action that accrued before the effective date of this Act is
3-12 governed by the law applicable to the cause of action immediately
3-13 before the effective date of this Act, and that law is continued in
3-14 effect for that purpose.

3-15 SECTION 4. This Act takes effect September 1, 2017.

3-16

* * * * *