

BILL ANALYSIS

Senate Research Center
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H.B. 2593
By: Moody et al. (Johnson)
State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

While current law punishes the possession of marihuana, whose active component is tetrahydrocannabinol (THC), as a misdemeanor, the possession of THC in any other format is a felony. It has been suggested that this disparity has no rational basis and leads to uneven and sometimes unduly harsh results. H.B. 2593 seeks to remedy this situation by removing THC from Penalty Group 2 of the Texas Controlled Substances Act, which consists of hallucinogens having a penalty range originating at the felony level, and creating a new Penalty Group 2-B, consisting of THC other than marihuana and having a penalty range originating at the misdemeanor level.

H.B. 2593 amends the Health and Safety Code to create Penalty Group 2-B under the Texas Controlled Substances Act and to transfer from Penalty Group 2 to Penalty Group 2-B the following substances, their salts, isomers, and salts of isomers, unless specifically excepted, if their existence is possible within the specific chemical designation: Tetrahydrocannabinols, other than marijuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including certain specified structures and compounds of those structures.

H.B. 2593 extends to Penalty Group 2-B substances the applicability of certain provisions under the act governing the following:

- the classification of certain controlled substance analogues;
- offenses for the manufacture or delivery of a substance in Penalty Group 2 or 2-A or for
- possession of a substance in Penalty Group 2-A; and
- the offense for the delivery of a controlled substance or marihuana to a child.

H.B. 2593 amends current law relating to the criminal penalties for the possession of certain tetrahydrocannabinols under the Texas Controlled Substances Act.

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 Sections 481.002(5) and (6), Health and Safety Code, as follows:

(5) Redefines "controlled substance" for purposes of Chapter 481 (Texas Controlled Substances Act) to include a substance, including a drug, an adulterant, and a dilutant, listed in Penalty Group 2-B.

(6) Redefines "controlled substance analogue" for purposes of Chapter 481 to include a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Penalty Group 2-B, and a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Penalty Group 2-B. Makes nonsubstantive changes.

SECTION 2. Amends Section 481.103(a), Health and Safety Code, as follows:

(a) Deletes existing text including in Penalty Group 2 tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and certain isomers with similar chemical structure and pharmacological activity.

SECTION 3. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1032, as follows:

Sec. 481.1032. PENALTY GROUP 2-B. (a) Provides that Penalty Group 2-B consists of any quantity of the following substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and certain isomers with similar chemical structure and pharmacological activity.

(b) Provides that for the purposes of this section, the term "isomer" includes an optical, position, or geometric isomer.

SECTION 4. Amends Section 481.106, Health and Safety Code, as follows:

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE. Provides that, for the purposes of the prosecution of an offense under Subchapter D (Offenses and Penalties) involving the manufacture, delivery, or possession of a controlled substance, certain penalty groups, including Penalty Group 2-B, include a controlled substance analogue that has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group, or that is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group. Makes a nonsubstantive change.

SECTION 5. Amends the heading to Section 481.113, Health and Safety Code, to read as follows:

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2, 2-A, OR 2-B.

SECTION 6. Amends Section 481.113(a), Health and Safety Code, to provide that, except as authorized by Chapter 481, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in certain penalty groups, including in Penalty Group 2-B. Makes nonsubstantive changes.

SECTION 7. Amends the heading to Section 481.1161, Health and Safety Code, to read as follows:

Sec. 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2-A OR 2-B.

SECTION 8. Amends Section 481.1161(a), Health and Safety Code, to provide that, except as authorized by Chapter 481, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 2-A or 2-B, rather than listed in Penalty Group 2-A, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

SECTION 9. Amends Section 481.122(a), Health and Safety Code, to provide that a person commits an offense if the person knowingly delivers a controlled substance listed in certain

penalty groups, including Penalty Group 2-B, or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a person who meets certain conditions.

SECTION 10. Amends Sections 551.003(11) and (12), Occupations Code, as follows:

(11) Redefines "controlled substance" for purposes of Chapters 551 (General Provisions)-566 (Penalties and Enforcement Provisions) to include a substance, including a drug, listed in Penalty Group 2-B.

(12) Redefines "dangerous drug" to for purposes of Chapters 551-566 include a drug or device that is not included in Penalty Group 2-B and is unsafe for self-medication.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2021.