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LaMantia

S.B. No. 70

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the defense to prosecution for certain offenses
3 involving possession of small amounts of controlled substances,
4 marihuana, dangerous drugs, or abusable volatile chemicals, or
5 possession of drug paraphernalia for defendants seeking assistance
6 for a suspected overdose.

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

8 SECTION 1. Section 481.115(h), Health and Safety Code, is
9 amended to read as follows:

10 (h) The defense to prosecution provided by Subsection (g) is
11 not available if[+]

12 [~~(1)~~] at the time the request for emergency medical
13 assistance was made:

14 (1) [~~(A)~~] a peace officer was in the process of
15 arresting the actor or executing a search warrant describing the
16 actor or the place from which the request for medical assistance was
17 made; or

18 (2) [~~(B)~~] the actor is committing another offense,
19 other than an offense punishable under Section 481.1151(b)(1),
20 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
21 481.121(b)(1) or (2), or an offense under Section 481.119(b),
22 481.125(a), 483.041(a), or 485.031(a)[+]

23 [~~(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.1151(c), 481.116(f), 481.1161(c),~~
6 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
7 ~~483.041(c), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 2. Section 481.1151(d), Health and Safety Code, is
13 amended to read as follows:

14 (d) The defense to prosecution provided by Subsection (c) is
15 not available if[+

16 ~~[(1)]~~ at the time the request for emergency medical
17 assistance was made:

18 (1) ~~[(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~[(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
25 481.121(b)(1) or (2), or an offense under Section 481.119(b),
26 481.125(a), 483.041(a), or 485.031(a)[+

27 ~~[(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.116(f), 481.1161(c),~~
6 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
7 ~~483.041(c), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 3. Section 481.116(g), Health and Safety Code, is
13 amended to read as follows:

14 (g) The defense to prosecution provided by Subsection (f) is
15 not available if[+

16 ~~(1)] at the time the request for emergency medical~~
17 ~~assistance was made:~~

18 (1) ~~(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
25 481.121(b)(1) or (2), or an offense under Section 481.119(b),
26 481.125(a), 483.041(a), or 485.031(a)[+

27 ~~(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.1161(c),~~
6 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
7 ~~483.041(c), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 4. Section 481.1161(d), Health and Safety Code, is
13 amended to read as follows:

14 (d) The defense to prosecution provided by Subsection (c) is
15 not available if[+

16 ~~[(1)]~~ at the time the request for emergency medical
17 assistance was made:

18 (1) ~~[(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~[(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or
25 481.121(b)(1) or (2), or an offense under Section 481.119(b),
26 481.125(a), 483.041(a), or 485.031(a)[+

27 ~~[(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
7 ~~483.041(e), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 5. Section 481.117(g), Health and Safety Code, is
13 amended to read as follows:

14 (g) The defense to prosecution provided by Subsection (f) is
15 not available if[+

16 ~~(1)] at the time the request for emergency medical~~
17 ~~assistance was made:~~

18 (1) ~~(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or
25 481.121(b)(1) or (2), or an offense under Section 481.119(b),
26 481.125(a), 483.041(a), or 485.031(a)[+

27 ~~(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
7 ~~483.041(c), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 6. Section 481.118(g), Health and Safety Code, is
13 amended to read as follows:

14 (g) The defense to prosecution provided by Subsection (f) is
15 not available if[+

16 ~~[(1)]~~ at the time the request for emergency medical
17 assistance was made:

18 (1) ~~[(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~[(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
25 481.121(b)(1) or (2), or an offense under Section 481.119(b),
26 481.125(a), 483.041(a), or 485.031(a)[+

27 ~~[(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),~~
7 ~~483.041(e), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 7. Section 481.119(d), Health and Safety Code, is
13 amended to read as follows:

14 (d) The defense to prosecution provided by Subsection (c) is
15 not available if[+

16 ~~[(1)]~~ at the time the request for emergency medical
17 assistance was made:

18 (1) ~~[(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~[(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
25 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
26 481.125(a), 483.041(a), or 485.031(a)[+

27 ~~[(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),~~
7 ~~483.041(e), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 8. Section 481.121(d), Health and Safety Code, is
13 amended to read as follows:

14 (d) The defense to prosecution provided by Subsection (c) is
15 not available if[+

16 ~~[(1)]~~ at the time the request for emergency medical
17 assistance was made:

18 (1) ~~[(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~[(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
25 481.118(b), or an offense under Section 481.119(b), 481.125(a),
26 483.041(a), or 485.031(a) [+

27 ~~[(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g),~~
7 ~~483.041(e), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 9. Section 481.125(h), Health and Safety Code, is
13 amended to read as follows:

14 (h) The defense to prosecution provided by Subsection (g) is
15 not available if[+

16 ~~(1)] at the time the request for emergency medical~~
17 ~~assistance was made:~~

18 (1) ~~(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
25 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
26 481.119(b), 483.041(a), or 485.031(a)[+

27 ~~(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 483 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),~~
7 ~~483.041(e), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 10. Section 483.041(f), Health and Safety Code, is
13 amended to read as follows:

14 (f) The defense to prosecution provided by Subsection (e) is
15 not available if[+

16 ~~(1)] at the time the request for emergency medical~~
17 ~~assistance was made:~~

18 (1) ~~(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
25 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
26 481.119(b), 481.125(a), or 485.031(a)[+

27 ~~(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 481 or 485;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),~~
7 ~~481.125(g), or 485.031(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 11. Section 485.031(d), Health and Safety Code, is
13 amended to read as follows:

14 (d) The defense to prosecution provided by Subsection (c) is
15 not available if[+

16 ~~(1)] at the time the request for emergency medical~~
17 ~~assistance was made:~~

18 (1) ~~(A)]~~ a peace officer was in the process of
19 arresting the actor or executing a search warrant describing the
20 actor or the place from which the request for medical assistance was
21 made; or

22 (2) ~~(B)]~~ the actor is committing another offense,
23 other than an offense punishable under Section 481.115(b),
24 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
25 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
26 481.119(b), 481.125(a), or 483.041(a)[+

27 ~~(2) the actor has been previously convicted of or~~

1 ~~placed on deferred adjudication community supervision for an~~
2 ~~offense under this chapter or Chapter 481 or 483;~~

3 ~~[(3) the actor was acquitted in a previous proceeding~~
4 ~~in which the actor successfully established the defense under that~~
5 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
6 ~~481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),~~
7 ~~481.125(g), or 483.041(c); or~~

8 ~~[(4) at any time during the 18-month period preceding~~
9 ~~the date of the commission of the instant offense, the actor~~
10 ~~requested emergency medical assistance in response to the possible~~
11 ~~overdose of the actor or another person].~~

12 SECTION 12. The changes in law made by this Act apply only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect on the date the offense was committed,
16 and the former law is continued in effect for that purpose. For
17 purposes of this section, an offense was committed before the
18 effective date of this Act if any element of the offense occurred
19 before that date.

20 SECTION 13. This Act takes effect on the 91st day after the
21 last day of the legislative session.