88R12086 JSC-D

By:  Moody, Dutton, Geren, Anchía, Cain, H.B. No. 218

     et al.

Substitute the following for H.B. No. 218:

By:  Moody C.S.H.B. No. 218

A BILL TO BE ENTITLED

AN ACT

relating to the criminal and licensing consequences of certain offenses relating to the possession of marihuana, certain tetrahydrocannabinols, certain synthetic cannabinoids, and drug paraphernalia; imposing a fee.

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

SECTION 1.  Article 14.06, Code of Criminal Procedure, is amended by adding Subsections (b-1) and (b-2) and amending Subsection (d) to read as follows:

(b-1)  A peace officer who is charging a person with committing an offense under Section 481.1161(b)(1), 481.121(b)(1), or 481.125(a), Health and Safety Code, may not arrest the person and shall issue the person a citation as provided by Subsection (b).

(b-2)  Subsection (b-1) does not apply to an officer making an arrest for an offense other than an offense under Section 481.1161(b)(1), 481.121(b)(1), or 481.125(a), Health and Safety Code.

(d)  Subsection (c) applies only to a person charged with committing an offense under:

(1)  Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~] or (2) of that section;

(1-a)  Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~] or (2) of that section;

(2)  Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3)  Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(2) or (3) of that section;

(4)  Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5)  Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6)  Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7)  Section 521.457, Transportation Code.

SECTION 2.  Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.02161 to read as follows:

Art. 45.02161.  EXPUNCTION OF CERTAIN RECORDS. (a) This article applies only to a person charged with an offense under Section 481.1161(b)(1), 481.121(b)(1), or 481.125(a), Health and Safety Code.

(b)  Records of a person relating to a complaint may be expunged under this article if:

(1)  the complaint was dismissed under Article 45.051 or 45.052 or other law and:

(A)  at least 180 days have elapsed from the date of the dismissal; or

(B)  at least one year has elapsed from the date of the citation; or

(2)  the person was acquitted of the offense.

(c)  The person must make a written request to have the records expunged. The request must be under oath.

(d)  The court shall order all complaints, verdicts, sentences, and prosecutorial and law enforcement records and any other documents relating to the offense expunged from the person's record if the court finds that the person satisfies the requirements of this article.

(e)  The justice or municipal court shall require a person who requests expungement under this article to pay a fee in the amount of $30 to defray the cost of notifying state agencies of orders of expungement under this article.

(f)  The procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55.

SECTION 3.  Article 45.051, Code of Criminal Procedure, is amended by adding Subsections (a-2) and (e-1) to read as follows:

(a-2)  Unless the defendant has previously received a deferral of disposition for an offense under Section 481.1161(b)(1), 481.121(b)(1), or 481.125(a), Health and Safety Code, committed within the 12-month period preceding the date of the commission of the instant offense, on plea of guilty or nolo contendere for either offense, the judge shall defer further proceedings without entering an adjudication of guilt and place the defendant on probation under the provisions of this article.

(e-1)  A court that dismisses a complaint under this article for a person charged with an offense under Section 481.1161(b)(1), 481.121(b)(1), or 481.125(a), Health and Safety Code, shall notify the defendant in writing of the person's expunction rights under Article 45.02161 and provide the person with a copy of that article. The dismissed complaint is not a conviction and may not be used against the person for any purpose.

SECTION 4.  Section 411.0728(a), Government Code, is amended to read as follows:

(a)  This section applies only to a person:

(1)  who is convicted of or placed on deferred adjudication community supervision for an offense under:

(A)  Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1-a);

(B)  Section 481.120, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(C) [~~(B)~~]  Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~];

(D) [~~(C)~~]  Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(1) or (2); or

(E) [~~(D)~~]  Section 43.02, Penal Code; and

(2)  who, if requested by the applicable law enforcement agency or prosecuting attorney to provide assistance in the investigation or prosecution of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense containing elements that are substantially similar to the elements of an offense under any of those sections:

(A)  provided assistance in the investigation or prosecution of the offense; or

(B)  did not provide assistance in the investigation or prosecution of the offense due to the person's age or a physical or mental disability resulting from being a victim of an offense described by this subdivision.

SECTION 5.  Sections 481.002(5) and (6), Health and Safety Code, are amended to read as follows:

(5)  "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 1-B, 2, 2-A, 2-B, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. The term does not include hemp, as defined by Section 121.001, Agriculture Code, or the tetrahydrocannabinols in hemp.

(6)  "Controlled substance analogue" means:

(A)  a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, [~~or~~] 2-A, or 2-B; or

(B)  a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, [~~or~~] 2-A, or 2-B.

SECTION 6.  Section 481.103(a), Health and Safety Code, is amended to read as follows:

(a)  Penalty Group 2 consists of:

(1)  any quantity of the following hallucinogenic 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:

5-(2-aminopropyl)benzofuran (5-APB);

6-(2-aminopropyl)benzofuran (6-APB);

5-(2-aminopropyl)-2,3-dihydrobenzofuran (5-APDB);

6-(2-aminopropyl)-2,3-dihydrobenzofuran (6-APDB);

5-(2-aminopropyl)indole (5-IT,5-API);

6-(2-aminopropyl)indole (6-IT,6-API);

1-(benzofuran-5-yl)-N-methylpropan-2-amine (5-MAPB);

1-(benzofuran-6-yl)-N-methylpropan-2-amine (6-MAPB);

Benzothiophenylcyclohexylpiperidine (BTCP);

8-bromo-alpha-methyl-benzo[1,2-b:4,5-b']difuran- 4-ethanamine (trade or other name: Bromo-DragonFLY);

Desoxypipradrol (2-benzhydrylpiperidine);

2, 5-dimethoxyamphetamine (some trade or other names:  2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

Diphenylprolinol (diphenyl(pyrrolidin-2-yl) methanol, D2PM);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (some trade or other names for Dronabinol:  (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6, 9- trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-1-ol or (-)-delta-9- (trans)- tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names:  N-ethyl-1-phenylcyclohexylamine, (1- phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

2-ethylamino-2-(3-methoxyphenyl)cyclohexanone (trade or other name: methoxetamine);

Ibogaine (some trade or other names:  7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

5-iodo-2-aminoindane (5-IAI);

Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names:  4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

4-methoxymethamphetamine (PMMA);

2-(2-methoxyphenyl)-2-(methylamino)cyclohexanone (some trade and other names: 2-MeO-ketamine; methoxyketamine);

1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names:  4-methyl-2, 5-dimethoxy-alpha- methylphenethylamine; "DOM"; "STP");

3,4-methylenedioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

5,6-methylenedioxy-2-aminoindane (MDAI);

Nabilone (Another name for nabilone:  (+)-trans- 3-(1,1-dimethylheptyl)- 6,6a, 7,8,10,10a-hexahydro-1-hydroxy- 6, 6-dimethyl-9H-dibenzo[b,d] pyran-9-one;

N-benzylpiperazine (some trade or other names:  BZP; 1-benzylpiperazine);

N-ethyl-3-piperidyl benzilate;

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names:  3-Hexyl-1- hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexanecarbonitrile (PCC);

Pyrrolidine Analog of Phencyclidine (some trade or other names:  1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

[~~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 their isomers with similar chemical structure and pharmacological activity such as:~~

[~~delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;~~

[~~delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;~~

[~~delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers; or~~

[~~compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;~~]

Thiophene Analog of Phencyclidine (some trade or other names:  1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP);

1-pyrrolidine (some trade or other name:  TCPy);

1-(3-trifluoromethylphenyl)piperazine (trade or other name:  TFMPP); and

3,4,5-trimethoxy amphetamine;

(2)  Phenylacetone (some trade or other names:  Phenyl-2-propanone; P2P, Benzymethyl ketone, methyl benzyl ketone);

(3)  unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

Aminorex (some trade or other names:  aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5- phenyl-2-oxazolamine);

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Cathinone (some trade or other names:  2-amino-1- phenyl-1-propanone, alpha-aminopropiophenone, 2- aminopropiophenone);

Etaqualone and its salts;

Etorphine Hydrochloride;

Fenethylline and its salts;

Lisdexamfetamine, including its salts, isomers, and salts of isomers;

Mecloqualone and its salts;

Methaqualone and its salts;

Methcathinone (some trade or other names:  2- methylamino-propiophenone; alpha-(methylamino)propriophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N- methylaminopropriophenone; monomethylpropion; ephedrone, N- methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR 1431);

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers; and

N,N-dimethylamphetamine (some trade or other names: N,N,alpha-trimethylbenzeneethanamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers, and salts of optical isomers;

(4)  any compound structurally derived from 2-aminopropanal by substitution at the 1-position with any monocyclic or fused-polycyclic ring system, including:

(A)  compounds further modified by:

(i)  substitution in the ring system to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), whether or not further substituted in the ring system by other substituents;

(ii)  substitution at the 3-position with an alkyl substituent; or

(iii)  substitution at the 2-amino nitrogen atom with alkyl, benzyl, dialkyl, or methoxybenzyl groups, or inclusion of the 2-amino nitrogen atom in a cyclic structure; and

(B)  by example, compounds such as:

4-Methylmethcathinone (Also known as Mephedrone);

3,4-Dimethylmethcathinone (Also known as 3,4-DMMC);

3-Fluoromethcathinone (Also known as 3-FMC);

4-Fluoromethcathinone (Also known as Flephedrone);

3,4-Methylenedioxy-N-methylcathinone (Also known as Methylone);

3,4-Methylenedioxypyrovalerone (Also known as MDPV);

alpha-Pyrrolidinopentiophenone (Also known as alpha-PVP);

Naphthylpyrovalerone  (Also known as Naphyrone);

alpha-Methylamino-valerophenone (Also known as Pentedrone);

beta-Keto-N-methylbenzodioxolylpropylamine (Also known as Butylone);

beta-Keto-N-methylbenzodioxolylpentanamine (Also known as Pentylone);

beta-Keto-Ethylbenzodioxolylbutanamine (Also known as Eutylone); and

3,4-methylenedioxy-N-ethylcathinone (Also known as Ethylone);

(5)  any compound structurally derived from tryptamine (3-(2-aminoethyl)indole) or a ring-hydroxy tryptamine:

(A)  by modification in any of the following ways:

(i)  by substitution at the amine nitrogen atom of the sidechain to any extent with alkyl or alkenyl groups or by inclusion of the amine nitrogen atom of the side chain (and no other atoms of the side chain) in a cyclic structure;

(ii)  by substitution at the carbon atom adjacent to the nitrogen atom of the side chain (alpha-position) with an alkyl or alkenyl group;

(iii)  by substitution in the 6-membered ring to any extent with alkyl, alkoxy, haloalkyl, thioaklyl, alkylenedioxy, or halide substituents; or

(iv)  by substitution at the 2-position of the tryptamine ring system with an alkyl substituent; and

(B)  including:

(i)  ethers and esters of the controlled substances listed in this subdivision; and

(ii)  by example, compounds such as:

alpha-ethyltryptamine;

alpha-methyltryptamine;

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)- 5- indolol; N, N-dimethylserotonin; 5-hydroxy-N, N- dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

Dimethyltryptamine (trade or other name: DMT);

5-methoxy-N, N-diisopropyltryptamine (5-MeO-DiPT);

O-Acetylpsilocin (Trade or other name: 4-Aco-DMT);

Psilocin; and

Psilocybin;

(6)  2,5-Dimethoxyphenethylamine and any compound structurally derived from 2,5-Dimethoxyphenethylamine by substitution at the 4-position of the phenyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), including, by example, compounds such as:

4-Bromo-2,5-dimethoxyphenethylamine (trade or other name: 2C-B);

4-Chloro-2,5-dimethoxyphenethylamine (trade or other name: 2C-C);

2,5-Dimethoxy-4-methylphenethylamine (trade or other name: 2C-D);

4-Ethyl-2,5-dimethoxyphenethylamine (trade or other name: 2C-E);

4-Iodo-2,5-dimethoxyphenethylamine (trade or other name: 2C-I);

2,5-Dimethoxy-4-nitrophenethylamine (trade or other name: 2C-N);

2,5-Dimethoxy-4-(n)-propylphenethylamine (trade or other name: 2C-P);

4-Ethylthio-2,5-dimethoxyphenethylamine (trade or other name: 2C-T-2);

4-Isopropylthio-2,5-dimethoxyphenethylamine (trade or other name: 2C-T-4); and

2,5-Dimethoxy-4-(n)-propylthiophenethylamine (trade or other name:  2C-T-7); and

(7)  2,5-Dimethoxyamphetamine and any compound structurally derived from 2,5-Dimethoxyamphetamine by substitution at the 4-position of the phenyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), including, by example, compounds such as:

4-Ethylthio-2,5-dimethoxyamphetamine (trade or other name: Aleph-2);

4-Isopropylthio-2,5-dimethoxyamphetamine (trade or other name: Aleph-4);

4-Bromo-2,5-dimethoxyamphetamine (trade or other name: DOB);

4-Chloro-2,5-dimethoxyamphetamine (trade or other name: DOC);

2,5-Dimethoxy-4-ethylamphetamine (trade or other name: DOET);

4-Iodo-2,5-dimethoxyamphetamine (trade or other name: DOI);

2,5-Dimethoxy-4-methylamphetamine (trade or other name: DOM);

2,5-Dimethoxy-4-nitroamphetamine (trade or other name: DON);

4-Isopropyl-2,5-dimethoxyamphetamine (trade or other name: DOIP); and

2,5-Dimethoxy-4-(n)-propylamphetamine (trade or other name: DOPR).

SECTION 7.  Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1032 to read as follows:

Sec. 481.1032.  PENALTY GROUP 2-B. (a) 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 their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and their optical isomers; or

compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized.

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

SECTION 8.  Section 481.106, Health and Safety Code, is amended to read as follows:

Sec. 481.106.  CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE. For the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, 1-B, 2, [~~and~~] 2-A, and 2-B include a controlled substance analogue that:

(1)  has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group; or

(2)  is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

SECTION 9.  The heading to Section 481.113, Health and Safety Code, is amended to read as follows:

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

SECTION 10.  Section 481.113(a), Health and Safety Code, is amended to read as follows:

(a)  Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 2, [~~or~~] 2-A, or 2-B.

SECTION 11.  Section 481.115(h), Health and Safety Code, is amended to read as follows:

(h)  The defense to prosecution provided by Subsection (g) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

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

(d)  The defense to prosecution provided by Subsection (c) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

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

(g)  The defense to prosecution provided by Subsection (f) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

SECTION 14.  The heading to Section 481.1161, Health and Safety Code, is amended to read as follows:

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

SECTION 15.  Sections 481.1161(a), (b), (c), and (d), Health and Safety Code, are amended to read as follows:

(a)  Except as authorized by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 2-A or 2-B, 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.

(b)  An offense under this section is:

(1)  a Class C misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one ounce or less;

(1-a)  a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less but more than one ounce;

(2)  a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;

(3)  a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, five pounds or less but more than four ounces;

(4)  a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 50 pounds or less but more than 5 pounds;

(5)  a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 2,000 pounds or less but more than 50 pounds; and

(6)  punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds.

(c)  It is a defense to prosecution for an offense punishable under Subsection (b)(1), (1-a), or (2) that the actor:

(1)  was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A)  made the request for medical assistance during an ongoing medical emergency;

(B)  remained on the scene until the medical assistance arrived; and

(C)  cooperated with medical assistance and law enforcement personnel; or

(2)  was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d)  The defense to prosecution provided by Subsection (c) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

SECTION 16.  Section 481.117(g), Health and Safety Code, is amended to read as follows:

(g)  The defense to prosecution provided by Subsection (f) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

SECTION 17.  Section 481.118(g), Health and Safety Code, is amended to read as follows:

(g)  The defense to prosecution provided by Subsection (f) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

SECTION 18.  Section 481.119(d), Health and Safety Code, is amended to read as follows:

(d)  The defense to prosecution provided by Subsection (c) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

SECTION 19.  Sections 481.121(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b)  An offense under Subsection (a) is:

(1)  a Class C misdemeanor if the amount of marihuana possessed is one ounce or less;

(1-a)  a Class B misdemeanor if the amount of marihuana possessed is two ounces or less but more than one ounce;

(2)  a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3)  a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;

(4)  a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;

(5)  a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and

(6)  punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of marihuana possessed is more than 2,000 pounds.

(c)  It is a defense to prosecution for an offense punishable under Subsection (b)(1), (1-a), or (2) that the actor:

(1)  was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A)  made the request for medical assistance during an ongoing medical emergency;

(B)  remained on the scene until the medical assistance arrived; and

(C)  cooperated with medical assistance and law enforcement personnel; or

(2)  was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d)  The defense to prosecution provided by Subsection (c) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), or 481.118(b), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

SECTION 20.  Section 481.122(a), Health and Safety Code, is amended to read as follows:

(a)  A person commits an offense if the person knowingly delivers a controlled substance listed in Penalty Group 1, 1-A, 1-B, 2, 2-A, 2-B, or 3 or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a person:

(1)  who is a child;

(2)  who is enrolled in a public or private primary or secondary school; or

(3)  who the actor knows or believes intends to deliver the controlled substance or marihuana to a person described by Subdivision (1) or (2).

SECTION 21.  Section 481.124(d), Health and Safety Code, is amended to read as follows:

(d)  An offense under this section is:

(1)  a felony of the second degree if the controlled substance is listed in Penalty Group 1, 1-A, or 1-B;

(2)  a felony of the third degree if the controlled substance is listed in Penalty Group 2, 2-A, or 2-B;

(3)  a state jail felony if the controlled substance is listed in Penalty Group 3 or 4; or

(4)  a Class A misdemeanor if the controlled substance is listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group.

SECTION 22.  Section 481.125(h), Health and Safety Code, is amended to read as follows:

(h)  The defense to prosecution provided by Subsection (g) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 483.041(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

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

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

SECTION 23.  Section 481.134(f), Health and Safety Code, is amended to read as follows:

(f)  An offense otherwise punishable under Section 481.1161(b)(1-a), 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1-a) [~~481.121(b)(1)~~] is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1)  in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground;

(2)  on a school bus; or

(3)  by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

SECTION 24.  Section 483.041(f), Health and Safety Code, is amended to read as follows:

(f)  The defense to prosecution provided by Subsection (e) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), or 485.031(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 485;

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

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

SECTION 25.  Section 485.031(d), Health and Safety Code, is amended to read as follows:

(d)  The defense to prosecution provided by Subsection (c) is not available if:

(1)  at the time the request for emergency medical assistance was made:

(A)  a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under Section 481.119(b), 481.125(a), or 483.041(a);

(2)  the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 483;

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

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

SECTION 26.  Sections 551.003(11) and (12), Occupations Code, are amended to read as follows:

(11)  "Controlled substance" means a substance, including a drug:

(A)  listed in Schedule I, II, III, IV, or V, as established by the commissioner of public health under Chapter 481, Health and Safety Code, or in Penalty Group 1, 1-A, 1-B, 2, 2-A, 2-B, 3, or 4, Chapter 481; or

(B)  included in Schedule I, II, III, IV, or V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(12)  "Dangerous drug" means a drug or device that:

(A)  is not included in Penalty Group 1, 1-B, 2, 2-A, 2-B, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B)  bears or is required to bear the legend:

(i)  "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii)  "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

SECTION 27.  Section 521.371(3), Transportation Code, is amended to read as follows:

(3)  "Drug offense" has the meaning assigned under 23 U.S.C. Section 159(c) and includes an offense under Section 49.04, 49.07, or 49.08, Penal Code, that is committed as a result of the introduction into the body of any substance the possession of which is prohibited under the Controlled Substances Act. The term does not include an offense punishable by fine only under the laws of this state.

SECTION 28.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 29.  (a) Except as otherwise provided by this section, this Act takes effect September 1, 2023.

(b)  Section 521.371, Transportation Code, as amended by this Act, takes effect on the 91st day after the date the office of the attorney general publishes in the Texas Register a finding that:

(1)  the legislature of this state has adopted a resolution expressing the legislature's opposition to a law meeting the requirements of 23 U.S.C. Section 159 in suspending, revoking, or denying the driver's license of a person convicted of a drug offense punishable by fine only for a period of six months;

(2)  the governor of this state has submitted to the United States secretary of transportation:

(A)  a written certification of the governor's opposition to the enactment or enforcement of a law required under 23 U.S.C. Section 159 as that law relates to offenses punishable by fine only; and

(B)  a written certification that the legislature has adopted the resolution described by Subdivision (1) of this subsection; and

(3)  the United States secretary of transportation has responded to the governor's submission and certified that highway funds will not be withheld from this state in response to the modification or full or partial repeal of the law required under 23 U.S.C. Section 159.