88R13449 CJD-D

By:  Lujan H.B. No. 3498

A BILL TO BE ENTITLED

AN ACT

relating to the designation of fentanyl poisoning for purposes of the death certificate and to the manufacture or delivery of a controlled substance or marihuana causing death or serious bodily injury; creating a criminal offense; increasing a criminal penalty.

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

SECTION 1.  Section 193.005, Health and Safety Code, is amended by adding Subsection (e-1) to read as follows:

(e-1)  If a toxicology examination reveals a detectable amount of a controlled substance listed in Penalty Group 1-B in the body of the decedent, the medical certification on the death certificate must include the presence of the substance and the term "Fentanyl Poisoning." This subsection does not apply if the decedent at the time of death had a valid prescription for the controlled substance.

SECTION 2.  Section 481.122(c), Health and Safety Code, is amended to read as follows:

(c)  An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that the person to whom the actor delivered the controlled substance or marihuana died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance or marihuana manufactured or delivered by the actor, regardless of whether the controlled substance or marihuana was used by itself or with another substance, including a drug, adulterant, or dilutant.

SECTION 3.  Section 481.141, Health and Safety Code, is amended to read as follows:

Sec. 481.141.  OFFENSE: MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY. (a) A person commits an offense if the person knowingly manufactures or delivers a controlled substance in violation of this chapter and [~~If at the guilt or innocence phase of the trial of an offense described by Subsection (b), the judge or jury, whichever is the trier of fact, determines beyond a reasonable doubt that~~] a person dies [~~died~~] or suffers [~~suffered~~] serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance manufactured or delivered by the actor [~~defendant~~], regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant[~~, the punishment for the offense is increased by one degree~~].

(b)  An offense under this section is:

(1)  [~~This section applies to an offense otherwise punishable as~~] a [~~state jail felony,~~] felony of the third degree if the commission of the offense resulted in serious bodily injury to a person; or

(2)  a [~~, or~~] felony of the second degree if the commission of the offense resulted in the death of a person [~~under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or 481.122~~].

(c)  It is a defense to prosecution under this section that the actor's conduct in manufacturing or delivering the controlled substance was authorized under this chapter or other state or federal law.

(d)  If conduct constituting an offense under this section also constitutes an offense under another section of this chapter or the Penal Code, the actor may be prosecuted under either section or both sections.

(e)  Notwithstanding Article 42.08, Code of Criminal Procedure, if [~~punishment for~~] a defendant is convicted of an offense [~~increased~~] under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

SECTION 4.  The change in law made by this Act to Section 193.005, Health and Safety Code, applies only to a death that occurs on or after the effective date of this Act, or a death that occurs before that date but is discovered on or after the effective date of this Act.

SECTION 5.  The changes in law made by this Act to Chapter 481, Health and Safety Code, 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 occurred before that date.

SECTION 6.  This Act takes effect September 1, 2023.