By:  Huffman S.B. No. 645

(In the Senate - Filed January 27, 2023; February 17, 2023, read first time and referred to Committee on Criminal Justice; March 9, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 0; March 9, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Flores          X

Bettencourt     X

Hinojosa        X

Huffman         X

King            X

Miles           X

COMMITTEE SUBSTITUTE FOR S.B. No. 645 By:  Huffman

A BILL TO BE ENTITLED

AN ACT

relating to the designation of fentanyl poisoning for purposes of the death certificate and to the criminal penalties for certain controlled substance offenses; 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.  Sections 481.112(e) and (f), Health and Safety Code, are amended to read as follows:

(e)  An offense under Subsection (a) is a felony of the first degree 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 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f)  An offense under Subsection (a) is a felony of the first degree 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 15 years, and a fine not to exceed $250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 3.  Section 481.1121(b), Health and Safety Code, is amended to read as follows:

(b)  An offense under this section is:

(1)  a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2)  a felony of the second degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3)  a felony of the first degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000; and

(4)  a felony of the first degree 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 15 years and a fine not to exceed $250,000, if the number of abuse units of the controlled substance is 4,000 or more.

SECTION 4.  Sections 481.1123(b), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(b)  An offense under Subsection (a) is a [~~state jail~~] felony of the third degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(d)  An offense under Subsection (a) is a felony of the first degree 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 10 years, and a fine not to exceed $20,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e)  An offense under Subsection (a) is a felony of the first degree 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 15 years, and a fine not to exceed $200,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f)  An offense under Subsection (a) is a felony of the first degree 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 20 years, and a fine not to exceed $500,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 5.  Section 481.113(e), Health and Safety Code, is amended to read as follows:

(e)  An offense under Subsection (a) is a felony of the first degree 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 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 6.  Section 481.114(e), Health and Safety Code, is amended to read as follows:

(e)  An offense under Subsection (a) is a felony of the first degree 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 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

SECTION 7.  Section 481.115(f), Health and Safety Code, is amended to read as follows:

(f)  An offense under Subsection (a) is a felony of the first degree 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 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 8.  Section 481.1151(b), Health and Safety Code, is amended to read as follows:

(b)  An offense under this section is:

(1)  a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2)  a felony of the third degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3)  a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;

(4)  a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and

(5)  a felony of the first degree 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 15 years and a fine not to exceed $250,000, if the number of abuse units of the controlled substance is 8,000 or more.

SECTION 9.  Section 481.116(e), Health and Safety Code, is amended to read as follows:

(e)  An offense under Subsection (a) is a felony of the first degree 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 five 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, 400 grams or more.

SECTION 10.  Section 481.1161(b), Health and Safety Code, is amended to read as follows:

(b)  An offense under this section is:

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

(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)  a felony of the first degree 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.

SECTION 11.  Section 481.117(e), Health and Safety Code, is amended to read as follows:

(e)  An offense under Subsection (a) is a felony of the first degree 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 five 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, 400 grams or more.

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

(e)  An offense under Subsection (a) is a felony of the first degree 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 five 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, 400 grams or more.

SECTION 13.  Section 481.120(b), Health and Safety Code, is amended to read as follows:

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

(1)  a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2)  a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3)  a state jail felony if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;

(4)  a felony of the second degree if the amount of marihuana delivered is 50 pounds or less but more than five pounds;

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

(6)  a felony of the first degree 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 10 years, and a fine not to exceed $100,000, if the amount of marihuana delivered is more than 2,000 pounds.

SECTION 14.  Section 481.121(b), Health and Safety Code, is amended to read as follows:

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

(1)  a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;

(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)  a felony of the first degree 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.

SECTION 15.  Section 481.126(a), Health and Safety Code, is amended to read as follows:

(a)  A person commits an offense if the person:

(1)  barters property or expends funds the person knows are derived from the commission of a first degree felony [~~an~~] offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;

(2)  barters property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5);

(3)  barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4)  barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5).

SECTION 16.  Section 481.134(c), Health and Safety Code, as amended by Chapters 584 (S.B. 768) and 807 (H.B. 1540), Acts of the 87th Legislature, Regular Session, 2021, is reenacted and amended to read as follows:

(c)  The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.1123(b), (c) [~~481.1123(c)~~], (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1)  in, on, or within 1,000 feet of the premises of a school, 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 17.  Section 71.02(a), Penal Code, is amended to read as follows:

(a)  A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1)  murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or disabled individual, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2)  any gambling offense punishable as a Class A misdemeanor;

(3)  promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4)  unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5)  unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(5-b) unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B under Section 481.1022, Health and Safety Code;

(6)  any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7)  any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8)  any felony offense under Chapter 32;

(9)  any offense under Chapter 36;

(10)  any offense under Chapter 34, 35, or 35A;

(11)  any offense under Section 37.11(a);

(12)  any offense under Chapter 20A;

(13)  any offense under Section 37.10;

(14)  any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15)  any offense under Section 42.10;

(16)  any offense under Section 46.06(a)(1) or 46.14;

(17)  any offense under Section 20.05 or 20.06;

(18)  any offense under Section 16.02; or

(19)  any offense classified as a felony under the Tax Code.

SECTION 18.  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 19.  The changes in law made by this Act to Chapter 481, Health and Safety Code, and Section 71.02, Penal 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 20.  To the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 21.  This Act takes effect September 1, 2023.

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