

By: Moody, Dutton, Geren, Anchía, Cain,
et al.

H.B. No. 218

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

By: Moody

C.S.H.B. No. 218

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the criminal and licensing consequences of certain
3 offenses relating to the possession of marihuana, certain
4 tetrahydrocannabinols, certain synthetic cannabinoids, and drug
5 paraphernalia; imposing a fee.

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

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

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

14 (b-2) Subsection (b-1) does not apply to an officer making
15 an arrest for an offense other than an offense under Section
16 481.1161(b)(1), 481.121(b)(1), or 481.125(a), Health and Safety
17 Code.

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

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

23 (1-a) Section 481.1161, Health and Safety Code, if the
24 offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~] or (2) of

1 that section;

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

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

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

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

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

12 (7) Section 521.457, Transportation Code.

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

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

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

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

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

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

1 (2) the person was acquitted of the offense.

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

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

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

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

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

18 (a-2) Unless the defendant has previously received a
19 deferral of disposition for an offense under Section
20 [481.1161](#)(b)(1), [481.121](#)(b)(1), or [481.125](#)(a), Health and Safety
21 Code, committed within the 12-month period preceding the date of
22 the commission of the instant offense, on plea of guilty or nolo
23 contendere for either offense, the judge shall defer further
24 proceedings without entering an adjudication of guilt and place the
25 defendant on probation under the provisions of this article.

26 (e-1) A court that dismisses a complaint under this article
27 for a person charged with an offense under Section [481.1161](#)(b)(1),

1 481.121(b)(1), or 481.125(a), Health and Safety Code, shall notify
2 the defendant in writing of the person's expunction rights under
3 Article 45.02161 and provide the person with a copy of that article.
4 The dismissed complaint is not a conviction and may not be used
5 against the person for any purpose.

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

8 (a) This section applies only to a person:

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

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

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

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

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

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

21 (2) who, if requested by the applicable law
22 enforcement agency or prosecuting attorney to provide assistance in
23 the investigation or prosecution of an offense under Section
24 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense
25 containing elements that are substantially similar to the elements
26 of an offense under any of those sections:

27 (A) provided assistance in the investigation or

1 prosecution of the offense; or

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

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

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

15 (6) "Controlled substance analogue" means:

16 (A) a substance with a chemical structure
17 substantially similar to the chemical structure of a controlled
18 substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, [~~or~~]
19 2-A, or 2-B; or

20 (B) a substance specifically designed to produce
21 an effect substantially similar to, or greater than, the effect of a
22 controlled substance in Schedule I or II or Penalty Group 1, 1-A,
23 1-B, 2, [~~or~~] 2-A, or 2-B.

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

26 (a) Penalty Group 2 consists of:

27 (1) any quantity of the following hallucinogenic

1 substances, their salts, isomers, and salts of isomers, unless
2 specifically excepted, if the existence of these salts, isomers,
3 and salts of isomers is possible within the specific chemical
4 designation:

5 5-(2-aminopropyl)benzofuran (5-APB);
6 6-(2-aminopropyl)benzofuran (6-APB);
7 5-(2-aminopropyl)-2,3-dihydrobenzofuran
8 (5-APDB);
9 6-(2-aminopropyl)-2,3-dihydrobenzofuran
10 (6-APDB);
11 5-(2-aminopropyl)indole (5-IT,5-API);
12 6-(2-aminopropyl)indole (6-IT,6-API);
13 1-(benzofuran-5-yl)-N-methylpropan-2-amine
14 (5-MAPB);
15 1-(benzofuran-6-yl)-N-methylpropan-2-amine
16 (6-MAPB);
17 Benzothiophenylcyclohexylpiperidine (BTCP);
18 8-bromo-alpha-methyl-benzo[1,2-b:4,5-b']difuran-
19 4-ethanamine (trade or other name: Bromo-DragonFLY);
20 Desoxypipradrol (2-benzhydrylpiperidine);
21 2, 5-dimethoxyamphetamine (some trade or other
22 names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);
23 Diphenylprolinol (diphenyl(pyrrolidin-2-yl)
24 methanol, D2PM);
25 Dronabinol (synthetic) in sesame oil and
26 encapsulated in a soft gelatin capsule in a U.S. Food and Drug
27 Administration approved drug product (some trade or other names for

1 Dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro- 6,6, 9-
2 trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-1-ol or (-)-delta-9-
3 (trans)- tetrahydrocannabinol);

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

8 2-ethylamino-2-(3-methoxyphenyl)cyclohexanone
9 (trade or other name: methoxetamine);

10 Ibogaine (some trade or other names: 7-Ethyl-6,
11 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-
12 pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

13 5-iodo-2-aminoindane (5-IAI);

14 Mescaline;

15 5-methoxy-3, 4-methylenedioxy amphetamine;

16 4-methoxyamphetamine (some trade or other
17 names: 4-methoxy-alpha-methylphenethylamine;
18 paramethoxyamphetamine; PMA);

19 4-methoxymethamphetamine (PMMA);

20 2-(2-methoxyphenyl)-2-(methylamino)cyclohexanone
21 (some trade and other names: 2-MeO-ketamine; methoxyketamine);

22 1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP,
23 PPMP);

24 4-methyl-2, 5-dimethoxyamphetamine (some trade
25 and other names: 4-methyl-2, 5-dimethoxy-alpha-
26 methylphenethylamine; "DOM"; "STP");

27 3,4-methylenedioxy methamphetamine (MDMA, MDM);

- 1 3,4-methylenedioxy amphetamine;
- 2 3,4-methylenedioxy N-ethylamphetamine (Also
3 known as N-ethyl MDA);
- 4 5,6-methylenedioxy-2-aminoindane (MDAI);
- 5 Nabilone (Another name for nabilone: (+)-trans-
6 3-(1,1-dimethylheptyl)- 6,6a, 7,8,10,10a-hexahydro-1-hydroxy- 6,
7 6-dimethyl-9H-dibenzo[b,d] pyran-9-one;
- 8 N-benzylpiperazine (some trade or other
9 names: BZP; 1-benzylpiperazine);
- 10 N-ethyl-3-piperidyl benzilate;
- 11 N-hydroxy-3,4-methylenedioxyamphetamine (Also
12 known as N-hydroxy MDA);
- 13 4-methylaminorex;
- 14 N-methyl-3-piperidyl benzilate;
- 15 Parahexyl (some trade or other names: 3-Hexyl-1-
16 hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d]
17 pyran; Synhexyl);
- 18 1-Phenylcyclohexylamine;
- 19 1-Piperidinocyclohexanecarbonitrile (PCC);
- 20 Pyrrolidine Analog of Phencyclidine (some trade
21 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);
- 22 ~~[Tetrahydrocannabinols, other than marijuana, and
23 synthetic equivalents of the substances contained in the plant, or
24 in the resinous extractives of Cannabis, or synthetic substances,
25 derivatives, and their isomers with similar chemical structure and
26 pharmacological activity such as:
27 [delta-1 cis or trans tetrahydrocannabinol,~~

1 ~~and their optical isomers;~~

2 ~~[delta-6 cis or trans tetrahydrocannabinol,~~

3 ~~and their optical isomers;~~

4 ~~[delta-3, 4 cis or trans~~

5 ~~tetrahydrocannabinol, and its optical isomers; or~~

6 ~~[compounds of these structures, regardless~~

7 ~~of numerical designation of atomic positions, since nomenclature of~~

8 ~~these substances is not internationally standardized;]~~

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

12 1-pyrrolidine (some trade or other name: TCPy);

13 1-(3-trifluoromethylphenyl)piperazine (trade or
14 other name: TFMPP); and

15 3,4,5-trimethoxy amphetamine;

16 (2) Phenylacetone (some trade or other
17 names: Phenyl-2-propanone; P2P, Benzylmethyl ketone, methyl benzyl
18 ketone);

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

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

27 Amphetamine, its salts, optical isomers, and

- 1 salts of optical isomers;
- 2 Cathinone (some trade or other names: 2-amino-1-
3 phenyl-1-propanone, alpha-aminopropiophenone, 2-
4 aminopropiophenone);
- 5 Etaqualone and its salts;
- 6 Etorphine Hydrochloride;
- 7 Fenethylamine and its salts;
- 8 Lisdexamfetamine, including its salts, isomers,
9 and salts of isomers;
- 10 Mecloqualone and its salts;
- 11 Methaqualone and its salts;
- 12 Methcathinone (some trade or other names: 2-
13 methylamino-propionophenone; alpha-(methylamino)propionophenone;
14 2-(methylamino)-1-phenylpropan-1-one; alpha-N-
15 methylaminopropionophenone; monomethylpropion; ephedrone, N-
16 methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR
17 1431);
- 18 N-Ethylamphetamine, its salts, optical isomers,
19 and salts of optical isomers; and
- 20 N,N-dimethylamphetamine (some trade or other
21 names: N,N,alpha-trimethylbenzeneethanamine;
22 N,N,alpha-trimethylphenethylamine), its salts, optical isomers,
23 and salts of optical isomers;
- 24 (4) any compound structurally derived from
25 2-aminopropanal by substitution at the 1-position with any
26 monocyclic or fused-polycyclic ring system, including:
- 27 (A) compounds further modified by:

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

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

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

10 (B) by example, compounds such as:

11 4-Methylmethcathinone (Also known as
12 Mephedrone);

13 3,4-Dimethylmethcathinone (Also known as
14 3,4-DMMC);

15 3-Fluoromethcathinone (Also known as 3-FMC);

16 4-Fluoromethcathinone (Also known as
17 Flephedrone);

18 3,4-Methylenedioxy-N-methylcathinone (Also
19 known as Methylone);

20 3,4-Methylenedioxypropylvalerone (Also known
21 as MDPV);

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

24 Naphthylpropylvalerone (Also known as
25 Naphyrone);

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

1 beta-Keto-N-methylbenzodioxolylpropylamine

2 (Also known as Butylone);

3 beta-Keto-N-methylbenzodioxolylpentanamine

4 (Also known as Pentylone);

5 beta-Keto-Ethylbenzodioxolylbutanamine

6 (Also known as Eutylone); and

7 3,4-methylenedioxy-N-ethylcathinone (Also
8 known as Ethylone);

9 (5) any compound structurally derived from tryptamine
10 (3-(2-aminoethyl)indole) or a ring-hydroxy tryptamine:

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

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

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

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

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

24 (B) including:

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

27 (ii) by example, compounds such as:

1 alpha-ethyltryptamine;
2 alpha-methyltryptamine;
3 Bufotenine (some trade and other names:
4 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;
5 3-(2-dimethylaminoethyl)- 5- indolol; N, N-dimethylserotonin;
6 5-hydroxy-N, N- dimethyltryptamine; mappine);
7 Diethyltryptamine (some trade and
8 other names: N, N-Diethyltryptamine, DET);
9 Dimethyltryptamine (trade or other
10 name: DMT);
11 5-methoxy-N, N-diisopropyltryptamine
12 (5-MeO-DiPT);
13 O-Acetylpsilocin (Trade or other name:
14 4-Aco-DMT);
15 Psilocin; and
16 Psilocybin;
17 (6) 2,5-Dimethoxyphenethylamine and any compound
18 structurally derived from 2,5-Dimethoxyphenethylamine by
19 substitution at the 4-position of the phenyl ring to any extent
20 (including alkyl, alkoxy, alkylendioxy, haloalkyl, or halide
21 substituents), including, by example, compounds such as:
22 4-Bromo-2,5-dimethoxyphenethylamine (trade or
23 other name: 2C-B);
24 4-Chloro-2,5-dimethoxyphenethylamine (trade or
25 other name: 2C-C);
26 2,5-Dimethoxy-4-methylphenethylamine (trade or
27 other name: 2C-D);

1 4-Ethyl-2,5-dimethoxyphenethylamine (trade or
2 other name: 2C-E);

3 4-Iodo-2,5-dimethoxyphenethylamine (trade or
4 other name: 2C-I);

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

7 2,5-Dimethoxy-4-(n)-propylphenethylamine (trade
8 or other name: 2C-P);

9 4-Ethylthio-2,5-dimethoxyphenethylamine (trade
10 or other name: 2C-T-2);

11 4-Isopropylthio-2,5-dimethoxyphenethylamine
12 (trade or other name: 2C-T-4); and

13 2,5-Dimethoxy-4-(n)-propylthiophenethylamine
14 (trade or other name: 2C-T-7); and

15 (7) 2,5-Dimethoxyamphetamine and any compound
16 structurally derived from 2,5-Dimethoxyamphetamine by substitution
17 at the 4-position of the phenyl ring to any extent (including alkyl,
18 alkoxy, alkylenedioxy, haloalkyl, or halide substituents),
19 including, by example, compounds such as:

20 4-Ethylthio-2,5-dimethoxyamphetamine (trade or
21 other name: Aleph-2);

22 4-Isopropylthio-2,5-dimethoxyamphetamine (trade
23 or other name: Aleph-4);

24 4-Bromo-2,5-dimethoxyamphetamine (trade or other
25 name: DOB);

26 4-Chloro-2,5-dimethoxyamphetamine (trade or
27 other name: DOC);

1 2,5-Dimethoxy-4-ethylamphetamine (trade or other
2 name: DOET);
3 4-Iodo-2,5-dimethoxyamphetamine (trade or other
4 name: DOI);
5 2,5-Dimethoxy-4-methylamphetamine (trade or
6 other name: DOM);
7 2,5-Dimethoxy-4-nitroamphetamine (trade or other
8 name: DON);
9 4-Isopropyl-2,5-dimethoxyamphetamine (trade or
10 other name: DOIP); and
11 2,5-Dimethoxy-4-(n)-propylamphetamine (trade or
12 other name: DOPR).

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

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

20 Tetrahydrocannabinols, other than marijuana, and
21 synthetic equivalents of the substances contained in the plant, or
22 in the resinous extractives of Cannabis, or synthetic substances,
23 derivatives, and their isomers with similar chemical structure and
24 pharmacological activity such as:

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

27 delta-6 cis or trans tetrahydrocannabinol, and

1 their optical isomers;
2 delta-3, 4 cis or trans tetrahydrocannabinol, and
3 their optical isomers; or
4 compounds of these structures, regardless of
5 numerical designation of atomic positions, since nomenclature of
6 these substances is not internationally standardized.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (B) the actor is committing another offense,
16 other than an offense punishable under Section 481.1151(b)(1),
17 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b),
18 or 481.121(b)(1), (1-a), or (2), or an offense under Section
19 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

23 (3) the actor was acquitted in a previous proceeding
24 in which the actor successfully established the defense under that
25 subsection or Section 481.1151(c), 481.116(f), 481.1161(c),
26 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
27 483.041(e), or 485.031(c); or

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

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

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

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

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

15 (B) the actor is committing another offense,
16 other than an offense punishable under Section 481.115(b),
17 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b),
18 or 481.121(b)(1), (1-a), or (2), or an offense under Section
19 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

23 (3) the actor was acquitted in a previous proceeding
24 in which the actor successfully established the defense under that
25 subsection or Section 481.115(g), 481.116(f), 481.1161(c),
26 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
27 483.041(e), or 485.031(c); or

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

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

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

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

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

15 (B) the actor is committing another offense,
16 other than an offense punishable under Section 481.115(b),
17 481.1151(b)(1), 481.1161(b)(1), (1-a), or (2), 481.117(b),
18 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under
19 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

23 (3) the actor was acquitted in a previous proceeding
24 in which the actor successfully established the defense under that
25 subsection or Section 481.115(g), 481.1151(c), 481.1161(c),
26 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
27 483.041(e), or 485.031(c); or

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

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

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

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

11 (a) Except as authorized by this chapter, a person commits
12 an offense if the person knowingly possesses a controlled substance
13 listed in Penalty Group 2-A or 2-B, unless the person obtained the
14 substance directly from or under a valid prescription or order of a
15 practitioner acting in the course of professional practice.

16 (b) An offense under this section is:

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

20 (1-a) a Class B misdemeanor if the amount of the
21 controlled substance possessed is, by aggregate weight, including
22 adulterants or dilutants, two ounces or less but more than one
23 ounce;

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

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

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

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

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

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

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

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

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

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

27 (2) was the victim of a possible overdose for which

1 emergency medical assistance was requested, by the actor or by
2 another person, during an ongoing medical emergency.

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

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

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

11 (B) the actor is committing another offense,
12 other than an offense punishable under Section 481.115(b),
13 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or
14 481.121(b)(1), (1-a), or (2), or an offense under Section
15 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

19 (3) the actor was acquitted in a previous proceeding
20 in which the actor successfully established the defense under that
21 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
22 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
23 483.041(e), or 485.031(c); or

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

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

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

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

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

11 (B) the actor is committing another offense,
12 other than an offense punishable under Section 481.115(b),
13 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
14 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under
15 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

19 (3) the actor was acquitted in a previous proceeding
20 in which the actor successfully established the defense under that
21 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
22 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
23 483.041(e), or 485.031(c); or

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

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

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

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

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

11 (B) the actor is committing another offense,
12 other than an offense punishable under Section 481.115(b),
13 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
14 481.117(b), or 481.121(b)(1), (1-a), or (2), or an offense under
15 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

19 (3) the actor was acquitted in a previous proceeding
20 in which the actor successfully established the defense under that
21 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
22 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),
23 483.041(e), or 485.031(c); or

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

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

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

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

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

11 (B) the actor is committing another offense,
12 other than an offense punishable under Section 481.115(b),
13 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
14 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an
15 offense under Section 481.125(a), 483.041(a), or 485.031(a);

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

19 (3) the actor was acquitted in a previous proceeding
20 in which the actor successfully established the defense under that
21 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
22 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),
23 483.041(e), or 485.031(c); or

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

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

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

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

6 (1-a) a Class B misdemeanor if the amount of marihuana
7 possessed is two ounces or less but more than one ounce;

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

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

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

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

16 and

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

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

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

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

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

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

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

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

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

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

16 (B) the actor is committing another offense,
17 other than an offense punishable under Section 481.115(b),
18 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
19 481.117(b), or 481.118(b), or an offense under Section 481.119(b),
20 481.125(a), 483.041(a), or 485.031(a);

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

24 (3) the actor was acquitted in a previous proceeding
25 in which the actor successfully established the defense under that
26 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
27 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g),

1 483.041(e), or 485.031(c); or

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

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

8 (a) A person commits an offense if the person knowingly
9 delivers a controlled substance listed in Penalty Group 1, 1-A,
10 1-B, 2, 2-A, 2-B, or 3 or knowingly delivers marihuana and the
11 person delivers the controlled substance or marihuana to a person:

12 (1) who is a child;

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

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

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

20 (d) An offense under this section is:

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

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

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

27 (4) a Class A misdemeanor if the controlled substance

1 is listed in a schedule by an action of the commissioner under this
2 chapter but not listed in a penalty group.

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

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

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

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

13 (B) the actor is committing another offense,
14 other than an offense punishable under Section 481.115(b),
15 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
16 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an
17 offense under Section 481.119(b), 483.041(a), or 485.031(a);

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

21 (3) the actor was acquitted in a previous proceeding
22 in which the actor successfully established the defense under that
23 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
24 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
25 483.041(e), or 485.031(c); or

26 (4) at any time during the 18-month period preceding
27 the date of the commission of the instant offense, the actor

1 requested emergency medical assistance in response to the possible
2 overdose of the actor or another person.

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

5 (f) An offense otherwise punishable under Section
6 481.1161(b)(1-a), 481.118(b), 481.119(b), 481.120(b)(1), or
7 481.121(b)(1-a) [~~481.121(b)(1)~~] is a Class A misdemeanor if it is
8 shown on the trial of the offense that the offense was committed:

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

12 (2) on a school bus; or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b),
2 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
3 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an
4 offense under Section 481.119(b), 481.125(a), or 485.031(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
11 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
12 481.125(g), or 485.031(c); or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b),
2 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
3 481.117(b), 481.118(b), or 481.121(b)(1), (1-a), or (2), or an
4 offense under Section 481.119(b), 481.125(a), or 483.041(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
11 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
12 481.125(g), or 483.041(e); or

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

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

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

21 (A) listed in Schedule I, II, III, IV, or V, as
22 established by the commissioner of public health under Chapter 481,
23 Health and Safety Code, or in Penalty Group 1, 1-A, 1-B, 2, 2-A,
24 2-B, 3, or 4, Chapter 481; or

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

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

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

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

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

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

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

13 (3) "Drug offense" has the meaning assigned under 23
14 U.S.C. Section 159(c) and includes an offense under Section 49.04,
15 49.07, or 49.08, Penal Code, that is committed as a result of the
16 introduction into the body of any substance the possession of which
17 is prohibited under the Controlled Substances Act. The term does
18 not include an offense punishable by fine only under the laws of
19 this state.

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

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

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

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

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

14 (A) a written certification of the governor's
15 opposition to the enactment or enforcement of a law required under
16 23 U.S.C. Section 159 as that law relates to offenses punishable by
17 fine only; and

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

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