

By: Moody

H.B. No. 218

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the criminal and licensing consequences of certain
3 marihuana possession, drug paraphernalia possession, and
4 tetrahydrocannabinol possession offenses; imposing a fee.

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

6 SECTION 1. Section [481.121\(b\)](#), Health and Safety Code, is
7 amended to read as follows:

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

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

11 (1-a) a Class B misdemeanor if the amount of marihuana
12 possessed is two ounces or less but more than one ounce;

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

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

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

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

21 and

22 (6) punishable by imprisonment in the Texas Department
23 of Criminal Justice for life or for a term of not more than 99 years
24 or less than 5 years, and a fine not to exceed \$50,000, if the amount

1 of marihuana possessed is more than 2,000 pounds.

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

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

9 (b-2) Subsection (b-1) does not apply to an officer making
10 an arrest for an offense other than an offense under Section
11 481.1161(b)(1), 481.121(b)(1), or 481.125(a), Health and Safety
12 Code.

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

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

18 (1-a) Section 481.1161, Health and Safety Code, if the
19 offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~] or (2) of
20 that section;

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

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

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

27 (5) Section 31.04, Penal Code, if the offense is

1 punishable under Subsection (e)(2) of that section;

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

4 (7) Section 521.457, Transportation Code.

5 SECTION 3. Subchapter B, Chapter 45, Code of Criminal
6 Procedure, is amended by adding Article 45.02161 to read as
7 follows:

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

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

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

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

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

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

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

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

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

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

8 SECTION 4. Article [45.051](#), Code of Criminal Procedure, is
9 amended by adding Subsections (a-2) and (e-1) to read as follows:

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

18 (e-1) A court that dismisses a complaint under this article
19 for a person charged with an offense under Section [481.1161](#)(b)(1),
20 [481.121](#)(b)(1), or [481.125](#)(a), Health and Safety Code, shall notify
21 the defendant in writing of the person's expunction rights under
22 Article [45.02161](#) and provide the person with a copy of that article.
23 The dismissed complaint is not a conviction and may not be used
24 against the person for any purpose.

25 SECTION 5. Section [411.0728](#)(a), Government Code, is amended
26 to read as follows:

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

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

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

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

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

9 (C) Section 31.03, Penal Code, if the offense is
10 punishable under Subsection (e)(1) or (2); or

11 (D) Section 43.02, Penal Code; and

12 (2) who, if requested by the applicable law
13 enforcement agency or prosecuting attorney to provide assistance in
14 the investigation or prosecution of an offense under Section
15 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense
16 containing elements that are substantially similar to the elements
17 of an offense under any of those sections:

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

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

24 SECTION 6. Section 521.371(3), Transportation Code, is
25 amended to read as follows:

26 (3) "Drug offense" has the meaning assigned under 23
27 U.S.C. Section 159(c) and includes an offense under Section 49.04,

1 49.07, or 49.08, Penal Code, that is committed as a result of the
2 introduction into the body of any substance the possession of which
3 is prohibited under the Controlled Substances Act. The term does
4 not include an offense punishable by fine only under the laws of
5 this state.

6 SECTION 7. 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, 2, 2-A, 2-B, 3, or 4.
11 The term includes the aggregate weight of any mixture, solution, or
12 other substance containing a controlled substance. The term does
13 not include hemp, as defined by Section 121.001, Agriculture Code,
14 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, 2, [~~or~~] 2-A,
19 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, 2,
23 [~~or~~] 2-A, or 2-B.

24 SECTION 8. 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: (a6aR-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,
6 (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
7 ethylamine, 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, 6,
11 beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
12 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole;
13 tabernanthe iboga.);

14 5-iodo-2-aminoindane (5-IAI);

15 Mescaline;

16 5-methoxy-3, 4-methylenedioxy amphetamine;

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

20 4-methoxymethamphetamine (PMMA);

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

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

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

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

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

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

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

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

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

13 1-pyrrolidine (some trade or other name: TCPy);

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

16 3,4,5-trimethoxy amphetamine;

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

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

25 Aminorex (some trade or other names: aminoxaphen;

26 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-

27 phenyl-2-oxazolamine);

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

3 Cathinone (some trade or other names:
4 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone,
5 2-aminopropiophenone);

6 Etaqualone and its salts;

7 Etorphine Hydrochloride;

8 Fenethylamine and its salts;

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

11 Mecloqualone and its salts;

12 Methaqualone and its salts;

13 Methcathinone (some trade or other names:

14 2-methylamino-propionophenone; alpha-(methylamino)propionophenone;

15 2-(methylamino)-1-phenylpropan-1-one;

16 alpha-N-methylaminopropionophenone; monomethylpropion; ephedrone,

17 N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR

18 1431);

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

21 N,N-dimethylamphetamine (some trade or other

22 names: N,N,alpha-trimethylbenzeneethanamine;

23 N,N,alpha-trimethylphenethylamine), its salts, optical isomers,

24 and salts of optical isomers;

25 (4) any compound structurally derived from

26 2-aminopropanal by substitution at the 1-position with any

27 monocyclic or fused-polycyclic ring system, including:

1 (A) compounds further modified by:

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

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

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

11 (B) by example, compounds such as:

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

14 3,4-Dimethylmethcathinone (Also known as
15 3,4- DMMC);

16 3-Fluoromethcathinone (Also known as 3-FMC);

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

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

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

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

25 Naphthylpyrovalerone (Also known as
26 Naphyrone);

27 alpha-Methylamino-valerophenone (Also known

1 as Pentedrone);

2 beta-Keto-N-methylbenzodioxolylpropylamine

3 (Also known as Butylone);

4 beta-Keto-N-methylbenzodioxolylpentanamine

5 (Also known as Pentylone);

6 beta-Keto-Ethylbenzodioxolylbutanamine

7 (Also known as Eutylone); and

8 3,4-methylenedioxy-N-ethylcathinone (Also

9 known as Ethylone);

10 (5) any compound structurally derived from tryptamine
11 (3-(2-aminoethyl)indole) or a ring-hydroxy tryptamine:

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

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

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

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

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

25 (B) including:

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

1 (ii) by example, compounds such as:
2 alpha-ethyltryptamine;
3 alpha-methyltryptamine;
4 Bufotenine (some trade and other names:
5 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;
6 3-(2-dimethylaminoethyl)- 5- indolol; N, N-dimethylserotonin;
7 5-hydroxy-N, N- dimethyltryptamine; mappine);
8 Diethyltryptamine (some trade and
9 other names: N, N-Diethyltryptamine, DET);
10 Dimethyltryptamine (trade or other
11 name: DMT);
12 5-methoxy-N, N-diisopropyltryptamine
13 (5-MeO-DiPT);
14 O-Acetylpsilocin (Trade or other name:
15 4-Aco-DMT);
16 Psilocin; and
17 Psilocybin;

18 (6) 2,5-Dimethoxyphenethylamine and any compound
19 structurally derived from 2,5-Dimethoxyphenethylamine by
20 substitution at the 4-position of the phenyl ring to any extent
21 (including alkyl, alkoxy, alkylendioxy, haloalkyl, or halide
22 substituents), including, by example, compounds such as:
23 4-Bromo-2,5-dimethoxyphenethylamine (trade or
24 other name: 2C-B);
25 4-Chloro-2,5-dimethoxyphenethylamine (trade or
26 other name: 2C-C);
27 2,5-Dimethoxy-4-methylphenethylamine (trade or

1 other name: 2C-D);
2 4-Ethyl-2,5-dimethoxyphenethylamine (trade or
3 other name: 2C-E);
4 4-Iodo-2,5-dimethoxyphenethylamine (trade or
5 other name: 2C-I);
6 2,5-Dimethoxy-4-nitrophenethylamine (trade or
7 other name: 2C-N);
8 2,5-Dimethoxy-4-(n)-propylphenethylamine (trade
9 or other name: 2C-P);
10 4-Ethylthio-2,5-dimethoxyphenethylamine (trade
11 or other name: 2C-T-2);
12 4-Isopropylthio-2,5-dimethoxyphenethylamine
13 (trade or other name: 2C-T-4); and
14 2,5-Dimethoxy-4-(n)-propylthiophenethylamine
15 (trade or other name: 2C-T-7); and
16 (7) 2,5-Dimethoxyamphetamine and any compound
17 structurally derived from 2,5-Dimethoxyamphetamine by substitution
18 at the 4-position of the phenyl ring to any extent (including alkyl,
19 alkoxy, alkylendioxy, haloalkyl, or halide substituents),
20 including, by example, compounds such as:
21 4-Ethylthio-2,5-dimethoxyamphetamine (trade or
22 other name: Aleph-2);
23 4-Isopropylthio-2,5-dimethoxyamphetamine (trade
24 or other name: Aleph-4);
25 4-Bromo-2,5-dimethoxyamphetamine (trade or other
26 name: DOB);
27 4-Chloro-2,5-dimethoxyamphetamine (trade or

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

14 SECTION 9. Subchapter D, Chapter 481, Health and Safety
15 Code, is amended by adding Section 481.1032 to read as follows:

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

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

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

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

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

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

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

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

12 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE
13 ANALOGUE. For the purposes of the prosecution of an offense under
14 this subchapter involving the manufacture, delivery, or possession
15 of a controlled substance, Penalty Groups 1, 1-A, 2, [~~and~~] 2-A, and
16 2-B include a controlled substance analogue that:

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

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

23 SECTION 11. The heading to Section 481.113, Health and
24 Safety Code, is amended to read as follows:

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

27 SECTION 12. Section 481.113(a), Health and Safety Code, is

1 amended to read as follows:

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

6 SECTION 13. The heading to Section [481.1161](#), Health and
7 Safety Code, is amended to read as follows:

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

10 SECTION 14. Section [481.1161](#)(a) and (b), Health and Safety
11 Code, are amended to read as follows:

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

17 (b) An offense under this section is:

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

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

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

1 ounces;

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

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

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

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

17 SECTION 15. Section [481.122](#)(a), Health and Safety Code, is
18 amended to read as follows:

19 (a) A person commits an offense if the person knowingly
20 delivers a controlled substance listed in Penalty Group 1, 1-A, 2,
21 2-B, or 3 or knowingly delivers marihuana and the person delivers
22 the controlled substance or marihuana to a person:

23 (1) who is a child;

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

26 (3) who the actor knows or believes intends to deliver
27 the controlled substance or marihuana to a person described by

1 Subdivision (1) or (2).

2 SECTION 16. Sections 551.003(11) and (12), Occupations
3 Code, are amended to read as follows:

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

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

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

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

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

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

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

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

23 SECTION 17. Section 481.115(h)(1)(B), Health and Safety
24 Code, is amended to read as follows:

25 (B) the actor is committing another offense,
26 other than an offense punishable under Section 481.1151(b)(1),
27 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b),

1 or 481.121(b)(1) or (2), or an offense under Section 481.119(b),
2 481.125(a), 483.041(a), or 485.031(a);

3 SECTION 18. Section 481.1151(d)(1)(B), Health and Safety
4 Code, is amended to read as follows:

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.116(b), 481.1161(b)(1), (1-a), or (2), 481.117(b), 481.118(b),
8 or 481.121(b)(1) or (2), or an offense under Section 481.119(b),
9 481.125(a), 483.041(a), or 485.031(a);

10 SECTION 19. Section 481.116(g)(1)(B), Health and Safety
11 Code, is amended to read as follows:

12 (B) the actor is committing another offense,
13 other than an offense punishable under Section 481.115(b),
14 481.1151(b)(1), 481.1161(b)(1), (1-a), or (2), 481.117(b),
15 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
16 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

17 SECTION 20. Section 481.117(g)(1)(B), Health and Safety
18 Code, is amended to read as follows:

19 (B) the actor is committing another offense,
20 other than an offense punishable under Section 481.115(b),
21 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
22 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
23 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

24 SECTION 21. Section 481.118(g)(1)(B), Health and Safety
25 Code, is amended to read as follows:

26 (B) the actor is committing another offense,
27 other than an offense punishable under Section 481.115(b),

1 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
2 481.117(b), or 481.121(b)(1) or (2), or an offense under Section
3 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

4 SECTION 22. Section 481.119(d)(1)(B), Health and Safety
5 Code, is amended to read as follows:

6 (B) the actor is committing another offense,
7 other than an offense punishable under Section 481.115(b),
8 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
9 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense
10 under Section 481.125(a), 483.041(a), or 485.031(a);

11 SECTION 23. Section 481.121(d)(1)(B), Health and Safety
12 Code, is amended to read as follows:

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), or 481.118(b), or an offense under Section 481.119(b),
17 481.125(a), 483.041(a), or 485.031(a);

18 SECTION 24. Section 481.125(h)(1)(B), Health and Safety
19 Code, is amended to read as follows:

20 (B) the actor is committing another offense,
21 other than an offense punishable under Section 481.115(b),
22 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
23 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense
24 under Section 481.119(b), 483.041(a), or 485.031(a);

25 SECTION 25. Section 483.041(f)(1)(B), Health and Safety
26 Code, is amended to read as follows:

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) or (2), or an offense
4 under Section 481.119(b), 481.125(a), or 485.031(a);

5 SECTION 26. Section 485.031(d)(1)(B), Health and Safety
6 Code, is amended to read as follows:

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (1-a), or (2),
10 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense
11 under Section 481.119(b), 481.125(a), or 483.041(a);

12 SECTION 27. The changes in law made by this Act apply only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect on the date the offense was committed,
16 and the former law is continued in effect for that purpose. For
17 purposes of this section, an offense was committed before the
18 effective date of this Act if any element of the offense was
19 committed before that date.

20 SECTION 28. (a) Except as otherwise provided by this
21 section, this Act takes effect September 1, 2023.

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

26 (1) the legislature of this state has adopted a
27 resolution expressing the legislature's opposition to a law meeting

1 the requirements of 23 U.S.C. Section 159 in suspending, revoking,
2 or denying the driver's license of a person convicted of a drug
3 offense punishable by fine only for a period of six months;

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

6 (A) a written certification of the governor's
7 opposition to the enactment or enforcement of a law required under
8 23 U.S.C. Section 159 as that law relates to offenses punishable by
9 fine only; and

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

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