

By: Lujan

H.B. No. 3498

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the designation of fentanyl poisoning for purposes of
3 the death certificate and to the manufacture or delivery of a
4 controlled substance or marihuana causing death or serious bodily
5 injury; creating a criminal offense; increasing a criminal penalty.

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

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

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

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

18 (c) An offense under this section is a felony of the second
19 degree, except that the offense is a felony of the first degree if
20 it is shown on the trial of the offense that the person to whom the
21 actor delivered the controlled substance or marihuana died or
22 suffered serious bodily injury as a result of injecting, ingesting,
23 inhaling, or introducing into the person's body any amount of the
24 controlled substance or marihuana manufactured or delivered by the

1 actor, regardless of whether the controlled substance or marihuana
2 was used by itself or with another substance, including a drug,
3 adulterant, or dilutant.

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

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

20 (b) An offense under this section is:

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

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

1 ~~481.122~~].

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

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

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

15 SECTION 4. The change in law made by this Act to Section
16 193.005, Health and Safety Code, applies only to a death that occurs
17 on or after the effective date of this Act, or a death that occurs
18 before that date but is discovered on or after the effective date of
19 this Act.

20 SECTION 5. The changes in law made by this Act to Chapter
21 481, Health and Safety Code, apply only to an offense committed on
22 or after the effective date of this Act. An offense committed
23 before the effective date of this Act is governed by the law in
24 effect on the date the offense was committed, and the former law is
25 continued in effect for that purpose. For purposes of this section,
26 an offense was committed before the effective date of this Act if
27 any element of the offense occurred before that date.

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