

By: Perry

S.B. No. 1869

A BILL TO BE ENTITLED

AN ACT

relating to the procedures for modifying the schedules of controlled substances.

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

SECTION 1. Section 481.034, Health and Safety Code, is amended by amending Subsections (a), (b), (d), and (g) and adding Subsections (a-1) and (c-1) to read as follows:

(a) The commissioner shall at least annually establish the schedules of controlled substances. These ~~[annual]~~ schedules shall include the complete list of all controlled substances from the previous schedules and modifications in the federal schedules of controlled substances under ~~[as required by]~~ Subsection (g). Except as provided by Subsection (g), any ~~[Any]~~ further additions to and deletions from these schedules, any rescheduling of substances, and any other modifications made by the commissioner to these schedules of controlled substances shall be made:

(1) in accordance with Section 481.035;

(2) in a manner consistent with this subchapter; and

(3) with approval of the executive commissioner.

(a-1) A decision or modification to the schedules made by the commissioner under Subsection (a) is final and binding, unless altered by the legislature as described by Subsection (c).

(b) Except for alterations in schedules under ~~[required by]~~ Subsection (g), the commissioner may not make an alteration in a

1 schedule unless the commissioner holds a public hearing on the
2 matter in Austin and obtains approval from the executive
3 commissioner.

4 (c-1) For purposes of Subsection (c):

5 (1) an action by the legislature in adding a
6 controlled substance to, or removing a controlled substance from, a
7 penalty group does not change or require the commissioner to change
8 the schedule of the controlled substance; and

9 (2) the legislature is considered to have added,
10 deleted, or rescheduled a substance with respect to a schedule
11 listed in this subchapter only if the legislature passes a bill that
12 becomes law directly adding, deleting, or rescheduling the
13 substance with respect to a specific schedule listed in this
14 subchapter.

15 (d) In making a determination regarding a substance, other
16 than a determination under Subsection (g), the commissioner shall
17 consider and make findings with respect to each of the following
18 factors:

19 (1) the actual or relative potential for its abuse;

20 (2) the scientific evidence of its pharmacological
21 effect, if known;

22 (3) the state of current scientific knowledge
23 regarding the substance;

24 (4) the history and current pattern of its abuse;

25 (5) the scope, duration, and significance of its
26 abuse;

27 (6) the risk to the public health;

1 (7) the potential of the substance to produce
2 psychological or physiological dependence liability; and

3 (8) whether the substance is a controlled substance
4 analogue, chemical precursor, or an immediate precursor of a
5 substance controlled under this chapter.

6 (g) Except as otherwise provided by this subsection, if a
7 substance is designated, rescheduled, or deleted as a controlled
8 substance under federal law and notice of that fact is given to the
9 commissioner, the commissioner similarly shall control the
10 substance under this chapter unless the commissioner objects.

11 After the expiration of a 90-day [~~30-day~~] period beginning on the
12 day after the date of publication in the Federal Register of a final
13 order designating a substance as a controlled substance or
14 rescheduling or deleting a substance, the commissioner similarly
15 shall designate, reschedule, or delete the substance, unless the
16 commissioner objects during the period. If the commissioner
17 objects, the commissioner shall publish the reasons for the
18 objection, the commissioner's [~~and give all interested parties an~~
19 ~~opportunity to be heard. At the conclusion of the hearing, the~~
20 ~~commissioner shall publish a~~] decision, and any resulting
21 modifications to the schedules which are [~~is~~] final and binding
22 unless altered by the legislature as described by Subsection (c)
23 [~~statute~~]. On publication of an objection by the commissioner,
24 control as to that particular substance under this chapter is
25 stayed until the commissioner publishes the commissioner's
26 decision. If the commissioner objects under this subsection, the
27 commissioner may control the substance under this chapter similarly

1 to the manner in which the substance is controlled under federal law
2 or control the substance under this chapter in a manner determined
3 appropriate by the commissioner.

4 SECTION 2. Subchapter B, Chapter 481, Health and Safety
5 Code, is amended by adding Sections 481.038 and 481.039 to read as
6 follows:

7 Sec. 481.038. INTERPRETATION OF SUBCHAPTER. (a) The
8 commissioner shall manage the schedules of controlled substances
9 under this subchapter and may:

10 (1) adopt, for the administration of schedules,
11 written rules, policies, or guidelines;

12 (2) interpret and construe this subchapter;

13 (3) correct a defect, supply an omission, and
14 reconcile an inconsistency that appears in this subchapter in a
15 manner and to the extent that the commissioner considers expedient
16 to administer this subchapter for the protection of public health
17 and safety;

18 (4) determine all questions, whether legal or factual,
19 relating to this subchapter to promote the uniform administration
20 of this subchapter for the benefit of public health and safety; and

21 (5) establish and maintain records necessary or
22 appropriate for the proper administration of this subchapter.

23 (b) The determination of a fact or finding by the
24 commissioner, a final order or schedule modification issued by the
25 commissioner, an action taken by the commissioner, or the
26 commissioner's interpretation of this subchapter is final and
27 binding.

1 (c) Except as provided by Section 481.034(c), if the
2 determination of a fact or finding by the commissioner, a final
3 order or schedule modification issued by the commissioner, an
4 action taken by the commissioner, or the commissioner's
5 interpretation of this subchapter conflicts with other law, the
6 commissioner's determination, issuance, action, or interpretation
7 prevails.

8 Sec. 481.039. SCHEDULING AND RELATED ACTIONS BY
9 COMMISSIONER NOT SUBJECT TO JUDICIAL REVIEW. (a) The legislature
10 grants the commissioner broad authority to administer this
11 subchapter in an effort to promote public health and safety. A
12 court may not substitute the court's judgment for the judgment of
13 the commissioner regarding this subchapter. A final order or
14 schedule modification under this subchapter is final and binding.
15 As authorized by Section 8, Article V, Texas Constitution, all
16 actions, proceedings, and remedies related to this subchapter are
17 granted solely to the commissioner and may be adjudicated at the
18 commissioner's discretion.

19 (b) An action taken by the commissioner under this
20 subchapter does not waive sovereign immunity.

21 (c) A court shall immediately dismiss a claim barred by this
22 subchapter.

23 (d) On dismissal of a claim under Subsection (c), the state
24 is entitled to recover court costs and attorney's fees from the
25 claimant.

26 (e) If a claim is not immediately dismissed under Subsection
27 (c) and the state prevails, the state is entitled to recover court

1 costs and attorney's fees from the claimant.

2 (f) An appeal of an action related to an act or omission by
3 the commissioner under this subchapter is governed by the
4 procedures for accelerated appeals in civil cases under the Texas
5 Rules of Appellate Procedure. The appellate court shall render the
6 court's final order or judgment with the least possible delay.

7 SECTION 3. Subchapter I, Chapter 2001, Government Code, is
8 amended by adding Section 2001.228 to read as follows:

9 Sec. 2001.228. SCHEDULES OF CONTROLLED SUBSTANCES. (a)
10 This chapter does not apply to an action taken by the Department of
11 State Health Services, the Health and Human Services Commission, or
12 the Department of Public Safety under Subchapter B, Chapter 481,
13 Health and Safety Code, including the establishment or modification
14 of the schedules of controlled substances under Section 481.034,
15 Health and Safety Code, or the emergency scheduling of controlled
16 substances under Section 481.0355, Health and Safety Code.

17 (b) A final order or schedule modification under Subchapter
18 B, Chapter 481, Health and Safety Code, is not a rule for purposes
19 of this chapter.

20 SECTION 4. Section 481.034(e), Health and Safety Code, is
21 repealed.

22 SECTION 5. If before implementing any provision of this Act
23 a state agency determines that a waiver or authorization from a
24 federal agency is necessary for implementation of that provision,
25 the agency affected by the provision shall request the waiver or
26 authorization and may delay implementing that provision until the
27 waiver or authorization is granted.

1 SECTION 6. It is the intent of the legislature that every
2 provision, section, subsection, sentence, clause, phrase, or word
3 in this Act, and every application of the provisions in this Act to
4 every person, group of persons, or circumstances, are severable
5 from each other. If any application of any provision in this Act to
6 any person, group of persons, or circumstances is found by a court
7 to be invalid for any reason, the remaining applications of that
8 provision to all other persons and circumstances shall be severed
9 and may not be affected.

10 SECTION 7. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2025.