

BILL ANALYSIS

C.S.H.B. 1200
By: Simpson
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that in the past several years there has been an influx of designer drugs on the market that mimic the physiological effects of controlled substances and that these synthetic drugs are far more dangerous than their natural counterparts because the substances are designed to better fit the receptors in the brain, amplifying the intensity of their effect and prolonging the duration of the experience. The parties point out that side effects of using these synthetic drugs include severe agitation and anxiety, nausea, vomiting, elevated heart rate, tremors, seizures, hallucinations, temporary blindness, or death. These parties are concerned that the issue is complicated by the deceptive practices under which these synthetic drugs are sold. For instance, the parties point out that these synthetic substances are not marketed as drugs and are sold as something else, such as an additive to incense or potpourri. The parties have expressed concern that most attempts to curtail the use and production of these synthetic substances have been ineffective and assert that providing recourse for victims to recover damages when a synthetic drug has harmed the individual or a family member would deter producers, distributors, and sellers who wish to avoid severe economic consequences. C.S.H.B. 1200 seeks to provide for this remedy.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1200 amends the Health and Safety Code to make a person liable for damages proximately caused by the consumption or ingestion of a synthetic substance by another person if the actor produced, distributed, sold, or provided the synthetic substance to the other person or aided in the production, distribution, sale, or provision of the synthetic substance to the other person. The bill defines "synthetic substance" as an artificial substance that produces and is intended to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance or controlled substance analogue, as defined by the Texas Controlled Substances Act. The bill makes a person strictly liable for all damages caused by the consumption or ingestion of a synthetic substance by a person younger than 18 years of age if the actor either produced, distributed, sold, or provided the synthetic substance to the minor or aided in the production, distribution, sale, or provision of the synthetic substance to the minor.

C.S.H.B. 1200 makes a person who is found liable under the bill's provisions or other law for

any amount of damages arising from the consumption or ingestion by another of a synthetic substance jointly and severally liable with any other person for the entire amount of damages awarded. The bill makes statutory provisions relating to proportionate responsibility inapplicable to an action brought under the bill's provisions or under the Deceptive Trade Practices-Consumer Protection Act based on the actionable conduct. The bill establishes that the conduct for which the bill creates liability is a false, misleading, or deceptive act or practice or an unconscionable action or course of action for the purposes of statutory provisions governing relief for consumers under the Deceptive Trade Practices-Consumer Protection Act and also establishes that such conduct is actionable under and subject to any remedy prescribed by that act. The bill authorizes an action brought under its provisions to include a claim for exemplary damages and authorizes the damages to be awarded in accordance with statutory standards for the recovery of exemplary damages. The bill exempts an award of exemplary damages in an action brought under its provisions from statutory limitations on the amount of exemplary damages that can be awarded. The bill makes a statutory prohibition on recovery of exemplary damages in certain situations inapplicable to a claim for exemplary damages in an action brought under the bill's provisions.

C.S.H.B. 1200 establishes an affirmative defense to liability under the bill's provisions that the synthetic substance produced, distributed, sold, or provided was approved for use, sale, or distribution by the U.S. Food and Drug Administration or other state or federal regulatory agency with authority to approve a substance for use, sale, or distribution but specifies that it is not a defense to such liability that a synthetic substance was in packaging labeled with "Not for Human Consumption" or other wording indicating the substance is not intended to be ingested.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1200 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1191 to read as follows:

Sec. 481.1191. CIVIL LIABILITY FOR ENGAGING IN OR AIDING IN PRODUCTION, DISTRIBUTION, SALE, OR PROVISION OF SYNTHETIC SUBSTANCES. (a) In this section:

(1) "Minor" means a person younger than 18 years of age.

(2) "Synthetic substance" means a substance that produces and is intended to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance or controlled substance analogue.

(b) A person is liable for all damages caused by the consumption or ingestion of a

HOUSE COMMITTEE SUBSTITUTE

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(1) "Minor" means a person younger than 18 years of age.

(2) "Synthetic substance" means an artificial substance that produces and is intended to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002.

(b) A person is liable for damages proximately caused by the consumption or

synthetic substance by another person if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the other person;

or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the other person.

(c) A person is strictly liable for all damages caused by the consumption or ingestion of a synthetic substance by a minor if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the minor; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the minor.

(d) A person who is found liable under this section or other law for any amount of damages arising from the consumption or ingestion by another of a synthetic substance is jointly and severally liable with any other person for the entire amount of damages awarded.

(e) Chapter 33, Civil Practice and Remedies Code, does not apply to an action brought under this section or an action brought under Section 17.50, Business & Commerce Code, based on conduct made actionable under Subsection (f).

(f) Conduct for which Subsection (b) or (c) creates liability is a false, misleading, or deceptive act or practice or an unconscionable action or course of action for purposes of Section 17.50, Business & Commerce Code, and that conduct is actionable under Subchapter E, Chapter 17, Business & Commerce Code, and is subject to any remedy prescribed by that subchapter.

(g) An action brought under this section may include a claim for exemplary damages, which may be awarded in accordance with Section 41.003, Civil Practice and Remedies Code.

(h) Section 41.008, Civil Practice and Remedies Code, does not apply to the award of exemplary damages in an action brought under this section.

(i) Section 41.005, Civil Practice and Remedies Code, does not apply to a claim for exemplary damages in an action brought under this section.

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(c) A person is strictly liable for all damages caused by the consumption or ingestion of a synthetic substance by a minor if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the minor; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the minor.

(d) A person who is found liable under this section or other law for any amount of damages arising from the consumption or ingestion by another of a synthetic substance is jointly and severally liable with any other person for the entire amount of damages awarded.

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(h) Section 41.008, Civil Practice and Remedies Code, does not apply to the award of exemplary damages in an action brought under this section.

(i) Section 41.005, Civil Practice and Remedies Code, does not apply to a claim for exemplary damages in an action brought under this section.

(j) It is an affirmative defense to liability under this section that the synthetic

substance produced, distributed, sold, or provided was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve a substance for use, sale, or distribution.

(k) It is not a defense to liability under this section that a synthetic substance was in packaging labeled with "Not for Human Consumption" or other wording indicating the substance is not intended to be ingested.

SECTION 2. This Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect September 1, 2015.

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