

- SUBJECT:** Offense for possessing, transporting precursors to controlled substances
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 5 ayes — Hinojosa, Keel, Talton, Martinez Fischer, Shields
0 nays
4 absent — Dunnam, Garcia, Green, Kitchen
- WITNESSES:** For — *Registered but did not testify:* Bill Harris, Texas District and County Attorneys Association
Against — None
On — David M. Boatright, Texas Department of Public Safety (DPS);
Registered but did not testify: Joel Budge, DPS
- BACKGROUND:** Health and Safety Code, ch. 481 sets forth general provisions, establishes a drug schedule, regulates the manufacture, distribution and dispensation of controlled substances, and creates offenses and penalties for violations under the Texas Controlled Substances Act.
Sec. 481.077 lists 17 chemical precursors to the manufacture of controlled substances for which transactions must be accurately recorded and maintained up to two years after the date of purchase. These include common and uncommon substances such as D-lysergic acid, ephedrine, barbituric acid, pseudoephedrine, and phenylpropanolamine.
Occupations Code, ch. 551 establishes guidelines for pharmacies and pharmacists. Sec. 551.003(11) defines controlled substances as both drugs and their precursors.
- DIGEST:** CSHB 3351 would make it a criminal offense to possess or transport certain chemicals if the person had intent to unlawfully manufacture a controlled substance. The chemicals that could not be possessed or transported would be anhydrous ammonia, an immediate precursor, or one of the chemical

precursor substances listed in Health and Safety Code sec. 481.077 that must reported if sold or transferred.

CSHB 3351 would eliminate the current offenses of possessing with intent to manufacture controlled substances in individual controlled substance penalty groups. Immediate precursors would no longer be considered part of the definition of controlled substances in the Controlled Substance Act or in the Occupations Code provisions dealing with pharmacists.

The intent to unlawfully manufacture the controlled substance methamphetamine would be presumed if the person possessed or transported:

- ! anhydrous ammonia in a container not designed and manufactured to lawfully hold or transport it;
- ! lithium metal removed from a battery and immersed in kerosene, mineral spirits, or a similar liquid; or
- ! in one container, vehicle, or building, phenylacetic acid or more than nine grams, three containers packaged for retail sale, or 300 tablets or capsules of a product containing ephedrine or pseudoephedrine, and:
 - (1) anhydrous ammonia;
 - (2) at least three of the five categories of substances listed in the bill that are commonly used in the manufacture of methamphetamines;
or
 - (3) at least three items of chemical lab apparatus or equipment subject to regulation, if the person was not registered to manufacture, distribute, analyze or conduct research on certain controlled substances.

CSHB 3351 would establish circumstances under which substances would be presumed to be anhydrous ammonia.

The seriousness of the offense would depend on the penalty group of the controlled substance. Offenses would be:

- ! second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000) if the controlled substance was in Penalty Group 1 or 1-A;

- ! third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000) if the controlled substance was in Penalty Group 2;
- ! state-jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000) if the controlled substance was in Penalty Group 3 or 4; and
- ! class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000) if the controlled substance was not listed in a penalty group but had been placed in a schedule by the health commissioner.

Persons committing an offense defined by CSHB 3351 and an offense under another section of the Health and Safety Code could be prosecuted for the offense created by CSHB 3351, the other offense, or both.

CSHB 3351 would eliminate the option of proving that offenses relating to manufacturing, delivering or possessing with intent to deliver certain controlled substances were committed “intentionally”, leaving the current standard of “knowingly.”

CSHB 3351 would add drugs listed in Penalty Group 1-A to the definition of controlled substances in the Occupations Code’s provisions dealing with pharmacists.

CSHB 3351 would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 3351 would give law enforcement officers a needed tool to battle the increase in illegal methamphetamines. Current law has been interpreted to mean that to commit the offense of “possessing with the intent to manufacture,” persons must be caught with a finished product, not just the precursors to the illegal drugs. For example, law enforcement officers would have to wait until illegal methamphetamines had been produced by a speed lab instead of being able to make arrests before production was completed.

CSHB 3351 would address this problem by creating a new offense for possessing or transporting certain chemical precursors to controlled substances. Law enforcement officers would no longer have to wait until production of a controlled substance was finished.

Methamphetamine production can involve some common household products such as lithium batteries and anhydrous ammonia, making it difficult to make cases against persons who possess these precursors. Because of this, CSHB 3351 would establish some presumptions for when possessing methamphetamine precursors constituted a crime. These presumptions are detailed and numerous to ensure that only persons intending to manufacture illegal drugs would be committing an offense.

CSHB 3351 would apply only to persons who have the intent to unlawfully manufacture a controlled substance. It would not apply to consumers purchasing cold medicine, farmers, or other users of legal products.

Not all persons making methamphetamines could be charged with the Penal Code offense of criminal conspiracy because it must involve at least two persons. In addition, it can be important that persons making methamphetamines have been charged specifically with drug offenses, not criminal conspiracy, in case they are involved with the criminal justice system again.

Eliminating “intentionally” as a way to prove that offenses relating to manufacturing, delivering, or possessing with intent to deliver certain controlled substances be committed would be an insignificant change, because current law includes the lower standard of “knowingly,” which would remain. The interpretation of “knowingly” would remain the same.

**OPPONENTS
SAY:**

CSHB 3351 is unnecessary because persons preparing to make methamphetamines could be charged with the Penal Code offense of criminal conspiracy, no matter what stage of production they are caught in.

Eliminating “intentionally” as a way to prove that offenses relating to manufacturing, delivering or possessing with intent to deliver certain controlled substances be committed would be an unfair change in the law that could make it easier to prosecute these crimes. Current law, which reads “knowingly” or “intentionally,” has been interpreted to mean that “knowingly” must be results oriented. Eliminating “intentionally” could change this interpretation and could mean that “knowingly” would be a different, lower standard.

NOTES:

The committee substitute made several changes in the original bill, including changing the standards for when intent to manufacture methamphetamine was presumed and when a substance was presumed to be anhydrous ammonia.

A related bill, HB 238 by Keffer, which would make it a third degree felony to possess, with the intent to manufacture methamphetamine, a substantial number of the components to manufacture methamphetamine or to possess a substance commonly used in the manufacture of methamphetamine, was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 11.