

BILL ANALYSIS

Senate Research Center
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S.B. 1187
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Criminal Justice
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DIGEST AND PURPOSE

Over the last few years, federal law has been amended to add new controlled substances to the federal penalty groups, resulting, in inconsistencies between Texas' current statutes and recently amended federal law. As proposed, S.B. 1187 revises and updates provisions of the Texas Controlled Substance Act relating to controlled substance penalty groups.

RULEMAKING AUTHORITY

Rulemaking authority is transferred from the commissioner of public health or the commissioner's designee to the director of the Department of Public Safety or an employee designated by the director in SECTION 1 (Section 481.002(22), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 481.002(22), Health and Safety Code, to redefine "immediate precursor."

SECTION 2. Amends Section 481.034(d), Health and Safety Code, to require the commissioner of public health (commissioner), in making a determination regarding a substance to consider certain factors, including whether the substance is a controlled substance analogue, chemical precursor, or an immediate precursor of a substance controlled under this chapter.

SECTION 3. Amends Section 481.077, Health and Safety Code, by adding Subsection (b-1), to provide that a substance that is a precursor of the chemical precursor or the immediate precursor is not subject to control solely because it is a precursor of the chemical precursor or the immediate precursor, if the director of the Texas Department of Public Safety (director) names a chemical substance as a chemical precursor for purposes of Subsection (a) or designates a substance as an immediate precursor.

SECTION 4. Amends Section 481.102, Health and Safety Code, to include Dihydroetorphine in the list of controlled substances in penalty group 1. Makes nonsubstantive changes.

SECTION 5. Amends Section 481.103(a), Health and Safety Code, to include 2, 5-dimethoxy-4-(n)-propylthiophenethylamine (trade or other name: 2C-T-7); N-benzylpiperazine (some trade or other names: BZP; 1-benzylpiperazine); and 1-(3-trifluoromethylphenyl)piperazine (trade or other name: TFMPP) in the list of controlled substances in penalty group 2. Deletes Ketamine from the list of penalty group 2 substances. Makes conforming changes.

SECTION 6. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.106, as follows:

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE.
Provides that for the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, and

2 include a controlled substance analogue that has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group; or is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

SECTION 7. Amends Section 481.123, Health and Safety Code, as follows:

Sec. 481.123. DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING CONTROLLED SUBSTANCE ANALOGUE. (a) Provides that it is an affirmative defense to the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance analogue that the analogue was not in any part intended for human consumption; and was a a substance for which there is an approved new drug application under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355); or was a substance for which an exemption for investigational use has been granted under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the actor's conduct with respect to the substance is in accord with the exemption. Deletes text providing that a substance not intended for human consumption, before an exemption under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), takes effect with regard to the substance. Deletes text of existing Subsections (b) through (g).

(b) Redesignates Subsection (h) as Subsection (b).

Deletes Subsections (i) through (l).

SECTION 8. Amends Section 481.129(d), Health and Safety Code, to provide that an offense under Subsection (a) is a state jail felony, rather than a Class A misdemeanor, if the controlled substance that is the subject of the offense is listed in Schedule V.

SECTION 9. Amends Sections 481.181(a) and (b), Health and Safety Code, as follows:

(a) Defines “reasonable time.” Requires the director to state the purpose of the entry; display to the owner, operator, or agent in charge of the premises a written notice of inspection authority.

(b) Authorizes the director to take certain actions.

SECTION 10. Amends Section 481.182, Health and Safety Code, as follows:

Sec. 481.182. EVIDENTIARY RULES RELATING TO OFFER OF DELIVERY. Provides that for the purpose of establishing a delivery under this chapter, proof of an offer to sell must be corroborated by a person other than the person making the offer; or evidence other than a statement of the person making the offer. Deletes text referencing a search warrant.

SECTION 11. Amends Section 481.183, Health and Safety Code, as follows:

Sec. 481.183. New heading: EVIDENTIARY RULES RELATING TO DRUG PARAPHERNALIA. (a) Deletes text requiring collaborated evidence in regards to the delivery of controlled substances. Redesignates existing Subsection (b) as (a).

(b) Redesignates Subsection (c) as (b).

SECTION 12. Amends Section 481.184, Health and Safety Code, as follows

Sec. 481.184. New heading: BURDEN OF PROOF. (a) Establishes that it is a defense to prosecution under this chapter that the actor's conduct complied with an exemption or exception provided by this chapter, except as provided by Subsection (b). Deletes text providing that the person claiming the benefit of an exemption or exception has the burden of going forward with the evidence.

(b) Provides that it is an affirmative defense to prosecution under this chapter that the actor's conduct was authorized by: a rule adopted under this chapter; or an appropriate registration, permit, or order form issued under this chapter with respect to which the actor is the duly authorized holder. Deletes text providing that the presumption is subject to the rebuttal by a person charged with that offense.

(c) Deletes Subsection (c), regarding liability under this chapter.

SECTION 13. Amends Section 481.185, Health and Safety Code, as follows:

Sec. 481.185. New heading: LIABILITY. Provides that this chapter does not impose liability on an authorized state, county, or municipal officer engaged in the lawful performance of official duties. Deletes text regarding the manner in which a law enforcement agency prepares a controlled substance arrest report.

(b) Deletes existing Subsection (b), requiring the director to publish an annual summary of drug arrests and controlled substances seized in this state.

SECTION 14. Amends Section 481.186(b), Health and Safety Code, to make a nonsubstantive change.

SECTION 15. Amends Article 18.02, Code of Criminal Procedure, to authorize a search warrant to be issued to search for and seize certain drug-related items.

SECTION 16. Repealer: Article 481.034(f), Health and Safety Code (regarding establishment and modification of schedules by the commissioner).

SECTION 17. Effective date: September 1, 2003.
Makes application of this Act prospective.