

## **BILL ANALYSIS**

Senate Research Center  
87R6521 MCF-D

S.B. 768  
By: Huffman  
Jurisprudence  
3/15/2021  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Fentanyl, a drug that is 100 times more potent than morphine, is responsible for a drastic increase in overdose deaths in current years. The drug is often combined with cocaine and heroin without the knowledge of the user. Foreign cartels are responsible for mixing fentanyl with cocaine and/or heroin, or pressing various fentanyl mixtures into counterfeit prescription capsules and pills.

According to the United States Attorney General's Office, fentanyl overdoses were responsible for the drug deaths of more Americans than any other drug. As a result, the Department of Justice stepped up its prosecutions of fentanyl-related crimes over 300 percent in 2017.

S.B. 768 seeks to create a criminal offense specifically for fentanyl due to the drug's potency. The bill would create a new group for fentanyl (B-1) and increase criminal penalties for possessing, manufacturing, and distributing the drug.

Under current law, fentanyl is included in Penalty Group 1 of the Texas Controlled Substances Act with cocaine, methamphetamines, ketamine, oxycodone, and other opioids and/or opioid derivatives. Punishments for possessing fentanyl and other Penalty Group 1 drugs can depend on whether it was manufactured, distributed, or possessed, and/or whether the accused has any prior felony convictions. Penalties for manufacturing fentanyl and other Penalty Group 1 drugs range from as few as 180 days in a state jail facility for less than one gram to up to life in prison for 200 grams or more.

Following the steps of many other states, S.B. 768 would create a more stringent punishment system that is appropriately weighted for the drug's lethality. These steps would better deter the manufacturing and distribution of fentanyl in the State of Texas.

As proposed, S.B. 768 amends current law relating to increasing the criminal penalties for manufacture or delivery of fentanyl and related substances and creates a criminal offense.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 481.002(5) and (6), Health and Safety Code, to redefine "controlled substance" and "controlled substance analogue" to include certain substances listed in Penalty Group 1-B.

SECTION 2. Amends Section 481.102, Health and Safety Code, to delete existing text including fentanyl or alpha-methylfentanyl, or any other derivative of fentanyl as an opiate in Penalty Group 1.

SECTION 3. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1022, as follows:

Sec. 481.1022. PENALTY GROUP 1-B. Provides that Penalty Group 1-B consists of fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl.

SECTION 4. Amends Section 481.106, Health and Safety Code, to provide that, for the purposes of the prosecution of an offense under Subchapter D (Offenses and Penalties) involving the manufacture, delivery, or possession of a controlled substance, certain penalty groups, including Penalty Group 1-B, include certain controlled substance analogues.

SECTION 5. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1123, as follows:

Sec. 481.1123. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-B. (a) Provides that, except as authorized by Chapter 481 (Texas Controlled Substances Act), a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B.

(b) Provides that an offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) Provides that an offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) Provides that an offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$20,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) Provides that an offense under Subsection (a) is punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$200,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) Provides that an offense under Subsection (a) is punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 20 years, and a fine not to exceed \$500,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 6. Amends the heading to Section 481.115, Health and Safety Code, to read as follows:

Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1 OR 1-B.

SECTION 7. Amends Section 481.115(a), Health and Safety Code, as follows:

(a) Provides that, except as authorized by Chapter 481, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1-B, in addition to Penalty Group 1, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

SECTION 8. Amends Section 481.122(a), Health and Safety Code, as follows:

(a) Provides that a person commits an offense if the person knowingly delivers a controlled substance listed in certain penalty groups, including in Penalty Group 1-B, or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to certain persons.

SECTION 9. Amends Section 481.124(d), Health and Safety Code, as follows:

(d) Provides that an offense under Section 481.124 (Offense: Possession or Transport of Certain Chemicals with Intent to Manufacture Controlled Substance) is a felony of the second degree if the controlled substance is listed in certain penalty groups, including Penalty Group 1-B. Makes nonsubstantive changes.

SECTION 10. Amends Sections 481.134(b) and (c), Health and Safety Code, as follows:

(b) Provides that an offense otherwise punishable as a state jail felony under certain sections, including Section 481.1123, is punishable as a felony of the third degree, an offense otherwise punishable as a felony of the third degree under any of those sections is punishable as a felony of the second degree, and an offense otherwise punishable as a felony of the first degree, if it is shown at the punishment phase of the trial of the offense that the offense was committed in certain locations.

(c) Provides that the minimum term of confinement or imprisonment for an offense otherwise punishable under certain sections, including under Section 481.1123(c), (d), (e), or (f), is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed in certain locations.

SECTION 11. Amends Section 481.140(a), Health and Safety Code, as follows:

(a) Includes Section 481.1123 among sections for which the punishment is increased by one degree, if it is shown at the punishment phase of the trial of an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree that the defendant used or attempted to use a child younger than 18 years of age to commit or assist in the commission of the offense, unless the defendant used or threatened to use force against the child or another to gain the child's assistance, in which event the punishment for the offense is a felony of the first degree.

SECTION 12. Amends Section 481.141(b), Health and Safety Code, as follows:

(b) Provides that Section 481.141 (Manufacture or Delivery of Controlled Substance Causing Death or Serious Bodily Injury) applies to an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under certain sections, including under Section 481.1123.

SECTION 13. Amends Article 42A.054(a), Code of Criminal Procedure, as follows:

(a) Provides that Article 42A.053 (Judge-Ordered Community Supervision) does not apply to a defendant adjudged guilty of an offense under certain sections, including under Section 481.1123, Health and Safety Code, if the offense is punishable under Subsection (d), (e), or (f) of that section. Makes nonsubstantive changes.

SECTION 14. Amends Article 42A.056, Code of Criminal Procedure, to provide that a defendant is not eligible for community supervision under Article 42A.055 (Jury-Recommended Community Supervision) under certain circumstances, including if the defendant is convicted of an offense under Section 481.1123, Health and Safety Code, if the offense is punishable under Subsection (d), (e), or (f) of that section. Makes nonsubstantive changes.

SECTION 15. Reenacts Article 42A.102(b), Code of Criminal Procedure, as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B. 3582), Acts of the 86th Legislature, Regular Session, 2019, and amends it as follows:

(b) Provides that in all other cases, the judge may grant deferred adjudication community supervision unless the defendant is charged with certain offenses, including an offense under Section 481.1123, Health and Safety Code, that is punishable under Subsection (d), (e), or (f) of that section. Makes nonsubstantive changes.

SECTION 16. Amends Section 508.149(a), Government Code, as follows:

(a) Prohibits an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of certain offenses, including an offense under Section 481.1123, Health and Safety Code, punished under Subsection (d), (e), or (f) of that section. Makes nonsubstantive changes.

SECTION 17. Amends Section 161.042(a), Health and Safety Code, as follows:

(a) Requires a physician who attends or treats, or who is requested to attend or treat, an overdose of a certain controlled substance, including a controlled substance listed in Penalty Group 1-B under Section 481.1022, or the administrator, superintendent, or other person in charge of a hospital, sanatorium, or other institution in which an overdose of a certain controlled substance, including a controlled substance listed in Penalty Group 1-B under Section 481.1022 is attended or treated or in which the attention or treatment is requested, to report the case at once to the Department of State Health Services.

SECTION 18. Amends Sections 551.003(11) and (12), Occupations Code, to redefine "controlled substance" and "dangerous drug."

SECTION 19. Amends Section 22.041(c-1), Penal Code, as follows:

(c-1) Provides that, for purposes of Subsection (c) (relating to an offense committed if a person places a child younger than 15 years in danger), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person injected, ingested, inhaled, or otherwise introduced a certain controlled substance, including a controlled substance in Penalty Group 1-B, Section 481.1022, Health and Safety Code, into the human body when the person was not in lawful possession of the substance as defined by Section 481.002(24) (relating to the definition of lawful possession), Health and Safety Code.

SECTION 20. Amends Section 71.023(a), Penal Code, as follows:

(a) Provides that a person commits an offense if the person, as part of the identifiable leadership of a criminal street gang, knowingly finances, directs, or supervises the commission of, or a conspiracy to commit, certain offenses by members of a criminal street gang including an offense that is punishable under certain sections, including under Section 481.112(e) or (f), and under Section 481.1123(d), (e), or (f), Health and Safety Code. Makes a nonsubstantive change.

SECTION 21. Provides that to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 22. Makes application of this Act prospective.

SECTION 23. Effective date: September 1, 2021.