

BILL ANALYSIS

Senate Research Center

H.B. 2612
By: Meyer; Fallon (Huffman)
State Affairs
5/17/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties have raised concerns about the abuse of certain synthetic substances in Texas. H.B. 2612 combats this problem in two ways. First, the bill ensures that a person who produces, distributes, sells, or provides these synthetic substances to others or who aids in such activities may be held civilly liable. Second, H.B. 2612 provides for additional enforcement by authorizing district and county attorneys to act under the Deceptive Trade Practices-Consumer Protection Act with respect to these substances.

H.B. 2612 amends current law relating to civil liability of a person who produces, distributes, sells, or provides or aids in the production, distribution, sale, or provision of certain synthetic substances to another person for damages caused by the other person and to certain actions and investigations under the Deceptive Trade Practices-Consumer Protection Act.

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 Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1191, as follows:

Sec. 481.1191. CIVIL LIABILITY FOR ENGAGING IN OR AIDING IN PRODUCTION, DISTRIBUTION, SALE, OR PROVISION OF SYNTHETIC SUBSTANCES. (a) Defines "minor" and "synthetic substance."

(b) Provides that a person is 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.

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

(d) Provides that 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) Provides that Chapter 33 (Proportionate Responsibility), Civil Practice and Remedies Code, does not apply to an action brought under this section or an action brought under Section 17.50 (Relief for Consumers), Business &

Commerce Code, based on conduct made actionable under Subsection (f) of this section.

(f) Provides that 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:

(1) actionable under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices), Business & Commerce Code; and

(2) subject to any remedy prescribed by that subchapter.

(g) Authorizes an action brought under this section to include a claim for exemplary damages, which may be awarded in accordance with Section 41.003 (Standards for Recovery of Exemplary Damages), Civil Practice and Remedies Code.

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

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

(j) Provides that it is an affirmative defense to liability 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) Provides that it is not a defense to 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.

SECTION 2. Amends Subchapter E, Chapter 17, Business & Commerce Code, by adding Section 17.463, as follows:

Sec. 17.463. PRODUCTION, SALE, DISTRIBUTION, OR PROMOTION OF CERTAIN SYNTHETIC SUBSTANCES. (a) Provides that this section applies only to an act described by Section 17.46(b)(31) (relating to providing that the term "false, misleading, or deceptive acts or practices" includes certain acts by a licensed public insurance adjuster).

(b) Provides that, subject to Subsection (e) and except as otherwise provided by this section, an act to which this section applies is subject to action by a district or county attorney under Sections 17.47 (Restraining Orders), 17.58 (Voluntary Compliance), 17.60 (Reports and Examinations), and 17.61 (Civil Investigative Demand) to the same extent as the act is subject to action by the consumer protection division under those sections.

(c) Requires the district or county attorney, if a district or county attorney, under the authority of this section, accepts assurance of voluntary compliance under Section 17.58, to file the assurance of voluntary compliance in the district court in the county in which the alleged violator resides or does business.

(d) Requires that the petition, if a district or county attorney, under the authority of this section, executes and serves a civil investigative demand and files a

petition described by Section 17.61(g) (relating to authorizing a certain petition to be filed in certain district courts), be filed in the district court in the county where the parties reside.

(e) Authorizes a district or county attorney to act so long as the consumer protection division does not intend to act with respect to that matter. Requires the consumer protection division, consistent with Section 17.48(b) (relating to authorizing a district or county attorney to institute and prosecute actions seeking injunctive relief) of this subchapter, upon request and to the extent it has the resources available, to provide assistance to a district or county attorney in any action taken under this subchapter. Authorizes a district or county attorney to institute a suit described by this section on or after the 90th day after the date the attorney general receives the notice required by Section 17.48 unless before the 90th day after the date the notice is received the attorney general responds that it is actively investigating or litigating at least one of the alleged violations set forth in the notice. Requires the consumer protection division to notify the district or county attorney it no longer intends to actively investigate or litigate an alleged violation within a reasonable time of such determination.

(f) Requires that all settlements or penalties collected by the district or county attorney, notwithstanding any other law, in an action brought by a district or county attorney, be divided between the state and the county in which the attorney brought suit, with:

(1) 50 percent of the amount collected paid to the Texas comptroller of public accounts for deposit to the credit of the basic civil legal services account established by Section 51.943 (Basic Civil Legal Services Account), Government Code; and

(2) 50 percent of the amount collected paid to the county is required to be deposited by the county in a segregated account and requires that the funds be used only for law enforcement, public health programs, or drug abuse prevention programs.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.