

BILL ANALYSIS

C.S.H.B. 1955
By: Parker
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerned observers note that abusable synthetic substances have become a widespread problem across the state in recent years. The ease with which manufacturers of these substances alter the chemical makeup of their products to skirt the law puts a strain on local law enforcement agencies, first responders, and hospitals. The parties believe there should be criminal and civil consequences for certain actions relating to these substances. C.S.H.B. 1955 seeks to give law enforcement additional measures to address these actions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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. 1955 amends the Health and Safety Code to make it a Class C misdemeanor to knowingly produce, distribute, sell, or offer for sale a mislabeled abusable synthetic substance in the course of business. The bill defines "abusable synthetic substance" as a substance that is not otherwise regulated under statutory provisions relating to food, drugs, alcohol, and hazardous substances or under federal law; is intended to mimic a controlled substance or controlled substance analogue; and, when inhaled, ingested, or otherwise introduced into a person's body, produces an effect on the central nervous system similar to the effect produced by a controlled substance or controlled substance analogue, creates a condition of intoxication, hallucination, or elation similar to a condition produced by a controlled substance or controlled substance analogue, or changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination in a manner similar to a controlled substance or controlled substance analogue. The bill enhances the penalty for such an offense from a Class C misdemeanor to a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted of the offense or of a deceptive business practice offense for selling an adulterated or mislabeled commodity that was an abusable synthetic substance. The bill establishes that if conduct constituting the offense of selling a mislabeled abusable synthetic substance in the course of business also constitutes another offense, the person may be prosecuted for either offense.

C.S.H.B. 1955 authorizes the attorney general or a district, county, or city attorney to institute an action in district court to collect a civil penalty from a person who produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance in the course of business. The bill caps the civil penalty at \$25,000 a day for each offense and establishes that each day the offense is

committed constitutes a separate violation for purposes of the penalty assessment. The bill requires the court to consider, in determining the amount of the penalty, the person's history of any previous offenses of selling a mislabeled abusable synthetic substance or an adulterated or mislabeled commodity; the seriousness of the offense; any hazard posed to the public health and safety by the offense; and demonstrations of good faith by the person charged. The bill establishes that venue for a suit to collect such a civil penalty is in the city or county in which the offense occurred or in Travis County and requires a civil penalty recovered in such a suit instituted by a local government to be paid to that local government. The bill establishes an affirmative defense to prosecution or liability for producing, distributing, selling, or offering for sale a mislabeled abusable synthetic substance in the course of business that the abusable synthetic substance 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 the substance's use, sale, or distribution and that the abusable synthetic substance was lawfully produced, distributed, sold, or offered for sale by the person who is the subject of the criminal or civil action. The bill establishes that it is not a defense in a prosecution or civil action for the offense of selling a mislabeled abusable synthetic substance in the course of business that the abusable 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. 1955 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. Subtitle C, Title 6, Health and Safety Code, is amended by adding Chapter 484 to read as follows:

CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 484.001. DEFINITIONS. In this chapter:

(1) "Abusable synthetic substance" means a substance that:

(A) is not otherwise regulated under this title or under federal law; and

(B) when inhaled, ingested, or otherwise introduced into a person's body, produces an effect on the central nervous system, creates a condition of intoxication, hallucination, or elation, or changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle C, Title 6, Health and Safety Code, is amended by adding Chapter 484 to read as follows:

CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 484.001. DEFINITIONS. In this chapter:

(1) "Abusable synthetic substance" means a substance that:

(A) is not otherwise regulated under this title or under federal law;

(B) is intended to mimic a controlled substance or controlled substance analogue; and

(C) when inhaled, ingested, or otherwise introduced into a person's body:

(i) produces an effect on the central nervous system similar to the effect produced by a controlled substance or controlled substance analogue;

(ii) creates a condition of intoxication, hallucination, or elation similar to a condition produced by a controlled substance or controlled substance analogue;

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Misabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(4) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

Sec. 484.002. PROHIBITED ACTS. (a) A person commits an offense if in the course of business the person sells a mislabeled abusable synthetic substance.

(b) An offense under this section is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted of an offense under this section or of an offense under Section 32.42(b)(4), Penal Code, and the adulterated or mislabeled commodity was an abusable synthetic substance.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, the person may be prosecuted under either this section or the other provision.

Sec. 484.003. CIVIL PENALTY. (a) The attorney general or a district, county, or city attorney may institute an action in district court to collect a civil penalty from a person who commits an offense under Section 484.002.

(b) The civil penalty may not exceed \$25,000 a day for each offense. Each day an offense is committed constitutes a separate violation for purposes of the penalty assessment.

(c) The court shall consider the following in determining the amount of the penalty:

(1) the person's history of any previous offenses under Section 484.002 or under Section 32.42(b)(4), Penal Code, relating to the sale of a mislabeled abusable synthetic

or

(iii) changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination in a manner similar to a controlled substance or controlled substance analogue.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Misabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(4) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

Sec. 484.002. PROHIBITED ACTS. (a) A person commits an offense if in the course of business the person knowingly produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) An offense under this section is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted of an offense under this section or of an offense under Section 32.42(b)(4), Penal Code, and the adulterated or mislabeled commodity was an abusable synthetic substance.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, the person may be prosecuted under either this section or the other provision.

Sec. 484.003. CIVIL PENALTY. (a) The attorney general or a district, county, or city attorney may institute an action in district court to collect a civil penalty from a person who in the course of business produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) The civil penalty may not exceed \$25,000 a day for each offense. Each day an offense is committed constitutes a separate violation for purposes of the penalty assessment.

(c) The court shall consider the following in determining the amount of the penalty:

(1) the person's history of any previous offenses under Section 484.002 or under Section 32.42(b)(4), Penal Code, relating to the sale of a mislabeled abusable synthetic

substance;

- (2) the seriousness of the offense;
- (3) any hazard posed to the public health and safety by the offense; and
- (4) demonstrations of good faith by the person charged.
- (d) Venue for a suit brought under this section is in the city or county in which the offense occurred or in Travis County.
- (e) A civil penalty recovered in a suit instituted by a local government under this section shall be paid to that local government.

Sec. 484.004. NO DEFENSE. In a prosecution or civil action under this chapter, the fact that the abusable synthetic substance was in packaging labeled with "Not for Human Consumption," or other wording indicating the substance is not intended to be ingested, is not a defense.

SECTION 2. This Act takes effect September 1, 2015.

substance;

- (2) the seriousness of the offense;
- (3) any hazard posed to the public health and safety by the offense; and
- (4) demonstrations of good faith by the person charged.
- (d) Venue for a suit brought under this section is in the city or county in which the offense occurred or in Travis County.
- (e) A civil penalty recovered in a suit instituted by a local government under this section shall be paid to that local government.

Sec. 484.004. AFFIRMATIVE DEFENSE. It is an affirmative defense to prosecution or liability under this chapter that:

- (1) the abusable synthetic substance 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 the substance's use, sale, or distribution; and
- (2) the abusable synthetic substance was lawfully produced, distributed, sold, or offered for sale by the person who is the subject of the criminal or civil action.

Sec. 484.005. NO DEFENSE. In a prosecution or civil action under this chapter, the fact that the abusable synthetic substance was in packaging labeled with "Not for Human Consumption," or other wording indicating the substance is not intended to be ingested, is not a defense.

SECTION 2. Same as introduced version.