

- SUBJECT:** Updating controlled substances listed in Texas law
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Hinojosa, Dunnam, Talton, Garcia, Green, Kitchen, Martinez
Fischer, Shields
- 0 nays
- 1 absent — Keel
- WITNESSES:** For — *Registered but did not testify:* Mindy McCracken, Texas District and County Attorneys Association; Chuck Noll, Harris County District Attorney's Office
- Against — None
- On — Ron Urbanovsky, David M. Boatright, William Ginn, Texas Department of Public Safety; *Registered but did not testify:* Bobby Duvall, Linda Schaefer, Texas Department of Public Safety
- BACKGROUND:** The Code of Federal Regulations (CFR), title 21, parts 1300-1399, regulate the manufacture, possession, and distribution of controlled substances. When the federal government adds new substances to its schedules, it contacts the Texas Department of Health (TDH) to provide an update. TDH then files a rule proposal within 30 days to add the substances to the schedules in the Texas Administrative Code. TDH gives formal notice to the Texas Department of Public Safety (DPS), the state's drug enforcement agency, which then informs the Legislature of changes to the federal code.
- DIGEST:** CSHB 1707 would amend Health and Safety Code, ch. 481, known as the Texas Controlled Substances Act, to align it with recent changes to the Code of Federal Regulations and to conform it with other Texas statutes.
- The bill would amend the definitions to list chemical precursors and chemical laboratory apparatuses already listed elsewhere in the code. It

would strike those lists in secs. 481.080 and 481.077 and refer back to the definitions.

The bill would exempt an officer or employee of a political subdivision of Texas or another state who was authorized to possess a controlled substance in the discharge of his or her formal duties from required registration with DPS. The bill would make the \$25 annual registration fee nonrefundable.

The Administrative Procedure Act would not apply to a registration that was canceled, suspended, probated, or revoked because of:

- ! a felony conviction;
- ! a violation of the laws governing controlled substances, simulated controlled substances, dangerous drugs, volatile chemicals, or abusable glues and aerosol paints;
- ! revocation, suspension or denial of application or registration under the Federal Controlled Substances Act;
- ! suspended, probated, or revoked registration or practitioner's license under the laws of Texas or another state; or
- ! voluntary surrender of a registration that has not been reinstated.

The bill would extend from 72 hours to seven days the time within which a practitioner prescribing a Schedule II controlled substance would have to send written backup to a pharmacist of an oral or telephonically communicated emergency prescription. The validity of Schedule II prescriptions for terminally-ill patients or patients in a long-term care facility would be extended from 30 days to 60 days. The bill would make other nonsubstantive changes to the emergency prescription procedure.

CSHB 1707 would require pharmacists dispensing a Schedule II controlled substance to send all information to DPS that the director required not later than the 15th day after the last day of the month in which the prescription was completely filled.

CSHB 1707 would add certain drugs to the following penalty groups:

- ! Penalty Group 1: remifentanyl and gamma hydroxybutyric acid (GHB);
- ! Penalty Group 2: ketamine;

- ! Penalty Group 3: zaleplon, modafinil, and sibutramine; and
- ! Penalty Group 4: a material, compound, mixture or preparation containing butorphanol or its salt, unless specifically excepted or unless listed in another penalty group.

The bill would make nonsubstantive changes to sec. 481.122, regarding the delivery of a controlled substance or marihuana to a child, and would ensure that if an offense under this section also were an offense under another section of ch. 481, the actor could be prosecuted under either section or both.

The bill would make it an offense punishable by life imprisonment if a person expended funds the person knew were derived from the commission of an offense under ch. 481. In the current code, those offenses are listed.

CSHB 1707 would strike the printing, manufacture, possession, or production of a prescription sticker from the list of offenses under sec. 481.128. It also would create an offense for knowingly issuing a prescription bearing a forged or fictitious signature or for obtaining or attempting to obtain a controlled substance or an increased quantity of a controlled substance.

The bill would change certain references to “substance” to “chemical precursor” and “apparatus” to “chemical laboratory apparatus.”

CSHB 1707 would allow forfeited hazardous waste, residuals, contaminated glassware, associated equipment, or byproducts from illicit chemical laboratories or similar operations that created a health or environmental hazard or were not capable of being safely stored to be seized and summarily forfeited and destroyed by a law enforcement agency without a court order and before the disposition of a case arising out of the forfeiture so long as current environmental standards were followed.

Government Code, sec. 552.118 would be amended to allow an exception from public information requirements any information collected under the official prescription program outlined in Health and Safety Code, sec. 481.075.

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CSHB 1707 would take effect on September 1, 2001, and would apply to disciplinary action commenced, applications for annual registration submitted, and offenses committed on or after that date.

NOTES:

HB 1707 as filed would have repealed sec. 481.132 of the Health and Safety Code, which allows a defendant to be prosecuted for more than one offense at a time.

The companion bill, SB 753 by Van de Putte, passed the Senate on March 22 by voice vote and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 26 and recommended for the Local, Consent, and Resolutions Calendar.