

SUBJECT: Criminal, civil penalties relating to abusable synthetic substances

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 4 ayes — Herrero, Leach, Shaheen, Simpson

0 nays

3 absent — Moody, Canales, Hunter

WITNESSES: For — Azell Carter, Pasadena Police Department Regional Crime Laboratory; William Travis, Sheriffs' Association of Texas; (*Registered, but did not testify*: Eddie Solis, City of Arlington; Jennifer Tharp, Comal County Criminal District Attorney; Justin Wood, Harris County District Attorney's Office; Jessica Anderson, Houston Police Department; Tiana Sanford, Montgomery County District Attorney's Office; Larry Smith, Maxey Cerliano, Micah Harmon, and A.J. Louderback, Sheriffs' Association of Texas; Donald Baker, Texas Police Chiefs Association; James Grunden, and Bobby Sanders, Upshur County Sheriff's Office; Anna Bowers; James Capra; R. Glenn Smith; Destiny Young)

Against — None

On — Aaron Crowell, Texas Municipal Police Association; (*Registered, but did not testify*: Robert Bailey and Corwin Schalchlin, Texas Department of Public Safety)

BACKGROUND: Health and Safety Code, title 6, subtitle C governs substance abuse regulation and crimes. Ch. 485 covers abusable volatile chemicals and contains several offenses, including ones relating to use and possession of the chemicals and delivering them to a minor.

DIGEST: CSHB 1955 would create criminal and civil penalties for knowingly producing, distributing, selling, or offering to sell a mislabeled abusable synthetic substance.

An abusable synthetic substance would be defined to mean one that:

- was not otherwise regulated under Title 6 of the Health and Safety Code or federal law;
- was intended to mimic a controlled substance or controlled substance analogue; and
- when inhaled, ingested, or otherwise introduced in the body produced effects of intoxication and other changes to the body similar to those produced by a controlled substance or controlled substance analogue.

An offense would be a class C misdemeanor (maximum fine of \$500). An offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if an individual had been previously convicted of an offense under CSHB 1955 or convicted under Penal Code provisions that prohibit selling an adulterated or mislabeled commodity and the adulterated or mislabeled commodity was an abusable synthetic substance.

The attorney general or a district, county, or city attorney could institute an action in district court to collect a civil penalty from someone who in the course of business produced, distributed, sold, or offered for sale a mislabeled abusable synthetic substance. A civil penalty could not exceed \$25,000 a day for each offense. Each day an offense was committed would constitute a separate violation.

In determining the penalty, courts would have to consider the person's history of previous offenses relating to the sale of mislabeled abusable synthetic substances, the seriousness of the offense, whether the offense presented any hazard to the public health and safety, and demonstrations of good faith by the person charged. Venue for a civil suit would be in the city or county of the offense or in Travis County.

It would be an affirmative defense to both criminal prosecution and civil liability 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 such acts and that the substance was lawfully produced, distributed, sold, or offered for sale. The fact that the abusable synthetic substance was in packaging labeled "Not for Human Consumption" or similar wording would not be a defense.

The bill would take effect September 1, 2015.