

SUBJECT: Revising procedures for emergency scheduling of certain substances

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

WITNESSES: For — (*Registered, but did not testify:* Cynthia Humphrey, Association of Substance Abuse Programs; Arianna Smith, Combined Law Enforcement Associations of Texas (CLEAT); Bill Kelly, Mayor's Office, City of House; Henry Trochesset, Ricky Scaman, Micah Harmon, AJ Louderback, Sheriffs' Association of Texas; Amanda Martin, Texas Association of Business; Laura Nicholes, Texas Association of Counties; Lee Johnson, Texas Council of Community Centers)

Against — None

On — Karen Tannert, Texas Department of State Health Services; (*Registered, but did not testify:* Jonathan Huss, Department of State Health Services)

BACKGROUND: Health and Safety Code, sec. 481.0355 allows the Department of Health Services commissioner to emergency schedule a substance as a controlled substance if the commissioner determines it is necessary to avoid an imminent hazard to the public safety. In making a determination about whether a substance poses an imminent hazard to the public safety, the DSHS commissioner must consider twelve factors, including eight that are used in determining whether a substance should be scheduled under non-emergency circumstances.

In 2015, the 84th Legislature passed HB 1212 by Price, which allowed the DSHS commissioner to emergency schedule certain synthetic drugs in

coordination with the Department of Public Safety. Certain synthetic drugs include dangerous chemicals and can cause death or violent behavior for people who use them. Some observers note that DSHS has not been able to emergency schedule these substances as quickly as was intended by HB 1212, and clarification is needed.

DIGEST:

Under HB 2804, the commissioner of the Department of State Health Services would consider four, rather than twelve, factors in determining whether a substance posed an imminent hazard to the public safety and should be emergency scheduled as a controlled substance. These factors would include:

- the scope, duration, symptoms, or significance of abuse;
- the degree of detriment that abuse of the substance may cause;
- whether the substance had been temporarily scheduled under federal law; and
- whether the substance had been temporarily or permanently scheduled under the law of another state.

The change to the determining factors would apply only to a controlled substance emergency scheduled on or after the bill's effective date.

The DSHS commissioner could extend the emergency scheduling of a substance only once, for up to one year, by publishing the extension in the Texas Register. If the DSHS commissioner made an extension, it would take effect immediately, and the commissioner would post notice about each extension on the DSHS website. The changes made to emergency scheduling extensions by HB 2804 would apply to an extension that occurred on or after the bill's effective date, regardless of whether the controlled substance was emergency scheduled before, on, or after that date.

The bill would remove the existing requirement for the DSHS commissioner to consult with the Department of Public Safety regarding the chemical structure of compounds contained in an emergency-scheduled substance.

By December 1 of each even-numbered year, the DSHS commissioner would submit a report about each emergency scheduling action that was taken during the previous two-year period to the governor, lieutenant governor, speaker of the House of Representatives, and each legislative standing committee with primary jurisdiction over the department as well as each legislative standing committee with primary jurisdiction over criminal justice matters.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, SB 2232 by V. Taylor, was referred to the Senate Criminal Justice committee on March 29.