

## **BILL ANALYSIS**

Senate Research Center

H.B. 1070  
By: Van de Putte (Madla)  
Criminal Justice  
5-10-97  
Engrossed

### **DIGEST**

Currently, issues related to controlled substances are governed by the Controlled Substances Act. This legislation updates and streamlines the regulations contained in that Act to delete LSD from Penalty Group I and add it to the newly created Penalty Group 1-A; criminalize the possession, manufacture, and delivery of LSD in terms of very small "abuse units," rather than in terms of grams; update the substances listed in the penalty groups and the lists of precursor chemical and laboratory apparatus; remove the complex list of drug schedules and codify the authority of the Commissioner of Health to establish and modify the schedules; grant the Texas Department of Public Safety (DPS) the power to cancel, suspend, revoke, probate, or accept voluntary surrender of a controlled substances registration; provide for limited powers and inspection of chemical precursor and laboratory apparatus permit facilities; clarify that a home school cannot claim an educational or research program exception to registration and permitting available to a school district; and allow DPS to compile and release statistical data for the triplicate prescription program.

### **PURPOSE**

As proposed, H.B. 1070 establishes drug regulation and enforcement under the Texas Controlled Substances Act and the authority of certain state agencies under that Act, and imposes penalties for violations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the director of the Department of Public Safety (DPS) or an employee of DPS designated by the director in SECTION 12 (Sections 481.078(b) and (f), Health and Safety Code) and SECTION 14 (Sections 481.081(b) and (f), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 481.002, Health and Safety Code, by amending Subdivisions (3)-(6), (17), (30), and (41), and by adding Subdivision (50), to define "abuse unit." Redefines "commissioner," "controlled premises," "controlled substance," "controlled substance analogue," "drug paraphernalia," "opiate," and "prescription."

SECTION 2. Amends Chapter 481B, Health and Safety Code, as follows:

#### **SUBCHAPTER B. SCHEDULES**

Sec. 481.031. Makes no change.

Sec. 481.032. SCHEDULES. Requires the commissioner of health or the commissioner's designee (commissioner) to establish and modify Schedules I, I-A, II, III, IV, and V of controlled substances. Provides that a reference to a schedule in this chapter means the most current version of the schedule established or altered by the commissioner under this subchapter and published in the Texas Register on or after January 1, 1998. Deletes the existing provisions regarding Schedules I, II, III, IV, and V.

Sec. 481.033. EXCLUSION FROM SCHEDULES AND APPLICATION OF ACT.

Provides that a compound, mixture, or preparation containing a stimulant listed in Schedule II or depressant substance listed in Schedule III or IV having a potential for abuse associated with a stimulant or depressant effect on the central nervous system is excepted from the application of this chapter under certain circumstances. Makes conforming changes.

Sec. 481.034. New heading: ESTABLISHMENT AND MODIFICATION OF SCHEDULES BY COMMISSIONER. Requires the commissioner to establish schedules of controlled substances as described by Section 481.032 and may add, delete, or reschedule substances listed in those schedules. Requires the commissioner to assign a controlled substance to a schedule in accordance with Section 481.035 and in a manner consistent with this subchapter. Prohibits the commissioner from deleting a substance from the schedules or rescheduling a substance if the substance has been added to the schedules or placed in a schedule by the legislature, rather than if legislation attempting to add the substance has failed to pass. Makes conforming changes.

Sec. 481.035. FINDINGS. Makes a conforming change.

Sec. 481.036. PUBLICATION OF SCHEDULES. Requires the commissioner to publish the schedules for publication in the Texas Register not later than the fifth working day after the date the commissioner takes action under this subchapter, rather than annually. Sets forth the date on which an action by the commissioner that establishes or modifies a schedule is authorized to take effect. Makes conforming changes.

SECTION 3. Amends Section 481.061(a), Health and Safety Code, to prohibit a person who is not a registrant from prescribing or possessing a controlled substance in this state, except as otherwise provided by this chapter. Makes conforming changes.

SECTION 4. Amends Section 481.062(a), Health and Safety Code, to provide that an officer or employee of this state, another state, or the United States who is lawfully engaged in law enforcement related to a controlled substance, drug, or customs law and is authorized to possess the controlled substance is not required to register and may possess a controlled substance. Makes a conforming change.

SECTION 5. Amends Sections 481.0621(a) and (c), Health and Safety Code, to provide that this subchapter does not apply to a research program of a school district, or a public or private institution of higher education. Deletes reference to a private school. Makes conforming changes.

SECTION 6. Amends Sections 481.063(a) and (e)-(g), Health and Safety Code, to authorize the director of the Department of Public Safety (DPS) or an employee of DPS designated by the director to refuse to issue a controlled substance registration if the person fails or refuses to provide to the director a consent form granting the director the right to inspect the person's controlled premises and any record, controlled substance, or other item covered by this chapter. Sets forth the terms under which an application for registration to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may be denied. Authorizes the director to inspect the premises of an applicant for registration. Sets forth the provisions regarding validity terms and renewal of a registration.

SECTION 7. Amends Section 481.066, Health and Safety Code, as follows:

Sec. 481.066. New heading: VOLUNTARY SURRENDER, CANCELLATION, SUSPENSION, PROBATION, OR REVOCATION OF REGISTRATION. Authorizes the director to accept a voluntary surrender of a registration; cancel a registration; place on probation a person whose license has been suspended; reprimand a registrant; cancel a registration issued in error; and limit the cancellation or probation to a schedule or controlled substance within a particular schedule. Deletes the existing provisions regarding the suspension or revocation of a registration by a district court. Authorizes the director, rather than the court, to place under seal all controlled substances owned or possessed by the registrant under certain circumstances. Prohibits a disposition from being made until the time for administrative appeal of the order has elapsed, except in certain cases. Provides that

Chapter 2001, Government Code, rather than the Rules of Civil Procedure, applies to a proceeding under this section. Sets forth the terms by which the director is required to give written notice of the acceptance of a voluntary surrender, cancellation, suspension, probation, revocation, or denial of a registration to state agencies and the applicant or registrant. Authorizes the director to issue or reinstate the registration in certain situations. Makes conforming changes.

SECTION 8. Amends Sections 481.071(b) and (c), Health and Safety Code, to make conforming changes.

SECTION 9. Amends Sections 481.074(h), (i), and (k), Health and Safety Code, to prohibit a person from dispensing a controlled substance listed in Schedule V and containing a certain number of milligrams or less of codeine or dihydrocodeine, or any of their salts, without the prescription of a practitioner. Deletes the requirement that a prescription for a controlled substance show certain information relating to a practitioner. Makes conforming changes.

SECTION 10. Amends Sections 481.077(a)-(c), (k), and (l), Health and Safety Code, to delete Morpholine from the list of precursor substances for which a record must be maintained for a certain period following its sale or transfer by a person. Provides that this section and Section 481.078 do not apply to a person to whom a registration has been issued under Section 481.063. Deletes the provision requiring DPS to file a certified copy of a rule adopted. Includes a member of DPS among those allowed to conduct audits and inspect records of purchases, sales, and other records under certain circumstances. Provides that this section does not apply to the sale or transfer of a nonnarcotic product that includes certain precursor substances if the sale or transfer complies with federal law and involves a product that may be sold lawfully with a prescription or over the counter. Makes conforming changes.

SECTION 11. Amends Section 481.078, Health and Safety Code, by amending Subsections (b) and (e), and adding Subsection (f), to require the director, rather than DPS, by rule, to adopt procedures and standards for the issuance and renewal or the voluntary surrender, cancellation, suspension, probation, or revocation of controlled substance precursor permits. Sets forth the terms by which the director is prohibited from issuing a permit unless the person applying for the permit delivers a written consent to the director to inspect any controlled premise, record, chemical precursor, or certain other items. Authorizes the director to adopt rules to establish security controls and provide for the inspection of a place, entity, or item to which a chemical precursor transfer permit applies. Makes conforming changes.

SECTION 12. Amends Sections 481.080(a), (d), (e), and (m), Health and Safety Code, to define "chemical laboratory apparatus." Provides that this section and Section 481.081 do not apply to a person to whom a registration has been issued under Section 481.063. Deletes the provision regarding the inapplicability of this subsection to a recipient who has obtained a chemical laboratory apparatus subject to Subsection (a) and who is a permit holder under Section 481.081. Makes conforming changes.

SECTION 13. Amends Section 481.081, Health and Safety Code, by amending Subsections (b) and (e), and adding Subsection (f), to require the director, rather than DPS, by rule, to adopt procedures and standards for the issuance and renewal or the voluntary surrender, cancellation, suspension, probation or revocation of chemical laboratory apparatus permits. Sets forth the terms by which the director is prohibited from issuing a permit unless the person applying for the permit delivers written consent to inspect any controlled premise, record, chemical laboratory apparatus, or certain other items to the director. Authorizes the director, by rule, to establish security controls and provide for the inspection of a place, entity, or item to which a chemical laboratory apparatus transfer permit applies. Makes conforming changes.

SECTION 14. Amends Section 481.102, Health and Safety Code, to amend the list of substances constituting Penalty Group 1.

SECTION 15. Amends Chapter 481D, Health and Safety Code, by adding Section 481.1021, as follows:

Sec. 481.0121. PENALTY GROUP 1-A. Provides that Penalty Group 1-A consists of lysergic acid diethylamide (LSD), including its salts, isomers, and salts of isomers.

SECTION 16. Amends Section 481.103, Health and Safety Code, to amend the list of substances constituting Penalty Group 2.

SECTION 17. Amends Section 481.104, Health and Safety Code, to amend the list of substances constituting Penalty Group 3.

SECTION 18. Amends Section 481.105, Health and Safety Code, to amend the list of substances constituting Penalty Group 4.

SECTION 19. Amends Chapter 481D, Health and Safety Code, by adding Sections 481.1121 and 481.1151, as follows:

Sec. 481.1121. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-A. Establishes that except as provided by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1-A. Provides that an offense under this section ranges from a state jail felony to imprisonment for life, depending on the number of abuse units of the controlled substance.

Sec. 481.1151. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1-A. Establishes that except as provided by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 1-A. Provides that an offense under this section ranges from a state jail felony to imprisonment for life, depending on the number of abuse units of the controlled substance.

SECTION 20. Amends Section 481.122(a), Health and Safety Code, to establish that except as provided, rather than authorized, by this chapter, a person commits an offense if the person knowingly, rather than knowingly and intentionally, delivers a controlled substance listed in Penalty Group 1, 1-A, 2, or 3. Makes a conforming change.

SECTION 21. Amends Section 481.123(a), Health and Safety Code, to set forth the terms under which a controlled substance analogue is considered to be a controlled substance listed in Penalty Group 1 or 1-A, rather than Penalty Group 1. Makes conforming changes.

SECTION 22. Amends Section 481.128, Health and Safety Code, to provide that a registrant or dispenser commits an offense if the registrant or dispenser knowingly refuses or fails to maintain security required by this chapter or a rule adopted under this chapter. Provides that the registrant or dispenser is liable to the state for a certain civil penalty if the registrant or dispenser knowingly refuses or fails to maintain security required by a rule adopted by the director, rather than adopted on or after June 1, 1991. Deletes the provision regarding registrant or dispenser negligence resulting in the same. Sets forth the civil penalty if a person commits an act that would otherwise be an offense under Subsection (a) except that it was committed without the requisite culpable mental state. Makes conforming changes.

SECTION 23. Amends Chapter 481D, Health and Safety Code, by adding Sections 481.136-481.139, as follows:

Sec. 481.136. OFFENSE; UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL PRECURSOR. Sets forth the terms under which a person commits an offense if the person sells, transfers, furnishes, or receives a precursor substance listed in Section 481.077(a) under certain circumstances. Provides that an offense under this section is a state jail felony, unless the defendant has been previously convicted of an offense under this section or Section 481.137, in which event the offense is a felony of the third degree.

Sec. 148.137. OFFENSE: TRANSFER OF PRECURSOR SUBSTANCE FOR UNLAWFUL MANUFACTURE. Provides that a person commits a third degree felony if

the person sells, transfers, or otherwise furnishes a precursor substance listed in Section 481.077(a) with the knowledge or intent that the recipient will use the substance to unlawfully manufacture a controlled substance or controlled substance analogue.

Sec. 481.138. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL LABORATORY APPARATUS. Provides that a person commits an offense if the person sells, transfers, furnishes, or receives an apparatus described by Section 481.080(a) under certain circumstances. Establishes that an offense under this section is a state jail felony, unless the defendant has been previously convicted of an offense under this section, in which case the offense is a third degree felony.

Sec. 481.139. OFFENSE: TRANSFER OF CHEMICAL LABORATORY APPARATUS FOR UNLAWFUL MANUFACTURE. Provides that a person commits a third degree felony if the person sells, transfers, or otherwise furnishes an apparatus with the knowledge or intent that the recipient will use the apparatus to unlawfully manufacture a controlled substance or controlled substance analogue.

SECTION 24. Amends Section 481.160(e), Health and Safety Code, by relettering it as Subsection (f), to authorize a law enforcement agency to petition a court to require, as a condition of community supervision, rather than probation, a person to reimburse the agency for certain costs.

SECTION 25. Amends Chapter 12D, Penal Code, by adding Section 12.48, as follows:

Sec. 12.48. PENALTY IF CONTROLLED SUBSTANCE USED TO COMMIT OFFENSE. Sets forth penalties if the court make certain findings under Article 42.015.

SECTION 26. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.015, as follows:

Sec. 42.015. FINDING THAT CONTROLLED SUBSTANCE USED TO COMMIT OFFENSE. Sets forth a provision regarding the finding that a controlled substance was used to commit an offense.

SECTION 27. Amends Section 15(d), Article 42.12, Code of Criminal Procedure, to set forth provisions of punishment authorized to be issued by a judge, under certain sections, including Section 481.1121, Health and Safety Code.

SECTION 28. Repealers: Section 481.079, Health and Safety Code (Offense: Unlawful Transfer or Receipt of Chemical Precursor) and Section 481.082, Health and Safety Code (Offense: Unlawful Transfer or Receipt of Chemical Laboratory Apparatus).

SECTION 29. Provides that not later than December 1, 1997, the commissioner of public health is required to file with the secretary of state a list of substances designated in Schedules I through V. Requires the list to take effect January 1, 1998. Makes application of this Act prospective to January 1, 1998 regarding a schedule.

SECTION 30. Makes application of this Act prospective regarding an offense.

SECTION 31. (a) Effective date: January 1, 1998, except as provided by Subsection (b).

(b) Effective date for SECTION 27: September 1, 1997.

SECTION 32. Emergency clause.