

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 112
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

A rapidly growing number of methamphetamine laboratories have been established across the nation and in Texas. These labs pose a serious problem to not only the users of methamphetamine, but also to citizens in the vicinity of these labs, due to the fact that the production of this drug is an extremely dangerous process, which is flammable and explosive. Additionally, methamphetamine is a highly addictive drug requiring intensive rehabilitation for its users, which places an increased burden on community rehabilitation programs.

There are currently no laws governing the sale of products containing pseudoephedrine, found in everyday cold medication, which is a necessary ingredient for methamphetamine, or requiring the reporting of wholesaler records.

C.S.S.B. 112 establishes a Methamphetamine Watch Program, limits the sales of products containing pseudoephedrine, and requires wholesalers to report orders of products containing pseudoephedrine.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Health Services Council in SECTION 2.03 (Section 486.003, Health and Safety Code) and SECTION 3.05 of this bill.

Rulemaking authority is expressly granted to the director of the Department of Public Safety in SECTION 3.04 of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CIVIL AND CRIMINAL CONSEQUENCES OF ENGAGING IN CERTAIN CONDUCT RELATED TO THE MANUFACTURE OF METHAMPHETAMINE

SECTION 1.01. Amends Section 99.003, Civil Practice and Remedies Code, to make a manufacturer of methamphetamine strictly liable for any exposure by an individual to the manufacturing process for the greater of actual damages or \$20,000, rather than \$10,000, for each incident of exposure.

SECTION 1.02. Amends Section 262.104, Family Code, to require certain agencies or officials to take possession of a child in an emergency, without a court order, for the health and safety of that child, on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on the premises used for the manufacture of methamphetamine. Makes nonsubstantive changes.

SECTION 1.03. Amends Section 481.124(b), Health and Safety Code, to provide that an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports at least three of the following items: an item of equipment subject to regulation under Section 481.080 (Chemical Laboratory Apparatus Record-Keeping Requirements and Penalties), if the person is not registered under Section 481.063 (Registration Application; Issuance or Denial), or glassware, a plastic or metal container, tubing, a hose, or other item specifically designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.

ARTICLE 2. DISTRIBUTION AND RETAIL SALES OF
PSEUDOEPHEDRINE

SECTION 2.01. Amends Subtitle B, Title 6, Health and Safety Code, by adding Chapter 468, as follows:

CHAPTER 468. METHAMPHETAMINE WATCH PROGRAM

Sec. 468.001. DEFINITIONS. Defines "department," "program," and "retailer."

Sec. 468.002. ESTABLISHMENT OF METHAMPHETAMINE WATCH PROGRAM. Requires the Department of State Health Services (department) to establish a methamphetamine watch program (program) to perform certain functions, including distribution of information regarding methamphetamine and implementing procedures to increase reporting of suspected methamphetamine manufacturing.

Sec. 468.003. GOOD FAITH REPORTING; LIMITATION ON LIABILITY. (a) Requires the department, in consultation with the Department of Public Safety and local law enforcement agencies, to establish guidelines for retailers and retail personnel to follow in making good faith reports of thefts, suspicious purchases, or other transactions involving products used in the illicit manufacture of methamphetamine. Sets forth the requirements of the guidelines.

(b) Requires the department to involve retailers in determining the manner in which to implement the guidelines established under Subsection (a).

(c) Provides that a person is not liable for damages, other than economic damages, from an act relating to the reporting of information made in good faith and in accordance with the guidelines established under this section.

Sec. 468.004. FALSE REPORT; PENALTY. (a) Provides that a person commits an offense if the person knowingly makes a report or causes a report to be made to a law enforcement agency of a theft, suspicious purchase, or other transaction involving a product used in the manufacture of methamphetamine and the person knows the report is false.

(b) Provides that an offense under this section is a Class C misdemeanor.

Sec. 468.005. GRANT PROGRAM. Requires the department to implement a grant program for public and private organizations to engage in initiatives designed to support the methamphetamine watch program established under this chapter. Authorizes the grant recipient to use grant money only to pay for an activity directly related to the purpose of the initiative. Authorizes the department to accept gifts, grants, donations, and other contributions for the purpose of the grant program.

SECTION 2.02. Amends Subchapter C, Chapter 481, Health and Safety Code, by adding Section 481.0771, as follows:

Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE. (a) Requires a wholesaler who sells, transfers, or otherwise furnishes pseudoephedrine to a retailer to obtain certain information about the retailer prior to delivering the pseudoephedrine, and to make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) Requires the wholesaler to submit to the director of the Department of Public Safety (director) a monthly report which includes certain information.

(c) Requires the wholesaler, not later than five business days after receipt of an order for pseudoephedrine that requests delivery of a suspicious quantity of

pseudoephedrine as determined by department rule, to submit to the director a report of the order in accordance with department rule.

(d) Authorizes a wholesaler who, with reckless disregard for the duty to report, fails to report as required by Subsection (c) to be subject to disciplinary action.

SECTION 2.03. Amends Subtitle C, Title 6, Health and Safety Code, by adding Chapter 486, as follows:

CHAPTER 486. PSEUDOEPHEDRINE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 486.001. **DEFINITIONS.** Defines "commissioner," "council," "department," "driver's license," "personal identification certificate," "pseudoephedrine," and "sale." Provides that a term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002.

Sec. 486.002. **APPLICABILITY.** Provides that this chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.

Sec. 486.003. **RULES.** Requires the State Health Services Council (council) to adopt rules necessary to implement and enforce this chapter.

Sec. 486.004. **STATEWIDE UNIFORMITY.** (a) Provides that to ensure uniform and equitable implementation of enforcement throughout this state, this chapter constitutes the whole field of regulation regarding over-the-counter sales of products that contain pseudoephedrine.

(b) Provides that this chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state pertaining to over-the-counter sales of products that contain pseudoephedrine.

[Reserves Sections 486.005-486.010 for expansion.]

SUBCHAPTER B. SALES OF PSEUDOEPHEDRINE

Sec. 486.011. **SALES OF SINGLE-ENTITY PRODUCTS.** Requires a business establishment that engages in over-the-counter sales of products that contain pseudoephedrine as the only active ingredient to display the pseudoephedrine behind a counter, in a locked case, or in a location accessible to a patron of the establishment only with the assistance of an employee of the establishment.

Sec. 486.012. **SALES OF PRODUCTS WITH ADDITIONAL ACTIVE INGREDIENTS.** Sets forth the requirements for a business establishment that engages in over-the-counter sales of products that contain pseudoephedrine combined with at least one other active ingredient, giving the business establishment certain specified options of how to limit sales of the product for illicit purposes or theft of the product.

Sec. 486.013. **VIDEO SURVEILLANCE.** Sets forth the requirements regarding video surveillance that a business that maintains products containing pseudoephedrine under video surveillance must meet.

Sec. 486.014. **REQUIRED PERSONNEL TRAINING.** (a) Requires a business establishment that engages in over-the-counter sales of products containing pseudoephedrine to provide personnel training about the use of those products and the illicit manufacture of methamphetamine. Authorizes the training to be conducted by an individual instructor or by a computer-based program.

(b) Requires an establishment that provides training under Subsection (a) to require each employee who handles sales of products containing pseudoephedrine to submit to the establishment, not later than 30 days after the date on which the employee begins to handle sales of the products, a form signed by the employee making certain statements.

(c) Requires the establishment, on receipt of the form submitted under Subsection (b), to date the form and maintain the form during the employee's term of employment and for a period of not less than 30 days after completion of employment. Requires the establishment to make the form available to the department, a peace officer, or a law enforcement agency on request.

[Reserves Sections 486.015-486.020 for expansion.]

SUBCHAPTER C. ADMINISTRATIVE PENALTY

Sec. 486.021. IMPOSITION OF PENALTY. Authorizes the department to impose an administrative penalty on a person who violates this chapter

Sec. 486.022. AMOUNT OF PENALTY. Sets forth the maximum amount of the penalty for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Sets forth the maximum amount of the penalty for a violation continuing or occurring on separate days. Sets forth the factors upon which the amount of the penalty is required to be based.

Sec. 486.023. REPORT AND NOTICE OF VIOLATION AND PENALTY. Requires the department, if it initially determines that a violation occurred, to give written notice of the report by certified mail to the person. Sets forth the information the notice is required to include.

Sec. 486.024. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within a certain timeframe after receipt of the notice, to accept, in writing, the determination and the recommended penalty of the department or make a request for a hearing, in writing, on the occurrence of the violation, the amount of penalty, or both. Requires the commissioner of State Health Services (commissioner) by order, to approve the determination if either the person accepts the determination and recommended penalty or the person fails to respond to the notice.

Sec. 486.025. HEARING. Requires the commissioner, if the person requests a hearing, to refer the matter of the State Office of Administrative Hearings, which is required to promptly set a hearing date and give written notice of the time and place of the hearing to the person. Requires an administrative law judge of the State Office of Administrative Hearings to conduct the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and to promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of the proposed penalty.

Sec. 486.026. DECISION BY COMMISSIONER. Authorizes the commissioner, based on findings of fact, conclusions of law, and proposal for a decision, by order to find either that a violation occurred and impose a penalty, or to find that a violation did not occur. Requires the notice of the commissioner's order that is sent to the person to include a statement of the right of the person to judicial review of the order.

Sec. 486.027. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, within a certain timeframe after the date the order that imposes an administrative penalty becomes final, to either pay the penalty or file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Authorizes a person who files a petition for judicial review within the period prescribed by Section 486.027 to stay enforcement of the penalty either by paying the penalty to the court for placement in an escrow account or by giving the court a supersedeas bond approved by the court that is

for the amount of the penalty and is effective until all judicial review of the order is final. Alternatively, authorizes the person to request the court stay enforcement of the penalty by filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond, and sending a copy of the affidavit to the commissioner by certified mail.

(b) Authorizes the commissioner, following the receipt of a copy of the affidavit, to file with the court, within a certain timeframe after the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and requires the court to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Sec. 486.029. COLLECTION OF PENALTY. Authorizes the penalty to be collected if the person does not pay and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 486.030. DECISION BY COURT. Authorizes the court, if it sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. Requires the court to order that a penalty is not owed if the court does not sustain the finding that a violation occurred.

Sec. 486.031. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, the appropriate amount plus accrued interest to be remitted to the person within a certain timeframe.

(b) Sets forth the rate at which interest accrues.

(c) Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 486.032. RELEASE OF BOND. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 486.033. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

ARTICLE 3. TRANSITION LANGUAGE AND EFFECTIVE DATE

SECTION 3.01. Makes application of Section 99.003, Civil Practice and Remedies Code, as amended by this Act, prospective to September 1, 2005.

SECTION 3.02. Makes application of Section 481.124(b), Health and Safety Code, as amended by this Act, prospective to September 1, 2005.

SECTION 3.03. (a) Requires the Department of State Health Services to take all action necessary to establish the methamphetamine watch program, as required by Chapter 468, Health and Safety Code, as added by this Act, not later than September 1, 2005.

(b) Makes application of Section 468.003, Health and Safety Code, as added by this Act, prospective to a cause of action that accrues on or after the effective date of this Act.

(c) Provides that Section 468.003, Health and Safety Code, as added by this Act, is an exercise of authority under Section 66(c), Article III, Texas Constitution, and takes effect only if this Act receives a vote of three-fifths of all members elected to each house, as provided by Section 66(e) of that article.

(d) Requires the Department of State Health Services to take all action necessary to begin implementation of the grant program required under Section 468.005, Health and Safety Code, as added by this Act, not later than September 1, 2005.

SECTION 3.04. Requires the director of the Department of Public Safety to adopt any rules necessary to administer and enforce Section 481.0771, Health and Safety Code, as added by this Act, not later than September 1, 2005.

SECTION 3.05. Requires the State Health Services Council to adopt rules to implement and enforce Chapter 486, Health and Safety Code, as added by this Act, not later than September 1, 2005.

SECTION 3.06. Effective date: upon passage or September 1, 2005.