

## **BILL ANALYSIS**

Senate Research Center  
82R16861 JSC-D

C.S.S.B. 331  
By: Shapiro et al.  
Criminal Justice  
3/23/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

K2, also known as Spice, Genie, and Fire & Ice, is marketed as incense, but is actually a product that has been sprayed with a chemical compound that mimics the effects of THC, the active ingredient in marijuana, and is being smoked to produce intoxicating effects. K2 is legal and it is being sold at gas stations and smoke shops across Texas, as well as online to Texans of all ages.

Unbeknownst to the user, smoking K2 can have dangerous consequences that put the user's health at great risk. The reported side effects include hallucination, severe agitation, elevated heart rate and/or blood pressure, chest pains, blackouts, tremors, seizures, and cardiac infarction. According to the Texas Poison Center Network, there were 555 K2-related calls in 2010, and the number increases with each passing month.

The problem is spreading across Texas and the use of K2 among people of all ages and all walks of life is increasing. C.S.S.B. 331 addresses the legal sale, manufacture, and possession of synthetic cannabinoids in Texas. Currently, there are three illegal synthetic cannabinoids in Penalty Group 2, but many other compounds are unregulated under Texas law.

C.S.S.B. 331 criminalizes the manufacture, sale, and possession of the unregulated compounds by broadly defining subclasses of synthetic cannabinoids, but explicitly listing compounds that have been identified in products currently on the market. The penalties for possession track those of marijuana where the compound has been sprayed onto an organic substance, but differ when the substance is in its pure form. The penalties for manufacture and sale track those of Penalty Group 2.

C.S.S.B. 331 amends current law relating to designating certain synthetic cannabinoids as controlled substances under the Texas Controlled Substances Act, provides penalties, and establishes certain criminal consequences or procedures.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1031, as follows:

Sec. 481.1031. PENALTY GROUP 2-A. Provides that Penalty Group 2-A consists of any quantity of a synthetic chemical compound that is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring cannabinoids. Sets forth certain synthetic chemical compounds to be included in Penalty Group 2-A.

SECTION 2. Amends Section 481.111(c), Health and Safety Code, to provide that a person does not violate Section 481.113 (Offense: Manufacture or Delivery of Substance in Penalty Group 2), 481.116 (Offense: Possession of Substance in Penalty Group 2), 481.1161, 481.121 (Offense: Possession of Marijuana), or 481.125 (Offense: Possession or Delivery of Drug Paraphernalia) if the person possesses or delivers tetrahydrocannabinols or their derivatives, or

drug paraphernalia to be used to introduce tetrahydrocannabinols or their derivatives into the human body, for use in a federally approved therapeutic research program.

SECTION 3. Amends the heading to Section 481.113, Health and Safety Code, to read as follows:

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2 OR 2-A.

SECTION 4. Amends Section 481.113(a), Health and Safety Code, to provide that, except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 2 or 2-A.

SECTION 5. Amends Subchapter D, Chapter 481, Health and Safety Code, by adding Section 481.1161, as follows:

Sec. 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2-A. (a) Provides that, except as authorized by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 2-A, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) Provides that an offense under this section is:

(1) a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less;

(2) a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;

(3) a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 50 pounds or less but more than five pounds;

(5) a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 2,000 pounds or less but more than 50 pounds; and

(6) punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds.

SECTION 6. Amends Sections 481.134(c) and (d), Health and Safety Code, as follows:

(c) Provides that the minimum term of confinement or imprisonment for an offense otherwise punishable under certain sections, including Sections 481.1161(b)(4), (5), or (6), is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground, or on a school bus.

(d) Provides that an offense otherwise punishable under certain sections, including Section 481.1161(b)(3), is a felony of the third degree if it is shown on the trial of the offense that the offense was committed in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground, or on a school bus.

SECTION 7. Amends Article 14.06(d), Code of Criminal Procedure, to provide that Subsection (c) (authorizing a peace officer who is charging a person with committing an offense that is a Class A or B misdemeanor to, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate of this state, the name and address of the person charged, and the offense charged) applies only to a person charged with committing an offense under certain sections, including Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section.

SECTION 8. Amends Section 15(a)(1), Article 42.12, Code of Criminal Procedure, as follows:

(a)(1) Requires the judge, on conviction of a state jail felony under certain sections, including Section 481.1161(b)(3), Health and Safety Code, to suspend the imposition of the sentence and place the defendant on community supervision, unless the defendant has previously been convicted of a felony, other than a felony punished under Section 12.44(a), Penal Code, or unless the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense, in which event the judge is authorized to suspend the imposition of the sentence and place the defendant on community supervision or order the sentence to be executed. Provides that the provisions of this subdivision requiring the judge to suspend the imposition of the sentence and place the defendant on community supervision do not apply to a defendant who:

Creates Paragraphs (A) and (C) from existing text.

(A) under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance;

(B) under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or

(C) under Section 481.121(b)(3), Health and Safety Code, possessed more than one pound of marihuana.

SECTION 9. Effective date: September 1, 2011.