

## **BILL ANALYSIS**

Senate Research Center

S.B. 461  
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Criminal Justice  
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Enrolled

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

Synthetic drugs have become a widespread problem across the state in recent years. The ease with which manufacturers of these drugs alter the chemical makeup of their products to skirt the law puts a strain on local law enforcement agencies, first responders, and hospitals. S.B. 461 is an attempt to give law enforcement an additional measure to keep these drugs off the streets by allowing local prosecuting attorneys, or the attorney general, to bring a civil action against businesses that sell mislabeled synthetic drugs. To be properly labeled, all products must comply with applicable state and federal laws. As a result of the civil action, it would be possible to assess a high dollar civil penalty on businesses engaged in the sale of synthetic drugs.

District attorneys in Lubbock and Abilene detail their success in prosecuting businesses in a similar manner under Section 32.42(b)(4) (relating to the selling of an adulterated or mislabeled commodity), Penal Code.

S.B. 461 provides increased penalties to this method in an effort to further deter the sale of synthetic drugs.

S.B. 461 amends current law relating to false or misleading packaging, labeling, or advertising of certain abusable synthetic substances, provides civil penalties, and creates a criminal offense.

### **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 Subtitle C, Title 6, Health and Safety Code, by adding Chapter 484, as follows:

#### **CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES**

Sec. 484.001. DEFINITIONS. Defines "abusable synthetic substance," "business," "mislabeled," "sell," and "sale."

Sec. 484.002. PROHIBITED ACTS. (a) Provides that a person commits an offense if in the course of business the person produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) Provides that an offense under this section is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted of an offense under this section or of an offense under Section 32.42(b)(4) (relating to the selling of an adulterated or mislabeled commodity being an offense), Penal Code, and the adulterated or mislabeled commodity was an abusable synthetic substance.

(c) Authorizes the person to be prosecuted under either this section or the other provision if conduct constituting an offense under this section also constitutes an offense under another provision of law.

Sec. 484.003. CIVIL PENALTY. (a) Authorizes the attorney general or a district, county, or city attorney to institute an action in district court to collect a civil penalty from a person who in the course of business produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) Prohibits the civil penalty from exceeding \$25,000 a day for each offense. Provides that each day an offense is committed constitutes a separate violation for purposes of the penalty assessment.

(c) Requires the court to consider the following in determining the amount of the penalty:

(1) the person's history of any previous offenses under Section 484.002 or under Section 32.42(b)(4), Penal Code, relating to the sale of a mislabeled abusable synthetic substance;

(2) the seriousness of the offense;

(3) any hazard posed to the public health and safety by the offense; and

(4) demonstrations of good faith by the person charged.

(d) Provides that venue for a suit brought under this section is in the city or county in which the offense occurred or in Travis County.

(e) Requires that a civil penalty recovered in a suit instituted by a local government under this section be paid to that local government.

Sec. 484.004. AFFIRMATIVE DEFENSE. Provides that it is an affirmative defense to prosecution or liability under this chapter that:

(1) the abusable synthetic substance was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve the substance's use, sale, or distribution; and

(2) the abusable synthetic substance was lawfully produced, distributed, sold, or offered for sale by the person who is the subject of the criminal or civil action.

Sec. 484.005. NO DEFENSE. Provides that in a prosecution or civil action under this chapter, the fact that the abusable synthetic substance was in packaging labeled with "Not for Human Consumption," or other wording indicating the substance is not intended to be ingested, is not a defense.

SECTION 2. Effective date: September 1, 2015.