Chapter 739

S.B. No. 449

AN ACT

relating to the penalty group classification of certain controlled substances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 481.102, Health and Safety Code, is amended to read as follows:

Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;
Allylprodine;
Alphacetylmethadol;
Benzethidine;
Betaprodine;
Clonitazene;
Diampropide;
Diethylthiambutene;
Difenoxin not listed in Penalty Group 3 or 4;
Dimenoxadol;
Dimethylthiambutene;
Dioxaphethyl butyrate;
1  Dipipanone;
2  Ethylmethylthiambutene;
3  Etonitazene;
4  Etoxeridine;
5  Purethidine;
6  Hydroxypethidine;
7  Ketobemidone;
8  Levophenacylmorphan;
9  Meprodine;
10  Methadol;
11  Noramide;
12  Morphoridine;
13  Noracymethadol;
14  Norlevorphanol;
15  Normethadone;
16  Norpipanone;
17  Phenadoxone;
18  Phenamphomide;
19  Phenomorphan;
20  Phenoperidine;
21  Piramidine;
22  Proheptazine;
23  Properidine;
24  Propiram;
25  Sufentanil;
26  Tilidine; and
27  Trimeperidine;
(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- Acetorphine;
- Acetyldihydrocodeine;
- Benzylmorphine;
- Codeine methylbromide;
- Codeine-N-Oxide;
- Cyprenorphine;
- Desomorphine;
- Dihydromorphine;
- Drotebanol;
- Etorphine, except hydrochloride salt;
- Heroin;
- Hydromorphinol;
- Methyldesorphine;
- Methyldihydromorphine;
- Monoacetylmorphine;
- Morphine methylbromide;
- Morphine methylsulfonate;
- Morphine-N-Oxide;
- Myrophine;
- Nicocodeine;
- Nicomorphine;
- Normorphine;
- Pholcodine; and
Thebacon;
(3) the following substances, however produced, except those narcotic drugs listed in another group:
(A) Opium and opiate not listed in Penalty Group 3 or 4, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine derived butorphanol, nalmefene and its salts, naloxone and its salts, and naltrexone and its salts, but including:
Codeine not listed in Penalty Group 3 or 4;
Dihydroetorphine;
Ethylmorphine not listed in Penalty Group 3 or 4;
Granulated opium;
Hydrocodone not listed in Penalty Group 3;
Hydromorphone;
Metopon;
Morphine not listed in Penalty Group 3;
Opium extracts;
Opium fluid extracts;
Oripavine;
Oxycodone;
Oxymorphone;
Powdered opium;
Raw opium;
Thebaine; and
Tincture of opium;
(B) a salt, compound, isomer, derivative, or
preparation of a substance that is chemically equivalent or
identical to a substance described by Paragraph (A), other than the
isoquinoline alkaloids of opium;
(C) Opium poppy and poppy straw;
(D) Cocaine, including:
   (i) its salts, its optical, position, and
g geometric isomers, and the salts of those isomers;
   (ii) coca leaves and a salt, compound,
derivative, or preparation of coca leaves;
   (iii) a salt, compound, derivative, or
preparation of a salt, compound, or derivative that is chemically
equivalent or identical to a substance described by Subparagraph
(i) or (ii), other than decocainized coca leaves or extractions of
coca leaves that do not contain cocaine or ecgonine; and
(E) concentrate of poppy straw, meaning the crude
extract of poppy straw in liquid, solid, or powder form that
contains the phenanthrine alkaloids of the opium poppy;
(4) the following opiates, including their isomers,
esters, ethers, salts, and salts of isomers, if the existence of
these isomers, esters, ethers, and salts is possible within the
specific chemical designation:
   Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
phenethyl)-4-piperidinyl]-N-phenylacetamide);
   Alpha-methylthiofentanyl (N-[1-methyl-2-(2-
thiencyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
   Alphaprodine;
   Anileridine;
Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
Beta-hydroxy-3-methylfentanyl;
Bezitramide;
Carfentanil;
Dihydrocodeine not listed in Penalty Group 3 or 4;
Diphenoxylate not listed in Penalty Group 3 or 4;
Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;
Isomethadone;
Levomethorphan;
Levorphanol;
Metazocine;
Methadone;
Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
Moramide-Intermediate, 2-methyl-3-morpholino-1,2-diphenyl-propane-carboxylic acid;
Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4-piperidinylpropanamide);
PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxy piperidine);
Pethidine (Meperidine);
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1. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
2. phenylpiperidine;
3. Pethidine-Intermediate-B, ethyl-4-
4. phenylpiperidine-4-carboxylate;
5. Pethidine-Intermediate-C, 1-methyl-4-
6. phenylpiperidine-4-carboxylic acid;
7. Phenazocine;
8. Piminodine;
9. Racemethorphan;
10. Racemorphan;
11. Remifentanil; and
12. Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-pi
13. peridinyl]-propanamide);
14. (5) Flunitrazepam (trade or other name: Rohypnol);
15. (6) Methamphetamine, including its salts, optical
16. isomers, and salts of optical isomers;
17. (7) Phenylacetone and methylamine, if possessed
18. together with intent to manufacture methamphetamine;
19. (8) Phencyclidine, including its salts;
20. (9) Gamma hydroxybutyric acid (some trade or other
21. names: gamma hydroxybutyrate, GHB), including its salts; and
22. (10) Ketamine.

SECTION 2. Subsection (a), Section 481.103, Health and
Safety Code, is amended to read as follows:

(a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic
27. substances, their salts, isomers, and salts of isomers, unless
1 Specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

alpha-ethyltryptamine;

alpha-methyltryptamine;

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

4-bromo-2, 5-dimethoxyphenethylamine;

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

2, 5-dimethoxy-4-ethylamphetamine (trade or other name: DOET);

2, 5-dimethoxy-4-(n)-propylthiophenethylamine (trade or other name: 2C-T-7);

Dimethylamine (trade or other name: DMT);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (some trade or other names for Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b, d]pyran-1-ol or (-)-delta-9-
(trans)-tetrahydrocannabinol;

Ethylamine Analog of Phencyclidine (some trade or
other names: N-ethyl-1-phenylcyclohexylamine, (1-
phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine,
cyclohexamine, PCE);

Ibogaine (some trade or other names: 7-Ethyl-6,
6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-
pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

Mescaline;

5-methoxy-N, N-diisopropyltryptamine;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names:
4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine;

PMA);

1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP,
PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade
and other names: 4-methyl-2, 5-dimethoxy-alpha-
methylphenethylamine; "DOM"; "STP");

3,4-methylenedioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxyamphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also
known as N-ethyl MDA);

Nabilone (Another name for nabilone: (+)-trans-
3-(1,1-dimethylheptyl)- 6,6a, 7,8,10,10a-hexahydro-1-hydroxy- 6,
6-dimethyl-9H-dibenzo[b,d] pyran-9-one;

N-benzylpiperazine (some trade or other names:
BZP; 1-benzylpiperazine;

N-ethyl-3-piperidyl benzilate;

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenz [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexanecarbonitrile (PCC);

Psilocin;

Psilocybin;

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol,

and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol,

and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

compounds of these structures, regardless of
numerical designation of atomic positions, since nomenclature of
these substances is not internationally standardized;

Thiophene Analog of Phencyclidine (some trade or
other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl
Analog of Phencyclidine; TPCP, TCP);

1-pyrrolidine (some trade or other name: TCPy);

1-(3-trifluoromethylphenyl)piperazine (trade or
other name: TFMPP); and

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (some trade or other names:
Phenyl-2-propanone; P2P, Benzylmethyl ketone, methyl benzyl
ketone); and

(3) unless specifically excepted or unless listed in
another Penalty Group, a material, compound, mixture, or
preparation that contains any quantity of the following substances
having a potential for abuse associated with a depressant or
stimulant effect on the central nervous system:

Aminorex (some trade or other names: aminoxaphen;
2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-
phenyl-2-oxazolamine);

Amphetamine, its salts, optical isomers, and
salts of optical isomers;

Cathinone (some trade or other names: 2-amino-1-
phenyl-1-propanone, alpha-aminopropiophenone, 2-
aminopropiophenone);

Etorphine Hydrochloride;

Penethylline and its salts;
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Lisdexamfetamine, including its salts, isomers,
and salts of isomers;
Methaqualone and its salts;
Methaqualone and its salts;
Methcathinone (some trade or other names: 2-
methylamino-propiophenone; alpha-(methylamino)propriophenone;
2-(methylamino)-1-phenylpropan-1-one; alpha-N-
methaminopropiophenone; monomethylpropion; ephedrine, N-
methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR
1431);
N-Ethylamphetamine, its salts, optical isomers,
and salts of optical isomers; and
N,N-dimethylamphetamine (some trade or other
names: N,N,alpha-trimethylbenzeneethaneamine;
N,N,alpha-trimethylphenethylamine), its salts, optical isomers,
and salts of optical isomers.

SECTION 3. Subsection (a), Section 481.104, Health and
Safety Code, is amended to read as follows:
(a) Penalty Group 3 consists of:
(1) a material, compound, mixture, or preparation that
contains any quantity of the following substances having a
potential for abuse associated with a stimulant effect on the
central nervous system:
Methylphenidate and its salts; and
Phenmetrazine and its salts;
(2) a material, compound, mixture, or preparation that
contains any quantity of the following substances having a
potential for abuse associated with a depressant effect on the
central nervous system:

a substance that contains any quantity of a
derivative of barbituric acid, or any salt of a derivative of
barbituric acid not otherwise described by this subsection;

a compound, mixture, or preparation containing
amobarbital, secobarbital, pentobarbital, or any salt of any of
these, and one or more active medicinal ingredients that are not
listed in any penalty group;

a suppository dosage form containing amobarbital,
secobarbital, pentobarbital, or any salt of any of these drugs, and
approved by the United States Food and Drug Administration for
marketing only as a suppository;

Alprazolam;
Amobarbital;
Bromazepam;
Camazepam;
Chlordiazepoxide;
Chlorhexadol;
Clobazam;
Clonazepam;
Clorazepate;
Clotiazepam;
Cloxazolam;
Delorazepam;
Diazepam;
Estazolam;
1 Ethyl loflazepate;
2 Fludiazepam;
3 Flurazepam;
4 Glutethimide;
5 Halazepam;
6 Haloxzolam;
7 Ketazolam;
8 Loprazolam;
9 Lorazepam;
10 Lormetazepam;
11 Lysergic acid, including its salts, isomers, and salts of isomers;
12 Lysergic acid amide, including its salts, isomers, and salts of isomers;
13 Mebutamate;
14 Medazepam;
15 Methyprylon;
16 Midazolam;
17 Nimetazepam;
18 Nitrazepam;
19 Nordiazepam;
20 Oxazepam;
21 Oxazolam;
22 Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
23 Pentobarbital;
24 Pinazepam;
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1. Prazepam;
2. Quazepam;
3. Secobarbital;
4. Sulfondiethylmethane;
5. Sulfonethylmethane;
6. Sulfonmethane;
7. Temazepam;
8. Tetrazepam;
9. Tiletamine and zolazepam in combination, and its salts. (some trade or other names for a tiletamine-zolazepam combination product: Telazol, for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, and for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e](1,4)-diazepin-7(1H)-one, flupyrazapon);
10. Triazolam;
11. Zaleplon; [and]
12. Zolpidem; and
13. Zopiclone;
14. (3) Nalorphine;
15. (4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:
16. not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinolone alkaloid of opium;
17. not more than 1.8 grams of codeine, or any of its
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1 salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

   not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

   not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

   not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

   not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

   not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

   not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and
not more than 1 milligram of difenoxin and not
less than 25 micrograms of atropine sulfate per dosage unit;
(5) a material, compound, mixture, or preparation that
contains any quantity of the following substances:
Barbital;
Chloral betaine;
Chloral hydrate;
Ethchlorvynol;
Ethinamate;
Meprobamate;
Methohexital;
Methylphenobarbital (Mepobarbital);
Paraldehyde;
Petrichloral; and
Phenobarbital;
(6) Peyote, unless unharvested and growing in its
natural state, meaning all parts of the plant classified
botanically as Lophophora, whether growing or not, the seeds of the
plant, an extract from a part of the plant, and every compound,
manufacture, salt, derivative, mixture, or preparation of the
plant, its seeds, or extracts;
(7) unless listed in another penalty group, a
material, compound, mixture, or preparation that contains any
quantity of the following substances having a stimulant effect on
the central nervous system, including the substance's salts,
optical, position, or geometric isomers, and salts of the
substance's isomers, if the existence of the salts, isomers, and
salts of isomers is possible within the specific chemical designation:

Benzphetamine;
Cathine [(+) norpseudoephedrine];
Chlorphentermine;
Clortermine;
Diethylpropion;
Pencamfamin;
Fenfluramine;
Fenproporex;
Mazindol;
Mefenorex;
Modafinil;
Pemoline (including organometallic complexes and their chelates);
Phendimetrazine;
Phentermine;
Pipradrol;
Sibutramine; and
SPA [(-)-1-dimethylamino-1,2-diphenylethane];
(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:
Dextropropoxyphene (Alpha-(+) 4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane); and
(9) an anabolic steroid, including any drug or
hormonal substance, or any substance that is chemically or
pharmacologically related to testosterone, other than an estrogen,
progestin, dehydroepiandrosterone, or corticosteroid, and promotes
muscle growth, including the following drugs and substances and any
salt, ester, or ether of the following drugs and substances:

Androstanediol;
Androstanedione;
Androstenediol;
Androstenedione;
Bolasterone;
Boldenone;
Calusterone;
[Chlorotestosterone (4-chlorotestosterone)];
Clostebol;
Dehydrochlormethyltestosterone;
Delta-1-dihydrotestosterone;
Dihydrotestosterone (4-dihydrotestosterone);
Drostanolone;
Ethylestrenol;
Fluoxymesterone;
Formebulone;
Furazabol;
13beta-ethyl-17beta-hydroxy-4-en-3-one;
4-hydroxytestosterone;
4-hydroxy-19-nortestosterone;
Mestanolone;
Mesterolone;
Methandienone;
[Methandranone;]
Methandriol;
[Methandrostenolone;]
Methenolone;
17alpha-methyl-3beta, 17 beta-dihydroxy-5alpha-androstane;
17alpha-methyl-3alpha, 17 beta-dihydroxy-5alpha-androstane;
17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;
17alpha-methyl-4-hydroxynandrolone;
Methylidenolone;
Methyltestosterone;
Methyltrenolone;
17alpha-methyl-delta-1-dihydrotestosterone;
Mibolerone;
Nandrolone;
Norandrostenediol;
Norandrostenedione;
Norbolethone;
Norclostebol;
Norethandrolone;
Normethandrolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;
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[Stanolone;]
Stanozolol;
Stenbolone;
Testolactone;
Testosterone;
Tetrahydrogestrinone; and
Trenbolone.

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 5. This Act takes effect September 1, 2009.
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David Dewhurst
President of the Senate

I hereby certify that S.B. No. 449 passed the Senate on May 7, 2009, by the following vote: Yeas 31, Nays 0.

Peter K. Flores
Secretary of the Senate

I hereby certify that S.B. No. 449 passed the House on May 27, 2009, by the following vote: Yeas 148, Nays 0, one present not voting.

Robert H. Shearon
Chief Clerk of the House

Approved:

19 JUN '09

Rick Perry
Governor

Filed in the Office of the Secretary of State
7:00 AM O'CLOCK
JUN 19 2009

Coley Shoter