

1 AN ACT
2 relating to the regulation of controlled substances under the Texas
3 Controlled Substances Act and to the prosecution of certain
4 offenses under that Act.

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

6 SECTION 1. Section 431.002(8), Health and Safety Code, is
7 amended to read as follows:

8 (8) "Consumer commodity," except as otherwise
9 provided by this subdivision, means any food, drug, device, or
10 cosmetic, as those terms are defined by this chapter or by the
11 federal Act, and any other article, product, or commodity of any
12 kind or class that is customarily produced or distributed for sale
13 through retail sales agencies or instrumentalities for consumption
14 by individuals, or for use by individuals for purposes of personal
15 care or in the performance of services ordinarily rendered within
16 the household, and that usually is consumed or expended in the
17 course of the consumption or use. The term does not include:

18 (A) a meat or meat product, poultry or poultry
19 product, or tobacco or tobacco product;

20 (B) a commodity subject to packaging or labeling
21 requirements imposed under the Federal Insecticide, Fungicide, and
22 Rodenticide Act (7 U.S.C. 136), or The [~~Section 87,~~
23 ~~Virus-Serum-Toxin Act~~ (21 U.S.C. 151 et seq. [~~158~~]);

24 (C) a drug subject to the provisions of Section

1 431.113(c)(1) [~~ex 431.112(k)~~], or Section 503(b)(1) [~~ex 506~~] of the
2 federal Act;

3 (D) a beverage subject to or complying with
4 packaging or labeling requirements imposed under the Federal
5 Alcohol Administration Act (27 U.S.C. 205(e)); or

6 (E) a commodity subject to the provisions of
7 Chapter 61, Agriculture Code, relating to the inspection, labeling,
8 and sale of agricultural and vegetable seed.

9 SECTION 2. Section 431.112, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 431.112. MISBRANDED DRUG OR DEVICE. A drug or device
12 shall be deemed to be misbranded:

13 (a)(1) if its labeling is false or misleading in any
14 particular; or

15 (2) if its labeling or packaging fails to conform with
16 the requirements of Section 431.181.

17 (b) if in a package form unless it bears a label containing
18 (1) the name and place of business of the manufacturer, packer, or
19 distributor; and (2) an accurate statement of the quantity of the
20 contents in terms of weight, measure, or numerical count; provided,
21 that under Subdivision (2) reasonable variations shall be
22 permitted, and exemptions as to small packages shall be allowed in
23 accordance with regulations prescribed by the secretary under the
24 federal Act;

25 (c) if any word, statement, or other information required by
26 or under authority of this chapter to appear on the label or
27 labeling is not prominently placed thereon with such

1 conspicuousness (as compared with other words, statements,
2 designs, or devices, in the labeling) and in such terms as to render
3 it likely to be read and understood by the ordinary individual under
4 customary conditions of purchase and use;

5 (d) ~~[if it is for use by man and contains any quantity of the
6 narcotic or hypnotic substance alpha-eucaine, barbituric acid,
7 betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine,
8 codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote,
9 or sulphonmethane, or any chemical derivative of such substance,
10 which derivative, after investigation, has been found to be
11 designated as habit forming, by regulations issued by the secretary
12 under Section 502(d) of the federal Act, unless its label bears the
13 name and quantity or proportion of such substance or derivative and
14 in juxtaposition therewith the statement, "Warning: May be habit
15 forming",~~

16 [~~e~~] (1) if it is a drug, unless:

17 (A) its label bears, to the exclusion of any
18 other nonproprietary name (except the applicable systematic
19 chemical name or the chemical formula):

20 (i) the established name (as defined in
21 Subdivision (3)) of the drug, if any; and

22 (ii) in case it is fabricated from two or
23 more ingredients, the established name and quantity of each active
24 ingredient, including the quantity, kind, and proportion of any
25 alcohol, and also including, whether active or not, the established
26 name and quantity or proportion of any bromides, ether, chloroform,
27 acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine,

1 hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides,
2 mercury, ouabain, strophanthin, strychnine, thyroid, or any
3 derivative or preparation of any such substances, contained
4 therein; provided, that the requirement for stating the quantity of
5 the active ingredients, other than the quantity of those
6 specifically named in this subparagraph shall apply only to
7 prescription drugs; and

8 (B) for any prescription drug the established
9 name of the drug or ingredient, as the case may be, on the label (and
10 on any labeling on which a name for such drug or ingredient is used)
11 is printed prominently and in type at least half as large as that
12 used thereon for any proprietary name or designation for such drug
13 or ingredient; and provided, that to the extent that compliance
14 with the requirements of Paragraph (A)(ii) or this paragraph is
15 impracticable, exemptions shall be allowed under regulations
16 promulgated by the secretary under the federal Act;

17 (2) if it is a device and it has an established name,
18 unless its label bears, to the exclusion of any other
19 nonproprietary name, its established name (as defined in
20 Subdivision (4)) prominently printed in type at least half as large
21 as that used thereon for any proprietary name or designation for
22 such device, except that to the extent compliance with this
23 subdivision is impracticable, exemptions shall be allowed under
24 regulations promulgated by the secretary under the federal Act;

25 (3) as used in Subdivision (1), the term "established
26 name," with respect to a drug or ingredient thereof, means:

27 (A) the applicable official name designated

1 pursuant to Section 508 of the federal Act; or

2 (B) if there is no such name and such drug, or
3 such ingredient, is an article recognized in an official
4 compendium, then the official title thereof in such compendium; or

5 (C) if neither Paragraph (A) nor Paragraph (B)
6 applies, then the common or usual name, if any, of such drug or of
7 such ingredient; provided further, that where Paragraph (B) applies
8 to an article recognized in the United States Pharmacopoeia
9 National Formulary, the official title used in the United States
10 Pharmacopoeia National Formulary shall apply;

11 (4) as used in Subdivision (2), the term "established
12 name" with respect to a device means:

13 (A) the applicable official name of the device
14 designated pursuant to Section 508 of the federal Act;

15 (B) if there is no such name and such device is an
16 article recognized in an official compendium, then the official
17 title thereof in such compendium; or

18 (C) if neither Paragraph (A) nor Paragraph (B)
19 applies, then any common or usual name of such device;

20 (e) [~~(f)~~] unless its labeling bears:

21 (1) adequate directions for use; and

22 (2) such adequate warnings against use in those
23 pathological conditions or by children where its use may be
24 dangerous to health, or against unsafe dosage or methods or
25 durations of administration or application, in such manner and
26 form, as are necessary for the protection of users unless the drug
27 or device has been exempted from those requirements by the

1 regulations adopted by the secretary;

2 (f) [~~(g)~~] if it purports to be a drug the name of which is
3 recognized in an official compendium, unless it is packaged and
4 labeled as prescribed therein unless the method of packing has been
5 modified with the consent of the secretary. Whenever a drug is
6 recognized in the United States Pharmacopoeia National Formulary,
7 it shall be subject to the requirements of the United States
8 Pharmacopoeia National Formulary with respect to packaging and
9 labeling. If there is an inconsistency between the requirements of
10 this subsection and those of Subsection (d) [~~(e)~~] as to the name by
11 which the drug or its ingredients shall be designated, the
12 requirements of Subsection (d) [~~(e)~~] prevail;

13 (g) [~~(h)~~] if it has been found by the secretary to be a drug
14 liable to deterioration, unless it is packaged in such form and
15 manner, and its label bears a statement of such precautions, as the
16 secretary shall by regulations require as necessary for the
17 protection of public health;

18 (h) [~~(i)~~] if:

19 (1) it is a drug and its container is so made, formed,
20 or filled as to be misleading; or

21 (2) it is an imitation of another drug; or

22 (3) it is offered for sale under the name of another
23 drug;

24 (i) [~~(j)~~] if it is dangerous to health when used in the
25 dosage, or manner or with the frequency or duration prescribed,
26 recommended, or suggested in the labeling thereof;

27 [~~(k)~~] ~~if it is, or purports to be, or is represented as a drug~~

1 ~~composed wholly or partly of insulin, unless:~~

2 ~~[(1) it is from a batch with respect to which a~~
3 ~~certificate or release has been issued pursuant to Section 506 of~~
4 ~~the federal Act, and~~

5 ~~[(2) such certificate or release is in effect with~~
6 ~~respect to such drug,~~

7 ~~[(1) if it is, or purports to be, or is represented as a drug~~
8 ~~(except a drug for use in animals other than man) composed wholly or~~
9 ~~partly of any kind of penicillin, streptomycin, chlortetracycline,~~
10 ~~chloramphenicol, bacitracin, or any other antibiotic drug, or any~~
11 ~~derivative thereof, unless:~~

12 ~~[(1) it is from a batch with respect to which a~~
13 ~~certificate or release has been issued pursuant to Section 507 of~~
14 ~~the federal Act, and~~

15 ~~[(2) the certificate or release is in effect with~~
16 ~~respect to the drug, provided, that this subdivision shall not~~
17 ~~apply to any drug or class of drugs exempted by regulations~~
18 ~~promulgated under Section 507(c) or (d) of the federal Act,]~~

19 (j) ~~[(m)]~~ if it is a color additive, the intended use of
20 which is for the purpose of coloring only, unless its packaging and
21 labeling are in conformity with such packaging and labeling
22 requirements applicable to such color additive, as may be contained
23 in rules issued under Section 431.161(b);

24 (k) ~~[(n)]~~ in the case of any prescription drug distributed
25 or offered for sale in this state, unless the manufacturer, packer,
26 or distributor thereof includes in all advertisements and other
27 descriptive printed matter issued or caused to be issued by the

1 manufacturer, packer, or distributor with respect to that drug a
2 true statement of:

3 (1) the established name as defined in Subsection (d)
4 [~~(e)~~], printed prominently and in type at least half as large as
5 that used for any trade or brand name;

6 (2) the formula showing quantitatively each
7 ingredient of the drug to the extent required for labels under
8 Subsection (d) [~~(e)~~]; and

9 (3) other information in brief summary relating to
10 side effects, contraindications, and effectiveness as required in
11 regulations issued under Section 701(e) of the federal Act;

12 (l) [~~(e)~~] if it was manufactured, prepared, propagated,
13 compounded, or processed in an establishment in this state not
14 registered under Section 510 of the federal Act, if it was not
15 included in a list required by Section 510(j) of the federal Act, if
16 a notice or other information respecting it was not provided as
17 required by that section or Section 510(k) of the federal Act, or if
18 it does not bear symbols from the uniform system for identification
19 of devices prescribed under Section 510(e) of the federal Act as
20 required by regulation;

21 (m) [~~(p)~~] if it is a drug and its packaging or labeling is in
22 violation of an applicable regulation issued under Section 3 or 4 of
23 the federal [~~Federal~~] Poison Prevention Packaging Act of 1970 (15
24 [~~21~~] U.S.C. 1472 or 1473);

25 (n) [~~(q)~~] if a trademark, trade name, or other identifying
26 mark, imprint or device of another, or any likeness of the foregoing
27 has been placed thereon or on its container with intent to defraud;

1 (o) [~~r~~] in the case of any restricted device distributed
2 or offered for sale in this state, if:

3 (1) its advertising is false or misleading in any
4 particular; or

5 (2) it is sold, distributed, or used in violation of
6 regulations prescribed under Section 520(e) of the federal Act;

7 (p) [~~s~~] in the case of any restricted device distributed
8 or offered for sale in this state, unless the manufacturer, packer,
9 or distributor thereof includes in all advertisements and other
10 descriptive printed matter issued by the manufacturer, packer, or
11 distributor with respect to that device:

12 (1) a true statement of the device's established name
13 as defined in Section 502(e) of the federal Act, printed
14 prominently and in type at least half as large as that used for any
15 trade or brand name thereof; and

16 (2) a brief statement of the intended uses of the
17 device and relevant warnings, precautions, side effects, and
18 contraindications and in the case of specific devices made subject
19 to regulations issued under the federal Act, a full description of
20 the components of such device or the formula showing quantitatively
21 each ingredient of such device to the extent required in
22 regulations under the federal Act;

23 (q) [~~t~~] if it is a device subject to a performance
24 standard established under Section 514 of the federal Act, unless
25 it bears such labeling as may be prescribed in such performance
26 standard; or

27 (r) [~~u~~] if it is a device and there was a failure or

1 refusal:

2 (1) to comply with any requirement prescribed under
3 Section 518 of the federal Act respecting the device; or

4 (2) to furnish material required by or under Section
5 519 of the federal Act respecting the device.

6 SECTION 3. Section 431.113(c)(2), Health and Safety Code,
7 is amended to read as follows:

8 (2) Any drug dispensed by filling or refilling a
9 written or oral prescription of a practitioner licensed by law to
10 administer such drug shall be exempt from the requirements of
11 Section 431.112, except Sections 431.112(a)(1), (h)(2), and
12 (h)(3), [~~(i)(2), (i)(3), (k), and (l),~~] and the packaging
13 requirements of Sections 431.112(f), (g), and (m) [~~431.112(g), (h),~~
14 ~~and (p)~~], if the drug bears a label containing the name and address
15 of the dispenser, the serial number and date of the prescription or
16 of its filling, the name of the prescriber, and, if stated in the
17 prescription, the name of the patient, and the directions for use
18 and cautionary statements, if any, contained in such prescription.
19 This exemption shall not apply to any drugs dispensed in the course
20 of the conduct of business of dispensing drugs pursuant to
21 diagnosis by mail, or to a drug dispensed in violation of
22 Subdivision (1).

23 SECTION 4. Section 481.002(22), Health and Safety Code, is
24 amended to read as follows:

25 (22) "Immediate precursor" means a substance the
26 director [~~commissioner~~] finds to be and by rule designates as
27 being:

1 (A) a principal compound commonly used or
2 produced primarily for use in the manufacture of a controlled
3 substance;

4 (B) a substance that is an immediate chemical
5 intermediary used or likely to be used in the manufacture of a
6 controlled substance; and

7 (C) a substance the control of which is necessary
8 to prevent, curtail, or limit the manufacture of a controlled
9 substance.

10 SECTION 5. Section 481.034(d), Health and Safety Code, is
11 amended to read as follows:

12 (d) In making a determination regarding a substance, the
13 commissioner shall consider:

14 (1) the actual or relative potential for its abuse;

15 (2) the scientific evidence of its pharmacological
16 effect, if known;

17 (3) the state of current scientific knowledge
18 regarding the substance;

19 (4) the history and current pattern of its abuse;

20 (5) the scope, duration, and significance of its
21 abuse;

22 (6) the risk to the public health;

23 (7) the potential of the substance to produce
24 psychological or physiological dependence liability; and

25 (8) whether the substance is a controlled substance
26 analogue, chemical precursor, or an immediate precursor of a
27 substance [~~already~~] controlled under this chapter.

1 SECTION 6. Section 481.077, Health and Safety Code, is
2 amended by adding Subsection (b-1) to read as follows:

3 (b-1) If the director names a chemical substance as a
4 chemical precursor for purposes of Subsection (a) or designates a
5 substance as an immediate precursor, a substance that is a
6 precursor of the chemical precursor or the immediate precursor is
7 not subject to control solely because it is a precursor of the
8 chemical precursor or the immediate precursor.

9 SECTION 7. Section 481.102, Health and Safety Code, is
10 amended to read as follows:

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

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

- 17 Alfentanil;
- 18 Allylprodine;
- 19 Alphacetylmethadol;
- 20 Benzethidine;
- 21 Betaprodine;
- 22 Clonitazene;
- 23 Diampromide;
- 24 Diethylthiambutene;
- 25 DifenoXin not listed in Penalty Group 3 or 4;
- 26 Dimenoxadol;
- 27 Dimethylthiambutene;

1 Dioxaphetyl butyrate;
2 Dipipanone;
3 Ethylmethylthiambutene;
4 Etonitazene;
5 Etoxeridine;
6 Furethidine;
7 Hydroxypethidine;
8 Ketobemidone;
9 Levophenacylmorphan;
10 Meprodine;
11 Methadol;
12 Moramide;
13 Morpheridine;
14 Noracymethadol;
15 Norlevorphanol;
16 Normethadone;
17 Norpipanone;
18 Phenadoxone;
19 Phenampromide;
20 Phenomorphane;
21 Phenoperidine;
22 Piritramide;
23 Proheptazine;
24 Properidine;
25 Propiram;
26 Sufentanil;
27 Tilidine; and

1 Trimeperidine;

2 (2) the following opium derivatives, their salts,
3 isomers, and salts of isomers, unless specifically excepted, if the
4 existence of these salts, isomers, and salts of isomers is possible
5 within the specific chemical designation:

6 Acetorphine;

7 Acetyldihydrocodeine;

8 Benzylmorphine;

9 Codeine methylbromide;

10 Codeine-N-Oxide;

11 Cyprenorphine;

12 Desomorphine;

13 Dihydromorphine;

14 Drotebanol;

15 Etorphine, except hydrochloride salt;

16 Heroin;

17 Hydromorphenol;

18 Methyldesorphine;

19 Methyldihydromorphine;

20 Monoacetylmorphine;

21 Morphine methylbromide;

22 Morphine methylsulfonate;

23 Morphine-N-Oxide;

24 Myrophine;

25 Nicocodeine;

26 Nicomorphine;

27 Normorphine;

1 Pholcodine; and

2 Thebacon;

3 (3) the following substances, however produced,
4 except those narcotic drugs listed in another group:

5 (A) Opium and opiate not listed in Penalty Group
6 3 or 4, and a salt, compound, derivative, or preparation of opium or
7 opiate, other than thebaine derived butorphanol, nalmeffene and its
8 salts, naloxone and its salts, and naltrexone and its salts, but
9 including:

10 Codeine not listed in Penalty Group 3 or 4;

11 Dihydroetorphine;

12 Ethylmorphine not listed in Penalty Group 3
13 or 4;

14 Granulated opium;

15 Hydrocodone not listed in Penalty Group 3;

16 Hydromorphone;

17 Metopon;

18 Morphine not listed in Penalty Group 3;

19 Opium extracts;

20 Opium fluid extracts;

21 Oxycodone;

22 Oxymorphone;

23 Powdered opium;

24 Raw opium;

25 Thebaine; and

26 Tincture of opium;

27 (B) a salt, compound, isomer, derivative, or

1 preparation of a substance that is chemically equivalent or
2 identical to a substance described by Paragraph (A), other than the
3 isoquinoline alkaloids of opium;

4 (C) Opium poppy and poppy straw;

5 (D) Cocaine, including:

6 (i) its salts, its optical, position, and
7 geometric isomers, and the salts of those isomers;

8 (ii) coca leaves and a salt, compound,
9 derivative, or preparation of coca leaves;

10 (iii) a salt, compound, derivative, or
11 preparation of a salt, compound, or derivative that is chemically
12 equivalent or identical to a substance described by Subparagraph
13 (i) or (ii), other than decocainized coca leaves or extractions of
14 coca leaves that do not contain cocaine or ecgonine; and

15 (E) concentrate of poppy straw, meaning the crude
16 extract of poppy straw in liquid, solid, or powder form that
17 contains the phenanthrine alkaloids of the opium poppy;

18 (4) the following opiates, including their isomers,
19 esters, ethers, salts, and salts of isomers, if the existence of
20 these isomers, esters, ethers, and salts is possible within the
21 specific chemical designation:

22 Acetyl-alpha-methylfentanyl

23 (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

24 Alpha-methylthiofentanyl

25 (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]

26 -N-phenylpropanamide);

27 Alphaprodine;

1 Anileridine;
2 Beta-hydroxyfentanyl
3 (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]
4 -N-phenylpropanamide);
5 Beta-hydroxy-3-methylfentanyl;
6 Bezitramide;
7 Carfentanil;
8 Dihydrocodeine not listed in Penalty Group 3 or 4;
9 Diphenoxylate not listed in Penalty Group 3 or 4;
10 Fentanyl or alpha-methylfentanyl, or any other
11 derivative of Fentanyl;
12 Isomethadone;
13 Levomethorphan;
14 Levorphanol;
15 Metazocine;
16 Methadone;
17 Methadone-Intermediate,
18 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
19 3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-
20 4-piperidyl]-N- phenylpropanamide);
21 3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)
22 ethyl-4-piperidinyl]-N- phenylpropanamide);
23 Moramide-Intermediate, 2-methyl-3-morpholino-1,
24 1-diphenyl-propane- carboxylic acid;
25 Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-
26 (2-phenylethyl)-4- piperidinylpropanamide);
27 PEPAP

- 1 (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
 2 Pethidine (Meperidine);
 3 Pethidine-Intermediate-A,
 4 4-cyano-1-methyl-4-phenylpiperidine;
 5 Pethidine-Intermediate-B,
 6 ethyl-4-phenylpiperidine-4 carboxylate;
 7 Pethidine-Intermediate-C,
 8 1-methyl-4-phenylpiperidine-4-carboxylic acid;
 9 Phenazocine;
 10 Piminodine;
 11 Racemethorphan;
 12 Racemorphan;
 13 Remifentanil; and
 14 Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-
 15 piperidinyl]-propanamide);
 16 (5) Flunitrazepam (~~[some]~~ trade or other name [~~names~~]:
 17 Rohypnol);
 18 (6) Methamphetamine, including its salts, optical
 19 isomers, and salts of optical isomers;
 20 (7) Phenylacetone and methylamine, if possessed
 21 together with intent to manufacture methamphetamine;
 22 (8) Phencyclidine, including its salts; [~~and~~]
 23 (9) Gamma hydroxybutyric acid (some trade or other
 24 names: gamma hydroxybutyrate, GHB), including its salts; and [-]
 25 (10) Ketamine.

26 SECTION 8. Section 481.103(a), Health and Safety Code, is
 27 amended to read as follows:

1 (a) Penalty Group 2 consists of:

2 (1) any quantity of the following hallucinogenic
3 substances, their salts, isomers, and salts of isomers, unless
4 specifically excepted, if the existence of these salts, isomers,
5 and salts of isomers is possible within the specific chemical
6 designation:

7 alpha-ethyltryptamine;

8 4-bromo-2, 5-dimethoxyamphetamine (some trade or
9 other names: 4-bromo- 2, 5-dimethoxy-alpha-methylphenethylamine;
10 4-bromo-2, 5-DMA);

11 4-bromo-2, 5-dimethoxyphenethylamine;

12 Bufotenine (some trade and other names:
13 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;
14 3-(2-dimethylaminoethyl)-5- indolol; N, N-dimethylserotonin;
15 5-hydroxy-N, N-dimethyltryptamine; mappine);

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

18 2, 5-dimethoxyamphetamine (some trade or other
19 names: 2, 5-dimethoxy- alpha-methylphenethylamine; 2, 5-DMA);

20 2, 5-dimethoxy-4-ethylamphetamine (~~some~~ trade
21 or other name [~~names~~]: DOET);

22 2, 5-dimethoxy-4-(n)-propylthiophenethylamine
23 (trade or other name: 2C-T-7);

24 Dimethyltryptamine (~~some~~ trade or [~~and~~] other
25 name [~~names~~]: DMT);

26 Dronabinol (synthetic) in sesame oil and
27 encapsulated in a soft gelatin capsule in a U.S. Food and Drug

1 Administration approved drug product (some trade or other names for
 2 Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6,
 3 9-trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-1-ol or
 4 (-)-delta-9-(trans)- tetrahydrocannabinol);

5 Ethylamine Analog of Phencyclidine (some trade or
 6 other names: N-ethyl-1-phenylcyclohexylamine,
 7 (1-phenylcyclohexyl) ethylamine, N-(1- phenylcyclohexyl)
 8 ethylamine, cyclohexamine, PCE);

9 Ibogaine (some trade or other names: 7-Ethyl-6,
 10 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
 11 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole;
 12 tabernanthe iboga.);

13 [~~Ketamine~~];

14 Mescaline;

15 5-methoxy-3, 4-methylenedioxy amphetamine;

16 4-methoxyamphetamine (some trade or other names:
 17 4-methoxy-alpha- methylphenethylamine; paramethoxyamphetamine;
 18 PMA);

19 1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP,
 20 PPMP);

21 4-methyl-2, 5-dimethoxyamphetamine (some trade
 22 and other names: 4- methyl-2,
 23 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");

24 3,4-methylenedioxy methamphetamine (MDMA, MDM);

25 3,4-methylenedioxy amphetamine;

26 3,4-methylenedioxy N-ethylamphetamine (Also
 27 known as N-ethyl MDA);

1 Nabilone (Another name for nabilone:
2 (+)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-hexahydro-1-
3 hydroxy-6,6- dimethyl-9H-dibenzo[b,d] pyran-9-one;
4 N-benzylpiperazine (some trade or other names:
5 BZP; 1-benzylpiperazine);
6 N-ethyl-3-piperidyl benzilate;
7 N-hydroxy-3,4-methylenedioxyamphetamine (Also
8 known as N-hydroxy MDA); .
9 4-methylaminorex;
10 N-methyl-3-piperidyl benzilate;
11 Parahexyl (some trade or other names:
12 3-Hexyl-1-hydroxy-7, 8, 9, 10- tetrahydro-6, 6,
13 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);
14 1-Phenylcyclohexylamine;
15 1-Piperidinocyclohexanecarbonitrile (PCC);
16 Psilocin;
17 Psilocybin;
18 Pyrrolidine Analog of Phencyclidine (some trade
19 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);
20 Tetrahydrocannabinols, other than marihuana, and
21 synthetic equivalents of the substances contained in the plant, or
22 in the resinous extractives of Cannabis, or synthetic substances,
23 derivatives, and their isomers with similar chemical structure and
24 pharmacological activity such as:
25 delta-1 cis or trans tetrahydrocannabinol,
26 and their optical isomers;
27 delta-6 cis or trans tetrahydrocannabinol,

1 and their optical isomers;

2 delta-3, 4 cis or trans

3 tetrahydrocannabinol, and its optical isomers;

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

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

10 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some
11 trade or other name [~~names~~]: TCPy);

12 1-(3-trifluoromethylphenyl)piperazine (trade or
13 other name: TFMPP); and

14 3,4,5-trimethoxy amphetamine;

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

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

23 Aminorex (some trade or other names: aminoxaphen;
24 2-amino-5-phenyl-2-oxazoline;
25 4,5-dihydro-5-phenyl-2-oxazolamine);

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

1 Cathinone (some trade or other names:
2 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone,
3 2-aminopropiophenone);
4 Etorphine Hydrochloride;
5 Fenethylline and its salts;
6 Mecloqualone and its salts;
7 Methaqualone and its salts;
8 Methcathinone (some trade or other names:
9 2-methylamino-propriophenone; alpha-(methylamino)propriophenone;
10 2-(methylamino)-1-phenylpropan-1-one;
11 alpha-N-methylaminopropriophenone; monomethylpropion;
12 ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422;
13 AL-463; and UR 1431);
14 N-Ethylamphetamine, its salts, optical isomers,
15 and salts of optical isomers; and
16 N,N-dimethylamphetamine (some trade or other
17 names: N,N,alpha-trimethylbenzeneethaneamine;
18 N,N,alpha-trimethylphenethylamine), its salts, optical isomers,
19 and salts of optical isomers.

20 SECTION 9. Subchapter D, Chapter 481, Health and Safety
21 Code, is amended by adding Section 481.106 to read as follows:

22 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE
23 ANALOGUE. For the purposes of the prosecution of an offense under
24 this subchapter involving the manufacture, delivery, or possession
25 of a controlled substance, Penalty Groups 1, 1-A, and 2 include a
26 controlled substance analogue that:

27 (1) has a chemical structure substantially similar to

1 the chemical structure of a controlled substance listed in the
 2 applicable penalty group; or

3 (2) is specifically designed to produce an effect
 4 substantially similar to, or greater than, a controlled substance
 5 listed in the applicable penalty group.

6 SECTION 10. Section 481.123, Health and Safety Code, is
 7 amended to read as follows:

8 Sec. 481.123. DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING
 9 [~~+~~ DELIVERY, MANUFACTURE, OR POSSESSION OF] CONTROLLED SUBSTANCE
 10 ANALOGUE. (a) It is an affirmative defense to the prosecution of
 11 an offense under this subchapter involving the manufacture,
 12 delivery, or possession of [For the purposes of this chapter,] a
 13 controlled substance analogue that [is considered to be a
 14 controlled substance listed in Penalty Group 1 or 1-A if] the
 15 analogue:

16 (1) was not in any part [in whole or in part is]
 17 intended for human consumption;

18 (2) was [and

19 [~~(1)~~ the chemical structure of the analogue is
 20 substantially similar to the chemical structure of a controlled
 21 substance listed in Schedule I or Penalty Group 1 or 1-A, or

22 [~~(2)~~ the analogue is specifically designed to produce
 23 an effect substantially similar to or greater than the effect of a
 24 controlled substance listed in Schedule I or Penalty Group 1 or 1-A.

25 [(b) For the purposes of this chapter, a controlled
 26 substance analogue is considered to be a controlled substance
 27 listed in Penalty Group 2 if the analogue in whole or in part is

1 ~~intended for human consumption and,~~

2 ~~[(1) the chemical structure of the analogue is~~
3 ~~substantially similar to the chemical structure of a controlled~~
4 ~~substance listed in Schedule II or Penalty Group 2, or~~

5 ~~[(2) the analogue is specifically designed to produce~~
6 ~~an effect substantially similar to or greater than the effect of a~~
7 ~~controlled substance listed in Schedule II or Penalty Group 2.~~

8 ~~[(c) Except as authorized by this chapter, a person commits~~
9 ~~an offense if the person knowingly or intentionally manufactures,~~
10 ~~delivers, or possesses with intent to manufacture or deliver a~~
11 ~~controlled substance analogue described by Subsection (a).~~

12 ~~[(d) Except as authorized by this chapter, a person commits~~
13 ~~an offense if the person knowingly or intentionally possesses a~~
14 ~~controlled substance analogue described by Subsection (a).~~

15 ~~[(e) Except as authorized by this chapter, a person commits~~
16 ~~an offense if the person knowingly or intentionally manufactures,~~
17 ~~delivers, or possesses with intent to manufacture or deliver a~~
18 ~~controlled substance analogue described by Subsection (b).~~

19 ~~[(f) Except as authorized by this chapter, a person commits~~
20 ~~an offense if the person knowingly or intentionally possesses a~~
21 ~~controlled substance analogue described by Subsection (b).~~

22 ~~[(g) This section does not apply to:~~

23 ~~[(1) a controlled substance,~~

24 ~~[(2)] a substance for which there is an approved new~~
25 ~~drug application under Section 505 of the Federal Food, Drug, and~~
26 ~~Cosmetic Act (21 U.S.C. Section 355); or~~

27 ~~(3) was a substance for which an exemption for~~

1 investigational use has been granted under Section 505 of the
2 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the
3 actor's [~~to the extent that the substance is possessed,~~
4 ~~manufactured, or delivered by a particular person under the~~
5 ~~exemption and the person's]~~ conduct with respect to the substance
6 is in accord with the exemption[, ~~or~~

7 [~~(4) a substance, to the extent the substance is not~~
8 ~~intended for human consumption, before an exemption under Section~~
9 ~~505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section~~
10 ~~355), takes effect with regard to the substance].~~

11 (b) [~~(h)~~] For the purposes of this section, Section 505 of
12 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355)
13 applies to the introduction or delivery for introduction of any new
14 drug into intrastate, interstate, or foreign commerce.

15 [~~(i) An offense under Subsection (c) is punishable in the~~
16 ~~same manner as if the controlled substance analogue were a~~
17 ~~controlled substance manufactured, delivered, or possessed with~~
18 ~~intent to manufacture or deliver under Section 481.112.~~

19 [~~(j) An offense under Subsection (d) is punishable in the~~
20 ~~same manner as if the controlled substance analogue were a~~
21 ~~controlled substance possessed under Section 481.115.~~

22 [~~(k) An offense under Subsection (e) is punishable in the~~
23 ~~same manner as if the controlled substance analogue were a~~
24 ~~controlled substance manufactured, delivered, or possessed with~~
25 ~~intent to manufacture or deliver under Section 481.113.~~

26 [~~(l) An offense under Subsection (f) is punishable in the~~
27 ~~same manner as if the controlled substance analogue were a~~

1 ~~controlled substance possessed under Section 481.116.]~~

2 SECTION 11. Sections 481.181(a) and (b), Health and Safety
3 Code, are amended to read as follows:

4 (a) The director may enter controlled premises at any
5 reasonable time and inspect the premises and items described by
6 Subsection (b) in order to inspect, copy, and verify the
7 correctness of a record, report, or other document required to be
8 made or kept under this chapter and to perform other functions under
9 this chapter. For purposes of this subsection, "reasonable time"
10 means any time during the normal business hours of the person or
11 activity regulated under this chapter or any time an activity
12 regulated under this chapter is occurring on the premises. The
13 director shall:

14 (1) state the purpose of the entry;

15 (2) display [~~and present~~] to the owner, operator, or
16 agent in charge of the premises appropriate credentials; and

17 (3) deliver to the owner, operator, or agent in charge
18 of the premises a written notice of inspection authority.

19 (b) The director may:

20 (1) inspect and copy a record, report, or other
21 document required to be made or kept under this chapter;

22 (2) inspect, within reasonable limits and in a
23 reasonable manner, the controlled premises and all pertinent
24 equipment, finished and unfinished drugs, other substances, and
25 materials, containers, labels, records, files, papers, processes,
26 controls, and facilities as appropriate to verify a record, report,
27 or document required to be kept under this chapter or to administer

1 this chapter;

2 (3) examine and inventory stock of a controlled
3 substance and obtain samples of the controlled substance;

4 (4) examine a hypodermic syringe, needle, pipe, or
5 other instrument, device, contrivance, equipment, control,
6 container, label, or facility relating to a possible violation of
7 this chapter; and

8 (5) examine a material used, intended to be used, or
9 capable of being used to dilute or adulterate a controlled
10 substance.

11 SECTION 12. Section 481.182, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 481.182. EVIDENTIARY RULES RELATING TO OFFER OF
14 DELIVERY. For the purpose of establishing a delivery under this
15 chapter, proof of an offer to sell must be corroborated by:

16 (1) a person other than the person to whom the offer is
17 made; or

18 (2) evidence other than a statement of the person to
19 whom the offer is made. [~~SEARCH WARRANTS. A search warrant may be~~
20 ~~issued to search for and seize a controlled substance possessed or~~
21 ~~manufactured in violation of this chapter. The application for the~~
22 ~~issuance of and the execution of a search warrant under this section~~
23 ~~must conform to applicable provisions of the Code of Criminal~~
24 ~~Procedure.~~]

25 SECTION 13. Section 481.183, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 481.183. EVIDENTIARY RULES RELATING TO [~~DELIVERY OR~~]

1 DRUG PARAPHERNALIA. (a) [~~For the purpose of establishing the~~
2 ~~delivery of a controlled substance, counterfeit substance, or drug~~
3 ~~paraphernalia, proof of an offer to sell must be corroborated by a~~
4 ~~person other than the offeree or by evidence other than a statement~~
5 ~~of the offeree.~~

6 [(b)] In considering whether an item is drug paraphernalia
7 under this chapter, a court or other authority shall consider, in
8 addition to all other logically relevant factors, and subject to
9 rules of evidence:

10 (1) statements by an owner or person in control of the
11 object concerning its use;

12 (2) the existence of any residue of a controlled
13 substance on the object;

14 (3) direct or circumstantial evidence of the intent of
15 an owner or other person in control of the object to deliver it to a
16 person whom the person knows or should reasonably know intends to
17 use the object to facilitate a violation of this chapter;

18 (4) oral or written instructions provided with the
19 object concerning its use;

20 (5) descriptive material accompanying the object that
21 explains or depicts its use;

22 (6) the manner in which the object is displayed for
23 sale;

24 (7) whether the owner or person in control of the
25 object is a supplier of similar or related items to the community,
26 such as a licensed distributor or dealer of tobacco products;

27 (8) direct or circumstantial evidence of the ratio of

1 sales of the object to the total sales of the business enterprise;

2 (9) the existence and scope of uses for the object in
3 the community;

4 (10) the physical design characteristics of the item;
5 and

6 (11) expert testimony concerning the item's use.

7 (b) [~~(e)~~] The innocence of an owner or other person in
8 charge of an object as to a direct violation of this chapter does
9 not prevent a finding that the object is intended or designed for
10 use as drug paraphernalia.

11 SECTION 14. Section 481.184(c), Health and Safety Code, is
12 amended to read as follows:

13 (c) This chapter does not impose a liability on an
14 authorized state, county, or municipal officer engaged in the
15 lawful performance of official [~~the officer's~~] duties.

16 SECTION 15. Section 481.186(b), Health and Safety Code, is
17 amended to read as follows:

18 (b) In the exercise of regulatory functions under this
19 chapter, the director may rely on results, information, and
20 evidence relating to the regulatory functions of this chapter
21 received from the Federal Drug Enforcement Administration or a
22 [~~and~~] state agency [~~agencies~~].

23 SECTION 16. Article 18.02, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 18.02. GROUNDS FOR ISSUANCE. A search warrant may be
26 issued to search for and seize:

27 (1) property acquired by theft or in any other manner

- 1 which makes its acquisition a penal offense;
- 2 (2) property specially designed, made, or adapted for
3 or commonly used in the commission of an offense;
- 4 (3) arms and munitions kept or prepared for the
5 purposes of insurrection or riot;
- 6 (4) weapons prohibited by the Penal Code;
- 7 (5) gambling devices or equipment, altered gambling
8 equipment, or gambling paraphernalia;
- 9 (6) obscene materials kept or prepared for commercial
10 distribution or exhibition, subject to the additional rules set
11 forth by law;
- 12 (7) a drug, controlled substance, immediate
13 precursor, chemical precursor, or other controlled substance
14 property, including an apparatus or paraphernalia [drugs] kept,
15 prepared, or manufactured in violation of the laws of this state;
- 16 (8) any property the possession of which is prohibited
17 by law;
- 18 (9) implements or instruments used in the commission
19 of a crime;
- 20 (10) property or items, except the personal writings
21 by the accused, constituting evidence of an offense or constituting
22 evidence tending to show that a particular person committed an
23 offense;
- 24 (11) persons; or
- 25 (12) contraband subject to forfeiture under Chapter 59
26 of this code.

27 SECTION 17. Article 481.034(f), Health and Safety Code, is

1 repealed.

2 SECTION 18. To the extent of any conflict between Sections
3 431.002(8), 431.112, and 431.113(c)(2), Health and Safety Code,
4 and those provisions as amended by Sections 1, 4, and 5 of S.B. No.
5 1400, Acts of the 78th Legislature, Regular Session, 2003, this Act
6 prevails.

7 SECTION 19. (a) This Act takes effect September 1, 2003.

8 (b) The change in law made by this Act applies only to an
9 offense committed on or after September 1, 2003. An offense
10 committed before September 1, 2003, is covered by the law in effect
11 when the offense was committed, and the former law is continued in
12 effect for that purpose. For purposes of this subsection, an
13 offense was committed before September 1, 2003, if any element of
14 the offense was committed before that date.

David Newkum

President of the Senate

Jim Cusick

Speaker of the House

I certify that H.B. No. 2192 was passed by the House on May 2, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2192 on May 23, 2003, by a non-record vote; and that the House adopted H.C.R. No. 273 authorizing certain corrections in H.B. No. 2192 on May 29, 2003, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 2192 was passed by the Senate, with amendments, on May 22, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 273 authorizing certain corrections in H.B. No. 2192 on May 29, 2003, by a viva-voce vote.

Daisy Spaw

Secretary of the Senate

APPROVED: 20 JUN 03

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:20 P.M. O'CLOCK

JUN 20 2003
Ann Shea
Secretary of State