CHAPTER 388

H.B. No. 685

AN ACT

relating to the definition of and the regulation of the sale and transfer of certain chemical precursors to controlled substances and controlled substance analogues; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.02, Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. DEFINITIONS. For the purpose of this Act:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of his employment.

(3) "Commissioner" means the Commissioner of Health of the State Department of Health or his designee.

(4) "Controlled substance" means a drug, substance, or immediate precursor listed in Schedules I through V *or* [~~and~~] Penalty Groups 1 through 4 of this Act.

(5) "Controlled substance analogue" means:

(A) a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II of this Act or Penalty Group 1 or 2 of this Act; or

(B) a substance which was specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II of this Act or Penalty Group 1 or 2 of this Act.

(6) [(~~5~~)] "Counterfeit substance" means[~~:~~

[~~(A) a substance which is purported to be a controlled substance but is chemically different from the controlled substance it is purported to be; or~~

[(~~B~~)] a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(7) [(~~6~~)] "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, counterfeit substance, abusable glue or aerosol paint, or drug paraphernalia, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance, counterfeit substance, abusable glue or aerosol paint, or drug paraphernalia. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(8) [(~~7~~)] "Designated agent" means an individual designated under Subsection (c) of Section 3.08 of this Act and in accordance with rules of the Department of Public Safety to communicate a practitioner's instructions to a pharmacist.

(9) [(~~8~~)] "Director" means the Director of the Texas Department of Public Safety or an employee of the department designated by him.

(10) [(~~9~~)] "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of

professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(11) [~~(10)~~] "Dispenser" means a practitioner, institutional practitioner, pharmacist, or pharmacy that dispenses a controlled substance.

(12) [~~(11)~~] "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(13) [~~(12)~~] "Distributor" means a person who distributes.

(14) [~~(13)~~] "Drug" means:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) any substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(D) any substance intended for use as a component of any substance specified in Subdivision (A), (B), or (C) of this subsection. It does not include devices or their components, parts, or accessories.

(15) [~~(14)~~] "Drug paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this Act or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act. It includes, but is not limited to:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;

(B) a kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of any species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used or intended for use in cutting a controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

(16) [~~(15)~~] "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) or its successor.

(17) [~~(16)~~] "Federal Drug Enforcement Administration" means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(18) [~~(17)~~] "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 2, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes); or

(B) an ambulatory surgical center that is licensed by the Texas Board of Health and is approved by the United States government to perform surgery paid by Medicaid on patients admitted for a period of not more than 24 hours.

(19) "Human consumption" means the injection, inhalation, ingestion, or application of any substance to or into a human body.

(20) [~~(18)~~] "Immediate precursor" means a substance which the commissioner has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture of such controlled substance.

(21) [~~(19)~~] "Institutional practitioner" means an intern, resident physician, fellow, or person in an equivalent professional position who:

(A) is not licensed by the appropriate state professional licensing board;

(B) is enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Federal Drug Enforcement Administration; and

(C) is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(22) [~~(20)~~] "Lawful possession" means the possession of a controlled substance that has been obtained in accordance with state or federal law.

(23) [~~(21)~~] "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.

(24) [~~(22)~~] "Marihuana" means the plant Cannabis sativa L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. However, it does not include the resin extracted from

any part of such plant or any compound, manufacture, salt, derivative, mixture, or preparation of the resin; nor does it include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(25) [~~(23)~~] "Medical purpose" means the use of a controlled substance for the purpose of relieving or curing a mental or physical disease or infirmity.

(26) [~~(24)~~] "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(27) [~~(25)~~] "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium and opiates, and any salt, compound, derivative, or preparation of opium or opiates;

(B) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subdivision (A) of this subsection, but not including the isoquinoline alkaloids of opium;

(C) opium poppy and poppy straw; or

(D) cocaine, including its salts, isomers (whether optical, position, or geometric) and salts of those isomers; coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(28) [~~(26)~~] "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 2.09 of this Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(29) [~~(27)~~] "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(30) [~~(28)~~] "Patient" means a human or animal for which a drug is administered, dispensed, delivered, or prescribed by a *practitioner* [~~practioner~~].

(31) [~~(29)~~] "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(32) [~~(30)~~] "Pharmacist" means a person licensed by the State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.

(33) [~~(31)~~] "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with this Act and other laws relating to pharmacy.

(34) [~~(32)~~] "Pharmacy" means a facility licensed by the State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law.

(35) [~~(33)~~] "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(36) [~~(34)~~] "Possession" means actual care, custody, control or management.

(37) [~~(35)~~] "Practitioner" means:

(A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state; or

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state.

(38) [~~(36)~~] "Prescribe" means the act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

(39) [~~(37)~~] "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient which specifies the date of issue, the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner, the name and quantity of the controlled substance prescribed, and directions for use of the drug.

(40) [~~(38)~~] "Principal place of business" means a location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance, but does not include a location where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location.

(41) [~~(39)~~] "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(42) [~~(40)~~] "Raw material" means a compound, material, substance, or equipment that is used or intended for use, alone or in any combination, in manufacturing, compounding, or processing a controlled substance.

(43) [~~(41)~~] "Registrant" means a person who is registered under Section 3.03 of this Act.

(44) [~~(42)~~] "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(45) [~~(43)~~] "Triplicate prescription form" means an official Department of Public Safety prescription form used to administer, dispense, prescribe, or deliver to an ultimate user a controlled substance in Schedule II of this Act.

(46) [~~(44)~~] "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SECTION 2. Subchapter 3, Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes), is amended by amending its title to read as follows:

SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES, *CONTROLLED SUBSTANCE ANALOGUES, AND CHEMICAL PRECURSORS*

SECTION 3. The Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes) is amended by adding Section 3.10 to read as follows:

Sec. 3.10. CONTROLLED SUBSTANCE ANALOGUES. (a) A controlled substance analogue, the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I of this Act or Penalty Group 1 of this Act or which was specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I of this Act or Penalty Group 1 of this Act, all or part of which is intended for human consumption, shall be treated for the purposes of this Act as a controlled substance in Penalty Group 1 of this Act.

(b) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance analogue described in Subsection (a) of this section, and such an offense is punishable according to the provisions of Section 4.03 of this Act.

(c) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance analogue described in Subsection (a) of this section, and such an offense is punishable according to the provisions of Section 4.04 of this Act.

(d) A controlled substance analogue, the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule II of this Act or Penalty Group 2 of this Act or which was specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule II of this Act or Penalty Group 2 of this Act, all or part of which is intended for human consumption, shall be treated for the purposes of this Act as a controlled substance in Penalty Group 2 of this Act.

(e) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance analogue described in Subsection (d) of this section, and such an offense is punishable according to the provisions of Section 4.031 of this Act.

(f) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance analogue described in Subsection (d) of this section, and such an offense is punishable according to the provisions of Section 4.041 of this Act.

(g) This section shall not apply to the following:

(1) a controlled substance;

(2) any substance for which there is an approved new drug application under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355);

(3) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

(4) any substance to the extent not intended for human consumption before an exemption under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) takes effect with respect to that substance.

(h) For purposes of this section, Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

SECTION 4. The Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes) is amended by adding Section 3.11 to read as follows:

Sec. 3.11. CHEMICAL PRECURSOR RECORD-KEEPING REQUIREMENTS AND PENALTIES. (a) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following precursor substances to a person shall make an accurate and legible record of the transaction and maintain the record for a period of at least two years after the date of the transaction:

(1) Methylamine;

(2) Ethylamine;

(3) D-lysergic acid;

(4) Ergotamine tartrate;

(5) Diethyl malonate;

(6) Malonic acid;

(7) Ethyl malonate;

(8) Barbituric acid;

(9) Piperidine;

(10) N-acetylanthranilic acid;

(11) Pyrrolidine;

(12) Phenylacetic acid;

(13) Anthranilic acid;

(14) Morpholine;

(15) Ephedrine;

(16) Pseudoephedrine or norpseudoephedrine; or

(17) Phenylpropanolamine.

(b) The department may, by rule, name additional substances as precursors for the purposes of record-keeping under Subsection (a) of this section if public health and welfare are jeopardized by evidenced proliferation of a chemical substance utilized in the illicit manufacture of a controlled substance. The department shall file with the secretary of state a certified copy of any rule adopted under this subsection.

(c) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a precursor substance subject to Subsection (a) of this section shall file a written report with the director that includes the following information:

(1) the name and address of the recipient;

(2) if the recipient is acting on behalf of a business or another person, the name and address of the business or person; and

(3) the name of the executive head and the telephone number of the business if a business is the recipient.

(d) A person who files a report under Subsection (c) of this section and who subsequently becomes aware of a change in the information previously reported must file with the director a written notice of the change as soon as possible.

(e) A record made under Subsection (a) of this section must include the following information:

(1) the name and address of the recipient;

(2) if the recipient is acting on behalf of a business or another person, the name and address of the business or other person;

(3) if the recipient represents a business, the nature of the business;

(4) the name, description, and amount of the precursor substance that was received; and

(5) if the recipient does not represent an established business, the following identifying information:

(A) the recipient's driver's license number or other official state-issued identification of the recipient that includes a photograph and the home address of the recipient, other than a post office box number;

(B) the license plate number of a motor vehicle owned or operated by the recipient; and

(C) a description, obtained from the recipient, of how the substance is to be used.

(f) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance subject to Subsection (a) of this section shall allow a peace officer to inspect all records made in accordance with this section at any reasonable time and may not interfere with the full and complete inspection of those records or copying of any of those records.

(g) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a precursor substance subject to Subsection (a) of this section commits an offense if the manufacturer, wholesaler, retailer, or other person fails to comply with this section.

(h) Except as provided by Subsection (i) of this section, an offense under Subsection (g) of this section is a Class A misdemeanor.

(i) If it is shown on the trial of a defendant that the defendant was convicted previously under that subsection, the offense is punishable as a felony of the third degree.

(j) This section does not apply to the sale or transfer of a nonnarcotic product that includes a precursor substance subject to Subsection (a) of this section if the product may be sold lawfully over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).

SECTION 5. This Act takes effect September 1, 1987.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 15, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 685 on May 26, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 685 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 22, 1987, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 685 on June 1, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.
