

1-1 By: Perry, et al. S.B. No. 461  
1-2 (In the Senate - Filed February 5, 2015; February 10, 2015,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 March 18, 2015, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 18, 2015,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Whitmire</u>	X		
1-10	<u>Huffman</u>	X		
1-11	<u>Burton</u>	X		
1-12	<u>Creighton</u>	X		
1-13	<u>Hinojosa</u>		X	
1-14	<u>Menéndez</u>		X	
1-15	<u>Perry</u>	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 461 By: Whitmire

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to false or misleading packaging, labeling, or advertising  
1-20 of certain abusable synthetic substances; providing civil  
1-21 penalties; creating a criminal offense.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subtitle C, Title 6, Health and Safety Code, is  
1-24 amended by adding Chapter 484 to read as follows:

1-25 CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES

1-26 Sec. 484.001. DEFINITIONS. In this chapter:

1-27 (1) "Abusable synthetic substance" means a substance  
1-28 that:

1-29 (A) is not otherwise regulated under this title  
1-30 or under federal law;

1-31 (B) is intended to mimic a controlled substance  
1-32 or controlled substance analogue; and

1-33 (C) when inhaled, ingested, or otherwise  
1-34 introduced into a person's body:

1-35 (i) produces an effect on the central  
1-36 nervous system similar to the effect produced by a controlled  
1-37 substance or controlled substance analogue;

1-38 (ii) creates a condition of intoxication,  
1-39 hallucination, or elation similar to a condition produced by a  
1-40 controlled substance or controlled substance analogue; or

1-41 (iii) changes, distorts, or disturbs the  
1-42 person's eyesight, thinking process, balance, or coordination in a  
1-43 manner similar to a controlled substance or controlled substance  
1-44 analogue.

1-45 (2) "Business" includes trade and commerce and  
1-46 advertising, selling, and buying service or property.

1-47 (3) "Mislabelled" means varying from the standard of  
1-48 truth or disclosure in labeling prescribed by law or set by  
1-49 established commercial usage.

1-50 (4) "Sell" and "sale" include offer for sale,  
1-51 advertise for sale, expose for sale, keep for the purpose of sale,  
1-52 deliver for or after sale, solicit and offer to buy, and every  
1-53 disposition for value.

1-54 Sec. 484.002. PROHIBITED ACTS. (a) A person commits an  
1-55 offense if in the course of business the person produces,  
1-56 distributes, sells, or offers for sale a mislabeled abusable  
1-57 synthetic substance.

1-58 (b) An offense under this section is a Class C misdemeanor,  
1-59 except that the offense is a Class A misdemeanor if it is shown on  
1-60 the trial of the offense that the actor has previously been

2-1 convicted of an offense under this section or of an offense under  
2-2 Section 32.42(b)(4), Penal Code, and the adulterated or mislabeled  
2-3 commodity was an abusable synthetic substance.

2-4 (c) If conduct constituting an offense under this section  
2-5 also constitutes an offense under another provision of law, the  
2-6 person may be prosecuted under either this section or the other  
2-7 provision.

2-8 Sec. 484.003. CIVIL PENALTY. (a) The attorney general or  
2-9 a district, county, or city attorney may institute an action in  
2-10 district court to collect a civil penalty from a person who in the  
2-11 course of business produces, distributes, sells, or offers for sale  
2-12 a mislabeled abusable synthetic substance.

2-13 (b) The civil penalty may not exceed \$25,000 a day for each  
2-14 offense. Each day an offense is committed constitutes a separate  
2-15 violation for purposes of the penalty assessment.

2-16 (c) The court shall consider the following in determining  
2-17 the amount of the penalty:

2-18 (1) the person's history of any previous offenses  
2-19 under Section 484.002 or under Section 32.42(b)(4), Penal Code,  
2-20 relating to the sale of a mislabeled abusable synthetic substance;

2-21 (2) the seriousness of the offense;

2-22 (3) any hazard posed to the public health and safety by  
2-23 the offense; and

2-24 (4) demonstrations of good faith by the person  
2-25 charged.

2-26 (d) Venue for a suit brought under this section is in the  
2-27 city or county in which the offense occurred or in Travis County.

2-28 (e) A civil penalty recovered in a suit instituted by a  
2-29 local government under this section shall be paid to that local  
2-30 government.

2-31 Sec. 484.004. AFFIRMATIVE DEFENSE. It is an affirmative  
2-32 defense to prosecution or liability under this chapter that:

2-33 (1) the abusable synthetic substance was approved for  
2-34 use, sale, or distribution by the United States Food and Drug  
2-35 Administration or other state or federal regulatory agency with  
2-36 authority to approve the substance's use, sale, or distribution;  
2-37 and

2-38 (2) the abusable synthetic substance was lawfully  
2-39 produced, distributed, sold, or offered for sale by the person who  
2-40 is the subject of the criminal or civil action.

2-41 Sec. 484.005. NO DEFENSE. In a prosecution or civil action  
2-42 under this chapter, the fact that the abusable synthetic substance  
2-43 was in packaging labeled with "Not for Human Consumption," or other  
2-44 wording indicating the substance is not intended to be ingested, is  
2-45 not a defense.

2-46 SECTION 2. This Act takes effect September 1, 2015.

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