

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES

CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 484.001. DEFINITIONS. In this chapter:

(1) "Abusable synthetic substance" means a substance that:

(A) is not otherwise regulated under this title or under federal law;

(B) is intended to mimic a controlled substance or controlled substance analogue; and

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

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

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

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

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

(3) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.002. PROHIBITED ACTS. (a) A person commits an

offense if in the course of business the person knowingly produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

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

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

(c) The court shall consider the following in determining the amount of the penalty:

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

(2) the seriousness of the offense;

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

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

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

(e) A civil penalty recovered in a suit instituted by a

local government under this section shall be paid to that local government.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.