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BILL



ANALYSIS

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Senate Bill 1082 (as enacted)
Sponsor: Senator Dave Hildenbrand
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 183 of 2012

Date Completed: 7-6-12

RATIONALE

Consistent with Federal law, Michigan's Public Health Code classifies controlled substances under five schedules. A Schedule 1 controlled substance is a substance that has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. Under both Federal and Michigan law, Schedule 1 controlled substances include marijuana and cathinone (a stimulant commonly known as khat or qat). A number of health care professionals and agencies, as well as law enforcement officials, raised concerns about the increasingly popular use of synthetic substances that mimic THC, the main active chemical compound found in marijuana, and synthetic cathinones that are commonly referred to as "bath salts". These substances, which generally had not been included in the controlled substances schedules, reportedly can cause adverse effects in humans. In addition, despite 2010 legislation adding to Schedule 1 particular chemical compounds marketed as synthetic marijuana under such names as "Spice" and "K2", some retailers continued to offer products under those names with a slightly altered chemical makeup. It was suggested that the sale of named products indicating that they contain banned substances be prohibited, that synthetic marijuana be included in Schedule 1 more broadly than under previous law, and that synthetic cathinones be added to Schedule 1.

CONTENT

The bill amended the Public Health Code to prohibit and prescribe a criminal penalty for selling a named product while representing that it contains an ingredient producing effects similar to those produced by a Schedule 1 controlled substance.

The bill also included synthetic cannabinoids and synthetic cathinones in Schedule 1.

The bill took effect on July 1, 2012.

Sale of Named Product

The bill prohibits a person who knows that a named product contains or previously contained an ingredient that was designated as a Schedule 1 controlled substance from selling or offering to sell any other product while representing that it contains an ingredient that produces the same or a substantially similar physiological or psychological effect as the scheduled ingredient. The prohibition does not apply to a product approved by the Federal Food and Drug Administration (FDA).

A violation is a felony punishable by up to four years' imprisonment, a maximum fine of \$20,000, or both.

"Named product" means either of the following:

- A product having a designated brand name.

-- A product having a street or common name with application sufficient to identify the product as a specific product within Michigan or a local unit.

Synthetic Cannabinoids & Synthetic Cathinones

Synthetic Cannabinoids. Under the Code, several specific chemical compounds, all of which are synthetic forms of cannabinoids, are listed in Schedule 1. In addition, Schedule 1 includes synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure or pharmacological activity.

The bill also lists "synthetic cannabinoids" in Schedule 1. "Synthetic cannabinoids" include any material, compound, mixture, or preparation that is not otherwise listed as a controlled substance in Schedules 1 through 5, is not approved by the FDA as a drug, and contains any quantity of certain substances listed in the bill, their salts, isomers, and salts of isomers and homologues (analogs), unless specifically excepted, whenever the existence of those salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible with the specific chemical designation.

In addition to the listed chemical compounds, the bill includes in the definition of "synthetic cannabinoids" any other synthetic chemical compound that is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring cannabinoids that is not listed in Schedules 2 through 5 and is not approved as a drug by the FDA.

Synthetic Cathinones. The Code includes cathinone in Schedule 1.

The bill also lists "synthetic cathinones" in Schedule 1. "Synthetic cathinones" means any material, compound, mixture, or preparation that is not otherwise listed as a controlled substance in Schedules 1 through 5, is not approved by the FDA as a drug, and contains any quantity of certain substances listed in the bill, their salts, isomers, homologues (analogs), and salts of

isomers and homologues (analogs), unless specifically excepted, whenever the existence of those salts, isomers, etc. is possible with the specific chemical designation.

MCL 333.7212 et al.

BACKGROUND

Under the Public Health Code, manufacturing, creating, delivering, or possessing with intent to deliver a Schedule 1 controlled substance is a felony punishable by up to seven years imprisonment and/or a maximum fine of \$10,000. Creating, manufacturing, delivering, or possessing with intent to deliver a Schedule 1 counterfeit substance or a controlled substance analogue intended for human consumption is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000.

Possession of a Schedule 1 controlled substance is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000. Use of a Schedule 1 controlled substance is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000.

All of the penalties described above apply unless another penalty is specified for a particular substance.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Synthetic cannabinoid compounds were developed in laboratories in order to study the effects of cannabis on the brain. These compounds were never intended for human consumption and, unlike marijuana, evidently cannot be detected in the body through drug tests. According to the U.S. Drug Enforcement Agency (DEA) Office of Diversion Control website, behavioral studies have shown that synthetic cannabinoids have THC-like effects in animals. These effects are used by scientists to predict likelihood of THC-like psychoactivity in humans. Some studies have found the

subjective effects of certain synthetic cannabinoids to be as much as 66 to 80 times more active than those of THC in some animals.

In recent years, herbal mixtures or potpourri sprayed with the synthetic cannabinoid compounds, and known as "K2", "Spice", or "Spice Gold", have been marketed over the internet as a legal alternative to marijuana. Although the Federal government and most states, including Michigan, include some common synthetic cannabinoid compounds in their controlled substance schedules, products have continued to be sold under those names. Typically, producers of these fake weed compounds adjust the chemical structure just slightly enough so that they do not match the prohibited compounds, and their sale and use continue to be a problem.

While the synthetic cannabinoid compounds apparently work on the brain in the same manner as THC, users can have symptoms that do not match up with marijuana use, such as increased agitation and elevated blood pressure and heart rates. There have been reports of psychotic behavior, violence, and hallucinations by those who use synthetic cannabinoids. The rates of hospitalization and reports to poison control centers as a result of the use of fake marijuana products have increased dramatically over the last few years. According to written testimony submitted to the Senate Judiciary Committee by the Director of the Children's Hospital of Michigan Regional Poison Control Center, as of May 8, 2012, there had already been 166 hospital visits reported to the center in 2012, compared with 159 in all of 2011. Abuse of these substances has not been curtailed despite the addition of specific synthetic cannabinoids to Michigan's Schedule 1 controlled substance list in 2010 and the DEA's temporary addition of synthetic cannabinoids to the Federal Schedule 1 in March 2011.

Given the pharmacological similarities to marijuana, the results of lab research on animals, and the severe cardiovascular, neurological, and other symptoms observed in users of synthetic cannabinoids, those substances should be banned regardless of their specific chemical makeup. By prohibiting and providing a criminal penalty

for selling a named product, such as K2 or Spice, that suggests inclusion of a scheduled ingredient, and by broadly including synthetic cannabinoids in Schedule 1, the bill acknowledges the danger of these products and will help protect the health of potential users. It also will help law enforcement to respond to the still-growing trafficking of fake marijuana products and should reduce their availability.

Supporting Argument

Public Act 171 of 2010 added cathinone and Catha Edulis (commonly known as khat or qat) to Michigan's list of Schedule 1 controlled substances. Synthetic cathinones are central nervous system stimulants similar to cathinone in their chemical structure. Users typically ingest, inhale, inject, smoke, or snort synthetic cathinone products to experience effects similar to those of amphetamine abuse. Synthetic cathinones are typically marketed as "bath salts" or "plant food" and are sold legally under various names. Manufacturers and distributors have evaded regulation and enforcement because synthetic cathinones were not scheduled under Federal or Michigan law and the products typically are labeled to be not for human consumption. The distribution and use of synthetic cathinones, like synthetic marijuana products, have increased rapidly, as have the consequences of their use. According to the National Drug Intelligence Center, in 2009 there were no reports of bath salt-related calls to U.S. poison control centers. In 2010, there were 302 such calls. Just through May 12 of 2011, there were 2,237 calls to poison control centers related to use of bath salts. By including synthetic cathinones in Schedule 1, the bill recognizes the danger of these "bath salt" products and will help protect the health of potential users.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate impact on State and local government. With the addition of synthetic cannabinoids and cathinones to the Schedule 1 controlled substances list, the penalties already prescribed for manufacturing, delivering, possessing, or using Schedule 1 substances will now apply to these categories. These

penalties range from a misdemeanor punishable by up to one year's imprisonment and/or up to a \$1,000 fine, to a felony punishable by up to seven years' imprisonment and/or up to a \$10,000 fine. The bill also creates a new felony for selling or offering to sell a product that is misrepresented as being similar to the banned product. This new felony will be punishable by up to four years' imprisonment and/or a fine of up to \$20,000. There are no data to indicate how many individuals will be convicted of the additional crimes defined in the bill; however, given the previous widespread availability of some of the substances being banned, there could be a significant number of individuals found in violation. For those convicted, State government and local units will see increased incarceration costs and/or costs of community supervision. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.