~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 19, 2012

**S. 1056**

Introduced by Senator Peeler

S. Printed 1/19/12--S.

Read the first time January 10, 2012.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (S. 1056) to amend Section 44‑53‑160, as amended, Code of Laws of South Carolina, 1976, relating to the manner in which changes to schedules of controlled substances, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 3, by striking lines 16-17 and inserting:

/ Board of Health and Environmental Control, no later than thirty days after publication in the federal register of the final order/

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 44‑53‑160, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MANNER IN WHICH CHANGES TO SCHEDULES OF CONTROLLED SUBSTANCES MAY BE MADE BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO PROVIDE THAT THE EXISTENCE OF A RECOGNIZED MEDICAL USE OF A SUBSTANCE MUST BE CONSIDERED BY THE DEPARTMENT WHEN MAKING A RECOMMENDATION TO THE GENERAL ASSEMBLY ABOUT ADDING A SUBSTANCE TO A SCHEDULE, TO PROVIDE FOR THE ADDITION, DELETION OR RESCHEDULING OF A CONTROLLED SUBSTANCE BY THE DEPARTMENT WHEN A CORRESPONDING ADDITION, DELETION, OR RESCHEDULING OF THE DRUG BY FEDERAL LAW OR REGULATION OCCURS, TO PROVIDE FOR THE EMERGENCY DESIGNATION OF A SUBSTANCE AS A SCHEDULE I SUBSTANCE, AND TO PROVIDE AN EXEMPTION FROM ORDINARY PROMULGATION REQUIREMENTS; AND TO AMEND SECTION 44‑53‑190, AS AMENDED, RELATING TO SCHEDULE I CONTROLLED SUBSTANCES, SO AS TO DEFINE AND ADD SYNTHETIC CANNABINOIDS, CATHINONES, AND SUBSTITUTED CATHINONES TO THAT SCHEDULE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑53‑160 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“Section 44‑53‑160. (A)(1) Annually, within thirty days after the convening of each regular session of the General Assembly, the department shall recommend to the General Assembly any additions, deletions, or revisions in the schedules of substances~~,~~ enumerated in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270, which ~~it deems~~ the department considers necessary. ~~The~~ Except as otherwise provided in this section, the department shall not make any additions, deletions, or revisions in ~~such~~ the schedules until after notice and an opportunity for a hearing is afforded to all interested parties. In making a recommendation to the General Assembly regarding a substance, the department shall consider the following:

(a) the actual or relative potential for abuse;

(b) the scientific evidence of ~~it’s~~ the pharmacological effect of the substance, if known;

(c) the state of current scientific knowledge regarding the substance;

(d) the history and current pattern of abuse;

(e) the scope, duration, and significance of abuse;

(f) the risk to ~~the~~ public health;

(g) the potential of the substance to produce psychic or physiological dependence liability; ~~and~~

(h) whether the substance is an immediate precursor of a substance already controlled ~~under this Division~~ pursuant to this chapter; and

(i) whether there is an accepted or recognized medical use for the substance.

(2) After considering the above factors listed in item (1), the department shall make a recommendation to the General Assembly, specifying to what schedule the substance should be added, deleted, or rescheduled, if it the department finds that the substance has a potential for abuse.

~~(3)~~ ~~During the time the General Assembly is not in session, the Department may by rule add, delete or reschedule a substance as a controlled substance after providing for notice and hearing to all interested parties. Upon the adoption of such rule, the Department shall forward copies to the chairmen of the Medical Affairs Committee of the Senate, and the Military, Public and Municipal Affairs Committee of the House of Representatives and to the Clerks of the Senate and House and to the Chairman of the Joint Legislative Committee on Drugs and Narcotics.~~

~~(4)~~ ~~If any substance is added, deleted, or rescheduled as a controlled substance under federal law or regulation, the department shall by rule, at its first regular or special meeting after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, reschedule the substance into the appropriate schedule, such rule having force of law unless overturned by the General Assembly. This rule issued by the department shall be in substance identical with the order published in the federal register effecting the change in federal status of the substance. The department shall notify the General Assembly in writing of the change in federal law or regulation and of the corresponding change in South Carolina law.~~

~~(5)~~(B) Whether or not the General Assembly is in session, if a substance is added, deleted, or rescheduled as a controlled substance pursuant to federal law or regulation, the department shall, at the first regular or special meeting of the South Carolina Board of Health and Environmental Control, at least thirty days after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, add, delete, or reschedule the substance in the appropriate schedule. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection must be in substance identical with the order published in the federal register effecting the change in federal status of the substance. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the chairmen of the Medical Affairs Committee, the Judiciary Committee of the Senate, the Military, Public and Municipal Affairs Committee, the Judiciary Committee of the House of Representatives, and to the Clerks of the Senate and House, and shall post the schedules on the department’s website indicating the change and specifying the effective date of the change.

(C) Notwithstanding another provision of law, if the department determines there is a need for emergency designation as a Schedule I substance due to the high potential for abuse, no accepted medical use in treatment in the United States, and a lack of accepted safety for use in treatment under medical supervision, and there is a high risk to public health, the board may designate this substance by emergency scheduling immediately upon approval by the board. The department shall forward copies of its emergency scheduling to the General Assembly and post the action on its website. The emergency scheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly.

(D) The department shall exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act and the ~~law~~ laws of this State, be lawfully sold over the counter without a prescription.

(E) The addition, deletion, or rescheduling of a substance as a controlled substance by the department is governed by this section and is not subject to the promulgation requirements of Title 1, Chapter 23.”

SECTION 2. Section 44‑53‑190 of the 1976 Code, as last amended by Act 267 of 2002, is further amended to read:

“Section 44‑53‑190. (~~a~~A) The controlled substances listed in this section are included in Schedule I.

(~~b~~B) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetylmethadol

2. Allylprodine

3. Alphacetylmethadol

4. Alphameprodine

5. Alphamethadol

6. Benzethidine

7. Betacetylmethadol

8. Betameprodine

9. Betamethadol

10. Betaprodine

11. Clonitazene

12. Dextromoramide

13. [Deleted]

14. Diampromide

15. Diethylthiambutene

16. Dimenoxadol

17. Dimepheptanol

18. Dimethylthiambutene

19. Dioxaphetyl butyrate

20. Dipipanone

21. Ethylmethylthiambutene

22. Etonitazene

23. Etoxeridine

24. Furethidine

25. Hydroxypethidine

26. Ketobemidone

27. Levomoramide

28. Levophenacylmorphan

29. Morpheridine

30. Noracymethadol

31. Norlevorphanol

32. Normethadone

33. Norpipanone

34. Phenadoxone

35. Phenampromide

36. Phenomorphan

37. Phenoperidine

38. Piritramide

39. Proheptazine

40. Properidine

41. Racemoramide

42. Trimeperidine

43. Propiram

44. Difenoxin

45. Alfentanyl

46. Tilidine

47. Alphamethylfentanyl (N‑ [1‑(alpha‑methyl‑beta‑phenyl) ethyl‑4‑piperidyl] propionanilide; 1‑(1‑methyl‑2‑phenylethyl‑4‑(N‑propanilido) piperidine).

(~~c~~C) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine

2. Acetyldihydrocodeine

3. Benzylmorphine

4. Codeine methylbromide

5. Codeine‑N‑Oxide

6. Cyprenorphine

7. Desomorphine

8. Dihydromorphine

9. Etorphine

10. Heroin

11. Hydromorphinol

12. Methyldesorphine

13. Methylhydromorphine

14. Morphine methylbromide

15. Morphine methylsulfonate

16. Morphine‑N‑Oxide

17. Myrophine

18. Nicocodeine

19. Nicomorphine

20. Normorphine

21. Pholcodine

22. Thebacon

23. Drotebanol

(~~d~~D) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3,4‑methylenedioxy amphetamine

2. 5‑methoxy‑3,4‑methylenedioxy amphetamine

3. 3,4‑methylenedioxymethamphetamine (MDMA)

4. 3,4,5‑trimethoxy amphetamine

5. Bufotenine

6. Diethyltryptamine (DET)

7. Dimethyltryptamine (DMT)

8. 4‑methyl‑2,5‑dimethoxyamphetamine (STP)

9. Ibogaine

10. Lysergic acid diethylamide (LSD)

11. Marijuana

12. Mescaline

13. Peyote

14. N‑ethyl‑3‑piperidyl benzilate

15. N‑methyl‑3‑piperidyl benzilate

16. Psilocybin

17. Psilocyn

18. Tetrahydrocannabinol (THC)

19. 2,5‑dimethoxyamphetamine

20. 4‑bromo‑2,5‑dimethoxyamphetamine

21. 4‑Methoxyamphetamine

22. Thiophene analog of phencyclidine

23. Parahexyl

24. Synthetic cannabinoids. – Any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedule I through V, is not an FDA‑approved drug, and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation:

a. Naphthoylindoles. Any compound containing a 3‑(1‑naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Including, but not limited to, JWH‑015, JWH‑018, JWH‑019, JWH‑073, JWH‑081, JWH‑122, JWH‑200, JWH‑210, JWH‑398, AM‑2201, WIN 55‑212, AM‑2201 (C1 analog), AM‑1220.

b. Naphthylmethylindoles. Any compound containing a 1H‑indol‑3‑yl‑(1‑naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

c. Naphthoylpyrroles. Any compound containing a 3‑(1‑naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Including, but not limited to, JWH‑307, JWH‑370, JWH‑176.

d. Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3‑position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

e. Phenylacetylindoles. Any compound containing a 3‑phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Including, but not limited to, SR‑18, RCS‑8, JWH‑203, JWH‑250, JWH‑251.

f. Cyclohexylphenols. Any compound containing a 2‑(3‑hydroxycyclohexyl)phenol structure with substitution at the 5‑position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. Including, but not limited to, CP 47,497 (and homologues), cannabicyclohexanol, CP‑55, 940.

g. Benzoylindoles. Any compound containing a 3‑(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Including, but not limited to, AM‑694, Pravadoline (WIN 48,098), RCS‑4, AM‑630, AM‑1241, AM‑2233.

h. 2,3‑Dihydro‑5‑methyl‑3‑(4‑morpholinylmethyl)pyrrolo[1,2,3‑de]‑1, 4‑benzoxazin‑6‑yl]‑1‑napthalenylmethanone. (WIN 55,212‑2).

i. 9‑(hydroxymethyl)‑6,6‑dimethyl‑3‑(2‑methyloctan‑2‑yl) – 6a,7,10,10a‑tetrahydrobenzo[c]chromen‑1‑ol 7370. (HU‑210, HU‑211).

j. Adamantoylindoles. Any compound containing a 3‑(1‑adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring system to any extent.

(~~e~~E) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers if possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone; or

(3) Gamma Hydroxybutyric Acid.

(~~f~~F) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline~~.~~;

(2) N‑ethylamphetamine;

(3) Cathinone; or

(4) Substituted Cathinones.

Any compound (not being bupropion) structurally derived from 2‑amino‑1‑phenyl‑1‑propanone by modification in any of the following ways:

(a) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(b) by substitution at the 3‑position with an alkyl substituent;

(c) by substitution at the nitrogen atom with alkyl or dialkyl groups, benzyl or methoxybenzyl groups; or

(d) by inclusion of the nitrogen atom in a cyclic structure.

Including, but not limited to: Methylone, Mephedrone, 3,4‑Methylenedioxypyrovalerone (MDPV), Butylone, Methedrone, 4‑Methylethcathinone, Flephedrone, Pentylone, Pentedrone, Buphedrone.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑