~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 6, 2011

**S. 78**

Introduced by Senators Hayes, Lourie and L. Martin

S. Printed 4/6/11--S.

Read the first time January 11, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 78) to amend Section 44‑53‑190, as amended, Code of Laws of South Carolina, 1976, relating to materials, compounds, mixtures, and preparations classified, 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, by striking all after the enacting words and inserting:

/ SECTION 1. Section 44-53-160 of the 1976 Code is 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 controlled substances~~,~~ enumerated in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270~~,~~ which ~~it~~ the Department deems 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~~ the actual or relative potential for abuse;

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

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

(d) ~~The~~ the history and current pattern of abuse;

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

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

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

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

(2) After considering the ~~above~~ factors listed in subsection (A)(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)~~(B) ~~During~~ Except as otherwise provided in this section, 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 a hearing to all interested parties. The addition, deletion, or rescheduling of a substance pursuant to this subsection has the full force of law unless overturned by the General Assembly. Upon the ~~adoption of such rule~~ addition, deletion, or rescheduling of a substance, the Department shall forward copies of the change to the chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, ~~and~~ the Military, Public and Municipal Affairs Committee and the Judiciary 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~~, and shall post the schedules on the Department’s website indicating the change and specifying the effective date of the change.

~~(4)~~(C) If ~~any~~ a substance is added, deleted, or rescheduled as a controlled substance ~~under~~ pursuant to federal law or regulation, the ~~department~~ Department shall ~~by rule~~, at ~~its~~ 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 ~~into~~ in the appropriate schedule~~, such rule having~~. 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. ~~This rule issued~~ The addition, deletion, or rescheduling of a substance by the ~~department shall~~ 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. ~~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~~ 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 and the Judiciary Committee of the Senate, the Military, Public and Municipal Affairs Committee and 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.

~~(5)~~(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 Department’s addition, deletion, or rescheduling of a substance as a controlled substance is governed by this section and is not subject to the promulgation requirements of Title 1, Chapter 23.”

SECTION 2. Section 44‑53‑190(d) of the 1976 Code is amended to read:

“(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~~ the 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. Tetrahydrocannabinols (THC);

19. 2,5‑dimethoxyamphetamine;

20. 4‑bromo‑2,5‑dimethoxyamphetamine;

21. 4‑methoxyamphetamine;

22. Thiophene analog of phencyclidine;

23. Parahexyl; and

24. Synthetic cannabinoids, including, but not limited to, JWH‑018, JWH‑073, JWH-200, CP-47,497 and homologues, and HU-210.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs are expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Health & Environmental Control states the provisions of this bill will not cause the agency to incur any additional expense. The State Law Enforcement Division and the Judicial Department each indicate that enactment of this bill will have a minimal impact on the General Fund of the State, which can be absorbed by each agency at their current level of funding.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 44‑53‑190, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MATERIALS, COMPOUNDS, MIXTURES, AND PREPARATIONS CLASSIFIED AS SCHEDULE I DRUGS, SO AS TO ADD SYNTHETIC CANNABIS TO THE LIST OF SCHEDULE I DRUGS.

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

SECTION 1. Section 44‑53‑190(d) of the 1976 Code, as last amended by Act 267 of 2002, is further amended to read:

“(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~~ these 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; and

24. Synthetic cannabis (cannabicyclohexanol, JWH‑018, JWH‑073, HU‑210, other tetrahydrocannabinols, and any other synthetic equivalent of the substances contained in the plant or in the resinous extracts of cannabis).”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑