



Ohio Legislative Service Commission

Bill Analysis

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S.B. 57

129th General Assembly
(As Introduced)

Sen. Tavares

BILL SUMMARY

- Includes two synthetic cannabinoids commonly known as K2 or Spice as Schedule I controlled substances with the result that all Revised Code provisions pertaining to Schedule I controlled substances, including all drug offenses involving them, apply to those two synthetic cannabinoids.

CONTENT AND OPERATION

Inclusion of Spice as Schedule I controlled substance

The bill includes two synthetic cannabinoids commonly known as K2 or Spice as Schedule I controlled substances. Specifically, the bill includes as a Schedule I controlled substance any material, compound, mixture, or preparation that contains any quantity of any of the following substances, including their salts, isomers, and salts of isomers, unless specifically excepted under federal drug abuse control laws, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) 1-pentyl-3-(1-naphthoyl) indole (some trade or other names: JWH-018), and (2) 1-butyl-3-(1-naphthoyl) indole (some trade or other names: JWH-073) as Schedule I controlled substances. They are included within the portion of Schedule I that lists hallucinogens that are Schedule I controlled substances.¹ Consequently, all of the Revised Code provisions pertaining to Schedule I controlled substances (see "**Ohio law**" under "**Background**," below) will apply to JWH-018 and JWH-073.

¹ R.C. 3719.41, Schedule 1, (C)(35), (36), (37), (38), and (39).

Controlled substances and existing law

Existing law defines a "controlled substance" as any drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of Ohio's Controlled Substances Law.² Schedules I, II, III, IV, and V are established by statute,³ but current law provides that the Schedules are amended automatically to reflect changes in the federal Drug Abuse Control Law Schedules that are made by the U.S. Attorney General and that the Schedules are subject to changes in them made by rule adopted by the State Board of Pharmacy.⁴ Schedule I contains controlled substances that generally are considered to be the most dangerous (e.g., heroin, L.S.D., marihuana, mescaline, peyote, psilocybin, tetrahydrocannabinols, hashish, methaqualone, *Salvia divinorum*, etc.), whereas Schedule V contains controlled substances that generally are considered to be less potent but still dangerous (e.g., not more than specified small amounts of codeine or opium in medicinal usage, ephedrine unless otherwise exempted, etc.). Schedules II, III, and IV controlled substances fit in a continuum, as to potency and dangerousness, between Schedules I and V.

Background

Ohio law

The sale and distribution of controlled substances is regulated pursuant to R.C. Chapters 3719. and 4729., and a series of criminal offenses contained in those Chapters and R.C. Chapter 2925. prohibit the sale, distribution, possession, use, manufacture, etc., of controlled substances other than in accordance with the regulatory provisions of R.C. Chapters 3719. and 4729. or in accordance with specified exceptions to the prohibitions. The criminal penalties for many controlled substance offenses vary, depending on whether the drug involved in the offense is a Schedule I, II, III, IV, or V controlled substance, with the penalties for offenses involving a Schedule I or II controlled substance generally being classified as a higher degree of misdemeanor or felony than the same offenses involving Schedule III, IV, or V controlled substances.

Fifteen Revised Code sections use the term "Schedule I controlled substance" in substantive provisions. Most of those sections are contained in the Drug Offenses Law and use the term in criminal prohibitions, in determining the penalty for a prohibition, or in related provisions.⁵ Others pertain to criminal sentencing, penalties under the

² R.C. 3719.01, not in the bill.

³ R.C. 3719.41, not in the bill.

⁴ R.C. 3719.43 and 3719.44, not in the bill.

⁵ R.C. 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.11, 2925.22, 2925.23, 2925.36, and 2925.51.

Controlled Substances Law, licensing of terminal distributors, and penalties under the Pharmacy Law.⁶

Federal policy and law

The U.S. Drug Enforcement Agency (DEA), issued a final order on March 1, 2011, to temporarily place five synthetic cannabinoids into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions. The substances are 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue).

The Comprehensive Crime Control Act of 1984,⁷ which was signed into law on October 12, 1984, gives the U.S. Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year if he finds that such action is necessary to avoid imminent hazard to the public safety. According to the final order, "[t]he temporary placement of these five synthetic cannabinoids into Schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety. First, these substances are not intended for human consumption, but there has been a rapid and significant increase in abuse of these substances in the United States. As a result of this abuse, synthetic cannabinoids are banned in at least 18 states in the United States and several countries, and all five branches of the U.S. military prohibit military personnel from possessing or using synthetic cannabinoids. Second, law enforcement has seized synthetic cannabinoids in conjunction with controlled substances and based on self-reports to law enforcement and health care professionals, synthetic cannabinoids are abused for their psychoactive properties. Third, numerous state and local public health departments and poison control centers have issued health warnings describing the adverse health effects associated with synthetic cannabinoids. Based on scientific data currently available, these five substances have the potential to be extremely harmful and, therefore, pose an imminent hazard to the public safety."⁸

Federally listed "Drugs and Chemicals of Concern"

The DEA's Office of Diversion Control includes on its Internet web site a list entitled "Drugs and Chemicals of Concern." Included within that list are five substances referred to as "Spice Cannabinoids." The Spice Cannabinoid substances are:

⁶ R.C. 2929.14, 3719.99, 4729.54, and 4729.99.

⁷ Pub. L. 98-473.

⁸ Federal Register Volume 76, Number 40 (Tuesday, March 1, 2011).

(1) JWH-018 and JWH-073, which the bill adds to Ohio's Schedule I, (2) CP-47,497 and cannabicyclohexanol (CP-47,497 C8 homologue), which are not addressed in the bill, (3) HU-210, [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol)], which is not addressed in the bill, and (4) HU-211, (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol), which is not addressed in the bill. The list specifies illicit uses for each of the substances, stating that JWH-018 and JWH-073 have been identified in "Spice," "K2," "K3," and "other similar herbal incense products," that CP-47,497 and homologues have been identified in "Spice," "Spike 99," and other herbal incense products, that HU-210 and HU-211 are purported ingredients of "Spice," and that "Spice," "K2," "K3," "Spike 99," and the "other similar herbal products" may be smoked for their psychoactive effects. As of April 2011, the list provided the following information regarding CP-47,497 and homologues, HU-210, and HU-211:

(1) CP-47,497, which is not included in the bill, is a synthetic cannabinoid agonist lacking the classic cannabinoid chemical structure. It was designed and evaluated as a research tool to study the cannabinoid system. *As described above, as of March 1, 2011, CP-47,497 and cannabicyclohexanol, including its isomers, have been temporarily placed in Schedule I controlled substance under federal controlled substances law.*

(2) HU-210, which is not included within the bill, is structurally and pharmacologically similar to Δ^9 -THC. It is used in basic scientific research to identify cannabinoid receptors in the brain and study the mechanisms of action of Δ^9 -THC. HU-211, which is not included within the bill, is structurally similar to Δ^9 -THC. It is used in scientific research as a pharmacological tool to study the brain, and is being explored for several therapeutic uses. Both HU-210 and HU-211 were recently purported to be found in the herbal mixture "Spice," sold in European countries mainly via Internet shops. *HU-210 is a Schedule I controlled substance under federal controlled substances law.* HU-211 is not a controlled substance in the U.S. under federal controlled substances law.

HISTORY

ACTION	DATE
Introduced	02-01-11

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