

Legislative Analysis



PENALTY FOR POSSESSION OF K-2, CATHA EDULIS, & SALVIA DIVINORUM

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 99 as passed by the Senate

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (5-4-11)

BRIEF SUMMARY: The bill would lower the penalty for possession of Catha Edulis, Salvia Divinorum, and synthetic marijuana known as K-2 or Spice.

FISCAL IMPACT: To the extent that the bill increased the number of persons convicted of misdemeanors related to the possession of synthetic marijuana or the other substances listed in the bill, local units of government could incur increased costs of jail incarceration or misdemeanor supervision costs, both of which vary by jurisdiction. Any increase in penal fine revenues would benefit local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

In 2010, Public Act 171 designated the drugs Catha Edulis (Khat), Salvia Divinorum, and a synthetic marijuana known as K-2 or Spice as Schedule 1 controlled substances. Schedule 1 drugs, which are considered to have a high risk of abuse and to have no legitimate medical purpose, include heroin, LSD, marijuana, MDMA (ecstasy), and methamphetamines. A companion act, Public Act 169, made it a misdemeanor offense with a penalty of up to one year imprisonment and/or a fine of \$2,000 for possession of any of these drugs.

However, a few months later, the misdemeanor penalty for possession of those drugs was inadvertently wiped out when a bill that was part of a different package but that amended the same section of law was signed by the governor without what is known as a "conflict substitute." Sometimes multiple bills are introduced that amend the same section of law. If one bill is signed into law, the remaining bill or bills that also amend the same section of law must be brought into conformity. Otherwise, the last bill to be signed will inadvertently eliminate the changes made by the bills that came before it.

Because the language designating possession of K-2, Khat, and Salvia Divinorum as a misdemeanor was eliminated when the later bill was signed into law, the penalty defaulted to a catch-all penalty that made possession of the drugs a felony with a maximum term of imprisonment of two years and/or a fine of not more than \$2,000. Legislation has been offered that would reestablish the misdemeanor penalty for possession of any of these drugs.

THE CONTENT OF THE BILL:

Senate Bill 99 would amend the Public Health Code to specify that the penalty for knowingly or intentionally possessing *Catha Edulis*, *Salvia Divinorum*, or a substance described in Section 7212(1)(h) – synthetic marijuana known as K-2 – would be a misdemeanor punishable by imprisonment for up to one year and/or a fine of not more than \$2,000.

(Under the code, the penalty for using any of these drugs is up to 90 days in jail and/or a fine of not more than \$500. The manufacture/delivery/possession with intent to deliver any of these drugs is punishable by up to seven years in prison and/or a \$10,000 fine.)

MCL 333.7403

HOUSE COMMITTEE ACTION:

The committee reported the Senate-passed version.

ARGUMENTS:

For:

The bill is merely correcting an oversight that resulted in a higher than intended penalty for possession of *Salvia Divinorum*, *Cathis Edulis*, and the chemical substances known as K-2, Spice or fake pot. Originally, it was decided to set the penalties for possession the same as for marijuana since the effects on the body are similar. Unfortunately, when a bill that amended the same section of the health code was adopted in the closing hours of the lame duck session of 2010, no one noticed that the version being voted on did not include the recently enacted misdemeanor penalty and so it was inadvertently eliminated. Not only did this result in the penalty defaulting to a felony, it was also misunderstood by the press and reported as making it legal again to possess any of these drugs. Thus, Senate Bill 99 simply restores the penalty for possession of these drugs to what it was originally intended.

POSITIONS:

The Michigan State Police indicated support for the bill. (4-28-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Bob Schneider

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.