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Senate Bill 99 (as reported without amendment)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

*(as passed by the Senate)*

Date Completed: 2-15-11

### **RATIONALE**

Public Act 171 of 2010 added several substances, including several compounds of synthetic marijuana, Salvia Divinorum, and Catha Edulis, to Michigan's list of Schedule 1 controlled substances. Public Act 169 of 2010 amended the Public Health Code to include the possession and use of the synthetic marijuana compounds and other substances in the penalty provisions for the possession and use of marijuana. Public Acts 169 and 171 took effect on October 1, 2010. Later, Public Act 352 of 2010, which took effect on December 22, 2010, amended the section of the Public Health Code that prescribes penalties for the possession of controlled substances, but did not include the provisions enacted by Public Act 169. As a result, Public Act 352 repealed the amendment that had included the additional substances in the marijuana possession penalty (but did not affect the penalty for use of those substances). It has been suggested that the repealed provisions should be re-enacted, so the possession of synthetic marijuana, Salvia Divinorum, and Catha Edulis would be penalized in the same manner as the possession of marijuana.

### **CONTENT**

**The bill would amend the Public Health Code to extend the penalty for possession of marijuana to the possession of several synthetic cannabinoid compounds, Catha Edulis, and Salvia Divinorum.**

Under the Code, a person may not knowingly or intentionally possess a controlled substance or controlled substance

analogue unless it was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice. A violation involving marijuana is a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$2,000, or both.

The bill would extend that penalty to the possession of Catha Edulis, Salvia Divinorum, and each of the following synthetic cannabinoids:

- (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-210.
- 2-[1R,3S]-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, also known as CP47,497, and its side chain homologues.
- 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
- 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
- (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone, also known as JWH-015.
- [1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-naphthalenyl-mentanone, also known as JWH-200.
- 1-(1-pentyl-1H-indol-3-yl)-2-(2-methoxyphenyl)-ethanone, also known as JWH-250.

MCL 333.7403

## **BACKGROUND**

### **Possession & Use of Synthetic Cannabinoids & Other Substances**

Public Act 171 of 2010 added several synthetic cannabinoids and other substances, including *Catha Edulis* and *Salvia Divinorum*, to the Public Health Code's list of Schedule 1 controlled substances. (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. Marihuana is a Schedule 1 controlled substance under both Federal and Michigan law.)

Public Act 169 of 2010 amended Sections 7403 and 7404 of the Public Health Code to extend the penalties for possession and use of marihuana to the possession and use of *Catha Edulis*, *Salvia Divinorum*, and the synthetic cannabinoids. Public Acts 169 and 171 took effect on October 1, 2010.

Late in the 2009-10 legislative session, Public Act 352 of 2010 amended Section 7403 of the Public Health Code to address a different issue. Public Act 352, however, did not include the references to synthetic marihuana and other substances that were enacted by Public Act 169. Consequently, the criminal penalties for *possession* of synthetic marihuana, *Catha Edulis*, and *Salvia Divinorum* enacted by Public Act 169 were repealed by Public Act 352, which took effect on December 22, 2010.

Public Act 352 did not affect the penalty for *use* of synthetic marihuana or the other listed substances, or the provisions of Public Act 171. Therefore, synthetic marihuana remains classified as a Schedule 1 controlled substance and its use remains subject to the criminal penalties in Section 7404 of the Public Health Code, as provided for by Public Act 169. Furthermore, because synthetic marihuana is a controlled substance, its *possession* is still prohibited under Section 7403. Instead of being subject to the misdemeanor penalty that applies to the possession of marihuana, however, possession of synthetic marihuana presumably is subject to a catchall felony penalty for possession of other Schedule 1 controlled substances.

### **Synthetic Cannabinoids, *Catha Edulis*, & *Salvia Divinorum***

The website of the U.S. Department of Justice Drug Enforcement Administration's (DEA's) Office of Diversion Control contains the following information.

**Synthetic Cannabinoids.** HU-210 is structurally and pharmacologically similar to THC, the main active ingredient of marijuana. It is used in basic scientific research to identify cannabinoid receptors in the brain and study the mechanisms of action of THC (tetrahydrocannabinol). It is a Schedule 1 controlled substance in the U.S.

CP47,497, JWH-018, and JWH-073 are synthetic cannabinoid agonists without the classical cannabinoid chemical structure. The compounds are used in scientific research as a tool to study the cannabinoid system. Although they are likely to have effects similar to those of THC in humans, CP47,497 and its homologues, JWH-018, and JWH-073, are not controlled substances in the U.S. (According to other sources, JWH-015, JWH-200, and JWH-250 also are synthetic cannabinoid agonists, similar to JWH-018 and JWH-073.)

**Catha Edulis.** *Catha Edulis*, or "Khat", refers to the leaves and young shoots of a flowering shrub native to East Africa and the Arabian Peninsula. Since the 13<sup>th</sup> century, it has been widely used as a recreational drug by the indigenous people of those regions and throughout the Middle East.

Khat is abused for its stimulant and euphoric effects. The fresh leaves and shoots typically are chewed. Dried Khat can be made into tea or a chewable paste. Rarely, it may be smoked or sprinkled on food.

Khat contains two central nervous system stimulants, cathinone and cathine. Cathinone is listed in Schedule I, and cathine is listed in Schedule IV, of the Federal Controlled Substances Act. (Public Act 171 of 2010 placed *Catha Edulis* and cathinone in the Public Health Code's list of Schedule 1 controlled substances, and included cathine in Schedule 4.)

**Salvia Divinorum.** *Salvia Divinorum* is a perennial herb in the mint family that is native to certain areas of Mexico. It has

been used by certain indigenous people for its ritual divination and healing.

Salvia Divinorum is abused for its ability to evoke hallucinogenic effects similar to those of other hallucinogenic substances that are scheduled controlled substances.

Currently, neither Salvia Divinorum nor any of its constituents is a controlled substance under Federal law, but several states have enacted legislation placing regulatory controls on Salvia Divinorum.

## **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 for the purpose of studying the effects of cannabis on the brain and were never intended for human consumption. In recent years, herbal mixtures of potpourri sprayed with the synthetic cannabinoid compounds, and known as "K2", "Spice", "Spice Gold", and other names, have been marketed as an alternative to marihuana. Public Act 171 added those compounds to the State's list of Schedule 1 controlled substances and Public Act 169 prescribed penalties for their possession and use. Those Acts also included other substances, including Salvia and Khat. With the enactment of Public Act 352, however, the provision treating possession of synthetic marihuana, Salvia, and Khat in the same manner as possession of marihuana was removed from the Public Health Code. When Governor Granholm signed Public Act 352, she also issued a signing statement pointing out the inadvertent repeal and urged the next Legislature to restore the criminal penalties. Senate Bill 99 would reinstate the penalty provisions for possession of synthetic marihuana, Salvia, and Khat.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of possession of synthetic marijuana or the other substances

and subject to the misdemeanor penalty. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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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.