

Regular Session, 2010

HOUSE BILL NO. 173

BY REPRESENTATIVES TEMPLET, WHITE, GIROD JACKSON, MICHAEL JACKSON, HENRY, LAFONTA, ARMES, WILLMOTT, BILLIOT, HENRY BURNS, GISCLAIR, MILLS, MONICA, PUGH, RICHARDSON, ST. GERMAIN, AND TALBOT AND SENATOR MARTINY

CONTROLLED SUBSTANCES: Creates the crime of the unlawful production, manufacturing, distribution, or possession of prohibited plants and adds hallucinogenic substances to Schedule I

1 AN ACT

2 To enact R.S. 40:964(Schedule I)(C)(32), (33), (34), and (35) and 989.2, relative to
3 controlled dangerous substances; to create the crime of the unlawful production,
4 manufacturing, distribution, or possession of a material, compound, mixture, or
5 preparation which contains a prohibited plant; to provide for definitions; to provide
6 for criminal penalties; to provide for exceptions; to add certain hallucinogenic
7 substances to Schedule I; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:964(Schedule I)(C)(32), (33), (34), and (35) and 989.2 are hereby
10 enacted to read as follows:

11 §964. Composition of schedules

12 Schedules I, II, III, IV, and V shall, unless and until added to pursuant to R.S.
13 40:962, consist of the following drugs or other substances, by whatever official
14 name, common or usual name, chemical name, or brand name designated:

15 SCHEDULE I

16 * * *

17 C. Hallucinogenic substances. Unless specifically excepted or unless listed
18 in another schedule, any material, compound, mixture, or preparation, which
19 contains any quantity of the following hallucinogenic substances, or which contains
20 any of their salts, isomers, or salts of isomers, whenever the existence of such salts,

1 isomers, or salts of isomers is possible within the specific chemical designation, for
2 purposes of this Paragraph only, the term "isomer" includes the optical, position, and
3 geometric isomers:

4 * * *

5 (32) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also
6 known as CP 47,497 and its C6, C7, C8, and C9 homologues}

7 (33) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-
8 6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol {also known as HU-210}

9 (34) Naphthalen-1-yl-(1-pentylindol-3-yl)methanone {also known as 1-
10 Pentyl-3-(1-naphthoyl)indole or JWH-018}

11 (35) Naphthalen-1-yl-(1-butylindol-3-yl)methanone {also known as 1-Butyl-
12 3-(1-naphthoyl)indole or JWH-073}

13 * * *

14 §989.2. Unlawful production, manufacturing, distribution, or possession of
15 prohibited plant products

16 A.(1) It shall be unlawful for any person knowingly or intentionally to
17 produce, manufacture, distribute, or possess with intent to produce, manufacture, or
18 distribute a material, compound, mixture, or preparation which contains a prohibited
19 plant and which meets any of the following criteria:

20 (a) It is intended to be placed in the oral or nasal cavity.

21 (b) It is prepared in such a manner as to be suitable for smoking in a pipe or
22 cigarette, or other device.

23 (c) It is to be burned and inhaled or exhaled in any manner or in any form.

24 (2) Whoever violates the provisions of this Subsection shall be sentenced to
25 a term of imprisonment with or without hard labor for not more than five years and
26 may, in addition, be sentenced to pay a fine of not more than ten thousand dollars.

27 B.(1) It shall be unlawful for any person knowingly or intentionally to
28 possess material, compound, mixture, or preparation which contains a prohibited
29 plant and which is intended to be placed in the oral or nasal cavity, is prepared in

1 such a manner as to be suitable for smoking in a pipe or cigarette, or is to be burned
2 and inhaled or exhaled in any manner or in any form.

3 (2) Any person who violates the provisions of this Subsection shall be fined
4 not more than five hundred dollars, imprisoned for not more than six months, or
5 both.

6 C. For the purposes of this Section:

7 (1) "Distribute" means to sell, barter, trade, furnish, supply, or otherwise
8 transfer in exchange for anything of value a material, compound, mixture, or
9 preparation which contains a prohibited plant.

10 (2) "Homeopathic drug" means any drug labeled as being homeopathic
11 which is listed in the Homeopathic Pharmacopeia of the United States, an addendum
12 to it, or its supplements. The potencies of homeopathic drugs are specified in terms
13 of dilution. Homeopathic drug products must contain diluents commonly used in
14 homeopathic pharmaceuticals. Drug products containing homeopathic ingredients in
15 combination with non-homeopathic active ingredients are not homeopathic drug
16 products.

17 (3) "Manufacture" means the production, preparation, propagation,
18 compounding, or processing of a material, compound, mixture, or preparation which
19 contains a prohibited plant either directly or indirectly by extraction from substances
20 of natural origin, or independently by means of chemical synthesis, or by a
21 combination of extraction and chemical synthesis. Manufacturer includes any person
22 who packages, repackages, or labels any container holding a material, compound,
23 mixture, or preparation which contains a prohibited plant.

24 (4) "Production" includes the manufacture, planting, cultivation, growing,
25 or harvesting of a prohibited plant.

26 (5) "Prohibited plant" means any combination of any of the parts, leaves,
27 stems, stalks, seeds, materials, compounds, salts, derivatives, mixtures, preparations,
28 or any resin extracted from any part of the following plants:

29 (a) Artemisia vulgaris (Mugwort).

- 1 (b) Canavalia rosea (Bay bean).
- 2 (c) Leonotis leonurus (Lion's tail).
- 3 (d) Leonotis nepetifolia (Lion's ear).
- 4 (e) Leonurus sibiricus (Honeyweed).
- 5 (f) Nelumbo nucifera (Sacred Lotus).
- 6 (g) Nymphaea caerulea (Blue Lotus, Egyptian Lotus).
- 7 (h) Pedicularis densiflora (Indian warrior).
- 8 (i) Salvia divinorum.
- 9 (j) Scutellaria nana (Dwarf skullcap).
- 10 (k) Turnera diffusa (Damiana).
- 11 (l) Zornia latifolia.
- 12 D. The provisions of this Section shall not apply to any dosage form which
- 13 is legally obtainable from a retail establishment without a prescription and is
- 14 recognized by the United States Food and Drug Administration as a homeopathic
- 15 drug.
- 16 E. The provisions of this Section shall not apply to the possession, planting,
- 17 cultivation, growing, or harvesting of a prohibited plant strictly for aesthetic,
- 18 landscaping, or decorative purposes.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Templet

HB No. 173

Abstract: Creates the crime of unlawful production, manufacturing, distribution, or possession of a material, compound, mixture, or preparation which contains a prohibited plant and adds certain hallucinogenic substances to Schedule I.

Present law provides for classification of controlled dangerous substances in Schedules I through V.

Proposed law retains the provisions of present law and adds the following substances to Schedule I: 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also known as CP 47,497 and its C6, C7, C8, and C9 homologues}; (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}; Naphthalen-1-yl-(1-pentylindol-3-yl)methanone {also known as 1-Pentyl-3-(1-

naphthoyl)indole or JWH-018}; and Naphthalen-1-yl-(1-butyldol-3-yl)methanone {also known as 1-Butyl-3-(1-naphthoyl)indole or JWH-073}.

Present law provides criminal penalties for the unlawful production, manufacture, distribution, or dispensing of controlled dangerous substances.

Proposed law retains the provisions of present law and creates the crime of unlawful production, manufacturing, distribution, or possession of a material, compound, mixture, or preparation which contains a prohibited plant.

Proposed law defines "production", "manufacture", "distribute", and "prohibited plant".

Proposed law provides for the following criminal penalties for unlawful production, manufacturing, distribution, or possession with intent to manufacture, produce, or distribute a material, compound, mixture, or preparation which contains a prohibited plant: imprisonment with or without hard labor for not more than five years and a fine of not more than \$10,000.

Proposed law provides for the following criminal penalties for unlawful possession of a material, compound, mixture, or preparation which contains a prohibited plant: imprisonment for not more than six months, a fine of not more than \$500, or both.

Proposed law creates an exception for the possession, planting, cultivation, growing, or harvesting of a prohibited plant strictly for aesthetic, landscaping, or decorative purposes.

Proposed law creates an exception for any dosage form which is legally obtainable from a retail establishment without a prescription and is recognized by the FDA as a homeopathic drug. Defines "homeopathic drug".

(Adds R.S. 40:964(Schedule I)(C)(32), (33), (34), and (35) and 989.2)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Added Salvia divinorum to the list of prohibited plants.
2. Removed the minimum two-year term of imprisonment from penalty provision.