

Regular Session, 2010

HOUSE BILL NO. 173

BY REPRESENTATIVES TEMPLET, ANDERS, ARMES, ARNOLD, AUSTIN BADON, BOBBY BADON, BALDONE, BARRAS, BILLIOT, HENRY BURNS, TIM BURNS, BURRELL, CHANDLER, CHANEY, CONNICK, CORTEZ, DIXON, DOERGE, DOVE, DOWNS, EDWARDS, FANNIN, GISCLAIR, GREENE, GUILLORY, HARDY, HAZEL, HENDERSON, HENRY, HILL, HINES, HOFFMANN, HUTTER, GIROD JACKSON, MICHAEL JACKSON, KATZ, LAFONTA, LAMBERT, LEBAS, LIGI, LORUSSO, MCVEA, MILLS, MONICA, MORRIS, NOWLIN, PUGH, RICHARD, RICHARDSON, RICHMOND, ROBIDEAUX, SIMON, SMILEY, JANE SMITH, ST. GERMAIN, TALBOT, TUCKER, WADDELL, WHITE, WILLIAMS, WILLMOTT, AND WOOTON 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 amend and reenact R.S. 40:966(B)(3), (E), and (F) and to enact R.S. 40:964(Schedule
3 I)(C)(32) and 989.2, relative to controlled dangerous substances; to create the crime
4 of the unlawful production, manufacturing, distribution, or possession of a material,
5 compound, mixture, or preparation which contains a prohibited plant; to provide for
6 definitions; to provide for criminal penalties; to provide for exceptions; to add
7 certain hallucinogenic substances to Schedule I; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:966(B)(3), (E), and (F) are hereby amended and reenacted and
10 R.S. 40:964(Schedule I)(C)(32) and 989.2 are hereby 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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 contains any quantity of the following hallucinogenic substances, or which contains
2 any of their salts, isomers, or salts of isomers, whenever the existence of such salts,
3 isomers, or salts of isomers is possible within the specific chemical designation, for
4 purposes of this Paragraph only, the term "isomer" includes the optical, position, and
5 geometric isomers:

6 * * *

7 (32) Synthetic cannabinoids as follows:

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

10 (b) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-
11 6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol {also known as HU-210}

12 (c) Naphthalen-1-yl-(1-pentylindol-3-yl)methanone {also known as 1-
13 Pentyl-3-(1-naphthoyl)indole or JWH-018}

14 (d) Naphthalen-1-yl-(1-butylindol-3-yl)methanone {also known as 1-Butyl-
15 3-(1-naphthoyl)indole or JWH-073}

16 * * *

17 §966. Penalty for distribution or possession with intent to distribute narcotic drugs
18 listed in Schedule I; possession of marijuana, possession of synthetic
19 cannabinoids

20 * * *

21 B. Penalties for violation of Subsection A of this Section. Any person who
22 violates Subsection A of this Section with respect to:

23 * * *

24 (3) A substance classified in Schedule I which is marijuana,
25 tetrahydrocannabinols, or chemical derivatives of tetrahydrocanna-binols, or
26 synthetic cannabinoids shall upon conviction be sentenced to a term of imprisonment
27 at hard labor for not less than five nor more than thirty years, and pay a fine of not
28 more than fifty thousand dollars.

29 * * *

1 E. Possession of marijuana, or synthetic cannabinoids. (1) Except as
2 provided in Subsections E and F of this Section, on a first conviction for violation
3 of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or
4 chemical derivatives thereof, or synthetic cannabinoids the offender shall be fined
5 not more than five hundred dollars, imprisoned in the parish jail for not more than
6 six months, or both.

7 (2) Except as provided in Subsection F or G of this Section, on a second
8 conviction for violation of Subsection C of this Section with regard to marijuana,
9 tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids the
10 offender shall be fined not more than two thousand dollars, imprisoned with or
11 without hard labor for not more than five years, or both.

12 (3) Except as provided in Subsection F or G of this Section, on a third or
13 subsequent conviction for violation of Subsection C of this Section with regard to
14 marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic
15 cannabinoids the offender shall be sentenced to imprisonment with or without hard
16 labor for not more than twenty years, and may, in addition, be sentenced to pay a fine
17 of not more than five thousand dollars.

18 (4) A conviction for the violation of any other statute or ordinance with the
19 same elements as R.S. 40:966(C) prohibiting the possession of marijuana,
20 tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall
21 be considered as a prior conviction for the purposes of this Subsection relating to
22 penalties for second, third, or subsequent offenders.

23 (5) A conviction for the violation of any other statute or ordinance with the
24 same elements as R.S. 40:966(B)(3) prohibiting the distributing or dispensing or
25 possession with intent to distribute or dispense marijuana, of marijuana,¹
26 tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall
27 be considered as a prior conviction for the purposes of this Subsection relating to
28 penalties for second, third, or subsequent offenders.

1 F. Except as otherwise authorized in this Part:

2 (1) Any person who knowingly or intentionally possesses sixty pounds or
3 more, but less than two thousand pounds of marijuana, tetrahydrocannabinol or
4 chemical derivatives thereof, or synthetic cannabinoids shall be sentenced to serve
5 a term of imprisonment at hard labor of not less than five years, nor more than thirty
6 years, and to pay a fine of not less than fifty thousand dollars nor more than one
7 hundred thousand dollars.

8 (2) Any person who knowingly or intentionally possesses two thousand
9 pounds or more, but less than ten thousand pounds of marijuana,
10 tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall
11 be sentenced to serve a term of imprisonment at hard labor of not less than ten years
12 nor more than forty years, and to pay a fine of not less than one hundred thousand
13 dollars nor more than four hundred thousand dollars.

14 (3) Any person who knowingly or intentionally possesses ten thousand
15 pounds or more of marijuana, tetrahydrocannabinol or chemical derivatives thereof,
16 or synthetic cannabinoids shall be sentenced to serve a term of imprisonment at hard
17 labor of not less than twenty-five years, nor more than forty years and to pay a fine
18 of not less than four hundred thousand dollars nor more than one million dollars.

19 * * *

20 §989.2. Unlawful production, manufacturing, distribution, or possession of
21 prohibited plant products

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

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

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

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

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

4 B.(1) It shall be unlawful for any person knowingly or intentionally to
5 possess material, compound, mixture, or preparation which contains a prohibited
6 plant and which is intended to be placed in the oral or nasal cavity, is prepared in
7 such a manner as to be suitable for smoking in a pipe or cigarette, or is to be burned
8 and inhaled or exhaled in any manner or in any form.

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

12 C. For the purposes of this Section:

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

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

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

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

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

6 (a) Artemisia vulgaris (Mugwort).

7 (b) Canavalia rosea (Bay bean).

8 (c) Leonotis leonurus (Lion's tail).

9 (d) Leonotis nepetifolia (Lion's ear).

10 (e) Leonurus sibiricus (Honeyweed).

11 (f) Nelumbo nucifera (Sacred Lotus).

12 (g) Nymphaea caerulea (Blue Lotus, Egyptian Lotus).

13 (h) Pedicularis densiflora (Indian warrior).

14 (i) Salvia divinorum.

15 (j) Scutellaria nana (Dwarf skullcap).

16 (k) Turnera diffusa (Damiana).

17 (l) Zornia latifolia.

18 D. The provisions of this Section shall not apply to any dosage form which
19 is legally obtainable from a retail establishment without a prescription and is
20 recognized by the United States Food and Drug Administration as a homeopathic
21 drug.

22 E. The provisions of this Section shall not apply to the possession, planting,
23 cultivation, growing, or harvesting of a prohibited plant strictly for aesthetic,
24 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-butylindol-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".

Present law provides for the following criminal penalties for the possession of marijuana, tetrahydrocannabinoids, or chemical derivatives of tetrahydrocannabinols:

- (1) 1st offense possession - a maximum fine of \$500, imprisonment for not more than six months, or both.
- (2) 2nd offense possession - a maximum fine of \$2,000, imprisonment with or without hard labor for not more than five years, or both.

- (3) 3rd or subsequent offense possession - a maximum fine of \$5,000, imprisonment with or without hard labor for not more than 20 years, or both.
- (4) Possession of 60 - 1,999 pounds - a fine of \$50,000 to \$100,000 and imprisonment at hard labor for five to 30 years.
- (5) Possession of 2,000 - 9,999 pounds - a fine of \$100,000 to \$400,000 and imprisonment at hard labor for 10 to 40 years.
- (6) Possession of 10,000 pounds or more - a fine of \$400,000 to \$1 million and imprisonment at hard labor for 25 to 40 years.

Proposed law applies present law penalties to the possession of synthetic cannabinoids.

(Amends R.S. 40:966(B)(3), (E), and (F); 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.

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Made present law penalties for possession of marijuana applicable to possession of synthetic cannabinoids.