

SESSION OF 2011

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2049**

As Agreed to April 28, 2011

Brief*

Senate Sub. for HB 2049 would modify provisions of the Controlled Substances Act (as amended by Section 1 of 2011 HB 2023 and approved by the Governor on March 28, 2011) by creating a new subsection to address cannabanoids, inserting additional substances in that subsection, and adding the class of substituted cathinones (commonly known as bath salts) to subsection (f). A type of synthetic marijuana commonly referred to as K-3 would be included in the new subsection on cannabinoids. The bill uses a general chemical class approach intended to prevent manufacturers from simply transitioning from scheduled compounds to uncontrolled compounds.

The bill also would amend part of the Controlled Substances Act found in KSA 2010 Supp. 65-4105 as amended by Section 1 of 2011 HB 2023 (as approved by the Governor on March 28, 2011), by moving Tetrahydrocannabinols (commonly known as THC) from subsection (d) to a new subsection (h) addressing cannabinoids. In addition to K-3, the following substances would be added to that subsection: Naphthoylindoles, Naphthylmethylindoles, Naphthoylpyrroles, Naphthylmethylindenes, Phenylacetylindoles, Cyclohexy-phenols, Benzoylindoles, and 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo [1,2,3-de]-1,4-benzoxazin-6-y-l]-1-naphthalenylmethanone.

* Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Tetrahydrobenzo[c]chromen-1-ol and HU-210 would be restored to the controlled substances list, and HU-211 would be added as a new controlled substance. All three would be listed under KSA 65-4105(d) as hallucinogenic substances.

Further, the bill would amend KSA 21-36a05 and 21-36a06, crimes involving controlled substances, by adding the substances in new subsection (h) to the list of substances that are illegal to cultivate, distribute, possess, or possess with the intent to distribute. Cultivation, distribution, and possession with the intent to distribute is a severity level 3 drug felony for a first offense; a level 2 for a second conviction or if the offender is over 18 and distribution or possession with intent to distribute occurs on or within 1,000 feet of school property; and a level 1 for a third conviction. Possession is a class A nonperson misdemeanor for a first conviction and a severity level 4 felony for a subsequent conviction.

The bill would become effective upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee further agreed to amend the bill to incorporate the contents of enrolled 2011 HB 2023 so as to correct technical errors in the enrolled bill which were attributed to the Kansas Legislative Information Systems and Services (KLISS) system. The Conference Committee action results in the repeal of sections of law amended by HB 2023. The prior Conference Committee accepted the Senate's changes to the bill and made some technical changes (these amendments are incorporated in the second Conference Committee report).

Background

HB 2023

HB 2023, as approved by the Governor, added the following to the list of controlled substances:

- Schedule I: 4-Bromo-2,5-dimethoxyphenethylamine; 2,5-Dimethoxy-4(n)-propylthiopenethylamine (2C-7); Alpha-methyltryptamine, aka AMT; and 5-methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT).
- Schedule II: Dihydroetorphine; Oripavine; Remifen-antil; Tapentadol; and Lisdexamfetamine.
- Schedule III: Embutramide, and any material, compound, mixture, or preparation containing Buprenorphine, which was previously a schedule V controlled substance.
- Schedule IV: Dichoralphenazone; Fospropofol; and Zopiclone.
- Schedule V: Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide, and Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid, 2782.

HB 2049

At the hearing on **HB 2049** before the House Committee on Corrections and Juvenile Justice, representatives of the Johnson County Sheriffs Office and Criminalistics Lab and the Kansas Peace Officers Association, in addition to an assistant district attorney from Sedgwick County, the Salina Chief of Police, and two private citizens offered testimony in support of the bill. Proponents explained that the general chemical class approach the bill uses would keep manufacturers from simply transitioning to similar

uncontrolled compounds, which, they suggested, occurred after the passage of 2010 HB 2411, outlawing a type of synthetic marijuana commonly referred to as K-2. No opponents provided testimony.

The House Committee on Corrections and Juvenile Justice amended the bill by adding the substances in new subsection (h) to the list of substances that are illegal to cultivate, distribute, possess, or possess with the intent to distribute.

At the hearing on HB 2049 before the Senate Committee on Public Health and Welfare, a representative of the Johnson County Sheriffs Office Criminalistics Laboratory testified in favor of the bill. Proponents providing written testimony included representatives of the Kansas County and District Attorneys Association, the Kansas Board of Pharmacy, the Kansas Sheriffs Association, and the Kansas Peace Officers Association. The representative of the Johnson County Sheriffs Office Criminalistics Laboratory stated the bill takes an unprecedented approach by controlling synthetic cannabinoids using a general class approach, rather than by listing compounds individually. The Criminalistics Laboratory representative stated nearly twenty non-controlled substances have been detected in herbal incense blends, but the general chemical class approach taken in the bill would control each of these compounds, in addition to over a hundred or more additional compounds with the potential for abuse which have not yet been included in these products. He further stated that the bill would not restrict legitimate research. There were no opponents to the bill at the Committee hearing.

The Senate Committee on Public Health and Welfare recommended a substitute bill which would include both the contents of HB 2049, (as amended by House Committee, and further amended by the Senate Committee) and HB 2249. The substitute bill contains: the addition of a new subsection addressing cannabinoids (adding several substances, including K-3) to the list of controlled substances included in

Schedule I; provisions adding the substances in the newly created cannabinoid subsection to the list of substances that are illegal to cultivate, distribute, possess or possess with the intent to distribute; and the addition of the class of substituted cathinones (known as bath salts) to the list of controlled substances. HB 2049 also was amended by the Senate Committee to: make possession of all substances in subsection (h) referring to cannabinoids, not just tetrahydrocannabinol, a drug severity level 4 felony if there was a prior conviction for possession of those substances; correct the omission of tetrahydrobenzo[c]chromen-1-ol and HU-210 due to a striking error; and add HU-211 to the subsection containing HU-210.

HB 2249 was heard in the House Committee on Corrections and Juvenile Justice, where representatives of the Johnson County Sheriffs Office Criminalistics Lab, the Kansas County and District Attorneys Association, the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and the Kansas Peace Officers Association offered testimony in support of the bill. The Committee also received written testimony in support of the bill from representatives of the Kansas Association of Addiction Professionals and the Kansas Board of Pharmacy, as well as from a private citizen. No opponents provided testimony at the hearing.

At the hearing before the Senate Committee on Public Health and Welfare, a representative of the Johnson County Sheriffs Office Criminalistics Laboratory, the Salina Police Chief on behalf of the Kansas Association of Chiefs of Police, and a private citizen testified in favor of HB 2249. Proponents providing written testimony included a representative of the Kansas Board of Pharmacy, an assistant district attorney from Reno County on behalf of the Kansas County and District Attorneys Association, and a private citizen. The Salina Police Chief stated the chemicals found in bath salts are very similar to methamphetamine and have no legitimate use other than to provide a high for the user. The representative of the Criminalistics Laboratory reported a number of substituted

cathinones have been detected nationally and internationally in bath salt products, and these compounds currently are not covered by Kansas or federal statutes. No opponents testified at the Committee hearing.

The fiscal note for HB 2049 as introduced states that the Kansas Sentencing Commission estimates an increase in annual convictions pursuant to the bill of 5, 10, or 15 percent and that 15 percent of those convicted would go to prison. Under these scenarios, the bill could result in an increase of 8, 15, or 23 prison beds in FY 2012 and 15, 31, or 46 beds by FY 2021. As the number of male inmates already exceeds capacity, the bed impact of this bill in addition to the impact of other possible legislation is likely to require additional expenditures. Based on the Kansas Sentencing Commission projections, it is estimated that by the end of FY 2011 the number of male inmates will exceed available capacity by 235 beds, and that number would rise to 394 beds by the end of FY 2012. The FY 2012 Governor's Budget Report includes \$2.5 million for contract prison beds. If construction is necessary, the Department of Corrections has identified expansion projects: two high medium housing units at El Dorado Correctional Facility with 512 beds at a cost of \$22.7 million for construction and \$9.3 million for operation; and one minimum security housing unit at Ellsworth Correctional Facility with 100 beds at a cost of \$5.9 million for construction and \$1.8 million for operation.

The Kansas Bureau of Investigation estimates that 12 new drugs would be used illegally, requiring identification in its labs for criminal cases, at a cost of \$7,200. The KBI estimates that additional State General Fund resources would be needed for those costs.

The Office of Judicial Administration reports that the fiscal effect of the bill would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with HB 2049 is not reflected in The FY 2012 Governor's Budget Report.

A revised fiscal note for HB 2049 dated March 4, 2011, indicates a reduction in the previously estimated increase in prison beds. The new estimates provided by the Kansas Sentencing Commission indicate an increase of 2, 5, or 8 prison beds in FY 2012 and 3, 9, or 15 prison beds by FY 2021. The revised fiscal note reflects new estimates by the Sentencing Commission for additional drug treatment costs ranging from \$57,090 to \$178,120 from all funding sources for FY 2012, including \$56,520 to \$176,339 from the State General Fund. Additional revenue of \$744 from offender reimbursements would be received. By FY 2013, the total expenditures and revenues are expected to increase to maximums of \$182,688 and \$960, respectively.

The fiscal note for HB 2249 as introduced states that the Kansas Sentencing Commission estimates an increase in annual convictions pursuant to the bill of 1-4 prison beds in FY 2012 and 2-9 beds by FY 2021. As the number of male inmates already exceeds capacity, the bed impact of this bill in addition to the impact of other possible legislation is likely to require additional expenditures. The FY 2012 Governor's Budget Report includes \$2.5 million for contract prison beds and if construction is necessary, the Department of Corrections has identified the same two expansion projects which were identified for HB 2049 at the same cost.

The Kansas Bureau of Investigation indicates that each forensic laboratory would need substitute cathinone standards to provide chemical analysis for law enforcement and court cases. The Bureau estimates 15 standards would be needed in FY 2012 at a cost of \$400 each, with a total cost of \$6,000 from the State General Fund.

The Office of Judicial Administration reports that the fiscal effect of HB 2249 would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with this bill is not reflected in The FY 2012 Governor's Budget Report.

A fiscal note considering the impact of combining HB 2049 and HB 2249 was requested by the Senate Committee on Public Health and Welfare. Fiscal information was received by the Committee at the time action was taken to combine these two bills into Sen. Sub. for HB 2049. The information from the Sentencing Commission indicated the substitute bill would result in 3, 8, and 12 additional prison beds needed in FY 2012 and 5, 16, and 24 additional prison beds needed respectively in FY 2021 based on three different scenarios. The bill would result in additional workload for the Commission in the form of increased journal entries. The bill would result in estimated SB 123 drug treatment costs ranging from \$22,836 to \$91,344 for FY 2012 to from \$23,406 to \$97, 525 in FY 2013. These treatment costs are lower than those estimated in the revised HB 2049 fiscal note. KBI costs are expected to be the sum of the cost under both bills, \$13,200. Court costs are difficult to predict.

Crimes; Controlled Substances