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SYNTHETIC DRUG CONTROL ACT OF 2011

NOVEMBER 22, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 1254]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1254) to amend the Controlled Substances Act to place synthetic drugs in Schedule I, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Synthetic Drug Control Act of 2011".

19–006

SEC. 2. ADDITION OF SYNTHETIC DRUGS TO SCHEDULE I OF THE CONTROLLED SUBSTANCES ACT.

(a) CANNABIMIMETIC AGENTS.—Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended by adding at the end the following:

"(d)(1) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

"(2) In paragraph (1):

"(A) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

"(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

"(ii) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

"(iii) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

"(iv) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

"(v) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

"(B) Such term includes—

"(i) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497);

"(ii) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog);

"(iii) 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678);

"(iv) 1-butyl-3-(1-naphthoyl)indole (JWH-073);

"(v) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);

"(vi) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);

"(vii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);

"(viii) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);

"(ix) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122);

"(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398);

"(xi) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);

"(xii) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);

"(xiii) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4);

"(xiv) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8); and

"(xv) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).".

(b) OTHER DRUGS.—Schedule I of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended in subsection (c) by adding at the end the following:

"(18) 4-methylmethcathinone (Mephedrone).

"(19) 3,4-methylenedioxypyrovalerone (MDPV).

"(20) 3,4-methylenedioxymethcathinone (methylone).

"(21) Naphthylpyrovalerone (naphyrone).

"(22) 4-fluoromethcathinone (flephedrone).

"(23) 4-methoxymethcathinone (methedrone; Bk-PMMA).

"(24) Ethcathinone (N-Ethylcathinone).

"(25) 3,4-methylenedioxyethcathinone (ethylone).

"(26) Beta-keto-N-methyl-3,4-benzodioxyolybutanamine (butylone).

"(27) N,N-dimethylcathinone (metamfepramone).

"(28) Alpha-pyrrolidinopropiophenone (alpha-PPP).

"(29) 4-methoxy-alpha-pyrrolidinopropiophenone (MOPPP).

"(30) 3,4-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP).

"(31) Alpha-pyrrolidinovalerophenone (alpha-PVP).

"(32) 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine) (MDAI).

"(33) 3-fluoromethcathinone.

"(34) 4'-Methyl-α-pyrrolidinobutiophenone (MPBP).".

SEC. 3. TEMPORARY SCHEDULING TO AVOID IMMINENT HAZARDS TO PUBLIC SAFETY EXPANSION.

Section 201(h)(2) of the Controlled Substances Act (21 U.S.C. 811(h)(2)) is amended—

(1) by striking "one year" and inserting "2 years"; and
(2) by striking "six months" and inserting "1 year".

PURPOSE AND SUMMARY

H.R. 1254, the "Synthetic Drug Control Act of 2011," was introduced on March 30, 2011, by Rep. Charlie Dent (R–PA), and referred to the Committee on Energy and Commerce.

The legislation would prohibit harmful synthetic drugs that imitate the hallucinogenic or stimulant properties of drugs like marijuana, cocaine or methamphetamines. Additionally, H.R. 1254 would enhance the authority of the Drug Enforcement Administration (DEA), to temporarily schedule new substances.

BACKGROUND AND NEED FOR LEGISLATION

Synthetic drugs imitate the hallucinogenic or stimulant properties of illegal drugs like marijuana, cocaine or methamphetamines. Although synthetic drugs can affect the brain in a manner that is similar to Schedule I drugs and may be more harmful than the scheduled substances they simulate, these synthetic drugs are not prohibited under federal law.

Synthetic drugs are a serious public health problem, and, unfortunately, the use of these substances is increasing dramatically. In a concerted effort to circumvent the Controlled Substances Act, manufacturers manipulate the chemical structure of compounds used in synthetic drugs, while largely maintaining the pharmacological activity of the illegal substances they imitate. Subsequently, these synthetic drugs are sold to consumers as harmless alternatives to marijuana, cocaine, or methamphetamines.

Families across the country have witnessed firsthand that these designer drugs are anything but harmless. There are numerous instances where the use of these drugs has resulted in agitation, anxiety, vomiting, nausea, elevated blood pressure, seizures, tremors, hallucinations, paranoia, non-responsiveness, and death.

The Synthetic Drug Control Act of 2011 is designed to ensure that the manufacture and sale of these dangerous synthetic substances are prohibited in the United States.

HEARINGS

On July 21, 2011, the Subcommittee on Health held a hearing entitled "Legislative Hearing to Address Bioterrorism, Controlled Substances and Public Health Issues." The Synthetic Drug Control Act of 2011 was one of three bills considered at this hearing. The Subcommittee received testimony from: Charlie Dent, United States Representative for the 15th District of Pennsylvania; Nicole Lurie, M.D., M.S.P.H, Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services; and Howard K. Koh, M.D., M.P.H, Assistant Secretary for Health, U.S. Department of Health and Human Services. At the hearing, the Subcommittee unanimously agreed to include in the record the written statement of Joseph T. Rannazzisi, Deputy Assistant Ad-

ministrator, Office of Diversion Control, Drug Enforcement Administration.

COMMITTEE CONSIDERATION

H.R. 1254, the "Synthetic Drug Control Act of 2011," was introduced by Mr. Dent of Pennsylvania on March 30, 2011, and referred to the Committee on Energy and Commerce. The bill was referred to the Subcommittee on Health on April 7, 2011.

The Subcommittee on Health held a legislative hearing on July 21, 2011, entitled "Legislative Hearing to Address Bioterrorism, Controlled Substances and Public Health Issues," during which it considered H.R. 1254. On July 26, 2011, the Subcommittee met in open markup session to consider H.R. 1254 and favorably reported an Amendment in the Nature of a Substitute to the bill, which contained technical changes recommended by the Administration, including the addition of four compounds to be listed as controlled substances. Thereafter, the Subcommittee ordered that H.R. 1254 be favorably forwarded to the full Committee for consideration.

On July 28, 2011, the Committee on Energy and Commerce met in open markup session to consider H.R. 1254, as approved by the Subcommittee on Health. The Committee approved an amendment to the Subcommittee-approved bill by voice vote. This amendment contained technical changes recommended by the Administration. Subsequently, the Committee ordered that H.R. 1254 be favorably reported to the House by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 1254 reported. A motion to order H.R. 1254 reported to the House, as amended, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report, including the finding that synthetic drugs that imitate the hallucinogenic or stimulant properties of drugs like marijuana, cocaine or methamphetamines should be prohibited.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the Committee are reflected in the descriptive portions of this report, including the goal that synthetic drugs that imitate the hallucinogenic or stimulant properties of drugs like marijuana, cocaine or methamphetamines be prohibited.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1254, the "Synthetic Drug Control Act of 2011," would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1254, the "Synthetic Drug Control Act of 2011," contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 1254—Synthetic Drug Control Act of 2011

CBO estimates that implementing H.R. 1254 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

H.R. 1254 would expand the list of substances regulated under the Controlled Substances Act (title II of Public Law 91–513, the Comprehensive Drug Abuse Prevention and Control Act of 1970) to include cannabimimetic agents, chemicals that are commonly known as synthetic drugs. As a result, the government might be able to pursue cases involving drug use that it otherwise would not be able to prosecute. CBO expects that H.R. 1254 would apply to a relatively small number of additional offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1254 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

H.R. 1254 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 1254 would impose private-sector mandates, as defined in UMRA, on manufacturers, sellers, and consumers of certain synthetic chemicals. CBO estimates that the cost of complying with those mandates would probably exceed the annual threshold established in UMRA for private-sector mandates in the first year after enactment ($142 million in 2011, adjusted annually for inflation).

By adding selected chemical compounds to Schedule I of the Controlled Substances Act, the bill would prohibit the sale, distribution, or use of those chemicals without a permit issued by the Drug Enforcement Administration (DEA). The cost of that prohibition would be the forgone income from lost sales and the value of the inventory of the banned products. Because of the nature of the market being regulated, the scope of sales affected is difficult to determine. Some industry experts estimate that the profits generated by the sale of products containing such synthetic chemicals amount to billions of dollars annually.

However, based on information from industry and law enforcement experts, CBO expects that, by the date of the legislation's enactment, most vendors will have largely replaced the banned substances with new products because many states have already passed legislation banning some or all of the compounds listed in the bill; because the DEA has already issued emergency rules temporarily banning five cannabimimetic agents and three synthetic stimulants; and because vendors are already anticipating passage of federal legislation. Thus, the cost of the mandate would be much smaller than the profits currently being earned in the industry. Given the estimated magnitude of industry profits, however, it would only require about a 5 percent to 10 percent decrease in profits for the costs to exceed the annual threshold for private-sector mandates. Consequently, CBO estimates that the cost of the mandate would probably exceed the annual threshold in the first year following enactment. Thereafter, costs would be minimal, CBO estimates.

The bill also would impose a mandate by prohibiting the unregistered possession of the banned compounds, requiring individuals and facilities that wish to use or handle the chemicals to register with the DEA. Individuals who are unable to obtain DEA approval would have to dispose of the banned chemicals in their possession. CBO expects that the cost to those individuals would be small. Because some of those compounds have been temporarily placed under Schedule I of the Controlled Substances Act by two emergency rules issued by the DEA in 2011, most researchers investigating those synthetic compounds have already registered with the DEA. The legislation would not require them to register again with the DEA; therefore, CBO expects the cost of the mandate to private research facilities to be small.

The CBO staff contact for this estimate is Mark Grabowicz (for federal costs) and Michael Levine (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act may be cited as the "Synthetic Drug Control Act of 2011."

Section 2. Addition of synthetic drugs to Schedule I of the Controlled Substances Act

Section 2 amends section 202(c) of the Controlled Substances Act (CSA) to schedule designated synthetic drugs that imitate marijuana, cocaine or methamphetamines as Schedule I under the CSA.

Section 3. Temporary scheduling to avoid imminent hazards to public safety expansion

Section 3 amends section 201(h)(2) of the CSA to allow the Drug Enforcement Administration (DEA), to temporarily schedule a new substance for up to three years. Under current law, the DEA may only temporarily schedule a substance for 18 months.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

TITLE II—CONTROL AND ENFORCEMENT

* * * * * * *

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

AUTHORITY AND CRITERIA FOR CLASSIFICATION OF SUBSTANCES

SEC. 201. (a) * * *

* * * * * * *

(h)(1) * * *

(2) The scheduling of a substance under this subsection shall expire at the end of [one year] *2 years* from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings under subsection

(a)(1) with respect to the substance, extend the temporary scheduling for up to [six months] *1 year*.

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SCHEDULES OF CONTROLLED SUBSTANCES

SEC. 202. (a) * * *

* * * * * * *

(c) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 201, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

(a) * * *

* * * * * * *

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) * * *

* * * * * * *

(18) 4-methylmethcathinone (Mephedrone).
(19) 3,4-methylenedioxypyrovalerone (MDPV).
(20) 3,4-methylenedioxymethcathinone (methylone).
(21) Naphthylpyrovalerone (naphyrone).
(22) 4-fluoromethcathinone (flephedrone).
(23) 4-methoxymethcathinone (methedrone; Bk-PMMA).
(24) Ethcathinone (N-Ethylcathinone).
(25) 3,4-methylenedioxyethcathinone (ethylone).
(26) Beta-keto-N-methyl-3,4-benzodioxyolybutanamine (butylone).
(27) N,N-dimethylcathinone (metamfepramone).
(28) Alpha-pyrrolidinopropiophenone (alpha-PPP).
(29) 4-methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
(30) 3,4-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP).
(31) Alpha-pyrrolidinovalerophenone (alpha-PVP).
(32) 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine) (MDAI).
(33) 3-fluoromethcathinone.
(34) 4'-Methyl-α-pyrrolidinobutiophenone (MPBP).

(d)(1) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(2) In paragraph (1):

(A) The term "cannabimimetic agents" means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as

demonstrated by binding studies and functional assays within any of the following structural classes:

(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(ii) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(iii) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(iv) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(v) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(B) Such term includes—

(i) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497);

(ii) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog);

(iii) 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678);

(iv) 1-butyl-3-(1-naphthoyl)indole (JWH-073);

(v) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);

(vi) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);

(vii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);

(viii) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);

(ix) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122);

(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398);

(xi) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);

(xii) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);

(xiii) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4);

(xiv) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8); and

(xv) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).

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