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Senate Bill No. 276

(By Senator Kessler (Acting President), Unger, Jenkins, Plymale,
Green, Minard, Nohe and Klempa)

[Introduced January 26, 2011; referred to the Committee on the
Judiciary.]

12 A BILL to amend and reenact §60A-1-101 of the Code of West
13 Virginia, 1931, as amended; to amend and reenact §60A-2-204 of
14 said code; to amend and reenact §60A-4-402 and §60A-4-407 of
15 said code; and to amend and reenact §61-7-7 of said code, all
16 relating to criminalizing sale and use of synthetic
17 cannabinoids; defining terms; including synthetic cannabinoids
18 in Schedule I drugs and other substances; establishing
19 penalties; providing for conditional discharge for first
20 offense of possession; and providing that persons convicted of
21 possession of synthetic cannabinoid are not prohibited from
22 possessing a firearm.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §60A-1-101 of the Code of West Virginia, 1931, as
25 amended, be amended and reenacted; that §60A-2-204 of said code be

1 amended and reenacted; that §60A-4-402 and §60A-4-407 of said code
2 be amended and reenacted; and that §61-7-7 of said code be amended
3 and reenacted, all to read as follows:

4 **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

5 **ARTICLE 1. DEFINITIONS.**

6 **§60A-1-101. Definitions.**

7 As used in this act:

8 (a) "Administer" means the direct application of a controlled
9 substance whether by injection, inhalation, ingestion or any other
10 means to the body of a patient or research subject by:

11 (1) A practitioner (or, in his presence, by his authorized
12 agent); or

13 (2) The patient or research subject at the direction and in
14 the presence of the practitioner.

15 (b) "Agent" means an authorized person who acts on behalf of
16 or at the direction of a manufacturer, distributor or dispenser.
17 It does not include a common or contract carrier, public
18 warehouseman or employee of the carrier or warehouseman.

19 (c) "Bureau" means the "Bureau of Narcotics and Dangerous
20 Drugs, United States Department of Justice" or its successor
21 agency.

22 (d) "Controlled substance" means a drug, substance or
23 immediate precursor in Schedules I through V of article two.

24 (e) "Counterfeit substance" means a controlled substance
25 which, or the container or labeling of which, without

1 authorization, bears the trademark, trade name or other identifying
2 mark, imprint, number or device, or any likeness thereof, of a
3 manufacturer, distributor or dispenser other than the person who in
4 fact manufactured, distributed or dispensed the substance.

5 (f) "Imitation controlled substance" means: (1) A controlled
6 substance which is falsely represented to be a different controlled
7 substance; (2) a drug or substance which is not a controlled
8 substance but which is falsely represented to be a controlled
9 substance; or (3) a controlled substance or other drug or substance
10 or a combination thereof which is shaped, sized, colored, marked,
11 imprinted, numbered, labeled, packaged, distributed or priced so as
12 to cause a reasonable person to believe that it is a controlled
13 substance.

14 (g) "Deliver" or "delivery" means the actual, constructive or
15 attempted transfer from one person to another of: (1) A controlled
16 substance, whether or not there is an agency relationship; (2) a
17 counterfeit substance; or (3) an imitation controlled substance.

18 (h) "Dispense" means to deliver a controlled substance to an
19 ultimate user or research subject by or pursuant to the lawful
20 order of a practitioner, including the prescribing, administering,
21 packaging, labeling or compounding necessary to prepare the
22 substance for that delivery.

23 (i) "Dispenser" means a practitioner who dispenses.

24 (j) "Distribute" means to deliver, other than by administering
25 or dispensing, a controlled substance, a counterfeit substance or

1 an imitation controlled substance.

2 (k) "Distributor" means a person who distributes.

3 (l) "Drug" means: (1) Substances recognized as drugs in the
4 official "United States Pharmacopoeia, official Homeopathic
5 Pharmacopoeia of the United States or official National Formulary",
6 or any supplement to any of them; (2) substances intended for use
7 in the diagnosis, cure, mitigation, treatment or prevention of
8 disease in man or animals; (3) substances (other than food)
9 intended to affect the structure or any function of the body of man
10 or animals; and (4) substances intended for use as a component of
11 any article specified in clause (1), (2) or (3) of this
12 subdivision. It does not include devices or their components,
13 parts or accessories.

14 (m) "Immediate precursor" means a substance which the "West
15 Virginia Board of Pharmacy" (hereinafter in this act referred to as
16 the state Board of Pharmacy) has found to be and by rule designates
17 as being the principal compound commonly used or produced primarily
18 for use and which is an immediate chemical intermediary used or
19 likely to be used in the manufacture of a controlled substance, the
20 control of which is necessary to prevent, curtail or limit
21 manufacture.

22 (n) "Manufacture" means the production, preparation,
23 propagation, compounding, conversion or processing of a controlled
24 substance, either directly or indirectly or by extraction from
25 substances of natural origin, or independently by means of chemical

1 synthesis, or by a combination of extraction and chemical
2 synthesis, and includes any packaging or repackaging of the
3 substance or labeling or relabeling of its container, except that
4 this term does not include the preparation, compounding, packaging
5 or labeling of a controlled substance:

6 (1) By a practitioner as an incident to his administering or
7 dispensing of a controlled substance in the course of his
8 professional practice; or

9 (2) By a practitioner, or by his authorized agent under his
10 supervision, for the purpose of, or as an incident to, research,
11 teaching or chemical analysis and not for sale.

12 (o) "Marijuana" means all parts of the plant "Cannabis sativa
13 L.", whether growing or not; the seeds thereof; the resin extracted
14 from any part of the plant; and every compound, manufacture, salt,
15 derivative, mixture or preparation of the plant, its seeds or
16 resin. It does not include the mature stalks of the plant, fiber
17 produced from the stalks, oil or cake made from the seeds of the
18 plant, any other compound, manufacture, salt, derivative, mixture
19 or preparation of the mature stalks (except the resin extracted
20 therefrom), fiber, oil or cake, or the sterilized seed of the plant
21 which is incapable of germination.

22 (p) "Narcotic drug" means any of the following, whether
23 produced directly or indirectly by extraction from substances of
24 vegetable origin or independently by means of chemical synthesis,
25 or by a combination of extraction and chemical synthesis:

1 (1) Opium and opiate and any salt, compound, derivative or
2 preparation of opium or opiate.

3 (2) Any salt, compound, isomer, derivative or preparation
4 thereof which is chemically equivalent or identical with any of the
5 substances referred to in paragraph (1) of this subdivision, but
6 not including the isoquinoline alkaloids of opium.

7 (3) Opium poppy and poppy straw.

8 (4) Coca leaves and any salt, compound, derivative or
9 preparation of coca leaves and any salt, compound, isomer,
10 derivative or preparation thereof which is chemically equivalent or
11 identical with any of these substances, but not including
12 decocainized coca leaves or extractions of coca leaves which do not
13 contain cocaine or ecgonine.

14 (q) "Opiate" means any substance having an addiction-forming
15 or addiction-sustaining liability similar to morphine or being
16 capable of conversion into a drug having addiction-forming or
17 addiction-sustaining liability. It does not include, unless
18 specifically designated as controlled under section two hundred
19 one, article two of this chapter, the dextrorotatory isomer of 3-
20 methoxy-n-methylmorphinan and its salts (dextromethorphan). It
21 does not include its racemic and levorotatory forms.

22 (r) "Opium poppy" means the plant of the species "Papaver
23 somniferum L.", except its seeds.

24 (s) "Person" means individual, corporation, government or
25 governmental subdivision or agency, business trust, estate, trust,

1 partnership or association, or any other legal entity.

2 (t) "Placebo" means an inert medicament or preparation
3 administered or dispensed for its psychological effect, to satisfy
4 a patient or research subject or to act as a control in
5 experimental series.

6 (u) "Poppy straw" means all parts, except the seeds, of the
7 opium poppy after mowing.

8 (v) "Practitioner" means:

9 (1) A physician, dentist, veterinarian, scientific
10 investigator or other person licensed, registered or otherwise
11 permitted to distribute, dispense, conduct research with respect
12 to, or to administer a controlled substance in the course of
13 professional practice or research in this state.

14 (2) A pharmacy, hospital or other institution licensed,
15 registered or otherwise permitted to distribute, dispense, conduct
16 research with respect to, or to administer a controlled substance
17 in the course of professional practice or research in this state.

18 (w) "Production" includes the manufacture, planting,
19 cultivation, growing or harvesting of a controlled substance.

20 (x) "State", when applied to a part of the United States,
21 includes any state, district, commonwealth, territory, insular
22 possession thereof and any area subject to the legal authority of
23 the United States of America.

24 (y) "Synthetic cannabinoid" means any chemical compound that
25 contains "Synthetic cannabinoid agonists or piperazines" or any

1 chemical compound that contains Benzylpiperazine;
2 Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-
3 hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-
4 Pentyl-3-(1-naphthoyl)indole; dexanabinol; or 2-[(1R,3S)-3-
5 hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term does not
6 include synthetic cannabinoids that require a prescription, are
7 approved by the United States Food and Drug Administration, and are
8 dispensed in accordance with state or federal law;

9 ~~(y)~~ (z) "Ultimate user" means a person who lawfully possesses
10 a controlled substance for his own use or for the use of a member
11 of his household or for administering to an animal owned by him or
12 by a member of his household.

13 **§60A-2-204. Schedule I.**

14 (a) Schedule I shall consist of the drugs and other
15 substances, by whatever official name, common or usual name,
16 chemical name, or brand name designated, listed in this section.

17 (b) *Opiates*. Unless specifically excepted or unless listed in
18 another schedule, any of the following opiates, including their
19 isomers, esters, ethers, salts and salts of isomers, esters and
20 ethers, whenever the existence of such isomers, esters, ethers and
21 salts is possible within the specific chemical designation (for
22 purposes of subdivision (34) of this subsection only, the term
23 isomer includes the optical and geometric isomers):

24 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)
25 -4-piperidinyl]-N-phenylacetamide);

- 1 (2) Acetylmethadol;
- 2 (3) Allylprodine;
- 3 (4) Alphacetylmethadol (except levoalphacetylmethadol also
4 known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- 5 (5) Alphameprodine;
- 6 (6) Alphamethadol;
- 7 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)
8 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-
9 propanilido) piperidine);
- 10 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-
11 4-piperidinyl]-N-phenylpropanamide);
- 12 (9) Benzethidine;
- 13 (10) Betacetylmethadol;
- 14 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -4-
15 piperidinyl]-N-phenylpropanamide);
- 16 (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-
17 hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
- 18 (13) Betameprodine;
- 19 (14) Betamethadol;
- 20 (15) Betaprodine;
- 21 (16) Clonitazene;
- 22 (17) Dextromoramide;
- 23 (18) Diampromide;
- 24 (19) Diethylthiambutene;
- 25 (20) Difenoxyin;

- 1 (21) Dimenoxadol;
- 2 (22) Dimepheptanol;
- 3 (23) Dimethylthiambutene;
- 4 (24) Dioxaphetyl butyrate;
- 5 (25) Dipipanone;
- 6 (26) Ethylmethylthiambutene;
- 7 (27) Etonitazene;
- 8 (28) Etoxeridine;
- 9 (29) Furethidine;
- 10 (30) Hydroxypethidine;
- 11 (31) Ketobemidone;
- 12 (32) Levomoramide;
- 13 (33) Levophenacylmorphane;
- 14 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 15 piperidyl]-N-phenylpropanamide);
- 16 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-
- 17 piperidinyl]-N-phenylpropanamide);
- 18 (36) Morpheridine;
- 19 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 20 (38) Noracymethadol;
- 21 (39) Norlevorphanol;
- 22 (40) Normethadone;
- 23 (41) Norpipanone;
- 24 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
- 25 phenethyl)-4-piperidinyl] propanamide);

- 1 (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
2 (44) Phenadoxone;
3 (45) Phenampromide;
4 (46) Phenomorphan;
5 (47) Phenoperidine;
6 (48) Piritramide;
7 (49) Proheptazine;
8 (50) Properidine;
9 (51) Propiram;
10 (52) Racemoramide;
11 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-
12 piperidinyl]-propanamide);
13 (54) Tilidine;
14 (55) Trimeperidine.
- 15 (c) *Opium derivatives*. -- Unless specifically excepted or
16 unless listed in another schedule, any of the following opium
17 derivatives, its salts, isomers and salts of isomers whenever the
18 existence of such salts, isomers and salts of isomers is possible
19 within the specific chemical designation:
- 20 (1) Acetorphine;
21 (2) Acetyldihydrocodeine;
22 (3) Benzylmorphine;
23 (4) Codeine methylbromide;
24 (5) Codeine-N-Oxide;
25 (6) Cyprenorphine;

- 1 (7) Desomorphine;
- 2 (8) Dihydromorphine;
- 3 (9) Drotebanol;
- 4 (10) Etorphine (except HCl Salt);
- 5 (11) Heroin;
- 6 (12) Hydromorphanol;
- 7 (13) Methyldesorphine;
- 8 (14) Methyldihydromorphine;
- 9 (15) Morphine methylbromide;
- 10 (16) Morphine methylsulfonate;
- 11 (17) Morphine-N-Oxide;
- 12 (18) Myrophine;
- 13 (19) Nicocodeine;
- 14 (20) Nicomorphine;
- 15 (21) Normorphine;
- 16 (22) Pholcodine;
- 17 (23) Thebacon.

18 (d) *Hallucinogenic substances*. -- Unless specifically excepted
19 or unless listed in another schedule, any material, compound,
20 mixture or preparation, which contains any quantity of the
21 following hallucinogenic substances, or which contains any of its
22 salts, isomers and salts of isomers, whenever the existence of such
23 salts, isomers, and salts of isomers is possible within the
24 specific chemical designation (for purposes of this subsection
25 only, the term "isomer" includes the optical, position and

1 geometric isomers):

2 (1) Alpha-ethyltryptamine; some trade or other names:
3 etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-
4 aminobutyl) indole; alpha-ET; and AET;

5 (2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other
6 names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-
7 2,5-DMA;

8 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other
9 names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-
10 desmethyl DOB; 2C-B, Nexus;

11 (4) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-
12 dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

13 (5) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other
14 names: DOET;

15 (6) 4-methoxyamphetamine; some trade or other names: 4-
16 methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

17 (7) 5-methoxy-3, 4-methylenedioxy-amphetamine;

18 (8) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other
19 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM";
20 and "STP";

21 (9) 3,4-methylenedioxy amphetamine;

22 (10) 3,4-methylenedioxymethamphetamine (MDMA);

23 (11) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-
24 ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl
25 MDA, MDE, MDEA);

1 (12) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-
2 hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-
3 hydroxy MDA);

4 (13) 3,4,5-trimethoxy amphetamine;

5 (14) Bufotenine; some trade and other names: 3-
6 (beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)
7 -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-
8 dimethyltryptamine; mappine;

9 (15) Diethyltryptamine; some trade and other names: N,
10 N-Diethyltryptamine; DET;

11 (16) Dimethyltryptamine; some trade or other names: DMT;

12 (17) Ibogaine; some trade and other names: 7-Ethyl-6, 6
13 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-
14 pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

15 (18) Lysergic acid diethylamide;

16 (19) Marihuana;

17 (20) Mescaline;

18 (21) Parahexyl-7374; some trade or other names: 3-Hexyl
19 -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo
20 [b,d] pyran; Synhexyl;

21 (22) Peyote; meaning all parts of the plant presently
22 classified botanically as *Lophophora williamsii* Lemaire, whether
23 growing or not, the seeds thereof, any extract from any part of
24 such plant, and every compound, manufacture, salts, derivative,
25 mixture or preparation of such plant, its seeds or extracts;

- 1 (23) N-ethyl-3-piperidyl benzilate;
- 2 (24) N-methyl-3-piperidyl benzilate;
- 3 (25) Psilocybin;
- 4 (26) Psilocyn;
- 5 (27) Synthetic cannabinoid;
- 6 ~~(27)~~ (28) Tetrahydrocannabinols; synthetic equivalents of the
- 7 substances contained in the plant, or in the resinous extractives
- 8 of Cannabis, sp. and/or synthetic substances, derivatives and their
- 9 isomers with similar chemical structure and pharmacological
- 10 activity such as the following:
- 11 delta-1 Cis or trans tetrahydrocannabinol, and their optical
- 12 isomers;
- 13 delta-6 Cis or trans tetrahydrocannabinol, and their optical
- 14 isomers;
- 15 delta-3,4 Cis or trans tetrahydrocannabinol, and its optical
- 16 isomers;
- 17 (Since nomenclature of these substances is not internationally
- 18 standardized, compounds of these structures, regardless of
- 19 numerical designation of atomic positions covered.)
- 20 ~~(28)~~ (29) Ethylamine analog of phencyclidine; some trade or
- 21 other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)
- 22 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
- 23 ~~(29)~~ (30) Pyrrolidine analog of phencyclidine; some trade or
- 24 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- 25 ~~(30)~~ (31) Thiophene analog of phencyclidine; some trade or

1 other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-
2 thienylanalog of phencyclidine; TPCP, TCP;

3 ~~(31)~~ (32) 1[1-(2-thienyl)cyclohexyl]pyrroldine; some other
4 names: TCPy.

5 (e) *Depressants*. Unless specifically excepted or unless
6 listed in another schedule, any material, compound, mixture, or
7 preparation which contains any quantity of the following substances
8 having a depressant effect on the central nervous system, including
9 its salts, isomers and salts of isomers whenever the existence of
10 such salts, isomers and salts of isomers is possible within the
11 specific chemical designation:

12 (1) Mecloqualone;

13 (2) Methaqualone.

14 (f) *Stimulants*. Unless specifically excepted or unless listed
15 in another schedule, any material, compound, mixture, or
16 preparation which contains any quantity of the following substances
17 having a stimulant effect on the central nervous system, including
18 its salts, isomers, and salts of isomers:

19 (1) Aminorex; some other names: aminoxaphen; 2-amino-5-
20 phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

21 (2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-
22 propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and
23 norephedrone;

24 (3) Fenethylamine;

25 (4) Methcathinone, its salts, optical isomers and salts of

1 optical isomers; some other names: (2-(methylamino)-propiophenone;
2 alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-
3 one; alpha-N-methylaminopropiophenone; monomethylpropion;
4 ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-
5 463 and UR1432;

6 (5) (+-) cis-4-methylaminorex; ((+)-cis-4,5-dihydro-4-methyl-
7 5-phenyl-2-oxazolamine);

8 (6) N-ethylamphetamine;

9 (7) N,N-dimethylamphetemine; also known as N,N-alpha-
10 trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

11 (g) *Temporary listing of substances subject to emergency*
12 *scheduling*. Any material, compound, mixture or preparation which
13 contains any quantity of the following substances:

14 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
15 (benzylfentanyl), its optical isomers, salts, and salts of isomers.

16 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide
17 (thenylfentanyl), its optical isomers, salts and salts of isomers.

18 **§60A-4-402. Prohibited acts B; penalties.**

19 (a) It is unlawful for any person:

20 (1) Who is subject to article 3 to distribute or dispense a
21 controlled substance in violation of section 308;

22 (2) Who is a registrant, to manufacture a controlled substance
23 not authorized by his registration, or to distribute or dispense a
24 controlled substance not authorized by his registration to another
25 registrant or other authorized person;

1 (3) To refuse or fail to make, keep, or furnish any record,
2 notification, order form, statement, invoice, or information
3 required under this act;

4 (4) To refuse any entry into any premises for any inspection
5 authorized by this act; or

6 (5) Knowingly to keep or maintain any store, shop, warehouse,
7 dwelling, building, vehicle, boat, aircraft, or other structure or
8 place, which is resorted to by persons using controlled substances
9 in violation of this act for the purpose of using these substances,
10 or which is used for keeping or selling them in violation of this
11 act.

12 (b) Any person who violates this section is guilty of a
13 misdemeanor, and, upon conviction, may be confined in the ~~county~~
14 regional jail for not less than six months nor more than one year,
15 or fined not more than twenty-five thousand dollars, or both.

16 (c) Notwithstanding any other provision of this act to the
17 contrary, any first offense for distributing less than 15 grams of
18 marihuana or synthetic cannabinoid without any remuneration shall
19 be disposed of under section 407.

20 **§60A-4-407. Conditional discharge for first offense of possession.**

21 (a) Whenever any person who has not previously been convicted
22 of any offense under this chapter or under any statute of the
23 United States or of any state relating to narcotic drugs,
24 marihuana, synthetic cannabinoid, or stimulant, depressant, or
25 hallucinogenic drugs, pleads guilty to or is found guilty of

1 possession of a controlled substance under section 401(c), the
2 court, without entering a judgment of guilt and with the consent of
3 the accused, may defer further proceedings and place him or her on
4 probation upon terms and conditions. Upon violation of a term or
5 condition, the court may enter an adjudication of guilt and proceed
6 as otherwise provided. Upon fulfillment of the terms and
7 conditions, the court shall discharge the person and dismiss the
8 proceedings against him or her. Discharge and dismissal under this
9 section shall be without adjudication of guilt and is not a
10 conviction for purposes of this section or for purposes of
11 disqualifications or disabilities imposed by law upon conviction of
12 a crime, including the additional penalties imposed for second or
13 subsequent convictions under section 408. The effect of the
14 dismissal and discharge shall be to restore the person in
15 contemplation of law to the status he or she occupied prior to
16 arrest and trial. No person as to whom a dismissal and discharge
17 have been effected shall be thereafter held to be guilty of
18 perjury, false swearing, or otherwise giving a false statement by
19 reason of his or her failure to disclose or acknowledge his or her
20 arrest or trial in response to any inquiry made of him or her for
21 any purpose. There may be only one discharge and dismissal under
22 this section with respect to any person.

23 (b) After a period of not less than six months which shall
24 begin to run immediately upon the expiration of a term of probation
25 imposed upon any person under this chapter, the person may apply to

1 the court for an order to expunge from all official records all
2 recordations of his or her arrest, trial, and conviction, pursuant
3 to this section. If the court determines after a hearing that the
4 person during the period of his or her probation and during the
5 period of time prior to his or her application to the court under
6 this section has not been guilty of any serious or repeated
7 violation of the conditions of his or her probation, it shall order
8 the expungement.

9 (c) Notwithstanding any provision of this code to the
10 contrary, any person prosecuted pursuant to the provisions of this
11 article whose case is disposed of pursuant to the provisions of
12 this section shall be liable for any court costs assessable against
13 a person convicted of a violation of section 401(c) of this
14 article. Payment of such costs may be made a condition of
15 probation.

16 The costs assessed pursuant to this section, whether as a term
17 of probation or not, shall be distributed as other court costs in
18 accordance with section two, article three, chapter fifty, section
19 four, article two-a, chapter fourteen, section four, article
20 twenty-nine, chapter thirty and sections two, seven and ten,
21 article five, chapter sixty-two of this code.

22 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

23 **ARTICLE 7. DANGEROUS WEAPONS.**

24 **§61-7-7. Persons prohibited from possessing firearms;**

1 **classifications; reinstatement of rights to**
2 **possess; offenses; penalties.**

3 (a) Except as provided in this section, no person shall
4 possess a firearm, as such is defined in section two of this
5 article, who:

6 (1) Has been convicted in any court of a crime punishable by
7 imprisonment for a term exceeding one year;

8 (2) Is habitually addicted to alcohol;

9 (3) Is an unlawful user of or habitually addicted to any
10 controlled substance;

11 (4) Has been adjudicated as a mental defective or who has been
12 involuntarily committed to a mental institution pursuant to the
13 provisions of chapter twenty-seven of this code: *Provided, That*
14 once an individual has been adjudicated as a mental defective or
15 involuntarily committed to a mental institution, he or she shall be
16 duly notified that they are to immediately surrender any firearms
17 in their ownership or possession: *Provided, however, That* the
18 mental hygiene commissioner or circuit judge shall first make a
19 determination of the appropriate public or private individual or
20 entity to act as conservator for the surrendered property;

21 (5) Is an alien illegally or unlawfully in the United States;

22 (6) Has been discharged from the Armed Forces under
23 dishonorable conditions;

24 (7) Is subject to a domestic violence protective order that:

25 (A) Was issued after a hearing of which such person received

1 actual notice and at which such person had an opportunity to
2 participate;

3 (B) Restrains such person from harassing, stalking or
4 threatening an intimate partner of such person or child of such
5 intimate partner or person, or engaging in other conduct that would
6 place an intimate partner in reasonable fear of bodily injury to
7 the partner or child; and

8 (C) (i) Includes a finding that such person represents a
9 credible threat to the physical safety of such intimate partner or
10 child; or

11 (ii) By its terms explicitly prohibits the use, attempted use
12 or threatened use of physical force against such intimate partner
13 or child that would reasonably be expected to cause bodily injury;
14 or

15 (8) Has been convicted of a misdemeanor offense of assault or
16 battery either under the provisions of section twenty-eight,
17 article two of this chapter or the provisions of subsection (b) or
18 (c), section nine of said article in which the victim was a current
19 or former spouse, current or former sexual or intimate partner,
20 person with whom the defendant has a child in common, person with
21 whom the defendant cohabits or has cohabited, a parent or guardian,
22 the defendant's child or ward or a member of the defendant's
23 household at the time of the offense or has been convicted in any
24 court of any jurisdiction of a comparable misdemeanor crime of
25 domestic violence.

1 Any person who violates the provisions of this subsection
2 shall be guilty of a misdemeanor and, upon conviction thereof,
3 shall be fined not less than one hundred dollars nor more than one
4 thousand dollars or confined in the county jail for not less than
5 ninety days nor more than one year, or both.

6 (b) Notwithstanding the provisions of subsection (a) of this
7 section, any person:

8 (1) Who has been convicted in this state or any other
9 jurisdiction of a felony crime of violence against the person of
10 another or of a felony sexual offense; or

11 (2) Who has been convicted in this state or any other
12 jurisdiction of a felony controlled substance offense involving a
13 Schedule I controlled substance other than marijuana or synthetic
14 cannabinoid, a Schedule II or a Schedule III controlled substance
15 as such are defined in sections two hundred four, two hundred five
16 and two hundred six, article two, chapter sixty-a of this code and
17 who possesses a firearm as such is defined in section two of this
18 article shall be guilty of a felony and, upon conviction thereof,
19 shall be confined in a state correctional facility for not more
20 than five years or fined not more than five thousand dollars, or
21 both. The provisions of subsection (c) of this section shall not
22 apply to persons convicted of offenses referred to in this
23 subsection or to persons convicted of a violation of this
24 subsection.

25 (c) Any person prohibited from possessing a firearm by the

1 provisions of subsection (a) of this section may petition the
2 circuit court of the county in which he or she resides to regain
3 the ability to possess a firearm and if the court finds by clear
4 and convincing evidence that the person is competent and capable of
5 exercising the responsibility concomitant with the possession of a
6 firearm, the court may enter an order allowing the person to
7 possess a firearm if such possession would not violate any federal
8 law: *Provided*, That a person prohibited from possessing a firearm
9 by the provisions of subdivision (4), subsection (a) of this
10 section may petition to regain the ability to possess a firearm in
11 accordance with the provisions of section five, article seven-a of
12 this chapter.

NOTE: The purpose of this bill is to criminalize possession and distribution of synthetic cannabinoids in the same manner and with the same penalties as marijuana.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.