**A** **BILL**

TO AMEND SECTION 44‑53‑160, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROCESSES FOR CHANGING CONTROLLED SUBSTANCE SCHEDULES, SO AS TO REQUIRE THE STATE BOARD OF PHARMACY TO PERFORM FUNCTIONS TO QUICKLY IDENTIFY NEW SYNTHETIC CHEMICAL FORMULAS FOR SCHEDULING AND TO AUTHORIZE THE BOARD TO ISSUE EMERGENCY RULES TO SCHEDULE SYNTHETIC CHEMICAL FORMULAS AS A CONTROLLED SUBSTANCE.

Whereas, the General Assembly recognizes the recent growth of synthetic drugs, such as Spice/K2 and bath salts, and the dangers caused by these substances; and

Whereas, the concern is exemplified by a Substance Abuse and Mental Health Services Administration report that summarizes the frequency and trends of abuse for these substances; and

Whereas, the General Assembly recognizes further that better methods and strategies that appropriately respond to new synthetic drugs as soon as they are made known to the State is of particular importance; and

Whereas, the General Assembly recognizes further that law enforcement is in need of presumptive testing tools to quickly identify substances as illegal synthetic drugs defined under state law; and

Whereas, it is the intent of this legislation to create a process whereby synthetic drugs can be quickly outlawed under state law and instantly identified by police in the field. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑53‑160 of the 1976 Code, as last amended by Act 216 of 2018, is further amended to read:

“Section 44‑53‑160. (A)(1) Annually, within thirty days after the convening of each regular session of the General Assembly, the department shall recommend to the General Assembly any additions, deletions, or revisions in the schedules of controlled substances enumerated in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270 which the department deems necessary. Except as otherwise provided in this section, the department shall not make any additions, deletions, or revisions in the schedules until after notice and an opportunity for a hearing is afforded to all interested parties. In making a recommendation to the General Assembly regarding a substance, the department shall consider the following:

(a) the actual or relative potential for abuse;

(b) the scientific evidence of the substance’s pharmacological effect, if known;

(c) the state of current scientific knowledge regarding the substance;

(d) the history and current pattern of abuse;

(e) the scope, duration, and significance of abuse;

(f) the risk to public health;

(g) the potential of the substance to produce psychic or physiological dependence liability;

(h) whether the substance is an immediate precursor of a substance already controlled pursuant to this chapter; and

(i) whether the substance has an accepted or recognized medical use.

(2) After considering the factors listed in subsection (A)(1), the department shall make a recommendation to the General Assembly specifying to what schedule the substance should be added, deleted, or rescheduled, if the department finds that the substance has a potential for abuse.

(B) Except as otherwise provided in this section, during the time the General Assembly is not in session, the department may add, delete, or reschedule a substance as a controlled substance after providing notice and a hearing to all interested parties. The addition, deletion, or rescheduling of a substance pursuant to this subsection has the full force of law unless overturned by the General Assembly. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Medical, Military, Public and Municipal Affairs Committee, and the Judiciary Committee of the House of Representatives, the Clerks of the Senate and House, and the Code Commissioner, and shall post the schedules on the department’s website indicating the change and specifying the effective date of the change.

(C)(1) At least every ninety days, and in consultation with the South Carolina Law Enforcement Division (SLED), the State Board of Pharmacy shall provide a written report to the Governor, Attorney General, and the General Assembly outlining whether the board has identified any new chemical formulas that are used to make synthetic cannabinoids or cathinones not currently illegal under state law. To identify new chemical formulas, the board shall communicate routinely with SLED, the United States Drug Enforcement Administration (DEA), the White House Office of National Drug Control Policy, the Scientific Working Group for the Analysis of Seized Drugs, and other states’ boards of pharmacy. If the board identifies any new chemical formulas, the board immediately shall propose an emergency rule to add the new chemicals to the current list of formulas listed in state law as a scheduled controlled substance and vote on the proposed rule as quickly as allowed pursuant to the board’s notice and hearing requirements.

(2) The State Board of Pharmacy, on its own initiative or under a written request from SLED, the DEA, or a poison control center, may adopt an emergency rule declaring a chemical formula to be a synthetic drug if the board finds that the chemical formula:

(a) has been scheduled or emergency scheduled by the DEA;

(b) has been scheduled, emergency scheduled, or criminalized by another state; or

(c)(i) has a high potential for abuse; and

(ii) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(3) In making its determination under item (2)(c), the board shall consider the:

(a) actual or relative potential for abuse;

(b) scientific evidence of the substance’s pharmacological effect, if known;

(c) state of current scientific knowledge regarding the substance;

(d) history and current pattern of abuse of the substance;

(e) scope, duration, and significance of abuse of the substance;

(f) degree of risk to the public health; and

(g) psychological or physiological dependence liability of the substance.

(4) A rule adopted pursuant to this subsection is effective thirty days after adoption by the board and expires on the last legislative day of the following legislative session unless the substance is added as a scheduled controlled substance as otherwise allowed pursuant to this section.

(D) If a substance is added, deleted, or rescheduled as a controlled substance pursuant to federal law or regulation, the department shall, at the first regular or special meeting of the South Carolina Board of Health and Environmental Control within thirty days after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, add, delete, or reschedule the substance in the appropriate schedule. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection must be in substance identical with the order published in the federal register effecting the change in federal status of the substance. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Chairman of the Medical, Military, Public and Municipal Affairs Committee, the Chairman of the Judiciary Committee of the House of Representatives, the Clerks of the Senate and House, and the Code Commissioner, and shall post the schedules on the department’s website indicating the change and specifying the effective date of the change.

~~(D)~~(E) The department shall exclude any nonnarcotic substance from a schedule if the substance may, under the federal Food, Drug, and Cosmetic Act and the laws of this State, be lawfully sold over the counter without a prescription.

~~(E)~~(F) The department’s addition, deletion, or rescheduling of a substance as a controlled substance is governed by this section and is not subject to the promulgation requirements of Chapter 23, Title 1.”

SECTION 2. This act takes effect upon approval by the Governor.

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