

1-1 By: Shapiro, et al. S.B. No. 331
1-2 (In the Senate - Filed January 12, 2011; February 14, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 March 28, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 28, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 331 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to designating certain synthetic cannabinoids as
1-11 controlled substances under the Texas Controlled Substances Act;
1-12 providing penalties and establishing certain criminal consequences
1-13 or procedures.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subchapter D, Chapter 481, Health and Safety
1-16 Code, is amended by adding Section 481.1031 to read as follows:

1-17 Sec. 481.1031. PENALTY GROUP 2-A. Penalty Group 2-A
1-18 consists of any quantity of a synthetic chemical compound that is a
1-19 cannabinoid receptor agonist and mimics the pharmacological effect
1-20 of naturally occurring cannabinoids, including:

1-21 naphthoylindoles structurally derived from
1-22 3-(1-naphthoyl)indole by substitution at the nitrogen atom of the
1-23 indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
1-24 or 2-(4-morpholinyl)ethyl, whether or not further substituted in
1-25 the indole ring to any extent, whether or not substituted in the
1-26 naphthyl ring to any extent, including:

- 1-27 AM-2201;
- 1-28 JWH-004;
- 1-29 JWH-007;
- 1-30 JWH-009;
- 1-31 JWH-015;
- 1-32 JWH-016;
- 1-33 JWH-018;
- 1-34 JWH-019;
- 1-35 JWH-020;
- 1-36 JWH-046;
- 1-37 JWH-047;
- 1-38 JWH-048;
- 1-39 JWH-049;
- 1-40 JWH-050;
- 1-41 JWH-073;
- 1-42 JWH-076;
- 1-43 JWH-079;
- 1-44 JWH-080;
- 1-45 JWH-081;
- 1-46 JWH-082;
- 1-47 JWH-083;
- 1-48 JWH-093;
- 1-49 JWH-094;
- 1-50 JWH-095;
- 1-51 JWH-096;
- 1-52 JWH-097;
- 1-53 JWH-098;
- 1-54 JWH-099;
- 1-55 JWH-100;
- 1-56 JWH-116;
- 1-57 JWH-122;
- 1-58 JWH-148;
- 1-59 JWH-149;
- 1-60 JWH-153;
- 1-61 JWH-159;
- 1-62 JWH-164;
- 1-63 JWH-165;

2-1	<u>JWH-166;</u>
2-2	<u>JWH-180;</u>
2-3	<u>JWH-181;</u>
2-4	<u>JWH-182;</u>
2-5	<u>JWH-189;</u>
2-6	<u>JWH-193;</u>
2-7	<u>JWH-198;</u>
2-8	<u>JWH-200;</u>
2-9	<u>JWH-210;</u>
2-10	<u>JWH-211;</u>
2-11	<u>JWH-212;</u>
2-12	<u>JWH-213;</u>
2-13	<u>JWH-234;</u>
2-14	<u>JWH-235;</u>
2-15	<u>JWH-239;</u>
2-16	<u>JWH-240;</u>
2-17	<u>JWH-241;</u>
2-18	<u>JWH-242;</u>
2-19	<u>JWH-258;</u>
2-20	<u>JWH-259;</u>
2-21	<u>JWH-260;</u>
2-22	<u>JWH-262;</u>
2-23	<u>JWH-267;</u>
2-24	<u>JWH-386;</u>
2-25	<u>JWH-387;</u>
2-26	<u>JWH-394;</u>
2-27	<u>JWH-395;</u>
2-28	<u>JWH-397;</u>
2-29	<u>JWH-398;</u>
2-30	<u>JWH-399;</u>
2-31	<u>JWH-400;</u>
2-32	<u>JWH-412;</u>
2-33	<u>JWH-413; and</u>
2-34	<u>JWH-414;</u>
2-35	<u>naphthylmethylindones structurally derived from</u>
2-36	<u>1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen</u>
2-37	<u>atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl,</u>
2-38	<u>cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further</u>
2-39	<u>substituted in the indole ring to any extent, whether or not</u>
2-40	<u>substituted in the naphthyl ring to any extent, including:</u>
2-41	<u>JWH-175;</u>
2-42	<u>JWH-184;</u>
2-43	<u>JWH-185;</u>
2-44	<u>JWH-192;</u>
2-45	<u>JWH-194;</u>
2-46	<u>JWH-195;</u>
2-47	<u>JWH-196;</u>
2-48	<u>JWH-197; and</u>
2-49	<u>JWH-199;</u>
2-50	<u>naphthoylpyrroles structurally derived from</u>
2-51	<u>3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the</u>
2-52	<u>pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,</u>
2-53	<u>or 2-(4-morpholinyl)ethyl, whether or not further substituted in</u>
2-54	<u>the pyrrole ring to any extent, whether or not substituted in the</u>
2-55	<u>naphthyl ring to any extent, including:</u>
2-56	<u>JWH-030;</u>
2-57	<u>JWH-145;</u>
2-58	<u>JWH-146;</u>
2-59	<u>JWH-147;</u>
2-60	<u>JWH-150;</u>
2-61	<u>JWH-156;</u>
2-62	<u>JWH-243;</u>
2-63	<u>JWH-244;</u>
2-64	<u>JWH-245;</u>
2-65	<u>JWH-246;</u>
2-66	<u>JWH-292;</u>
2-67	<u>JWH-293;</u>
2-68	<u>JWH-307;</u>
2-69	<u>JWH-308;</u>

- 3-1 JWH-309;
3-2 JWH-346;
3-3 JWH-347;
3-4 JWH-348;
3-5 JWH-363;
3-6 JWH-364;
3-7 JWH-365;
3-8 JWH-366;
3-9 JWH-367;
3-10 JWH-368;
3-11 JWH-369;
3-12 JWH-370;
3-13 JWH-371;
3-14 JWH-372;
3-15 JWH-373; and
3-16 JWH-392;
3-17 naphthylmethylindenes structurally derived from
3-18 1-(1-naphthylmethyl)indene by substitution at the 3-position of
3-19 the indene ring by alkyl, alkenyl, cycloalkylmethyl,
3-20 cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further
3-21 substituted in the indene ring to any extent, whether or not
3-22 substituted in the naphthyl ring to any extent, including:
3-23 JWH-171;
3-24 JWH-172;
3-25 JWH-173; and
3-26 JWH-176;
3-27 phenylacetylindoles structurally derived from
3-28 3-phenylacetylindole by substitution at the nitrogen atom of the
3-29 indole ring with alkyl, alkenyl, cycloalkylmethyl,
3-30 cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further
3-31 substituted in the indole ring to any extent, whether or not
3-32 substituted in the phenyl ring to any extent, including:
3-33 AM-694;
3-34 AM-1241;
3-35 JWH-167;
3-36 JWH-203;
3-37 JWH-204;
3-38 JWH-205;
3-39 JWH-206;
3-40 JWH-208;
3-41 JWH-237;
3-42 JWH-248;
3-43 JWH-249;
3-44 JWH-250;
3-45 JWH-251;
3-46 JWH-252;
3-47 JWH-253;
3-48 JWH-302;
3-49 JWH-303;
3-50 JWH-305;
3-51 JWH-306;
3-52 JWH-311;
3-53 JWH-312;
3-54 JWH-313;
3-55 JWH-314; and
3-56 JWH-315;
3-57 cyclohexylphenols structurally derived from
3-58 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of
3-59 the phenolic ring by alkyl, alkenyl, cycloalkylmethyl,
3-60 cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not
3-61 substituted in the cyclohexyl ring to any extent, including:
3-62 CP-55,940;
3-63 CP-47,497;
3-64 analogues of CP-47,497, including VII, V, VIII, I,
3-65 II, III, IV, IX, X, XI, XII, XIII, XV, and XVI;
3-66 JWH-337;
3-67 JWH-344;
3-68 JWH-345; and
3-69 JWH-405; and

4-1 cannabinol derivatives, except where contained in
4-2 marihuana, including tetrahydro derivatives of cannabinol and
4-3 3-alkyl homologues of cannabinol or of its tetrahydro derivatives,
4-4 such as:

- 4-5 Nabilone;
- 4-6 HU-210;
- 4-7 HU-211; and
- 4-8 WIN-55,212-2.

4-9 SECTION 2. Subsection (c), Section 481.111, Health and
4-10 Safety Code, is amended to read as follows:

4-11 (c) A person does not violate Section 481.113, 481.116,
4-12 481.1161, 481.121, or 481.125 if the person possesses or delivers
4-13 tetrahydrocannabinols or their derivatives, or drug paraphernalia
4-14 to be used to introduce tetrahydrocannabinols or their derivatives
4-15 into the human body, for use in a federally approved therapeutic
4-16 research program.

4-17 SECTION 3. The heading to Section 481.113, Health and
4-18 Safety Code, is amended to read as follows:

4-19 Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF
4-20 SUBSTANCE IN PENALTY GROUP 2 OR 2-A.

4-21 SECTION 4. Subsection (a), Section 481.113, Health and
4-22 Safety Code, is amended to read as follows:

4-23 (a) Except as authorized by this chapter, a person commits
4-24 an offense if the person knowingly manufactures, delivers, or
4-25 possesses with intent to deliver a controlled substance listed in
4-26 Penalty Group 2 or 2-A.

4-27 SECTION 5. Subchapter D, Chapter 481, Health and Safety
4-28 Code, is amended by adding Section 481.1161 to read as follows:

4-29 Sec. 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY
4-30 GROUP 2-A. (a) Except as authorized by this chapter, a person
4-31 commits an offense if the person knowingly possesses a controlled
4-32 substance listed in Penalty Group 2-A, unless the person obtained
4-33 the substance directly from or under a valid prescription or order
4-34 of a practitioner acting in the course of professional practice.

4-35 (b) An offense under this section is:

4-36 (1) a Class B misdemeanor if the amount of the
4-37 controlled substance possessed is, by aggregate weight, including
4-38 adulterants or dilutants, two ounces or less;

4-39 (2) a Class A misdemeanor if the amount of the
4-40 controlled substance possessed is, by aggregate weight, including
4-41 adulterants or dilutants, four ounces or less but more than two
4-42 ounces;

4-43 (3) a state jail felony if the amount of the controlled
4-44 substance possessed is, by aggregate weight, including adulterants
4-45 or dilutants, five pounds or less but more than four ounces;

4-46 (4) a felony of the third degree if the amount of the
4-47 controlled substance possessed is, by aggregate weight, including
4-48 adulterants or dilutants, 50 pounds or less but more than 5 pounds;

4-49 (5) a felony of the second degree if the amount of the
4-50 controlled substance possessed is, by aggregate weight, including
4-51 adulterants or dilutants, 2,000 pounds or less but more than 50
4-52 pounds; and

4-53 (6) punishable by imprisonment in the Texas Department
4-54 of Criminal Justice for life or for a term of not more than 99 years
4-55 or less than 5 years, and a fine not to exceed \$50,000, if the amount
4-56 of the controlled substance possessed is, by aggregate weight,
4-57 including adulterants or dilutants, more than 2,000 pounds.

4-58 SECTION 6. Subsections (c) and (d), Section 481.134, Health
4-59 and Safety Code, are amended to read as follows:

4-60 (c) The minimum term of confinement or imprisonment for an
4-61 offense otherwise punishable under Section 481.112(c), (d), (e), or
4-62 (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e),
4-63 481.115(c)-(f), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or
4-64 (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e),
4-65 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is
4-66 increased by five years and the maximum fine for the offense is
4-67 doubled if it is shown on the trial of the offense that the offense
4-68 was committed:

4-69 (1) in, on, or within 1,000 feet of the premises of a

5-1 school, the premises of a public or private youth center, or a
5-2 playground; or

5-3 (2) on a school bus.

5-4 (d) An offense otherwise punishable under Section
5-5 481.112(b), 481.113(b), 481.114(b), 481.115(b), 481.116(b),
5-6 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a felony of the
5-7 third degree if it is shown on the trial of the offense that the
5-8 offense was committed:

5-9 (1) in, on, or within 1,000 feet of any real property
5-10 that is owned, rented, or leased to a school or school board, the
5-11 premises of a public or private youth center, or a playground; or

5-12 (2) on a school bus.

5-13 SECTION 7. Subsection (d), Article 14.06, Code of Criminal
5-14 Procedure, is amended to read as follows:

5-15 (d) Subsection (c) applies only to a person charged with
5-16 committing an offense under:

5-17 (1) Section 481.121, Health and Safety Code, if the
5-18 offense is punishable under Subsection (b)(1) or (2) of that
5-19 section;

5-20 (1-a) Section 481.1161, Health and Safety Code, if the
5-21 offense is punishable under Subsection (b)(1) or (2) of that
5-22 section;

5-23 (2) Section 28.03, Penal Code, if the offense is
5-24 punishable under Subsection (b)(2) of that section;

5-25 (3) Section 28.08, Penal Code, if the offense is
5-26 punishable under Subsection (b)(1) of that section;

5-27 (4) Section 31.03, Penal Code, if the offense is
5-28 punishable under Subsection (e)(2)(A) of that section;

5-29 (5) Section 31.04, Penal Code, if the offense is
5-30 punishable under Subsection (e)(2) of that section;

5-31 (6) Section 38.114, Penal Code, if the offense is
5-32 punishable as a Class B misdemeanor; or

5-33 (7) Section 521.457, Transportation Code.

5-34 SECTION 8. Subdivision (1), Subsection (a), Section 15,
5-35 Article 42.12, Code of Criminal Procedure, is amended to read as
5-36 follows:

5-37 (1) On conviction of a state jail felony under Section
5-38 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3),
5-39 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is
5-40 punished under Section 12.35(a), Penal Code, the judge shall
5-41 suspend the imposition of the sentence and place the defendant on
5-42 community supervision, unless the defendant has previously been
5-43 convicted of a felony, other than a felony punished under Section
5-44 12.44(a), Penal Code, or unless the conviction resulted from an
5-45 adjudication of the guilt of a defendant previously placed on
5-46 deferred adjudication community supervision for the offense, in
5-47 which event the judge may suspend the imposition of the sentence and
5-48 place the defendant on community supervision or may order the
5-49 sentence to be executed. The provisions of this subdivision
5-50 requiring the judge to suspend the imposition of the sentence and
5-51 place the defendant on community supervision do not apply to a
5-52 defendant who:

5-53 (A) under Section 481.1151(b)(1), Health and
5-54 Safety Code, possessed more than five abuse units of the controlled
5-55 substance;

5-56 (B) under Section 481.1161(b)(3), Health and
5-57 Safety Code, possessed more than one pound, by aggregate weight,
5-58 including adulterants or dilutants, of the controlled substance; or

5-59 (C) under Section 481.121(b)(3), Health and
5-60 Safety Code, possessed more than one pound of marihuana.

5-61 SECTION 9. This Act takes effect September 1, 2011.

5-62 * * * * *