

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Controlling Synthetic Marijuana: Addendum **By Patrick Affholter, Legislative Analyst**

The Fall 2010 issue of *State Notes: Topics of Legislative Interest* included an article about Michigan's addition of synthetic marijuana to the controlled substance schedules. As reported in that article, Public Act 171 of 2010 amended the Public Health Code to include various synthetic cannabinoids in the Code's list of Schedule 1 controlled substances.

In addition, Public Act 169 of 2010 amended Sections 7403 and 7404 of the Public Health Code to extend the penalties for possession and use of marijuana to the possession and use of the synthetic cannabinoids listed in Public Act 171. (Public Act 171 also included several other substances in the controlled substance schedules, and Public Act 169 made their possession and use subject to criminal penalties.) Public Acts 169 and 171 took effect on October 1, 2010.

Late in the 2009-2010 legislative session, then-Governor Granholm signed into law Public Act 352 of 2010, which amended Section 7403 of the Public Health Code to address a different issue. Public Act 352, however, did not include the references to synthetic marijuana and other substances that were enacted earlier in 2010 by Public Act 169. Consequently, the criminal penalties for *possession* of synthetic marijuana and other substances enacted by Public Act 169 were repealed by Public Act 352, which took effect on December 22, 2010.

In her signing statement for Public Act 352, the Governor pointed out the inadvertent repeal and urged the next Legislature to restore the criminal penalties. According to published reports, legislation to re-enact the penalty provisions will be introduced early in the 2011-2012 legislative session.

It is important to note that Public Act 352 did not affect the penalty for *use* of synthetic marijuana or the other listed substances, or the provisions enacted by Public Act 171. Therefore, synthetic marijuana remains classified as a Schedule 1 controlled substance and its use remains subject to the criminal penalties in Section 7404 of the Public Health Code that apply to the use of marijuana. Furthermore, because synthetic marijuana is now a controlled substance, its *possession* is still prohibited under Section 7403. Instead of being subject to the misdemeanor penalty that applies to the possession of marijuana, however, possession of synthetic marijuana presumably is now subject to a catchall felony penalty for possession of other Schedule 1 controlled substances.