

NAMSDL



National Alliance for Model State Drug Laws

ENFORCEMENT OF SYNTHETIC SUBSTANCES LAWS

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Prosecution and enforcement of synthetic substances laws is a difficult task given the ever-changing face of synthetic designer drugs. No sooner is a substance made illegal than another appears to take its place. There are three main ways which states are using to prosecute and enforce their synthetic substances laws – through the use of their controlled substance analogue and generic language statutes, through the use of their consumer protection and agriculture laws, and through the use of statutes and ordinances which allow state and local officials to financially penalize retailers selling these products by revoking or suspending certain licenses.

The federal government added “controlled substance analogue” to its list of definitions in the federal Controlled Substances Act in 1986. Since that time, thirty-four (34) states and the District of Columbia have added controlled substance analogue statutes or their equivalent to their controlled substances acts. The federal Uniform Controlled Substances Act defines “controlled substance analogue” as follows:

United States Code Annotated (2012)
Title 21. Food and Drugs
Chapter 13. Drug Abuse Prevention and Control
Subchapter I. Control and Enforcement
Part A. Introductory Provisions
§ 802. Definitions

...

(32)(A) Except as provided in subparagraph (C), the term “controlled substance analogue” means a substance--

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(B) The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) of this paragraph that the chemical is a controlled substance analogue.

(C) Such term does not include--

- (i) a controlled substance;
- (ii) any substance for which there is an approved new drug application;
- (iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 355 of this title to the extent conduct with respect to such substance is pursuant to such exemption; or
- (iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

The definition has been interpreted by the Seventh Circuit to require that prosecutors prove that an analog has both a chemical structure substantially similar to that of a controlled substance and that it have either a substantially similar or greater effect on the central nervous system as a schedule I or II controlled substance or that a person represents or intends to have such an effect on the central nervous system.¹ In many cases, there isn't enough research on these synthetic substances to be able to provide the scientific expert testimony necessary to prove that the chemical structure is substantially similar to that of a controlled substance.

In 2013, two states passed legislation designed to make it easier to prove the “substantially similar” prong of the controlled substance analogue statute. South Dakota’s new definition of controlled substance analogue provides that an analogue is any substance that differs in its chemical structure to a Schedule I or II controlled substance only by substituting one or more hydrogens with halogens or by substituting one halogen with a different halogen, or a substance that is an alkyl homologue of a Schedule I or II controlled substance. South Dakota’s analogue definition is attached hereto as Appendix A.

Tennessee also amended their controlled substance analogue definition to provide that an analogue has a chemical structure which is a derivative or structural analogue of the chemical structure of a controlled substance. “Analogue” is defined to mean that the structure of the substance differs in no more than two atoms, one functional group, or one double bond from the structure of the controlled substance. Tennessee’s analogue language is attached hereto as Appendix B.

Many states have scheduled the generic language in their controlled substances act schedules which language encompasses several classes of synthetic drugs so that even if a substance is not specifically listed in the controlled substances schedules, if it falls within one of the listed classes of substances, it is considered a scheduled substance and can be prosecuted the same as for controlled substances offenses.

These drugs are primarily sold in packages labeled “not for human consumption” in an effort to get around 21 USCA § 802(32)(C)(iv) requiring that the analogue be intended for human consumption. To combat this, some jurisdictions have relied upon their consumer protection and

¹ See *U.S. v. Turcotte*, 405 F.3d 515 (7th Cir. 2005).

agricultural laws regarding the improper labeling or misbranding of the substances. Additionally, the US Food, Drug and Cosmetic Act prohibits the introduction or delivery for introduction into interstate commerce of any drug that is misbranded as well as the receipt in interstate commerce of any drug that is misbranded.

Further, the United States Court of Appeals for the Eighth District has held that “a label indicating a substance is not for human consumption is not dispositive evidence of the distributor’s intent.” *U.S. v. Sullivan*, 714 F.3d 1104, 1107 (8th Cir. 2013).

Because these substances are sometimes sold as “plant food,” those particular synthetic drugs fall within the purview of the Department of Agriculture which requires that all plant foods be registered with the Department as a fertilizer. For example, Tennessee law requires that all fertilizers (e.g., plant foods) be registered with the commissioner of agriculture before being distributed within the state.² Tennessee law further provides that misbranding of fertilizers is unlawful and, further, that any fertilizer not in compliance with the law is subject to seizure.³ Most states have similar provisions regarding registration and seizure of products not in compliance with state law.

Other synthetic substances being sold as potpourri, incense, bath salts, eyeglass cleaner, road snow melt, detergent drops, incense enhancers, aromatherapy powder, spiritual powder, etc., fall under state consumer protection laws as misbranded or mislabeled products, and are also subject to seizure. Illinois specifically includes misbranded products suspected to be synthetic drugs in its Food, Drug and Cosmetic Act statutes for purposes of detaining or seizing such products.⁴

Illinois has also taken the lead in the area of enforcement and prosecution by amending their controlled substances penalty statutes to provide that anyone selling a synthetic drug product or misbranded drug is subject to the state forfeiture provisions, including forfeiture of their business license.⁵ Indiana provides for the revocation of a retail merchant certificate for any person convicted of the sale or the offer to sell, in the normal course of business, a synthetic drug or synthetic drug lookalike substance for one year and may not have another certificate issued for one year. Indiana law also provides for the suspension of a retail merchant certificate for any person with a judgment as an infraction for the sale or offer to sell, in the normal course of business, a synthetic drug or synthetic drug lookalike substance for six months (see Appendix C).⁶

The city of DeKalb, Illinois adopted a new municipal ordinance (attached as Appendix D) recently that includes certain innovative provisions to convince shopkeepers and other distributors of synthetic drugs to refrain from selling these substances. The new ordinance

² T.C.A. § 43-11-104 (2012).

³ T.C.A. §§ 43-11-112 and 43-11-116 (2012).

⁴ 410 ILCS 620/6 (2012).

⁵ 410 ILCS 620/3.22 (2012).

⁶ Ind. Code § 6-2.5-8-7(i) & (j) (2013).

allows the city to suspend the licenses to sell alcohol, liquor or tobacco of any establishment currently licensed to sell those products if they are caught selling synthetic substances.

Tennessee also has language in its controlled substance analogue statute (§ 39-17-454; see Appendix B) that provides guidance regarding making a determination that a substance is an analogue, including the difference between the price at which the substance is sold and the price at which the substance is purported to be or advertised as is normally sold. This is an important factor in combatting the sale and distribution of synthetic substances as these substances are purported to be any number of products (i.e., potpourri, plant food, eyeglass cleaner, bath salts, scratch remover, etc.), but are sold at a substantially higher price than the legitimate products.

Massachusetts has a bill pending, H.B. 3401, which would ban the sale of any synthetic cannabinoid that bears a reasonable resemblance to any packaging of anything available for consumption as a candy, likely geared toward stopping the sale of synthetics in packages that are designed to attract children and teens, while Indiana has banned the possession and sale of synthetic drug lookalike substances (see Appendix E for language).

There are several other avenues that may be useful for removing synthetic drugs from retail establishments, namely the use of state, county, and municipal revocation and suspension proceedings under the state administrative procedures act for revocation or suspension of a business or other (i.e., beer, liquor, tobacco, food, etc.) license; the use of nuisance abatement laws; and, the use of state forfeiture statutes.

Every state has the equivalent of an administrative procedures act which provides an administrative mechanism for a state or local board or commission to initiate proceedings against individuals for violations that fall within the purview of that board or commission. These statutes require that the individual in question be provided with a hearing regarding the violation (for example, revocation of a beer license for selling beer to a minor) and the penalties involved can include the suspension or revocation of certain licenses, which may include business or operating licenses.

Additionally, law enforcement may be able to rely upon state nuisance abatement laws. Alabama, for example, has a specific drug-related nuisance statute which provides that, if a drug-related nuisance is found after a hearing, the court can revoke or suspend any business, housing, operational, or liquor license held by the defendant.⁷ It further provides a mandatory suspension of at least 90 days of any beer, wine, or liquor license held by the defendant if the court finds there is a drug-related nuisance. “Drug-related nuisance,” as defined in Ala. Code § 6-5-155.1, includes the use, sale, distribution, or storage of any controlled substances in violation of the controlled substances act.

Tennessee included a provision in its analogue statute (see Appendix B) that also provides that the building and premises of any business in or upon which certain violations are committed by an employee, agent or owner of such business is declared to be a public nuisance and shall be

⁷ See, Ala. Code § 6-5-155, et seq. (2012).

subject to abatement. Pursuant to Tenn. Code Ann. § 29-3-101, all furnishings, fixtures, equipment, moneys and stock used in or in connection with the maintaining or conducting of a nuisance are subject to seizure. Included in the definition of “nuisance” is any place in or upon which there is the unlawful sale of any regulated legend drug, narcotic, controlled substance, or controlled substance analogue.

Finally, law enforcement may be able to make use of state forfeiture statutes to encourage retail establishments to stop the sale of synthetic drugs by impacting their business interests. Under the Uniform Controlled Substances Act, property is subject to forfeiture if an actor (a person who subjects property to forfeiture) violates the federal or a state controlled substances act and such violation would be punishable as a felony or by imprisonment of more than one year.⁸ This may include a business or operational license if it falls within the federal or state definition of “property” in the jurisdiction where the crime occurs and would certainly include any proceeds from the sale of such substances.

Anyone interested in pursuing any of the aforementioned methods for enforcing their state laws regarding synthetic substances should check their local laws to see what, if any, of these methods are available in that state.

As new methods for enforcement of synthetic drugs laws are implemented and as additional information is received on the effectiveness of the current methods of enforcement, this document will be updated.

⁸ See the Uniform Controlled Substances Act of 1994, § 501, et seq.

APPENDIX A

South Dakota Codified Laws (2013)
Title 34. Public Health and Safety
Chapter 34-20B. Drugs and Substances Control

§ 34-20B-1. Definitions

Terms as used in this chapter mean:

...

(22) “Controlled substance analogue,” any of the following:

(a) A substance that differs in its chemical structure to a controlled substance listed in or added to the schedule designated in schedule I or II only by substituting one or more hydrogens with halogens or by substituting one halogen with a different halogen; or

(b) A substance that is an alkyl homolog of a controlled substance listed in or added to schedule I or II; or

(c) A substance intended for human consumption; and

(i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II;

However, the term, controlled substance analogue, does not include a controlled substance or any substance for which there is an approved new drug application.

APPENDIX B

West's Tennessee Code Annotated (2013)
Title 39. Criminal Offenses
Chapter 17. Offenses Against Public Health, Safety and Welfare
Part 4. Drugs

§ 39-17-454. Controlled substance analogue; violations; penalties

(1) As used in this section, “controlled substance analogue” means a capsule, pill, powder, product or other substance, however constituted, that has the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance; and

(A) Has a chemical structure which is a derivative or structural analogue of the chemical structure of a controlled substance; provided, that as used in this subdivision, “analogue” means the structure of the tested item differs in no more than two (2) atoms, one (1) functional group, or one (1) double bond, from the structure of a controlled substance; or

(B) Is prohibited by § 39-17-452.

(2) “Controlled substance analogue” does not include:

(A) A controlled substance;

(B) Any substance for which there is an approved use or new drug application by the federal food and drug administration;

(C) Any compound, mixture, or preparation that contains any controlled substance that is not for administration to a human being or animal, and that is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or

(D) Any substance to which an investigational exemption applies under § 505 of the Food, Drug and Cosmetic Act, codified in 21 U.S.C. § 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

(b)(1) In determining whether a substance is a controlled substance analogue, the following factors shall be considered, along with any other relevant factors:

(A) The difference between the price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;

(B) Its diversion from legitimate channels, and its clandestine importation, manufacture, or distribution;

(C) The defendant's prior convictions, if any, for a violation of any state or federal statute prohibiting controlled substances or controlled substance analogues; and

(D) Comparisons with accepted methods of marketing a legitimate nonprescription drug for medicinal purposes rather than for the purpose of drug abuse or any similar nonmedical use, including:

(i) The packaging of the substance and its appearance in overall finished dosage form;

(ii) Oral or written statements or representations concerning the substance;

(iii) The methods by which the substance is distributed; and

(iv) The manner in which the substance is sold to the public.

(2) In determining whether a substance is a controlled substance analogue, the following scientific or pharmacological factors may be considered, along with any other relevant factors:

(A) Its actual or relative potential for abuse;

(B) Scientific evidence of its pharmacological effect, if known;

(C) The state of current scientific knowledge regarding the substance;

(D) The history of the substance and its current pattern of abuse;

(E) The scope, duration and significance of abuse;

(F) What, if any, risk there is to the public health;

(G) Its psychic or physiological dependence liability; and

(H) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(c) It is an offense to knowingly manufacture, deliver, dispense or sell a controlled substance analogue or to possess a controlled substance analogue with the intent to manufacture, deliver, dispense or sell such substance.

(d) It is an offense to knowingly possess or casually exchange a small amount of a controlled substance analogue not in excess of one (1) gram.

(e) It may be inferred from the amount of controlled substance analogue possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance analogue was possessed with the purpose of selling or otherwise dispensing in violation of

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subsection (c). It may be inferred from circumstances indicating a casual exchange among individuals of a controlled substance analogue that the controlled substance analogue so exchanged was possessed not with the purpose of selling or otherwise dispensing in violation of subsection (c). The inferences shall be transmitted to the jury by the trial judge's charge, and the jury will consider the inferences along with the nature of the substance possessed when affixing the penalty.

(f)(1) It is an offense for a person to represent, orally or in writing, advertise, infer or intend that a controlled substance analogue has the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance; and

(A) Has a chemical structure which is a derivative or structural analogue of the chemical structure of a controlled substance; provided, that as used in this subdivision, "analogue" means the structure of the tested item differs in no more than two (2) atoms, one (1) functional group, or one (1) double bond, from the structure of a controlled substance; or

(B) Is prohibited by § 39-17-452.

(2) It is not a defense to prosecution under this subsection (f) that the controlled substance analogue:

(A) Is not a derivative of a controlled substance;

(B) Does not have a chemical structure which is a derivative or analogue, as defined in subdivision (f)(1)(A), of the chemical structure of a controlled substance;

(C) Does not have a stimulant, depressant, hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance; or

(D) Is not listed in § 39-17-452.

(g)(1) A first violation of subsection (c) is a Class D felony.

(2) A second or subsequent violation of subsection (c) is a Class C felony.

(3) If the violation of subsection (c) involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one (1) classification higher than the punishment provided by this subsection (g) for delivering, dispensing or selling to an adult.

(4) A violation of subsection (d) or (f) is a Class A misdemeanor.

(h)(1) Nothing in this section shall preclude a violation of § 39-17-453, involving an imitation controlled substance, or § 39-17-452 from being prosecuted and punished as a violation of this

section if the substance in question meets the definition of an analogue controlled substance under subsection (a) .

(2) Nothing in this section shall preclude a violation of this section involving a controlled substance analogue from being prosecuted and punished under § 39-17-452 or § 39-17-453 if the controlled substance analogue in question also meets the definitions found in such sections.

(i) Any disability, disqualification, forfeiture, suspension, revocation, prohibition, tax or other adverse consequence provided by law that may result from a conviction for an offense involving a controlled substance shall also apply if the conviction involves a controlled substance analogue in violation of subsection (c).

(j) The building and premises of any business in or upon which a violation of subsection (c) or (f) is committed by an employee, agent or owner of such business is declared to be a public nuisance and shall be subject to abatement as provided in title 29, chapter 3.

APPENDIX C

West's Annotated Indiana Code (2013)

Title 6. Taxation

Article 2.5. State Gross Retail and Use Taxes

Chapter 8. Registration

§ 6-2.5-8-7 Revocation of certificate; notice; reinstatement

Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, or 4 of this chapter. However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate under this subsection. Good cause for revocation may include the following:

(1) Sale or solicitation of a sale involving a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5).

(2) Failure to collect sales tax on a sale involving a synthetic drug or a synthetic drug lookalike substance.

If the department gives notice of an intent to revoke based on an alleged violation of subdivision (1) or (2), the department shall hold a public hearing to determine whether good cause exists. If the department finds in a public hearing by a preponderance of the evidence that a person has committed a violation described in subdivision (1) or (2), the department shall proceed in accordance with subsection (i) (if the violation resulted in a criminal conviction) or subsection (j) (if the violation resulted in a judgment for an infraction).

(b) The department shall revoke a certificate issued under section 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate holder fails to:

(1) file the returns required by IC 6-2.5-6-1; or

(2) report the collection of any state gross retail or use tax on the returns filed under IC 6-2.5-6-1.

However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate.

(c) The department may, for good cause, revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

(1) the certificate holder is subject to an innkeeper's tax under IC 6-9; and

(2) a board, bureau, or commission established under IC 6-9 files a written statement with the department.

(d) The statement filed under subsection (c) must state that:

(1) information obtained by the board, bureau, or commission under IC 6-8. 1-7-1 indicates that the certificate holder has not complied with IC 6-9; and

(2) the board, bureau, or commission has determined that significant harm will result to the county from the certificate holder's failure to comply with IC 6-9.

(e) The department shall revoke or suspend a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

(1) the certificate holder owes taxes, penalties, fines, interest, or costs due under IC 6-1.1 that remain unpaid at least sixty (60) days after the due date under IC 6-1.1; and

(2) the treasurer of the county to which the taxes are due requests the department to revoke or suspend the certificate.

(f) The department shall reinstate a certificate suspended under subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid or the county treasurer requests the department to reinstate the certificate because an agreement for the payment of taxes and any penalties due under IC 6-1.1 has been reached to the satisfaction of the county treasurer.

(g) The department shall revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if the department finds in a public hearing by a preponderance of the evidence that the certificate holder has violated IC 35-45-5-3, IC 35-45-5-3. 5, or IC 35-45-5-4.

(h) If a person makes a payment for the certificate under section 1 or 3 of this chapter with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment of the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has five (5) days after the notice is mailed to pay the fee in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the five (5) day period, the department shall revoke the certificate.

(i) If the department finds in a public hearing by a preponderance of the evidence that a person has a conviction for a violation of IC 35-48-4-10.5 and the conviction involved the sale of or the offer to sell, in the normal course of business, a synthetic drug or a synthetic drug lookalike substance by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate under section 1 of this chapter, the department:

(1) shall suspend the registered retail merchant certificate for the place of business for one (1) year; and

(2) may not issue another retail merchant certificate under section 1 of this chapter for one (1) year to any person:

(A) that:

(i) applied for; or

(ii) made a retail transaction under;

the retail merchant certificate suspended under subdivision (1); or

(B) that:

(i) owned or co-owned, directly or indirectly; or

(ii) was an officer, a director, a manager, or a partner of;

the retail merchant that was issued the retail merchant certificate suspended under subdivision (1).

(j) If the department finds in a public hearing by a preponderance of the evidence that a person has a judgment for a violation of IC 35-48-4-10.5 as an infraction and the violation involved the sale of or the offer to sell, in the normal course of business, a synthetic drug or a synthetic drug lookalike substance by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate under section 1 of this chapter, the department:

(1) may suspend the registered retail merchant certificate for the place of business for six (6) months; and

(2) may withhold issuance of another retail merchant certificate under section 1 of this chapter for six (6) months to any person:

(A) that:

(i) applied for; or

(ii) made a retail transaction under;

the retail merchant certificate suspended under subdivision (1); or

(B) that:

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- (i) owned or co-owned, directly or indirectly; or
- (ii) was an officer, a director, a manager, or a partner of;

the retail merchant that was issued the retail merchant certificate suspended under subdivision (1).

APPENDIX D

ORDINANCE 12-33

Passed: May 14, 2012

AMENDING THE MUNICIPAL CODE OF THE CITY OF DEKALB, CHAPTER 52, "OFFENSES AGAINST PUBLIC PEACE – SAFETY AND MORALS," BY ADDING A NEW SECTION 52.20-5, "SYNTHETIC ALTERNATIVE DRUGS."

WHEREAS, the City of DeKalb has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and,

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and,

WHEREAS, the City of DeKalb has encountered products being sold at commercial businesses within its corporate boundaries containing compounds originally designed as synthetic alternatives (i.e., synthetic cannabinoids, synthetic stimulants and/or synthetic psychedelic/hallucinogens) to prohibited controlled substances such as tetrahydrocannabinol (THC), cathinone, methcathinone, MDMA and MDEA; and,

WHEREAS, the City of DeKalb finds that products containing such synthetic alternatives may be purchased for recreational use currently as an alternative to otherwise regulated controlled substances banned at the Federal, State, and local levels; and,

WHEREAS, the City of DeKalb finds these products to be misbranded drugs that contain products containing synthetic cannabinoids, synthetic stimulants and synthetic psychedelic/hallucinogens are particularly attractive to children and young adults due to their availability in small packages at neighborhood stores at minimal costs, as well as due to the names being given to these substances which are intended to appeal to children and young adults, as set forth on Exhibit "A" attached hereto [exhibit not attached]; and,

WHEREAS, the Drug Enforcement Administration ("DEA") has determined that the consumption of synthetic cannabinoids can have adverse health effects such as agitation, anxiety, nausea, vomiting, tachycardia, elevated blood pressure, tremors, seizures, hallucinations, paranoid behavior and non-responsiveness; and,

WHEREAS, the DEA has determined that consumption of synthetic stimulants affect alertness, and have been linked to severe psychotic episodes, increased heart rates, panic attacks, and hallucinations; and,

WHEREAS, the American Association of Poison Control Centers has reported 2,700 synthetic cannabinoid-related calls to poison control centers in 49 different states; and,

WHEREAS, the City of DeKalb is also aware of fatal overdoses as Northern Illinois University and in other Illinois communities and in other States, which are believed to have resulted from the users' consumption of synthetic stimulants, cannabinoids or psychedelic/hallucinogens; and,

WHEREAS, the City of DeKalb deems it necessary and desirable to prohibit the sale, delivery, possession and use of misbranded drugs and products containing synthetic cannabinoids, synthetic stimulants and synthetic psychedelic/hallucinogens in order to protect the public health, safety and welfare of the citizens of DeKalb; now,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1: That the recitals set forth in the preamble are incorporated herein by reference the same as if they were set forth herein verbatim and they are adopted as the findings of the City Council of the City of DeKalb.

Section 2: That the Municipal Code, Chapter 52, "Offenses Against Public Peace – Safety and Morals," be amended by adding a new Section 52.20-5, "Synthetic Alternative Drugs," as shown following:

52.20-5 SYNTHETIC ALTERNATIVE DRUGS.

a) Definitions. For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

1. A *product containing a synthetic alternative drug* means any product containing a synthetic cannabinoid, stimulant or psychedelic/hallucinogen, as those terms are defined herein such as, but not limited to, the examples of brand names or identifiers listed on Exhibit "A" attached hereto [exhibit not attached] and incorporated herein.

2. *Synthetic cannabinoid* means any laboratory-created compound that functions similar to the active ingredient in marijuana, tetrahydrocannabinol (THC), including, but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including isomers, esters, ethers, salts, and salts of isomers) containing a cannabinoid receptor agonist, such as:

- JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole)
- JWH-015 (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone)
- JWH-018 (1-pentyl-3-(1-naphthoyl)indole)
- JWH-019 (1-hexyl-3-(naphthalene-1-oyl)indole)
- JWH-073 (naphthalene-1-yl-(1-butylyndol-3-yl)methanone)
- JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone)

- JWH-098 (4-methoxynaphthalen-1-yl-(1-pentyl-2-methylindol-3-yl)methanone)
- JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole)
- JWH-164 (7-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone)
- JWH-200 (1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone)
- JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone)
- JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone)
- JWH-250 (1-pentyl-3-(2-methoxyphenylacetyl)indole)
- JWH-251 (1-pentyl-3-(2-methylphenylacetyl)indole)
- JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole)
- HU-210 ((6aR, 10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol)
- HU-211 ((6aS, 10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol)
- HU-308 ([1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol)
- HU-331 ((3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione)
- CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol)
- CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) and its homologues
- WIN 55,212-2 ((R)-(+)-[2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone)
- RCS-4 ((4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone)
- RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenyl)ethanone)

3. *Synthetic stimulant* means any compound that mimics the effects of any federally controlled Schedule I substance such as cathinone, methcathinone, MDMA and MDEA, including, but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including salts, isomers, and salts of isomers) containing substances which have a stimulant effect on the central nervous system, such as:

- 3-fluoromethcathinone
- 4-fluoromethcathinone (other name: flephedrone)
- 3,4-methylenedioxymethcathinone (other name: methylone, MDMC)
- 3,4-methylenedioxypropylmethcathinone (other name: MDPV)
- 4-methylmethcathinone (other names: mephedrone, 4-MMC)
- 4-methoxymethcathinone (other names: methedrone, bk-PMMA, PMMC)
- 4-ethylmethcathinone (other name: 4-EMC)
- Ethcathinone
- Beta-keto-N-methylbenzodioxypolypropylamine (other names: butylone, bk-MBDB)
- Naphthylpyrovalerone (other names: naphyrone, NRG-1)
- N,N-dimethylcathinone (other name: metamfepamone)

- Alpha-pyrrolidinopropiophenone (other name: alpha-PPP)
- 4-methoxy-alpha-pyrrolidinopropiophenone (other name: MOPPP)
- 3,4-methylenedioxy-alpha-pyrrolidinopropiophenone (other name: MDPPP)
- Alpha-pyrrolidinovalerophenone (other name: alpha-PVP)
- 6,7-kihydro-5H-indeno(5,6-d)-1,3-dioxal-6-amine) (other name: MDAI)
- Any compound that is structurally derived from 2-amino-1-phenyl-1-propanone by modification or substitution in any of the following ways:
 - In the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;
 - At the 3-position with an alkyl substituent;
 - At the nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups;
 - Or by inclusion of the nitrogen atom in a cyclic structure.

4. *Synthetic psychedelic/hallucinogen* means any compound that mimics the effects of any federally controlled Schedule I substance, including but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including salts, isomers, esters, ethers and salts of isomers) containing substances which have a psychedelic/hallucinogenic effect on the central nervous system and/or brain, such as:

- 2-(2,5-dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- 2-(2,5-dimethoxy-4-methylphenyl)ethanamine (2C-D);
- 2-(4-chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);
- 2-(4-iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);
- 2-(4-(ethylthio)-2,5-dimethoxyphenyl)ethanamine (2C-T-2);
- 2-(4-(isopropylthio)-2,5-dimethoxyphenyl)ethanamine (2C-T-4);
- 2-(2,5-dimethoxyphenyl)ethanamine (2C-H);
- 2-(2,5-dimethoxy-4-nitro-phenyl)ethanamine (2C-N);
- 2-(2,5-dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).

5. *Misbranded drug* shall have the same meaning as found in Illinois Food, Drug and Cosmetics Act, 410 ILCS 620/1, et seq.

b) Sale or Delivery. It shall be unlawful for any person to sell, offer for sale or delivery any product containing a synthetic cannabinoid, stimulant, misbranded drug, or psychedelic/hallucinogen.

c) Possession. It shall be unlawful for any person to knowingly possess a product containing a synthetic cannabinoid, stimulant, misbranded drug, or psychedelic/hallucinogen.

d) Use. It shall be unlawful for any person to be under the influence of a synthetic cannabinoid, stimulant, misbranded drug, or psychedelic/hallucinogen.

e) Penalties. Any person found to be in violation of Section 52.420 (*sic.*) (b), (c), or (d) shall be guilty of a City Ordinance Violation for each violation thereof. Each violation of this ordinance, or everyday a violation continues to exist, shall constitute a new and separate violation. Each violation of this Ordinance is punishable by a fine of not less than Seven Hundred Fifty Dollars (\$750) nor more than One Thousand Dollars (\$1,000) per violation.

f) Effect Upon Other Licensure. As noted above, violation of this Section constitutes an ordinance violation punishable by fine. In addition, violation of Section 52.20-5, b) by any organization, person, business, place, or establishment which has a license to sell intoxicating liquors pursuant to Chapter 38 of the City of DeKalb Municipal Code and/or which has a license to sell tobacco pursuant to Section 11.07 of the Municipal Code of the City of DeKalb shall constitute grounds for the City to take action relating to the liquor and/or tobacco license separate and apart from the ordinance violation, and the City may initiate proceedings to suspend or revoke the liquor and/or tobacco license of the party charged with a violation of this Section 52.20-5, b), and/or seek to impose a penalty under Chapter 38 or Section 11.07 of the Municipal Code of the City of DeKalb. For purposes of such a proceeding relating to the liquor and/or tobacco license, a violation of Section 52.20-5, b) shall be construed as a violation of the licensure requirements and sale restrictions under Section 11.07 and/or Chapter 38, which may be prosecuted according to the applicable requirements of those sections/chapters.

Section 3. That each section, paragraph, sentence, clause and provision of this ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this ordinance, nor any part thereof, other than that part affected by such decision.

Section 4. That except as to the amendments heretofore mentioned, all Sections of the Municipal Code of the City of DeKalb, Illinois shall remain in full force and effect.

Section 5. Upon its passage and approval according to law, this Ordinance shall, by authority of the City Council, be published in pamphlet form. On the tenth day after the date of publication, this Ordinance shall be in full force and effect. Publication date: May 15, 2012. Effective date: May 25, 2012.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 14th day of May, 2012 and approved by me as Mayor on the same day. First and second reading on May 14, 2012. Roll call vote 8-0. Aye: Jacobsen, Teresinski, Lash, Gallagher, Naylor, Baker, O'Leary, Povlsen.

APPENDIX E

West's Annotated Indiana Code (2013)
Title 35. Criminal Law and Procedure
Article 31.5. Definitions
Chapter 2. Definitions

§ 35-31.5-2-321.5 “Synthetic drug lookalike substance”

Sec. 321.5. (a) “Synthetic drug lookalike substance”, except as provided in subsection (b), means one (1) or more of the following:

(1) A substance, other than a synthetic drug, which any of the factors listed in subsection (c) would lead a reasonable person to believe to be a synthetic drug.

(2) A substance, other than a synthetic drug:

(A) that a person knows or should have known was intended to be consumed; and

(B) the consumption of which the person knows or should have known to be intended to cause intoxication.

(b) The term “synthetic drug lookalike substance” does not include the following:

(1) Food and food ingredients (as defined in IC 6-2.5-1-20).

(2) Alcohol (as defined in IC 7.1-1-3-4).

(3) A legend drug (as defined in IC 16-18-2-199).

(4) Tobacco.

(5) A dietary supplement (as defined in IC 6-2.5-1-16).

(c) In determining whether a substance is a synthetic drug lookalike substance, the following factors may be considered:

(1) The overall appearance of a dosage unit of the substance, including its shape, color, size, markings or lack of markings, taste, consistency, and any other identifying physical characteristics.

(2) How the substance is packaged for sale or distribution, including the shape, color, size, markings or lack of markings, and any other identifying physical characteristics of the packaging.

- (3) Any statement made by the owner or person in control of the substance concerning the substance's nature, use, or effect.
- (4) Any statement made to the buyer or recipient of the substance suggesting or implying that the substance is a synthetic drug.
- (5) Any statement made to the buyer or recipient of the substance suggesting or implying that the substance may be resold for profit.
- (6) The overall circumstances under which the substance is distributed, including whether:
 - (A) the distribution included an exchange of, or demand for, money or other property as consideration; and
 - (B) the amount of the consideration was substantially greater than the reasonable retail market value of the substance the seller claims the substance to be.