



BILL & AMENDMENT SUMMARY

Synthetic Drugs & Cocaine Penalties HF 2309

Status of Bill: House Floor
Committee: Public Safety (21-0)
Lead Democrats: Rep. Gaines
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Background

This bill is very similar to HF 567 that passed the House last year by a vote of 83-13, however, it didn't have the language regarding changes to cocaine penalties which is contained in this year's bill.

Under current law, there are three types of controlled substances: controlled substances, simulated controlled substances, and imitation controlled substances. The first two types of substances are regulated under chapter 124, and the imitation controlled substances are regulated under 124A. Below are the definitions for each type of substance.

Controlled Substance means a drug, substance, or immediate precursor in schedules I through IV of chapter 124.

Simulated Controlled Substance means a substance which is not a controlled substance but which is expressly represented to be a controlled substance, or a substance which is not a controlled substance but which is impliedly represented to be a controlled substance and which because of its nature, packaging, or appearance would lead a reasonable person to believe it to be a controlled substance.

Imitation Controlled Substance means a substance which is not a controlled substance but which by color, shape, size, markings, and other aspects of dosage unit appearance, and packaging or other factors, appears to be or resembles a controlled substance. The Board of Pharmacy may designate a substance as an imitation controlled substance pursuant to the board's rulemaking authority. Chapter 124A.3 lists the factors indicating an imitation controlled substance, and those are copied below.

When a substance has not been designated as an imitation controlled substance by the board of pharmacy and when dosage unit appearance alone does not establish that a substance is an imitation controlled substance, the following factors may be considered in determining whether the substance is an imitation controlled substance:

- 1. The person in control of the substance expressly or impliedly represents that the substance has the effect of a controlled substance.*
- 2. The person in control of the substance expressly or impliedly represents that the substance because of its nature or appearance can be sold or delivered as a controlled substance or as a substitute for a controlled substance.*
- 3. The person in control of the substance either demands or receives money or other property having a value substantially greater than the actual value of the substance as consideration for delivery of the substance.*

Penalties for violations of Imitation Controlled Substance - Below are the current penalties for violations under chapter 124A:

- 1. It is unlawful for a person to manufacture, deliver, or possess with intent to deliver, an imitation controlled substance. Except as provided in subsection 3, a person who violates this subsection is guilty of an aggravated misdemeanor.*

2. *It is unlawful for a person to publish or to post or distribute in a public place, an advertisement or solicitation, if the person knows or reasonably should know the advertisement or solicitation is to promote the distribution of imitation controlled substances. A person who violates this subsection is guilty of a serious misdemeanor.*
3. *A person who is eighteen years of age or older who violates this section by delivering an imitation controlled substance to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "D" felony.*

Bill Summary

House File 2309 accomplishes four goals:

1. Updates the list of controlled substances and precursors listed in chapter 124.
2. Gives the Legislature more time to codify controlled substances that the Board of Pharmacy identified as controlled substances through Administrative Rules.
3. Brings the laws regarding imitation controlled substances over to the controlled substances chapter and increases penalties to match the controlled substances penalties.
4. Increases the number of grams needed for a felony associated with crack cocaine.

A portion of the bill deal with compounds listed in chapter 124. Some of the existing compounds found in are moved from an existing section in 124 and some are new. Penalties associated with the compounds I are as follows:

- More than 10 kilograms of a substance is a class B felony and is punishable by confinement of not more than 50 years and a fine of not more than one million dollars.
- More than 5 kilograms but not more than 10 kilograms of a substance listed in section 11 of the bill is a class B felony and is punishable by confinement of not more than 25 years and a fine between \$5,000 and \$100,000.
- Less than 5 kilograms of a substance listed in section 11 of the bill is a class C felony and is punishable by confinement of not more ten 10 years and a fine between \$1,000 and \$50,000.

Changes the number of days that the Legislature has to enact into law any designations of a substance as a controlled substance by the Board of Pharmacy. Under current law, that time limit is within 60 days of the next General Assembly. Language in the bill states that the General Assembly must enact the changes and make the changes effective within two years from the effective date of the designation by the Board of Pharmacy. If this timeline is not met, the designation by the Board of Pharmacy is repealed.

The rest of the bill incorporates bringing the imitation controlled substances under the provisions of chapter 124 and assigns penalties for these substances. Penalties associated with these imitation substances for the manufacturing, delivering, or possessing with the intent to manufacture or deliver are enhanced to be as follows:

- More than 10 kilograms of an imitation controlled substance is a class B felony and is punishable by confinement of not more than 50 years and a fine of not more than one million dollars.
- More than 5 kilograms but not more than 10 kilograms of an imitation controlled substance is a class B felony and is punishable by confinement of not more than 25 years and a fine between \$5,000 and \$100,000.
- Less than 5 kilograms of an imitation controlled substance is a class C felony and is punishable by confinement of not more ten 10 years and a fine between \$1,000 and \$50,000.

The bill also incorporates "imitations controlled substances" into the rest of the penalties defined and listed under chapter 124 (enhanced penalties for manufacturing or distribution within one thousand feet of school property, public school, public park; parental notification; and Board of Pharmacy standards).

Increases the amounts of crack cocaine needed to be convicted of a class C, a class B, and a super class B felony. For a class C, increases the amount needed for a conviction from 10 grams or less to 35 grams or less. A person convicted of this would be sentenced to not more than 10 years in prison and a fine between \$1,000 and

\$50,000. For a class B felony, the amendment increases the amount needed for a conviction from more than 10 but not more than 50 grams to more than 35 grams but not more than 125 grams. A person convicted of this would be sentenced to not more than 25 years in prison and a fine between \$5,000 and \$100,000. For a super class B felony, the amendment increases the amount needed for a conviction from more than 50 grams to more than 125 grams. A person convicted of this would be sentenced to not more than 50 years in prison and a fine of up to \$1 million.

The language also creates a new class D penalty for both crack and powder cocaine under the following circumstances: A first offense involving three grams or less. The penalty for a class D felony is up to 5 years and up to a \$7,500 fine. Below is a chart showing the amount (in grams) of powder and crack cocaine needed for penalties under current law and the proposed changes in HF 2309.

<u>Criminal Penalty</u>	<u>Powder Cocaine</u>	<u>Crack Cocaine</u>	<u>Proposed Crack Cocaine Changes</u>
Super B felony (50-yr sentence)	>500 grams	> 50 grams	>125 grams
B felony (25-yr sentence)	>100 to 500 grams	>10 to 50 grams	>35 to 125 grams
C felony (10-yr sentence)	100 grams or less	10 grams or less	35 grams or less
D felony (5-yr sentence)	3 grams or less, first offense (proposal)		3 grams or less, first offense

Amendment Summary

H-8022 By Klein (R) - The language in this amendment is mirrored after SSB 3004, which is a Board of Pharmacy bill that reclassifies substances as controlled substances based upon recommendations from the U. S. Drug Enforcement Administration (DEA). The classifications in SSB 3004 are recommendations from both the 2015 and 2016 legislative session since the Legislature didn't enact the 2015 recommendations. A number of the recommendations in SSB 3004 were already included in HF 2309, so they didn't need to be included in this amendment.

The amendment specifically adds substances as schedule I or schedule IV controlled substances and makes the entire bill effective upon enactment.