

HOUSE No. 3547

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 11, 2013.

The committee on Mental Health and Substance Abuse to whom was referred the petition (accompanied by bill, Senate, No. 917) of John F. Keenan, Martin J. Walsh, James M. Murphy and Michael O. Moore for legislation relative to emergency scheduling of addictive substances by the Commissioner of Public Health, reports recommending that the accompanying bill (House, No. 3547) ought to pass.

For the committee,

ELIZABETH A. MALIA.

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In the Year Two Thousand Thirteen

An Act relative to emergency scheduling of addictive substances by the Commissioner of Public Health.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 94C of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by inserting after section 2 the following new section:-

3 Section 2A. (a) If the Commissioner finds that the scheduling of a drug or substance on a
4 temporary basis is necessary to avoid an imminent hazard to the public safety and is necessary
5 for the preservation of the public health, safety or general welfare, the Commissioner may, by
6 order and without regard to the requirements of section 2 of this chapter, schedule such substance
7 in schedule I if:

8 (1) the substance is not listed in any other schedule in section 3 of this chapter;

9 (2) no exception is in effect for the substance under section 4 of this chapter; and

10 (3) the substance is not excluded under subsection (c) of section 2 of this chapter.

11 (b) When issuing an order under this section, the Commissioner shall be required to
12 consider, with respect to the finding of an imminent hazard to the public safety, and regarding
13 each drug or substance that is the subject of the order, its actual or relative potential for abuse,
14 and its history and current patterns of abuse.

15 (c) An order issued under this section shall be considered an emergency regulation and
16 subject to the provisions of section 3 of chapter 30A, except that: (i) no further approval by
17 designated persons or bodies, as referenced in said section 3, shall be required before such
18 emergency regulations become effective, and; (ii) an emergency regulation so established may
19 remain in effect up to one year.

20 (d) An order issued under this section is not subject to judicial review.

21 (e) Upon issuing an order under this section, the Commissioner shall forward a copy of
22 said order to the Chairs of the Joint Committee on Public Health.

23 (f) Upon issuing an order under this section, the Commissioner shall forward a copy of
24 said order to the United States Attorney General for purposes of requesting that the Attorney
25 General temporarily schedule, in accordance with the provisions of the Title 21 United States
26 Code Controlled Substances Act, and or 21 USC 811(h), the drug or substance which is the
27 subject of the Commissioner's order.

28 (g) Upon issuing an order under this section, the Commissioner shall also forward a copy
29 of said order to all local and regional boards of health, with guidance that the possession or
30 distribution, by any food or retail or other commercial establishment, of the drug or substance
31 which is the subject of said order shall constitute an imminent health hazard. While such order is
32 in effect the board of health or an authorized agent may, in accordance with section 30 of chapter
33 111 of the General Laws, and any regulation promulgated pursuant thereto, take any enforcement
34 action consistent with a finding of an imminent health hazard, up to and including summary
35 suspension of the establishment's permit to operate.