A bill for an act

relating to public safety; establishing the crimes of sale or possession of synthetic cannabinoids; adding synthetic cannabinoids, 2C-E, and 2C-I to the list of Schedule I controlled substances; adding a definition of "analog" in the controlled substances law; providing that an analog of a Schedule I or II controlled substance is considered a Schedule I controlled substance; establishing use of weight of fluid used in a water pipe when determining weight or amount of controlled substance; providing that the Board of Pharmacy may reschedule certain drugs only pursuant to law; providing criminal penalties; amending Minnesota Statutes 2010, sections 152.01, subdivisions 9a, 16, by adding a subdivision; 152.02, subdivisions 2, 8; 152.021, subdivision 2; 152.022, subdivision 2; 152.023, subdivision 2; 152.027, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 152.01, subdivision 9a, is amended to read:

Subd. 9a. **Mixture.** "Mixture" means a preparation, compound, mixture, or substance containing a controlled substance, regardless of purity except as provided in subdivision 16; sections 152.021, subdivision 2, paragraph (b); 152.022, subdivision 2, paragraph (b); and 152.023, subdivision 2, paragraph (b).

**EFFECTIVE DATE.** This section is effective the day following final enactment, and applies to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2010, section 152.01, subdivision 16, is amended to read:

Subd. 16. **Small amount.** "Small amount" as applied to marijuana means 42.5 grams or less. This provision shall not apply to the resinous form of marijuana. The weight of fluid used in a water pipe may not be considered in determining a small amount except in cases where the marijuana is mixed with four or more fluid ounces of fluid.

**EFFECTIVE DATE.** This section is effective the day following final enactment, and applies to crimes committed on or after that date.

Sec. 3. Minnesota Statutes 2010, section 152.01, is amended by adding a subdivision to read:

Subd. 23. **Analog.** (a) Except as provided in paragraph (b), "analog" means a substance, the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II:

(1) that 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

(2) with respect to a particular person, if the person represents or intends that the substance 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) "Analog" does not include:

(1) a controlled substance;

(2) any substance for which there is an approved new drug application under the Federal Food, Drug, and Cosmetic Act; or

(3) with respect to a particular person, any substance, if an exemption is in effect for investigational use, for that person, as provided by United States Code, title 21, section 355, and the person is registered as a controlled substance researcher as required under section 152.12, subdivision 3, to the extent conduct with respect to the substance is pursuant to the exemption and registration.

**EFFECTIVE DATE.** This section is effective July 1, 2011, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2010, section 152.02, subdivision 2, is amended to read:

Subd. 2. **Schedule I.** The following items are listed in Schedule I:

(1) Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of ~~such~~ the isomers, esters, ethers and salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine;

Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethyliambutene; Dimenoxadol; Dimepheptanol; Dimethyliambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxeridine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Racemoramide; Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of ~~such~~ the salts, isomers and salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Acetylcodone; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphinol; Methyldesorphine; Methylhydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers (whether optical, positional, or geometric), and salts of isomers, unless specifically excepted or unless listed in another schedule, whenever the existence of ~~such~~ the salts, isomers, and salts of isomers is possible ~~within the specific chemical designation~~: 3,4-methylenedioxy amphetamine; 3,4-methylenedioxymethamphetamine; 4-bromo-2,5-dimethoxyamphetamine; 2,5-dimethoxyamphetamine; 4-methoxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 3,4,5-trimethoxy amphetamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; marijuana; Mescaline; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; 1-(1-(2-thienyl) cyclohexyl) piperidine; n-ethyl-1-phenyl-cyclohexylamine; 1-(1-phenylcyclohexyl) pyrrolidine; 2,5-dimethoxy-4-ethylphenethylamine, also known as 2C-E; 2,5-dimethoxy-4-iodophenethylamine, also known as 2C-I.

(4) Peyote, providing the listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the American Indian Church, and members of the American Indian Church are exempt from registration. Any person who manufactures peyote for or distributes peyote to the American Indian Church, however, is required to obtain federal registration annually and to comply with all other requirements of law.

(5) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of ~~such~~ the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Mecloqualone;

Flunitrazepam.

(6) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of ~~such~~ the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Cathinone;

Methcathinone; 4-methylmethcathinone (mephedrone); 3,4-methylenedioxy-N-methylcathinone (methylone); 4-methoxymethcathinone (methedrone); 3,4 - methylenedioxypyrovalerone (MDPV).

(7) Unless specifically excepted or unless listed in another schedule, any natural or synthetic material, compound, mixture, or preparation that contains any quantity of a substance that is a cannabinoid receptor agonist, including, but not limited to, the following substances and their analogs, including isomers, whether optical, positional, or geometric; esters; ethers; salts; and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, or salts is possible within the specific chemical designation:

1-pentyl-2-methyl-3-(1-naphthoyl)indole (JWH-007), (2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone (JWH-015), 1-Pentyl-3-(1-naphthoyl)indole (JWH-018), 1-hexyl-3-(naphthalen-1-oyl)indole (JWH-019), 1-Butyl-3-(1-naphthoyl)indole (JWH-073), 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone (JWH-081), 4-methoxynaphthalen-1-yl-(1-pentyl-2-methylindol-3-yl)methanone (JWH-098), (1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200), 7-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone (JWH-164), 2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone (JWH-203), 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone (JWH-210), 2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone (JWH-250), 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398), (6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (HU-210), (R)-(+)-[2,3-Dihydro-5-methyl-3-

(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone (WIN-55,212-2), 2-[3-hydroxycyclohexyl]- 5-(2-methyloctan-2-yl)phenol (CP47,497), dimethylheptylpyran.

(8) A controlled substance analog, to the extent that it is implicitly or explicitly intended for human consumption.

**EFFECTIVE DATE.** This section is effective July 1, 2011, and applies to crimes committed on or after that date.

Sec. 5. Minnesota Statutes 2010, section 152.02, subdivision 8, is amended to read:

Subd. 8. **Add, delete, or reschedule substances.** The state Board of Pharmacy may, by rule, add substances to or delete or reschedule substances listed in this section. ~~The state Board of Pharmacy, after consulting with the Advisory Council on Controlled Substances, shall annually, on or before May 1 of each year, conduct a review of the placement of controlled substances in the various schedules.~~ The Board of Pharmacy may not delete or reschedule a drug that is in Schedule I, except as provided in subdivision 12.

In making a determination regarding a substance, the Board of Pharmacy shall consider the following: The actual or relative potential for abuse, the scientific evidence of its pharmacological effect, if known, the state of current scientific knowledge regarding the substance, the history and current pattern of abuse, the scope, duration, and significance of abuse, the risk to public health, the potential of the substance to produce psychic or physiological dependence liability, and whether the substance is an immediate precursor of a substance already controlled under this section. The state Board of Pharmacy may include any nonnarcotic drug authorized by federal law for medicinal use in a schedule only if such drug must, under either federal or state law or rule, be sold only on prescription.

Sec. 6. Minnesota Statutes 2010, section 152.021, subdivision 2, is amended to read:

Subd. 2. **Possession crimes.** (a) A person is guilty of a controlled substance crime in the first degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 100 kilograms or more containing marijuana or Tetrahydrocannabinols.

(b) For the purposes of this subdivision, the weight of fluid used in a water pipe may not be considered in measuring the weight of a mixture except in cases where the mixture contains four or more fluid ounces of fluid.

**EFFECTIVE DATE.** This section is effective the day following final enactment, and applies to crimes committed on or after that date.

Sec. 7. Minnesota Statutes 2010, section 152.022, subdivision 2, is amended to read:

Subd. 2. **Possession crimes.** (a) A person is guilty of controlled substance crime in the second degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of six grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 100 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 50 kilograms or more containing marijuana or Tetrahydrocannabinols.

(b) For the purposes of this subdivision, the weight of fluid used in a water pipe may not be considered in measuring the weight of a mixture except in cases where the mixture contains four or more fluid ounces of fluid.

**EFFECTIVE DATE.** This section is effective the day following final enactment, and applies to crimes committed on or after that date.

Sec. 8. Minnesota Statutes 2010, section 152.023, subdivision 2, is amended to read:

Subd. 2. **Possession crimes.** (a) A person is guilty of controlled substance crime in the third degree if:

(1) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine;

(2) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals 50 or more dosage units;

(4) on one or more occasions within a 90-day period the person unlawfully possesses any amount of a schedule I or II narcotic drug or five or more dosage units of lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine in a school zone, a park zone, a public housing zone, or a drug treatment facility;

(5) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ten kilograms or more containing marijuana or Tetrahydrocannabinols; or

(6) the person unlawfully possesses one or more mixtures containing methamphetamine or amphetamine in a school zone, a park zone, a public housing zone, or a drug treatment facility.

(b) For the purposes of this subdivision, the weight of fluid used in a water pipe may not be considered in measuring the weight of a mixture except in cases where the mixture contains four or more fluid ounces of fluid.

**EFFECTIVE DATE.** This section is effective the day following final enactment, and applies to crimes committed on or after that date.

Sec. 9. Minnesota Statutes 2010, section 152.027, is amended by adding a subdivision to read:

Subd. 6. **Sale or possession of synthetic cannabinoids.** (a) As used in this subdivision, "synthetic cannabinoid" includes any substance included in section 152.02, subdivision 2, clause (7).

(b) A person who unlawfully sells any amount of a synthetic cannabinoid is guilty of a gross misdemeanor.

(c) A person who unlawfully possesses any amount of a synthetic cannabinoid is guilty of a misdemeanor.

(d) Notwithstanding any contrary provision in sections 152.021 to 152.025, this subdivision describes the exclusive penalties for the sale and possession of synthetic cannabinoid.

**EFFECTIVE DATE.** This section is effective July 1, 2011, and applies to crimes committed on or after that date.