

ASSEMBLY BILL NO. 349—ASSEMBLYWOMAN MASTROLUCA

MARCH 21, 2011

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to controlled substances.
(BDR 40-1043)FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to controlled substances; authorizing the Director of the Department of Health and Human Services to order the State Board of Pharmacy to adopt an extraordinary regulation to temporarily include a substance on the list of schedule I controlled substances under certain circumstances; requiring the Board to adopt an extraordinary regulation to temporarily include certain substances known as fake cocaine on the list of schedule I controlled substances; providing civil and criminal penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Pharmacy to adopt regulations to add substances to the schedules of controlled substances if the Board makes certain findings regarding the substances. (NRS 453.146, 453.166-453.206) If the Board finds that scheduling of a substance is necessary to avoid an imminent hazard to the public safety and that the substance is not in any other schedule or exempt or approved under certain federal law, the Board may adopt an extraordinary regulation including the substance in schedule I for a period of 1 year without making the findings otherwise required to include the substance in schedule I. Before the adoption of the extraordinary regulation, the Board must initiate a proceeding to determine whether the substance satisfies the criteria to be included in schedule I. (NRS 453.2184) Under existing law, the procedures for adopting regulations under the Nevada Administrative Procedure Act do not apply to the Board if it is adopting an extraordinary regulation to temporarily include a substance in schedule I. (NRS 233B.039)

Section 1 of this bill authorizes the Director of the Department of Health and Human Services to issue an order requiring the Board to adopt an extraordinary regulation to temporarily include a substance in schedule I if the Director makes the



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18 findings which would authorize the Board to adopt such an extraordinary
19 regulation. **Section 2** of this bill requires the Board to adopt an extraordinary
20 regulation to include certain substances known as fake cocaine on the list of
21 schedule I controlled substances for a period of 1 year and initiate a proceeding to
22 determine whether to adopt a permanent regulation to include these substances in
23 schedule I. The inclusion of these substances in schedule I will impose the civil and
24 criminal penalties applicable to other schedule I controlled substances. (NRS
25 453.321, 453.322, 453.336, 453.337, 453.3385, 453.553-453.5533, 484C.110)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 453.2184 is hereby amended to read as
2 follows:

3 453.2184 **1.** The Board, by extraordinary regulation and
4 without regard to the requirements of subsections 1, 2 and 3 of NRS
5 453.146, may schedule a substance in schedule I, whether or not the
6 substance is substantially similar to a controlled substance included
7 in schedule I or II, if the Board finds that scheduling of the
8 substance by extraordinary regulation is necessary to avoid an
9 imminent hazard to the public safety and the substance is not in any
10 other schedule and no exemption or approval is in effect for the
11 substance under Section 505 of the federal Food, Drug, and
12 Cosmetic Act (21 U.S.C. § 355). Upon receipt of notice under NRS
13 453.219 the Board shall initiate scheduling of the controlled
14 substance analog by extraordinary regulation pursuant to this
15 ~~{section.}~~ **subsection.** The scheduling of a substance under this
16 ~~{section.}~~ **subsection** expires 1 year after the adoption of the
17 extraordinary regulation. With respect to the finding of an imminent
18 hazard to the public safety, the Board shall consider whether the
19 substance has been scheduled on a temporary basis under federal
20 law and the factors set forth in paragraphs (d), (e) and (f) of
21 subsection 2 of NRS 453.146, and may also consider clandestine
22 importation, manufacture or distribution, and if available,
23 information concerning the other factors set forth in subsection 2 of
24 NRS 453.146. An extraordinary regulation may not be adopted
25 under this ~~{section.}~~ **subsection** until the Board initiates a proceeding
26 to adopt a regulation pursuant to subsections 1 to 4, inclusive, of
27 NRS 453.146 with respect to the substance. An extraordinary
28 regulation adopted under this ~~{section.}~~ **subsection** lapses upon the
29 conclusion of the proceeding initiated under subsections 1 to 4,
30 inclusive, of NRS 453.146 with respect to the substance.

31 **2.** *If the Director of the Department finds that the scheduling*
32 *of a substance by extraordinary regulation is necessary to avoid an*
33 *imminent hazard to the public safety and the substance is not in*
34 *any other schedule and no exemption or approval is in effect for*



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1 *the substance under Section 505 of the federal Food, Drug, and*
2 *Cosmetic Act (21 U.S.C. § 355), the Director may issue an order*
3 *requiring the Board, by extraordinary regulation and without*
4 *regard to the requirements of subsections 1, 2 and 3 of NRS*
5 *453.146, to schedule the substance in schedule I. Upon receipt of*
6 *an order from the Director, the Board shall initiate scheduling of*
7 *the substance by extraordinary regulation pursuant to this*
8 *subsection. With respect to the finding of an imminent hazard to*
9 *the public safety, the Director shall consider whether the*
10 *substance has been scheduled on a temporary basis under federal*
11 *law and the factors set forth in paragraphs (d), (e) and (f) of*
12 *subsection 2 of NRS 453.146, and may also consider clandestine*
13 *importation, manufacture or distribution, and if available,*
14 *information concerning the other factors set forth in subsection 2*
15 *of NRS 453.146. The scheduling of a substance under this*
16 *subsection expires 1 year after the adoption of the extraordinary*
17 *regulation. An extraordinary regulation may not be adopted under*
18 *this subsection until the Board initiates a proceeding to adopt a*
19 *regulation pursuant to subsections 1 to 4, inclusive, of NRS*
20 *453.146 with respect to the substance. An extraordinary regulation*
21 *adopted under this subsection lapses upon the conclusion of the*
22 *proceeding initiated under subsections 1 to 4, inclusive, of NRS*
23 *453.146 with respect to the substance.*

24 **Sec. 2.** 1. Before October 1, 2011, the State Board of
25 Pharmacy shall adopt an extraordinary regulation pursuant to the
26 provisions of NRS 453.2184, as amended by section 1 of this act, to
27 schedule the following substances in schedule I:

- 28 (a) 3,4-Methylenedioxymethcathinone (Methylone);
- 29 (b) 3,4-Methylenedioxypyrovalerone (MDPV);
- 30 (c) 4-Methylmethcathinone (Mephedrone);
- 31 (d) 4-Methoxymethcathinone;
- 32 (e) 3-Fluoromethcathinone;
- 33 (f) 4-Fluoromethcathinone; and

34 (g) Any other similar substance which the Director of the
35 Department of Health and Human Services or the State Board of
36 Pharmacy determines to present an imminent hazard to public
37 safety.

38 2. The provisions of NRS 453.2184, as amended by section 1
39 of this act, apply to the scheduling of a substance in schedule I
40 pursuant to this section.

41 **Sec. 3.** This act becomes effective upon passage and approval.

