

HOUSE BILL 2286

By Lundberg

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 4, relative to imitation controlled substances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new section:

39-17-453

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

(b) No person shall, for the purpose of causing a condition of intoxication, inebriation, elation, dizziness, excitement, stupefaction, paralysis, or the dulling of the brain or nervous system, or disturbing or distorting of the audio or visual processes, intentionally smell, inhale, inject, ingest or consume in any manner whatsoever an imitation controlled substance.

(c) No person shall, for the purpose of violating subsection (b), use, or possess for the purpose of so using, an imitation controlled substance.

(d) For purposes of this section "imitation controlled substance" means a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance enumerated in this part, which is subject to abuse, and which by express or implied representations, purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed,

promoted, or sold as permitted by the United States food and drug administration.

(e)

(1) In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an “imitation controlled substance,” there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.

(2) In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, it may be inferred from, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell. Such inference shall be transmitted to the jury by the trial judge’s charge.

(f)

(1) A violation of subsection (a) is a Class E felony. In addition to any period of incarceration imposed, there shall be imposed a fine of not less than two thousand dollars (\$2,000) and not more than five thousand dollars (\$5,000).

(2) A violation of subsection (b) or (c) is a Class A misdemeanor. In addition to any period of incarceration imposed, there shall be imposed a fine of not less than two hundred and fifty dollars (\$250) and not more than twenty-five hundred dollars (\$2,500).

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it.