

SENATE BILL 2172

By Beavers

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

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

SECTION 1. Tennessee Code Annotated, Section 39-17-452, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section, "controlled substance analogue" means a capsule, pill, powder, product or other substance, however constituted:

(1) The chemical structure of which is a derivative of, or substantially similar to, the chemical structure of a controlled substance; or

(2) Has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance.

(b) "Controlled substance analogue" does not include:

(1) A controlled substance;

(2) Any substance for which there is an approved use or new drug application by the federal Food and Drug Administration;

(3) Any compound, mixture, or preparation that contains any controlled substance that is not for administration to a human being or animal, and that is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or

(4) Any substance to which an investigational exemption applies under Section 505 of the Food, Drug and Cosmetic Act, 21 U.S.C. 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

(c) In determining whether a substance is a controlled substance analogue, the following factors shall be considered, along with any other relevant factors:

- (1) Its actual or relative potential for abuse;
- (2) Scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history of the substance and its current pattern of abuse;
- (5) The scope, duration and significance of abuse;
- (6) What, if any, risk there is to the public health;
- (7) Its psychic or physiological dependence liability;
- (8) Its diversion from legitimate channels, and its clandestine importation, manufacture, or distribution;
- (9) Whether the substance is an immediate precursor of a substance already controlled under this chapter;
- (10) The difference between the price at which the substance is sold and the price at which the substance it is purported to be is normally sold;
- (11) Comparisons with accepted methods of marketing a legitimate nonprescription drug for medicinal purposes rather than for the purpose of drug abuse or any similar nonmedical use, including:
  - (A) The packaging of the substance and its appearance in overall finished dosage form;
  - (B) Oral or written statements or representations concerning the substance;
  - (C) The methods by which the substance is distributed; and
  - (D) The manner in which the substance is sold to the public.

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

(e)

(1) It is an offense to knowingly possess or casually exchange a controlled substance analogue.

(2) It may be inferred from the amount of controlled substance analogue possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance analogue was possessed with the purpose of selling or otherwise dispensing in violation of subsection (d). It may be inferred from circumstances indicating a casual exchange among individuals of a small amount of a controlled substance analogue that the controlled substance analogue so exchanged was possessed not with the purpose of selling or otherwise dispensing in violation of subsection (d). The inferences shall be transmitted to the jury by the trial judge's charge, and the jury will consider the inferences along with the nature of the substance possessed when affixing the penalty.

(f)

(1) It is an offense for a person to represent, orally or in writing, advertise, infer or intend that a controlled substance analogue:

(A) Is a derivative of, or substantially similar to, the chemical structure of a controlled substance; or

(B) Has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater

than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a control substance.

(2) It is not a defense to prosecution under this subsection that the controlled substance analogue:

(A) Is not a derivative of a controlled substance;

(B) Does not have a chemical structure that is substantially similar to that of a controlled substance; or

(C) Does not have a stimulant, depressant, hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a control substance.

(g)

(1) A violation of subdivision (d) shall be punishable by the same fine, mandatory and discretionary, and shall be classified, for purposes of sentencing, the same as:

(A) The controlled substance to which the analogue is a derivative of, or has a substantially similar chemical structure as; or

(B) The controlled substance with which the analogue's stimulant, depressant, or hallucinogenic effect on the central nervous system is substantially similar to or greater than.

(2) A violation of subdivisions (e) and (f) are Class A misdemeanors.

(3) Any sentence enhancement authorized by this part or any other provision of law for:

(A) The manufacture, delivery, or sale of a controlled substance;

(B) The possession of a controlled substance with the intent to manufacture, deliver or sell such substance; or

(C) The simple possession or casual exchange of a controlled substance;

that is based on a specified number of prior convictions, the offense being committed in a specified location or involving a specified age group shall apply if the substance is a controlled substance analogue.

(h) Any disability, disqualification, forfeiture, suspension, revocation, prohibition, tax or other adverse consequence provided by law that may result from a conviction for an offense involving a controlled substance shall also apply if the conviction is for a violation of subsection (d) of this section involving a controlled substance analogue. Such adverse consequences may include, but shall not be limited to:

(1) Judgment of infamy;

(2) Disqualification to hold public office, vote or other rights of citizenship;

(3) Suspension or revocation of any license or permit or ineligibility to obtain any license or permit;

(4) Forfeiture of assets relating to the offense;

(5) Ineligibility for any alternative to incarceration;

(6) Suspension or expulsion from public schools;

(7) Civil liability;

(8) Termination of parental rights; and

(9) Tax liability under the Unauthorized Substances Act codified  
in title 67, chapter 4, part 28.

SECTION 2. If any provision of this act or the application thereof to any person or  
circumstance is held invalid, such invalidity shall not affect other provisions or applications of the  
act which can be given effect without the invalid provision or application, and to that end the  
provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring  
it.