

HOUSE BILL 3175

By Shipley

AN ACT to amend Tennessee Code Annotated, Title 4; Title 7; Title 8; Title 10; Title 29; Title 36; Title 37; Title 38; Title 39; Title 40; Title 41; Title 49; Title 50; Title 53; Title 55; Title 57; Title 62; Title 63; Title 65; Title 67 and Title 68, relative to controlled substance analogues.

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

SECTION 1. Tennessee Code Annotated, Section 4-6-146, is amended in subsection (a) by deleting the language “alcohol, controlled substances, cash and other items” and by substituting instead the language “alcohol, controlled substances, controlled substance analogues, cash and other items”.

SECTION 2. Tennessee Code Annotated, Section 4-21-102, is amended in subdivision (3)(B) by deleting the language “a controlled substance;” and by substituting instead the language “a controlled substance or controlled substance analogue;”.

SECTION 3. Tennessee Code Annotated, Section 7-86-205, is amended in subdivision (b)(2)(B)(i)(b) by deleting the language “Controlled substances” and by substituting instead the language “Controlled substances or controlled substance analogues”, and is further amended in subdivision (d)(4) by deleting the language “liquor or controlled substances” and by substituting instead the language “liquor, controlled substances or controlled substance analogues”.

SECTION 4. Tennessee Code Annotated, Section 8-8-102(a), is amended by adding the following as a new subdivision thereto:

(10) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or violation of any federal or state laws relating to controlled substance analogues;

SECTION 5. Tennessee Code Annotated, Section 10-7-504, is amended in subdivision (a)(4)(F) by deleting the language “alcohol or a controlled substance” and by substituting instead the language “alcohol, a controlled substance or a controlled substance analogue”.

SECTION 6. Tennessee Code Annotated, Section 29-3-101(a), is amended in subdivision (2)(A) by deleting the language “narcotic or other controlled substance” and by substituting instead the language “narcotic, other controlled substance or controlled substance analogue”, and is further amended in subdivision (2)(B) by deleting subdivision (iv) and by substituting instead the following:

(iv) Selling, possessing, manufacturing or using any controlled substance, drug paraphernalia as defined in § 39-17-402 or controlled substance analogue as defined in § 39-17-453, knowingly remaining in the presence of anyone selling, possessing, manufacturing or using any controlled substance, controlled substance analogue or drug paraphernalia, knowingly remaining in the presence of any controlled substance, controlled substance analogue or drug paraphernalia, driving under the influence of any controlled substance or controlled substance analogue in violation of § 55-10-401, or being under the influence of any controlled substance or controlled substance analogue in public in violation of § 39-17-310;

SECTION 7. Tennessee Code Annotated, Section 36-1-113, is amended in subdivision (i)(7) by deleting the language “alcohol or controlled substances” and by substituting instead the language “alcohol, controlled substances or controlled substance analogues”.

SECTION 8. Tennessee Code Annotated, Section 37-1-702, is amended in subdivision (c)(1)(Q) by adding the following as a new subdivision thereto:

(iv) § 39-17-453, relative to simple possession or casual exchange of a controlled substance analogue.

SECTION 9. Tennessee Code Annotated, Section 38-6-103, is amended in subdivision (d)(1)(A)(i) by deleting the language “Controlled substances, narcotics” and by substituting instead the language “Controlled substances, controlled substance analogues, narcotics”.

SECTION 10. Tennessee Code Annotated, Section 38-6-202, is amended in subsection (a) by deleting the language “controlled substances, narcotics” and by substituting instead the language “controlled substances, controlled substance analogues, narcotics”.

SECTION 11. Tennessee Code Annotated, Section 38-8-106, is amended in subdivision (4) by deleting the language “liquor or controlled substances” and by substituting instead the language “liquor, controlled substances or controlled substance analogues”.

SECTION 12. Tennessee Code Annotated, Section 39-13-301, is amended in subdivision (2)(D) by deleting the language “controlled substance,” and by substituting instead the language “controlled substance or controlled substance analogue,”.

SECTION 13. Tennessee Code Annotated, Section 39-15-402, is amended in subdivision (a)(2) by deleting the language “dangerous instrumentality or controlled substance” and by substituting instead the language “dangerous instrumentality, controlled substance or controlled substance analogue”.

SECTION 14. Tennessee Code Annotated, Section 39-16-201, is amended in subdivision (b)(1) by deleting the language “controlled substances” and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 15. Tennessee Code Annotated, Section 39-17-310, is amended in subsection (a) by deleting the language “controlled substance or” and by substituting instead the language “controlled substance, controlled substance analogue or”.

SECTION 16. Tennessee Code Annotated, Section 39-17-315, is amended in subdivision (g)(2) by deleting the language “controlled substances” and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 17. Tennessee Code Annotated, Section 39-17-424, is amended by deleting the language “controlled substances” each time the language appears and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 18. Tennessee Code Annotated, Section 39-17-425, is amended by deleting the language “into the human body a controlled substance” each time the language appears and by substituting instead the language “into the human body a controlled substance or controlled substance analogue”.

SECTION 19. Tennessee Code Annotated, Section 39-17-437, is amended in subdivision (b)(1) by deleting the language “a controlled substance” and by substituting instead the language “a controlled substance or a controlled substance analogue”.

SECTION 20. Tennessee Code Annotated, Section 39-17-1321, is amended in subsection (a) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 21. Tennessee Code Annotated, Section 39-17-1323, is amended in subdivision (a)(3) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 22. Tennessee Code Annotated, Section 39-17-1324, is amended in subdivision (i)(1)(L) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 23. Tennessee Code Annotated, Section 39-17-1350, is amended in subdivision (c)(2) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 24. Tennessee Code Annotated, Section 39-17-1351, is amended by deleting subdivision (c)(10) and by substituting instead the following:

(10) That the applicant is not an unlawful user of or addicted to alcohol, any controlled substance or controlled substance analogue, and the applicant has not been a patient in a rehabilitation program or hospitalized for alcohol, controlled substance or controlled substance analogue abuse or addiction within ten (10) years from the date of application;

SECTION 25. Tennessee Code Annotated, Section 39-17-1351, is further amended by deleting subdivision (j)(3) and by substituting instead the following:

(3) The applicant, who was rendered infamous or deprived of the rights of citizenship by judgment of any state or federal court, has had the applicant's full rights of citizenship duly restored pursuant to procedures set forth within title 40, chapter 29, or other federal or state law; provided, however, that this subdivision (j)(3) shall not apply to any person who has been convicted of burglary, any felony offense involving violence or use of a firearm or any felony drug offense involving a Schedule I, II, III, IV or V controlled substance or a controlled substance analogue. If the applicant has been convicted of a felony drug offense involving a Schedule VI controlled substance, this subdivision (j)(3) shall not apply if the offense occurred within ten (10) years of the date of application or renewal.

SECTION 26. Tennessee Code Annotated, Section 40-7-119, is amended by deleting subsection (b) and by substituting instead the following:

(b) No person arrested for a traffic, regulatory or misdemeanor offense, except in cases involving weapons, a controlled substance or controlled substance analogue, shall be strip searched unless there is reasonable belief that the individual is concealing a weapon, a controlled substance, a controlled substance analogue or other contraband.

SECTION 27. Tennessee Code Annotated, Section 40-7-121, is amended in subsection (a) by deleting the language “controlled substance” and by substituting instead the language “controlled substance, a controlled substance analogue”.

SECTION 28. Tennessee Code Annotated, Section 40-11-150, is amended by deleting from subdivision (b)(5) the language “alcohol or controlled substances” and by substituting instead the language “alcohol, controlled substances or controlled substance analogues”.

SECTION 29. Tennessee Code Annotated, Section 40-12-201, is amended by deleting subdivision (a)(3) and by substituting instead the following:

(3) Section 39-17-417, relating to controlled substances or § 39-17-453, relating to controlled substance analogues;

SECTION 30. Tennessee Code Annotated, Section 40-20-205, is amended in subdivision (5) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 31. Tennessee Code Annotated, Section 40-35-114, is amended in subdivision (20) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue” and is further amended in subdivision (23) by deleting the language “controlled substance” and by substituting instead the language “controlled substance, controlled substance analogue”.

SECTION 32. Tennessee Code Annotated, Section 40-35-121, is amended in subdivision (a)(3)(B) by deleting the language “controlled substance” and by substituting instead the language “controlled substance, controlled substance analogue”.

SECTION 33. Tennessee Code Annotated, Section 40-35-303, is amended in subdivision (n)(4) by deleting the language “alcohol or controlled substances” and by substituting instead the language “alcohol, controlled substances or controlled substance analogues”.

SECTION 34. Tennessee Code Annotated, Section 41-1-102, is amended in subdivisions (d)(1) and (5) by deleting the language “controlled substances” and by substituting instead the language “controlled substances and controlled substance analogues”.

SECTION 35. Tennessee Code Annotated, Section 41-1-121, is amended in subsections (a) and (d) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue” and is further amended in subsection (c) by deleting the language “controlled substances” and by substituting instead the language “controlled substances and controlled substance analogues”.

SECTION 36. Tennessee Code Annotated, Section 41-4-144, is amended in subdivision (a)(4) by deleting the language “liquor or controlled substances” and by substituting instead the language “liquor, controlled substances or controlled substance analogues”.

SECTION 37. Tennessee Code Annotated, Section 49-2-116, is amended in subsection (d) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 38. Tennessee Code Annotated, Section 49-6-2107, is amended in subdivision (e)(1) by adding the following as a new subdivision thereto:

(F) Manufacture, delivery, sale or possession of a controlled substance analogue as prohibited by § 39-17-453.

SECTION 39. Tennessee Code Annotated, Section 49-6-2117, is amended in subsection (a) by adding the following as a new subdivision thereto:

(6) Manufacture, delivery, sale or possession of a controlled substance analogue as prohibited by § 39-17-453.

SECTION 40. Tennessee Code Annotated, Section 49-6-3401, is amended in subsection (g) by deleting the language “or legend drug, as defined by” and by substituting

instead the language “controlled substance analogue, as defined by § 39-17-453, or legend drug, as defined by”.

SECTION 41. Tennessee Code Annotated, Section 49-6-4202, is amended in subdivision (2) by deleting the language “controlled substance,” and by substituting instead the language “controlled substance, controlled substance analogue,”.

SECTION 42. Tennessee Code Annotated, Section 49-7-146, is amended by deleting the language “alcohol or a controlled substance” and by substituting instead the language “alcohol, a controlled substance, or a controlled substance analogue”.

SECTION 43. Tennessee Code Annotated, Section 49-7-2205, is amended in subdivision (b)(2) by deleting the language “controlled substances” and by substituting instead the language “controlled substances and controlled substance analogues”.

SECTION 44. Tennessee Code Annotated, Section 50-9-106, is amended in subdivision (a)(2) by deleting the language “controlled substances” and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 45. Tennessee Code Annotated, Section 53-11-408, is amended in subsection (a) by deleting the language “controlled substance” and the language “controlled substances” and by substituting instead, respectively, the language “controlled substance and controlled substance analogue” and the language “controlled substances and controlled substance analogues”.

SECTION 46. Tennessee Code Annotated, Section 53-14-103, is amended by adding the following as a new, appropriately designated subdivision:

(5) “Controlled substance analogues” is defined as in § 39-17-453;

SECTION 47. Tennessee Code Annotated, Section 53-14-104, is amended in subsection (a) by deleting the language “legend drug or controlled substance” and by

substituting instead the language “legend drug, controlled substance or controlled substance analogue”.

SECTION 48. Tennessee Code Annotated, Section 53-14-105, is amended in subsection (a) by deleting the language “legend drugs or controlled substances, or both,” and by substituting instead the language “legend drugs, controlled substances or controlled substance analogues, or any combination thereof,”.

SECTION 49. Tennessee Code Annotated, Section 53-14-106, is amended in subdivision (a)(3) by deleting the language “legend drugs or controlled substances” and by substituting instead the language “legend drugs, controlled substances or controlled substance analogues”.

SECTION 50. Tennessee Code Annotated, Section 53-14-110, is amended in subdivision (1) by deleting the language “legend drugs and controlled substances” and by substituting instead the language “legend drugs, controlled substances and controlled substance analogues”.

SECTION 51. Tennessee Code Annotated, Section 53-14-111, is amended in subsection (a) by deleting the language “legend drugs and controlled substances” and by substituting instead the language “legend drugs, controlled substances and controlled substance analogues”.

SECTION 52. Tennessee Code Annotated, Section 53-14-112, is amended in subdivisions (3) and (5) by deleting the language “legend drugs or controlled substances” and by substituting instead the language “legend drugs, controlled substances or controlled substance analogues”.

SECTION 53. Tennessee Code Annotated, Section 53-14-114, is amended by deleting the language “legend drugs or controlled substances” and by substituting instead the language “legend drugs, controlled substances or controlled substance analogues”.

SECTION 54. Tennessee Code Annotated, Section 55-10-401, is amended in subdivision (a)(1) by deleting the language “controlled substance, drug,” and by substituting instead the language “controlled substance, controlled substance analogue, drug,”.

SECTION 55. Tennessee Code Annotated, Section 55-10-403, is amended in subdivision (c)(2) by deleting the language “controlled substance,” and by substituting instead the language “controlled substance or controlled substance analogue,”.

SECTION 56. Tennessee Code Annotated, Section 55-10-701, is amended in subsection (a) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 57. Tennessee Code Annotated, Section 55-50-102, is amended by adding the following as a new, appropriately designated subdivision:

() “Controlled substance analogue” means any substance so defined under § 39-17-453.

SECTION 58. Tennessee Code Annotated, Section 55-50-405, is amended by deleting the language “controlled substance” each time the language appears and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 59. Tennessee Code Annotated, Section 57-3-704, is amended in subdivision (2) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 60. Tennessee Code Annotated, Section 57-5-105, is amended in subdivision (b)(3) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 61. Tennessee Code Annotated, Section 57-5-105, is further amended in subdivision (b)(4) by deleting the language “or any crime involving moral turpitude within the past ten (10) years” and by substituting instead the language “or the manufacture, delivery, sale

or possession with intent to manufacture, deliver or sell any controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years”.

SECTION 62. Tennessee Code Annotated, Section 62-32-303, is amended in subdivision (9)(B)(i)(a) by deleting the language “controlled substance,” and by substituting instead the language “controlled substance, controlled substance analogue,”.

SECTION 63. Tennessee Code Annotated, Section 62-35-117, is amended in subdivision (4)(B)(iv) by deleting the language “controlled substances,” and by substituting instead the language “controlled substances, controlled substance analogues,”.

SECTION 64. Tennessee Code Annotated, Section 63-1-309, is amended in subdivision (b)(2) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 65. Tennessee Code Annotated, Section 63-3-119, is amended in subdivision (a)(14) by deleting the language “controlled substance” and by substituting instead the language “controlled substance, controlled substance analogue”.

SECTION 66. Tennessee Code Annotated, Section 63-3-204, is amended in subdivision (b)(11) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 67. Tennessee Code Annotated, Section 63-4-114, is amended in subdivision (3) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 68. Tennessee Code Annotated, Section 63-5-124, is amended in subdivision (a)(5) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 69. Tennessee Code Annotated, Section 63-5-124, is further amended in subdivision (a)(20) by deleting the language “controlled substance” and by substituting instead the language “controlled substance, controlled substance analogue”.

SECTION 70. Tennessee Code Annotated, Section 63-6-214, is amended in subdivision (b)(5) by deleting the language "controlled substances" and substituting instead the language "controlled substances, controlled substance analogues" and is further amended in subdivision (b)(14) by deleting the language “controlled substance” and by substituting instead the language “controlled substance, controlled substance analogue”.

SECTION 71. Tennessee Code Annotated, Section 63-6-807, is amended in subdivision (b)(11) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 72. Tennessee Code Annotated, Section 63-6-1102, is amended in subdivision (2) by deleting the language “alcohol or a controlled substance” each time the language appears and by substituting instead the language “alcohol, a controlled substance, or a controlled substance analogue”.

SECTION 73. Tennessee Code Annotated, Section 63-9-111, is amended in subdivision (b)(5) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 74. Tennessee Code Annotated, Section 63-11-215, is amended in subdivision (b)(5) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 75. Tennessee Code Annotated, Section 63-12-124, is amended in subdivision (a)(17) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 76. Tennessee Code Annotated, Section 63-13-209, is amended in subdivision (a)(5) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 77. Tennessee Code Annotated, Section 63-13-312, is amended in subdivision (8) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 78. Tennessee Code Annotated, Section 63-13-316, is amended in subdivision (a)(2) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 79. Tennessee Code Annotated, Section 63-23-108, is amended in subdivision (a)(12) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 80. Tennessee Code Annotated, Section 63-25-110, is amended in subdivision (a)(3) by deleting the language “narcotic or controlled substance” and by substituting instead the language “narcotic, controlled substance or controlled substance analogue”.

SECTION 81. Tennessee Code Annotated, Section 63-26-123, is amended in subdivision (3) by deleting the language “controlled dangerous substances” and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 82. Tennessee Code Annotated, Section 63-27-112, is amended in subdivision (a)(3) by deleting the language "controlled substances" and substituting instead the language "controlled substance analogues".

SECTION 83. Tennessee Code Annotated, Section 63-31-109, is amended in subdivision (3) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 84. Tennessee Code Annotated, Section 65-15-106, is amended in subdivision (c)(2) by deleting the language “alcoholic beverages or controlled substances” and by substituting instead the language “alcoholic beverages, controlled substances or controlled substance analogues”.

SECTION 85. Tennessee Code Annotated, Section 67-4-2802, is amended by adding the following as a new subdivision thereto:

() “Controlled substance analogue” means a controlled substance analogue as defined in § 39-17-402.

SECTION 86. Tennessee Code Annotated, Section 67-4-2802, is further amended by deleting the current subdivision (10) in its entirety and by substituting instead the following:

(10) “Unauthorized substance” means a controlled substance, a controlled substance analogue, a low-street-value drug or an illicit alcoholic beverage.

SECTION 87. Tennessee Code Annotated, Section 67-4-2803, is amended in subdivision (a)(5) by deleting the language “controlled substance” and by substituting instead the language “controlled substance, controlled substance analogue”.

SECTION 88. Tennessee Code Annotated, Section 67-4-2803, is further amended in subdivision (a)(7) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 89. Tennessee Code Annotated, Section 68-14-601, is amended by adding the following as a new, appropriately designated subdivision thereto:

(3) “Controlled substance analogue” has the meaning given in § 39-17-453.

SECTION 90. Tennessee Code Annotated, Section 68-14-602, is amended in subdivision (a)(3) by deleting the language “controlled substances” and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 91. Tennessee Code Annotated, Section 68-14-603, is amended in subdivision (a)(1) and subsection (d) by deleting the language “controlled substance” and by substituting instead the language “controlled substance or controlled substance analogue”.

SECTION 92. Tennessee Code Annotated, Section 68-14-605, is amended in subdivision (3) by deleting the language “controlled substances” and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 93. Tennessee Code Annotated, Section 68-24-301, is amended in subsection (b) by deleting the language “controlled substances” and by substituting instead the language “controlled substances or controlled substance analogues”.

SECTION 94. Tennessee Code Annotated, Section 68-140-311, is amended in subdivision (a)(2) by deleting the language “controlled substances” and by substituting instead the language “controlled substances, controlled substance analogues”.

SECTION 95. Tennessee Code Annotated, Section 39-17-438, is amended by deleting subsection (d) and by substituting instead the following:

(d)

(1) A first violation of this section is a Class D felony.

(2) A second or subsequent violation of this section is a Class C felony.

(3) If the violation of this section involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one (1) classification higher than the punishment provided by this subsection for delivering, dispensing or selling to an adult.

SECTION 96. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following new section:

39-17-453.

(a)

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

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

(B) That has the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance.

(2) “Controlled substance analogue” does not include:

(A) A controlled substance;

(B) Any substance for which there is an approved use or new drug application by the federal food and drug administration;

(C) 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

(D) 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.

(b)

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

(A) The difference between the price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;

(B) Its diversion from legitimate channels, and its clandestine importation, manufacture, or distribution;

(C) The defendant's prior convictions, if any, for a violation of any state or federal statute prohibiting controlled substance analogues; and

(D) 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:

(1) The packaging of the substance and its appearance in overall finished dosage form;

(2) Oral or written statements or representations concerning the substance;

(3) The methods by which the substance is distributed; and

(4) The manner in which the substance is sold to the public.

(2) In determining whether a substance is a controlled substance analogue, the following scientific or pharmacological factors may be considered, along with any other relevant factors:

(A) Its actual or relative potential for abuse;

(B) Scientific evidence of its pharmacological effect, if known;

(C) The state of current scientific knowledge regarding the substance;

- (D) The history of the substance and its current pattern of abuse;
- (E) The scope, duration and significance of abuse;
- (F) What, if any, risk there is to the public health;
- (G) Its psychic or physiological dependence liability; and
- (H) Whether the substance is an immediate precursor of a

substance already controlled under this chapter.

(c) 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.

(d) It is an offense to knowingly possess or casually exchange a small amount of a controlled substance analogue not in excess of one (1) gram.

(e) 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 (c). It may be inferred from circumstances indicating a casual exchange among individuals 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 (c). 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 controlled substance.

(2) It is not a defense to prosecution under this subsection (f) 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 controlled substance.

(g)

(1) A first violation of subsection (c) is a Class D felony.

(2) A second or subsequent violation of subsection (c) is a Class C felony.

(3) If the violation of subsection (c) involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one (1) classification higher than the punishment provided by this subsection for delivering, dispensing or selling to an adult.

(4) A violation of subsections (d) and (f) are Class A misdemeanors.

(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 involves a

controlled substance analogue in violation of subsection (c). 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 permit or license other than a driver license;
- (4) Ineligibility to obtain any permit or license other than a driver license;
- (5) Ineligibility for any alternative to incarceration, but eligibility for referral to, and trial, sentencing and treatment by a drug court shall be the same as a person whose violation involves a controlled substance;
- (6) Suspension or expulsion from public schools;
- (7) Civil liability;
- (8) Termination of parental rights; and
- (9) Tax liability under title 67, chapter 4, part 28.

SECTION 97. 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 98. This act shall take effect upon becoming a law, the public welfare requiring it.