

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS95061-LH-89B (02/20)

Short Title: Prohibited Imitation Controlled Substances. (Public)

Sponsors: Senator J. Davis (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE THE MANUFACTURE, POSSESSION, SALE, USE, AND DELIVERY
3 OF CERTAIN IMITATION CONTROLLED SUBSTANCES UNLAWFUL.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 90-94(3) is repealed.

6 SECTION 2. Article 5 of Chapter 90 of the General Statutes is amended by adding
7 a new section to read:

8 "**§ 90-94.1. Imitation controlled substances: prohibitions.**

9 (a) For purposes of this section, the term "imitation controlled substance" means a pill,
10 capsule, tablet, or substance in any form whatsoever that satisfies all of the following criteria:

11 (1) It is not a controlled substance enumerated in this Article which is subject to
12 abuse and which by express or implied representations purports to act like a
13 controlled substance as a stimulant or depressant of the central nervous
14 system and which is not commonly used or recognized for use in that
15 particular formulation for any purpose other than for such stimulant or
16 depressant effect unless marketed, promoted, or sold as permitted by the
17 United States Food and Drug Administration.

18 (2) The chemical structure is a derivative of or substantially similar to the
19 chemical structure of a controlled substance.

20 (b) It is an offense to knowingly manufacture, deliver, sell, import into or export from
21 the State, or possess with the intent to sell, deliver, or manufacture an imitation controlled
22 substance.

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

27 (d) No person shall, for the purpose of violating subsection (c) of this section, use or
28 possess for the purpose of so using an imitation controlled substance.

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



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

10 (g) A violation of this section shall be punishable as follows:

11 (1) A violation of subsection (b) of this section is a Class H felony.

12 (2) A violation of subsection (c) or (d) of this section is a Class 1 misdemeanor."

13 **SECTION 3.** This act becomes effective December 1, 2013, and applies to
14 offenses committed on or after that date. Prosecutions for offenses committed before the
15 effective date of this act are not abated or affected by this act, and the statutes that would be
16 applicable but for this act remain applicable to those prosecutions.