

## Chapter 569

## (Senate Bill 539)

AN ACT concerning

**Criminal Law – ~~Distribution of Opioids Resulting in Death~~ Distribution of Controlled Dangerous Substances – Fentanyl**

FOR the purpose of prohibiting a person from ~~distributing certain opioids or opioid analogues, the use of which causes the death of another, with a certain exception; establishing penalties for a violation of this Act; providing that it is not a defense under this Act that the defendant did not distribute the opioid or opioid analogue directly to the decedent; providing that a person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person experiencing a medical emergency after using an opioid or opioid analogue shall be immune from criminal prosecution for a violation of this Act if the evidence for the criminal prosecution was obtained in a certain manner; establishing that certain actions do not constitute distribution for a certain purpose; providing that it is a defense under this Act that the defendant was an active user of an opioid or opioid analogue at the time of the distribution causing the death of the decedent; providing that a sentence imposed under this Act shall be separate from and consecutive to a certain other sentence; defining certain terms; making this Act an emergency measure; and generally relating to distribution of opioids or opioid analogues~~ knowingly distributing a certain mixture of controlled dangerous substances; establishing certain penalties for a violation of this Act; requiring a sentence for the distribution of a mixture of certain controlled dangerous substances to be consecutive to any other sentence imposed; making this Act an emergency measure; and generally relating to controlled dangerous substances.

BY repealing and reenacting, without amendments,

Article – Criminal Law

Section 5-602

Annotated Code of Maryland

(2012 Replacement Volume and 2016 Supplement)

BY adding to

Article – Criminal Law

Section ~~5-602.1~~ 5-608.1

Annotated Code of Maryland

(2012 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

**Article – Criminal Law**

~~5-602.1.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "OPIOID" MEANS A CONTROLLED DANGEROUS SUBSTANCE LISTED IN § 5-402(B) OR (C) OR § 5-403(B)(1) OR (3)(I) OR (II) OR (C) OF THIS TITLE.~~

~~(3) (I) "OPIOID ANALOGUE" MEANS A SUBSTANCE:~~

~~1. THAT HAS A CHEMICAL STRUCTURE SIMILAR TO THE CHEMICAL STRUCTURE OF AN OPIOID; AND~~

~~2. THAT HAS A STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM THAT IS SUBSTANTIALLY SIMILAR TO OR GREATER THAN THE STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT OF AN OPIOID ON THE CENTRAL NERVOUS SYSTEM.~~

~~(II) "OPIOID ANALOGUE" DOES NOT INCLUDE:~~

~~1. A CONTROLLED DANGEROUS SUBSTANCE;~~

~~2. A SUBSTANCE FOR WHICH THERE IS AN APPROVED NEW DRUG APPLICATION; OR~~

~~3. A SUBSTANCE APPROVED FOR INVESTIGATIONAL USE UNDER § 506 OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.~~

~~(B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT DISTRIBUTE AN OPIOID OR OPIOID ANALOGUE, THE USE OF WHICH CAUSES THE DEATH OF ANOTHER.~~

~~(C) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.~~

~~(D) IT IS NOT A DEFENSE UNDER THIS SECTION THAT THE DEFENDANT DID NOT DISTRIBUTE THE OPIOID OR OPIOID ANALOGUE DIRECTLY TO THE DECEDENT.~~

~~(E) A PERSON WHO, IN GOOD FAITH, SEEKS, PROVIDES, OR ASSISTS WITH THE PROVISION OF MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING A MEDICAL EMERGENCY AFTER USING AN OPIOID OR OPIOID ANALOGUE SHALL BE IMMUNE FROM CRIMINAL PROSECUTION FOR A VIOLATION OF THIS SECTION IF THE~~

~~EVIDENCE FOR THE CRIMINAL PROSECUTION WAS OBTAINED SOLELY AS A RESULT OF THE PERSON'S SEEKING, PROVIDING, OR ASSISTING WITH THE PROVISION OF MEDICAL ASSISTANCE.~~

~~(F) FOR THE PURPOSES OF THIS SECTION, THE SHARING OF AN OPIOID OR OPIOID ANALOGUE WITHOUT REMUNERATION OR THE EXCHANGE OF GOODS OR SERVICES DOES NOT CONSTITUTE DISTRIBUTION.~~

~~(G) IT IS A DEFENSE UNDER THIS SECTION THAT THE DEFENDANT WAS AN ACTIVE USER OF AN OPIOID OR OPIOID ANALOGUE AT THE TIME OF THE DISTRIBUTION CAUSING THE DEATH OF THE DECEDENT.~~

~~(H) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE SEPARATE FROM AND CONSECUTIVE TO A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.~~

5-602.

Except as otherwise provided in this title, a person may not:

- (1) distribute or dispense a controlled dangerous substance; or
- (2) possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.

5-608.1.

(A) A PERSON MAY NOT KNOWINGLY VIOLATE § 5-602 OF THIS SUBTITLE WITH:

(1) A MIXTURE THAT CONTAINS HEROIN AND A DETECTABLE AMOUNT OF FENTANYL OR ANY ANALOGUE OF FENTANYL; OR

(2) FENTANYL OR ANY ANALOGUE OF FENTANYL.

(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND, IN ADDITION TO ANY OTHER PENALTY IMPOSED FOR A VIOLATION OF § 5-602 OF THIS SUBTITLE, ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

(C) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED UNDER ANY OTHER PROVISION OF LAW.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

**Approved by the Governor, May 25, 2017.**