

SENATE BILL 539

E1

EMERGENCY BILL

7lr0149
CF HB 687

By: **The President (By Request – Administration) and Senators Bates, Eckardt, Edwards, Hershey, Jennings, Ready, Salling, Serafini, and Simonaire**

Introduced and read first time: February 1, 2017

Assigned to: Rules

Re-referred to: Judicial Proceedings, February 15, 2017

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2017

CHAPTER _____

1 AN ACT concerning

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
 2 Article – Criminal Law
 3 Section 5–602
 4 Annotated Code of Maryland
 5 (2012 Replacement Volume and 2016 Supplement)

6 BY adding to
 7 Article – Criminal Law
 8 Section ~~5–602.1~~ 5–608.1
 9 Annotated Code of Maryland
 10 (2012 Replacement Volume and 2016 Supplement)

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

13 **Article – Criminal Law**

14 ~~5–602.1.~~

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

17 ~~(2) “OPIOID” MEANS A CONTROLLED DANGEROUS SUBSTANCE~~
 18 ~~LISTED IN § 5–402(B) OR (C) OR § 5–403(B)(1) OR (3)(I) OR (II) OR (C) OF THIS TITLE.~~

19 ~~(3) (i) “OPIOID ANALOGUE” MEANS A SUBSTANCE:~~

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

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

26 ~~(ii) “OPIOID ANALOGUE” DOES NOT INCLUDE:~~

27 ~~1. A CONTROLLED DANGEROUS SUBSTANCE;~~

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

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

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

4 ~~(C) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY~~
5 ~~OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING~~
6 ~~30 YEARS.~~

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

9 ~~(E) A PERSON WHO, IN GOOD FAITH, SEEKS, PROVIDES, OR ASSISTS WITH~~
10 ~~THE PROVISION OF MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING A MEDICAL~~
11 ~~EMERGENCY AFTER USING AN OPIOID OR OPIOID ANALOGUE SHALL BE IMMUNE~~
12 ~~FROM CRIMINAL PROSECUTION FOR A VIOLATION OF THIS SECTION IF THE~~
13 ~~EVIDENCE FOR THE CRIMINAL PROSECUTION WAS OBTAINED SOLELY AS A RESULT~~
14 ~~OF THE PERSON'S SEEKING, PROVIDING, OR ASSISTING WITH THE PROVISION OF~~
15 ~~MEDICAL ASSISTANCE.~~

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

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

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

25 5-602.

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

27 (1) distribute or dispense a controlled dangerous substance; or

28 (2) possess a controlled dangerous substance in sufficient quantity
29 reasonably to indicate under all circumstances an intent to distribute or dispense a
30 controlled dangerous substance.

31 5-608.1.

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

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

5 **(2) FENTANYL OR ANY ANALOGUE OF FENTANYL.**

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.