

House Bill 1186

By: Representative Parham of the 122nd

A BILL TO BE ENTITLED
AN ACT

1 To regulate certain controlled substances and analogs thereof; to amend Article 2 of Chapter
2 13 of Title 16 of the Official Code of Georgia Annotated, relating to regulation of controlled
3 substances, so as to define a certain term; to change certain provisions relating to purchase,
4 possession, manufacture, distribution, or sale of controlled substances or marijuana and
5 penalties; to prohibit certain delivery, distribution, dispensing, administration, or sale of
6 controlled substances or controlled substance analogs to other persons with the intent to
7 commit any certain offenses; to provide punishments; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
12 regulation of controlled substances, is amended in Code Section 16-13-21, relating to
13 definitions, by inserting a new paragraph to read as follows:

14 "(4.1)(A) Controlled substance analog means:

15 (i) Any substance which has, is represented as having, or is intended to have a
16 stimulant, depressant, or hallucinogenic effect on the human body that is substantially
17 similar to or greater than the stimulant, depressant, or hallucinogenic effect of a
18 controlled substance in Schedule I, II, III, IV, or V; or
19 (ii) Any controlled substance precursor, which is a substance possessed with the
20 intent to manufacture a Schedule I, II, III, IV, or V controlled substance.

21 (B) Controlled substance analog does not include:

22 (i) Any substance for which there is an approved new drug application as defined
23 under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Section
24 355;
25 (ii) Any substance which is generally recognized as safe and effective for use
26 pursuant to Sections 501, 502, and 503 of the federal Food, Drug and Cosmetic Act,

21 U.S.C. Sections 351, 352, and 353, and 21 C.F.R. Part 330 et seq., except when possessed with intent to manufacture a Schedule I, II, III, IV, or V controlled substance;

(iii) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 355, to the extent that the conduct with respect to that substance is pursuant to the exemption;

(iv) Any substance generally recognized as lawfully and legitimately useful in industrial or other commercial purposes, except when possessed with intent to manufacture a Schedule I, II, III, IV, or V controlled substance or when possessed for the purpose of human consumption; or

(v) Any substance in naturally occurring amounts present in the human body."

SECTION 2.

Said article is further amended by striking Code Section 16-13-30, relating to purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana and penalties, and inserting in lieu thereof the following:

"16-13-30.

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his control any controlled substance or controlled substance analog.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance or controlled substance analog.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II, or controlled substance analog of either shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be imprisoned for not less than five years nor more than 30 years.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II or a controlled substance analog of either shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such

1 offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall
2 apply for any subsequent offense.

3 (e) Any person who violates subsection (a) of this Code section with respect to a
4 controlled substance in Schedule II, other than a narcotic drug, or a controlled substance
5 analog of such controlled substance shall be guilty of a felony and, upon conviction
6 thereof, shall be punished by imprisonment for not less than two years nor more than 15
7 years. Upon conviction of a second or subsequent offense, he shall be punished by
8 imprisonment for not less than five years nor more than 30 years.

9 (f) Reserved.

10 (g) Any person who violates subsection (a) of this Code section with respect to a
11 controlled substance in Schedule III, IV, or V or a controlled substance analog thereof shall
12 be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for
13 not less than one year nor more than five years. Upon conviction of a second or subsequent
14 offense, he shall be imprisoned for not less than one year nor more than ten years.

15 (h) Any person who violates subsection (b) of this Code section with respect to a
16 controlled substance in Schedule III, IV, or V or a controlled substance analog thereof shall
17 be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for
18 not less than one year nor more than ten years.

19 (i) Except as authorized by this article, it is unlawful for any person to possess, have under
20 his control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess
21 with intent to distribute a counterfeit substance. Any person who violates this subsection
22 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment
23 for not less than one year nor more than ten years.

24 (j)(1) It is unlawful for any person to possess, have under his control, manufacture,
25 deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute
26 marijuana.

27 (2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code
28 Section 16-13-2, any person who violates this subsection shall be guilty of a felony and,
29 upon conviction thereof, shall be punished by imprisonment for not less than one year nor
30 more than ten years.

31 (k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under
32 the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or
33 dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or
34 marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by
35 law. Any person who violates this subsection shall be guilty of a felony and, upon
36 conviction thereof, shall be punished by imprisonment for not less than five years nor more
37 than 20 years or by a fine not to exceed \$20,000.00, or both.

(l)(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than five years nor more than 30 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense."

SECTION 3.

Said article is further amended by inserting a new Code section to read as follows:

"16-13-30.3

(a) It shall be unlawful for any person to knowingly deliver, distribute, dispense, administer, sell, or possess with the intent to deliver, distribute, dispense, administer, or sell a controlled substance or controlled substance analog to another person with the intent to commit any offense under:

(1) Article 1 of Chapter 5 of this title, relating to homicide;

(2) Article 2 of Chapter 5 of this title, relating to assault and battery;

(3) Article 3 of Chapter 5 of this title, relating to kidnaping, false imprisonment, and related offenses;

(4) Article 5 of Chapter 5 of this title, relating to cruelty to children;

(5) Chapter 6 of this title, relating to sexual offenses;

(6) Article 1 of Chapter 8 of this title, relating to theft; or

(7) Article 2 of Chapter 8 of this title, relating to robbery.

b) Any person who violates subsection (a) of this Code sect

and upon conviction thereof shall be punished by imprisonment for

more than 20 years, a fine not to exceed \$50,000.00, or both such imprisonment and fine.

(c) Each violation of this Code section shall be a separate offense."

with this Act.

5. All laws and parts of laws in conflict with this Act are repealed.