114TH CONGRESS
1ST SESSION

S. 36

To address the continued threat posed by dangerous synthetic drugs by amending the Controlled Substances Act relating to controlled substance analogues.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2015

Mrs. FEINSTEIN (for herself, Mrs. SHAHEEN, Ms. AYOTTE, Mr. SCHUMER, Mr. BLUMENTHAL, Ms. KLOBUCHAR, Mrs. BOXER, Mr. PORTMAN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To address the continued threat posed by dangerous synthetic drugs by amending the Controlled Substances Act relating to controlled substance analogues.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Our Youth from Dangerous Synthetic Drugs Act of 2015''.

SEC. 2. ENFORCEMENT.

(a) IN GENERAL.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102(32), by striking subparagraph (A) and inserting the following:

''(A) Except as provided in subparagraph (C), the term 'controlled substance analogue' means—

''(i) a substance whose chemical structure is substantially similar to the chemical structure of a controlled substance in schedule I or II—

''(I) which 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 on the central nervous system of a controlled substance in schedule I or II; or

''(II) with respect to a particular person, which such person represents or intends to have 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 on the central nervous system of a controlled substance in schedule I or II; or

''(ii) a substance designated as a controlled substance analogue by the Controlled Substance Analogue Committee in accordance with section 201(i).''; and

(2) in section 201, by adding at the end the following:

''(i)(1) The Attorney General, in consultation with the Secretary of Health and Human Services, shall establish an interagency committee, to be known as the Controlled Substance Analogue Committee (referred to in this subsection as the 'Committee').

''(2) The Committee shall be—

''(A) headed by the Administrator of the Drug Enforcement Administration; and

''(B) comprised of scientific experts in the fields of chemistry and pharmacology from—

''(i) the Drug Enforcement Administration;

''(ii) the National Institute on Drug Abuse;

''(iii) the Centers for Disease Control and Prevention; and

''(iv) any other Federal agency determined by the Attorney General, in consultation with the Secretary of Health and Human Services, to be appropriate.

''(3)(A) The Committee shall convene, on an as needed basis, to establish and maintain a list of controlled substance analogues.

''(B) A substance may be designated as a controlled substance analogue by the Committee under this subsection if the substance is determined by the Committee to be similar to a schedule I or II controlled substance in either its chemical structure or its predictive effect on the body, in such a manner as to make it likely that the substance will, or can be reasonably expected to have a potential for abuse.

''(C) Evidence of human consumption by an individual or the public at large is not necessary before a substance may be designated as a controlled substance analogue under this subsection.

''(D) The Attorney General shall, through rulemaking, establish procedures of operation for the Committee.

''(4)(A) Not later than 30 days before each meeting of the Committee, the Attorney General shall submit to the Secretary of Health and Human Services a notice of the meeting of the Committee, which shall include—

''(i) a list of the substances to be considered by the Committee during the meeting for designation as a controlled substance analogue; and

''(ii) a request for the Secretary of Health and Human Services to make a determination of whether an exemption or approval for each substance listed under clause (i) is in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355).

''(B) Not later than 30 days after the date on which the Secretary of Health and Human Services receives notice under subparagraph (A), the Secretary shall submit to the Attorney General a written response to the request described under subparagraph (A)(ii). The Committee shall consider the response submitted by the Secretary of Health and Human Services in determining whether to designate a substance considered by the Committee at the meeting as a controlled substance analogue.

''(5)(A) The Attorney General shall publish in the Federal Register any designation made by the Committee under this subsection.

''(B) The Administrator of the Drug Enforcement Administration shall publish, on the website of the Drug Enforcement Administration, a description of each designation made by the Committee under this subsection, which shall include—

''(i) the chemical and common name of the controlled substance analogue;

''(ii) the effective date of the determination, as described in paragraph (6)(A); and

''(iii) any schedule I or II controlled substance that the Committee has determined a substance is an analogue of.

''(6) A designation made by the Committee under this subsection shall take effect on the date that is 30 days after the date on which the designation is published in the Federal Register under paragraph (5)(A).

''(7) If a substance designated as a controlled substance analogue by the Committee under this section is subsequently scheduled through a rulemaking proceeding under subsection (a), (d), or (h), the substance shall be automatically removed from the controlled substance analogue list.

''(8) If a defendant challenges the designation of a controlled substance analogue made by the Committee under this subsection the issue shall be considered a question of law.''.

(b) FUNDING.—Section 111(b)(2)(B) of Public Law 102–395 (21 U.S.C. 886a(2)(B)) is amended by inserting ''controlled substance analogues,'' after ''substances,''.

SEC. 3. IMPORTATION OF CONTROLLED SUBSTANCE ANALOGUES.

Section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) is amended—

(1) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively; and

(2) by inserting after subsection (b) the following:

''(c) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance analogue designated pursuant to section 201(i) of the Controlled Substances Act (21 U.S.C. 811(i)) unless the controlled substance analogue is imported pursuant to such notification or declaration as the Attorney General may by regulation prescribe.''.

SEC. 4. DIRECTIVE TO SENTENCING COMMISSION.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure the guidelines and policy statements provide adequate penalties for any offense involving the unlawful manufacturing, importing, exporting, or trafficking of controlled substance analogues under part D of

the Controlled Substances Act (21 U.S.C. 841 et seq.) or part A of the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) and similar offenses, including unlawful possession, possession with intent to commit any of the foregoing offenses, and attempt and conspiracy to commit any of the foregoing offenses.

(b) COMMISSION DUTIES.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentences, guidelines, and policy statements relating to offenders convicted of these offenses are appropriately severe and reasonably consistent with other relevant directives and other Federal sentencing guidelines and policy statements;

(2) make any necessary conforming changes to the Federal sentencing guidelines; and

(3) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

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