

115TH CONGRESS  
1ST SESSION

# S. 739

To amend the Controlled Substances Act to provide enhanced penalties for marketing candy-flavored controlled substances to minors.

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IN THE SENATE OF THE UNITED STATES

MARCH 28, 2017

Mr. GRASSLEY (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Controlled Substances Act to provide enhanced penalties for marketing candy-flavored controlled substances to minors.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Kids from  
5 Candy-Flavored Drugs Act of 2017”.

1 **SEC. 2. OFFENSES INVOLVING CANDY-FLAVORED CON-**  
2 **TROLLED SUBSTANCES MANUFACTURED OR**  
3 **DISTRIBUTED FOR MINORS.**

4 (a) IN GENERAL.—Part D of the Controlled Sub-  
5 stances Act (21 U.S.C. 841 et seq.) is amended by insert-  
6 ing after section 418 the following:

7 “MANUFACTURING OR DISTRIBUTING CANDY-FLAVORED  
8 CONTROLLED SUBSTANCES FOR MINORS

9 “SEC. 418a. (a) Except as provided in subsection (c)  
10 and in section 418, 419, or 420, a person shall be subject  
11 to the penalty described in subsection (b) if the person  
12 violates section 401(a)(1) by—

13 “(1) manufacturing, creating, distributing, dis-  
14 pensing, or possessing with intent to distribute a  
15 controlled substance listed in schedule I or II that  
16 is—

17 “(A) combined with a candy or beverage  
18 product;

19 “(B) marketed or packaged to appear simi-  
20 lar to a candy or beverage product; or

21 “(C) modified by flavoring or coloring to  
22 appear similar to a candy or beverage product;  
23 and

24 “(2) knowing, or having reasonable cause to be-  
25 lieve, that the controlled substance will be distrib-

1       uted, dispensed, or sold to a person under 18 years  
2       of age.

3       “(b) The penalty described in this subsection is—

4               “(1) in the case of a first offense involving the  
5       same controlled substance and schedule, an addi-  
6       tional term of imprisonment of not more than 10  
7       years; and

8               “(2) in the case of a second or subsequent of-  
9       fense involving the same controlled substance and  
10      schedule, an additional term of imprisonment of not  
11      more than 20 years.

12      “(c) Subsection (a) shall not apply to any controlled  
13      substance that—

14              “(1) has been approved by the Secretary under  
15      section 505 of the Federal Food, Drug, and Cos-  
16      metic Act (21 U.S.C. 355), if the contents, mar-  
17      keting, and packaging of the controlled substance  
18      have not been altered from the form approved by the  
19      Secretary; or

20              “(2) has been altered at the direction of a prac-  
21      titioner who is acting for a legitimate medical pur-  
22      pose in the usual course of professional practice.”.

23      (b) TECHNICAL AND CONFORMING AMENDMENT.—

24      The table of contents for the Comprehensive Drug Abuse  
25      Prevention and Control Act of 1970 (Public Law 91–513;

1 84 Stat. 1236) is amended by inserting after the item re-  
2 lating to section 418 the following:

“Sec. 418a. Manufacturing or distributing candy-flavored controlled substances  
for minors.”.

3 **SEC. 3. SENTENCING GUIDELINES.**

4 Pursuant to its authority under section 994 of title  
5 28, United States Code, and in accordance with this sec-  
6 tion, the United States Sentencing Commission shall  
7 amend and review the Federal sentencing guidelines and  
8 policy statements to ensure that the guidelines provide for  
9 a penalty enhancement of not less than 2 offense levels  
10 for a violation of section 401(a) of the Controlled Sub-  
11 stances Act (21 U.S.C. 841(a)) if the defendant—

12 (1) manufactures, creates, distributes, dis-  
13 penses, or possesses with intent to distribute a con-  
14 trolled substance listed in schedule I or II that is—

15 (A) combined with a candy or beverage  
16 product;

17 (B) marketed or packaged to appear simi-  
18 lar to a candy or beverage product; or

19 (C) modified by flavoring or coloring to ap-  
20 pear similar to a candy or beverage product;

21 and

1           (2) knows, or has reasonable cause to believe,  
2           that the controlled substance will be distributed, dis-  
3           pensed, or sold to a person under 18 years of age.

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