

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 26-0445.01 Jacob Baus x2173

SENATE BILL 26-099

SENATE SPONSORSHIP

Kirkmeyer,

HOUSE SPONSORSHIP

(None),

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING AUTHORIZING THE GOVERNOR TO TEMPORARILY**
102 **CLASSIFY A SUBSTANCE AS A CONTROLLED SUBSTANCE ANALOG**
103 **UNDER SCHEDULE II.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, any material, compound, mixture, or preparation that is a controlled substance analog that is substantially similar to the chemical structure of a controlled substance in schedule II (analog to a schedule II controlled substance) is treated as a controlled substance in schedule II.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

The bill authorizes the governor to temporarily classify a material, compound, mixture, or preparation as an analog to a schedule II controlled substance, subject to conditions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) The illegal manufacture, distribution, and use of synthetic
5 opioids, including fentanyl, has increased in recent years, presenting a
6 serious health and public safety risk in Colorado;

7 (b) Because certain controlled substances listed on schedule II are
8 synthetic, illegal manufacturers and distributors alter substances'
9 chemistry to avoid classification on schedule II;

10 (c) In some instances, a synthetic substance's chemistry is so
11 unique that there is the potential for debate, confusion, and inconsistency
12 within the justice system whether a substance is on schedule II or
13 constitutes an analog thereof;

14 (d) The state has a compelling interest in defending against the
15 serious health and public safety consequences presented by a new and
16 unanticipated synthetic substance proliferating faster than sufficient
17 legislative response; and

18 (e) Authorizing the governor to temporarily declare a material,
19 compound, mixture, or preparation that has not been specifically excluded
20 from or included in a schedule is a controlled substance analog in
21 schedule II described in existing law, is an appropriate, narrowly tailored
22 approach that clearly:

23 (I) Articulates the authority that may be executed;

24 (II) Assigns the authority to the governor only; and

1 (III) Defines the scope of the authority, including safeguards that
2 prevent against abuse and noticing requirements that protect the peoples'
3 liberty interests.

4 **SECTION 2.** In Colorado Revised Statutes, 18-18-204, **add** (3)
5 as follows:

6 **18-18-204. Schedule II.**

7 (3) (a) UNLESS SPECIFICALLY EXCEPTED OR SPECIFICALLY
8 INCLUDED IN A SCHEDULE, THE GOVERNOR MAY CLASSIFY THAT A
9 MATERIAL, COMPOUND, MIXTURE, OR PREPARATION IS A CONTROLLED
10 SUBSTANCE ANALOG DESCRIBED IN SUBSECTION (2)(g) OF THIS SECTION
11 THAT IS TREATED, FOR PURPOSES OF THIS ARTICLE 18, AS A CONTROLLED
12 SUBSTANCE IN SCHEDULE II IF:

13 (I) THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION'S
14 CHEMICAL STRUCTURE IS SUBSTANTIALLY SIMILAR TO THE CHEMICAL
15 STRUCTURE OF A CONTROLLED SUBSTANCE IN SCHEDULE II OR WAS
16 SPECIFICALLY DESIGNED TO PRODUCE AN EFFECT SUBSTANTIALLY SIMILAR
17 TO OR GREATER THAN THE EFFECT OF A CONTROLLED SUBSTANCE IN
18 SCHEDULE II, AND ALL OR PART OF WHICH IS INTENDED FOR HUMAN
19 CONSUMPTION; AND

20 (II) (A) THE GOVERNOR ISSUES AN EXECUTIVE ORDER THAT
21 PROVIDES REASONABLE NOTICE TO THE PUBLIC AND THE GENERAL
22 ASSEMBLY THAT THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
23 IS A CONTROLLED SUBSTANCE ANALOG THAT IS TREATED, FOR PURPOSES
24 OF THIS ARTICLE 18, AS A CONTROLLED SUBSTANCE IN SCHEDULE II; AND

25 (B) THE GOVERNOR PROVIDES THE DESIGNATION DATE OF WHEN
26 THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION IS A CONTROLLED
27 SUBSTANCE ANALOG THAT IS TREATED, FOR PURPOSES OF THIS ARTICLE 18,

1 AS A CONTROLLED SUBSTANCE IN SCHEDULE II.

2 (b) (I) THE GOVERNOR'S DESIGNATION OF THE MATERIAL,
3 COMPOUND, MIXTURE, OR PREPARATION AS A CONTROLLED SUBSTANCE
4 ANALOG IS NOT EFFECTIVE AFTER 12:01 A.M. ON THE DAY THAT IS TWO
5 YEARS AFTER THE DESIGNATION DATE DESCRIBED IN SUBSECTION (3)(a) OF
6 THIS SECTION.

7 (II) THE GOVERNOR:

8 (A) MAY REPEAL THE DESIGNATION OF THE MATERIAL,
9 COMPOUND, MIXTURE, OR PREPARATION AS A CONTROLLED SUBSTANCE
10 ANALOG ON A DATE AND TIME THAT IS EARLIER THAN THE DATE AND TIME
11 DESCRIBED IN SUBSECTION (3)(b)(I) OF THIS SECTION;

12 (B) SHALL NOT EXTEND THE DESIGNATION OF THE MATERIAL,
13 COMPOUND, MIXTURE, OR PREPARATION AS A CONTROLLED SUBSTANCE
14 ANALOG TO A DATE OR TIME THAT IS LATER THAN THE DATE OR TIME
15 DESCRIBED IN SUBSECTION (3)(b)(I) OF THIS SECTION; AND

16 (C) SHALL NOT RENEW THE DESIGNATION OF THE MATERIAL,
17 COMPOUND, MIXTURE, OR PREPARATION AS A CONTROLLED SUBSTANCE
18 ANALOG AFTER THE EXPIRATION OR REPEAL OF THE DESIGNATION. THIS
19 SUBSECTION (3)(b)(II)(C) APPLIES IN ALL INSTANCES, INCLUDING IF THE
20 DESIGNATION OF THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
21 AS A CONTROLLED SUBSTANCE ANALOG REPEALED OR EXPIRED PRIOR TO
22 THE DATE OR TIME DESCRIBED IN SUBSECTION (3)(b)(I) OF THIS SECTION.

23 (c) THIS SUBSECTION (3) DOES NOT PROHIBIT A COURT FROM
24 FINDING THAT A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION IS A
25 CONTROLLED SUBSTANCE ANALOG DESCRIBED IN SUBSECTION (2)(g) OF
26 THIS SECTION.

27 (d) THE GENERAL ASSEMBLY, BY JOINT RESOLUTION, MAY

1 TERMINATE THE DESIGNATION OF A CONTROLLED SUBSTANCE ANALOG
2 MADE IN AN EXECUTIVE ORDER DESCRIBED IN THIS SUBSECTION (3).

3 **SECTION 3. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2026 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.