

South Carolina General Assembly
125th Session, 2023-2024

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S. 153

STATUS INFORMATION

General Bill

Sponsors: Senators Young, Gustafson, Senn, Rankin, Adams, Climer, Campsen, Alexander and Davis

Companion/Similar bill(s): 236, 242, 3503

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Introduced in the Senate on January 10, 2023

Introduced in the House on February 23, 2023

Last Amended on February 21, 2023

Currently residing in the Senate

Summary: Trafficking Fentanyl

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
11/30/2022	Senate	Prefiled
11/30/2022	Senate	Referred to Committee on Judiciary
1/10/2023	Senate	Introduced and read first time (Senate Journal-page 85)
1/10/2023	Senate	Referred to Committee on Judiciary (Senate Journal-page 85)
1/12/2023	Senate	Referred to Subcommittee: Hutto (ch), Matthews, Rice, Senn, Adams
2/1/2023	Senate	Committee report: Favorable Judiciary (Senate Journal-page 11)
2/2/2023		Scrivener's error corrected
2/14/2023	Senate	Amended (Senate Journal-page 13)
2/15/2023		Scrivener's error corrected
2/21/2023	Senate	Amended (Senate Journal-page 26)
2/21/2023	Senate	Read second time (Senate Journal-page 26)
2/21/2023	Senate	Roll call Ayes-44 Nays-0 (Senate Journal-page 26)
2/22/2023		Scrivener's error corrected

Date	Body	Action Description with journal page number
2/22/2023	Senate	Read third time and sent to House (Senate Journal-page 21)
2/22/2023	Senate	Roll call Ayes-45 Nays-0 (Senate Journal-page 21)
2/23/2023	House	Introduced and read first time (House Journal-page 16)
2/23/2023	House	Referred to Committee on Judiciary (House Journal-page 16)
7/27/2023		Scrivener's error corrected

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VERSIONS OF THIS BILL

[11/30/2022](#)
[02/01/2023](#)
[02/02/2023](#)
[02/14/2023](#)
[02/15/2023](#)
[02/21/2023](#)
[02/22/2023](#)
[07/27/2023](#)

~~Indicates Matter Stricken~~
Indicates New Matter

AMENDED
 February 21, 2023

S. 153

Introduced by Senators Young, Gustafson, Senn, Rankin, Adams, Climer, Campsen and Alexander

S. Printed 02/21/23--S.
 Read the first time January 10, 2023

[SEC 7/27/2023 4:05 PM]

A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS, BY AMENDING SECTIONS 44-53-190(B) AND [44-53-370](#)(E), RELATING TO THE TRAFFICKING OFFENSES FOR CERTAIN CONTROLLED SUBSTANCES, SO AS TO ADD AN OFFENSE FOR "TRAFFICKING IN FENTANYL", TO DEFINE NECESSARY TERMS AND PROVIDE PENALTIES; AND BY AMENDING SECTION 44-53-370(D) TO PROVIDE FOR PRESUMPTIVE WEIGHTS FOR POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL OR FENTANYL-RELATED SUBSTANCES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section [44-53-190](#)(B) of the S.C. Code is amended by adding an appropriately numbered new item at the end to read:

___ . Fentanyl-related substances. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, that is structurally related to fentanyl by one or more of the following modifications:

a. replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

b. substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

c. substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

d. replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

e. replacement of the N-propionyl group by another acyl group or hydrogen.

This definition includes, but is not limited to, the following substances: Methylacetyl fentanyl, Alpha-methylfentanyl, Methylthiofentanyl, Benzylfentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylfentanyl, Methylthiofentanyl, Fluorofentanyl, Thenylfentanyl or Thienyl fentanyl, Thiofentanyl, Acetyl fentanyl, Butyrylfentanyl, Beta-Hydroxythiofentanyl, Lofentanil, Ocfentanil, Ohmfentanyl, Benzodioxolefentanyl, Furanyl fentanyl, Pentanoyl fentanyl, Cyclopentyl fentanyl, Isobutyryl fentanyl, Remifentanil, Crotonyl fentanyl, Cyclopropyl fentanyl, Valeryl fentanyl, Fluorobutyryl fentanyl, Fluoroisobutyryl fentanyl, Methoxybutyryl Fentanyl, Isobutyryl fentanyl, Chloroisobutyryl fentanyl, Acryl fentanyl, Tetrahydrofuran fentanyl, Methoxyacetyl fentanyl, Fluorocrotonyl fentanyl, Cyclopentenyl fentanyl, Phenyl fentanyl, Cyclobutyl fentanyl, Methylcyclopropyl fenantyl.

SECTION 2. Section [44-53-370](#)(e) of the S.C. Code is amended by adding an appropriately numbered new item at the end to read:

() four grams or more of any fentanyl or fentanyl-related substance, as described in Section 44-53-190 or [44-53-210](#), or four grams or more of any mixture containing fentanyl or any fentanyl-related substance, is guilty of a felony which is known as "trafficking in fentanyl" and, upon conviction, must be punished as follows if the quantity involved is:

(a) four grams or more, but less than fourteen grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended or probation granted, and a fine of fifty thousand dollars; or

2. for a second or subsequent offense, a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended or probation granted, and a fine of one hundred thousand dollars;

(b) fourteen grams or more but less than twenty-eight grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(c) twenty-eight grams or more, a mandatory term of imprisonment of not less than twenty-five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

SECTION 3. Section [44-53-370](#)(d) of the S.C. Code is amended to read:

(d) A person who violates subsection (c) with respect to:

(1) a controlled substance classified in Schedule I (B) and (C) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than two thousand dollars, or both, except as provided in subsection (d)(4). Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(3) cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense, the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(4) more than two grains of fentanyl or fentanyl-related substance is guilty of a felony and, upon conviction, must be imprisoned not more than 5 years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than 15 years or fined not more than ten thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits;

(5) possession of more than: one gram of cocaine, one hundred milligrams of alpha- or beta-eucaine, four grains of opium, four grains of morphine, two grains of heroin, two grains of fentanyl or a fentanyl-related substance as described in Section 44-53-190 or 44-53-210, one hundred milligrams of isonipocaine, twenty-eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4-methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to twenty-eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section [44-53-450](#) upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections [17-22-10](#) through [17-22-160](#). For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence

suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section [14-1-206](#), [14-1-207](#), or [14-1-208](#), whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section [14-1-205](#). The assessment portion of the bail must be distributed as provided in Section [14-1-206](#), [14-1-207](#), or [14-1-208](#), whichever is applicable.

SECTION 4. Chapter 53, Title 44 of the S.C. Code is amended by adding:

Section 44-53-393. Notwithstanding any provision of law to the contrary, the term "drug paraphernalia" as defined in Section [44-53-110](#) shall not include rapid fentanyl test strips or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent, or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect upon approval by the Governor.

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