

Senate Engrossed House Bill
fentanyl sales; manufacture; sentencing; testing

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2802

AN ACT

AMENDING SECTION 13-3408, ARIZONA REVISED STATUTES; RELATING TO DRUG
OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3408, Arizona Revised Statutes, is amended to
3 read:
4 13-3408. Possession, use, administration, acquisition, sale,
5 manufacture or transportation of narcotic drugs;
6 mandatory fentanyl testing; classification;
7 definition
8 A. Except as provided in section 36-2850, paragraph ~~16~~ 19,
9 subdivision (b), section 36-2852 and section 36-2853, subsection C, a
10 person shall not knowingly:
11 1. Possess or use a narcotic drug.
12 2. Possess a narcotic drug for sale.
13 3. Possess equipment or chemicals, or both, for the purpose of
14 manufacturing a narcotic drug.
15 4. Manufacture a narcotic drug.
16 5. Administer a narcotic drug to another person.
17 6. Obtain or procure the administration of a narcotic drug by
18 fraud, deceit, misrepresentation or subterfuge.
19 7. Transport for sale, import into this state, offer to transport
20 for sale or import into this state, sell, transfer or offer to sell or
21 transfer a narcotic drug.
22 B. A person who violates:
23 1. Subsection A, paragraph 1 of this section is guilty of a class 4
24 felony.
25 2. Subsection A, paragraph 2 of this section is guilty of a class 2
26 felony.
27 3. Subsection A, paragraph 3 of this section is guilty of a class 3
28 felony.
29 4. Subsection A, paragraph 4 of this section is guilty of a class 2
30 felony.
31 5. Subsection A, paragraph 5 of this section is guilty of a class 2
32 felony.
33 6. Subsection A, paragraph 6 of this section is guilty of a class 3
34 felony.
35 7. Subsection A, paragraph 7 of this section is guilty of a class 2
36 felony.
37 C. **EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** a person who
38 is convicted of a violation of subsection A, paragraph 1, 3 or 6 of this
39 section and who has not previously been convicted of any felony or who has
40 not been sentenced pursuant to section 13-703, section 13-704, subsection
41 A, B, C, D or E, section 13-706, subsection A, section 13-708, subsection
42 D or any other provision of law making the convicted person ineligible for
43 probation is eligible for probation.
44 D. **EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** if the
45 aggregate amount of narcotic drugs involved in one offense or all of the

1 offenses that are consolidated for trial equals or exceeds the statutory
2 threshold amount, a person who is convicted of a violation of subsection
3 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of
4 sentence, probation, pardon or release from confinement on any basis until
5 the person has served the sentence imposed by the court, the person is
6 eligible for release pursuant to section 41-1604.07 or the sentence is
7 commuted.

8 E. A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A,
9 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING A SINGLE UNIT DOSE THAT
10 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL SHALL BE SENTENCED AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
5 CALENDAR YEARS	10 CALENDAR YEARS	15 CALENDAR YEARS

13 A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A,
14 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING A SINGLE UNIT DOSE THAT
15 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL SHALL BE SENTENCED AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
10 CALENDAR YEARS	15 CALENDAR YEARS	20 CALENDAR YEARS

17 ~~F.~~ F. A person who is convicted of a violation of SUBSECTION A,
18 PARAGRAPH 2, 3 OR 7 OF THIS SECTION INVOLVING A SINGLE UNIT DOSE THAT
19 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL OR A VIOLATION OF subsection
20 A, paragraph 4 of this section is not eligible for suspension of sentence,
21 probation, pardon or release from confinement on any basis until the
22 person has served the sentence imposed by the court, the person is
23 eligible for release pursuant to section 41-1604.07 or the sentence is
24 commuted.
25

26 G. SUBSECTIONS E AND F OF THIS SECTION DO NOT APPLY TO A PERSON WHO
27 IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 7 OF THIS SECTION
28 THAT INVOLVES THE TRANSFER OR OFFER TO TRANSFER A SINGLE UNIT DOSE THAT
29 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL.

30 ~~F.~~ H. In addition to any other penalty prescribed by this title,
31 the court shall order a person who is convicted of a violation of this
32 section to pay a fine of not less than \$2,000 or three times the value as
33 determined by the court of the narcotic drugs involved in or giving rise
34 to the charge, whichever is greater, and not more than the maximum
35 authorized by chapter 8 of this title. A judge shall not suspend any part
36 or all of the imposition of any fine required by this subsection.

37 ~~G.~~ I. A person who is convicted of a violation of this section for
38 which probation or release before the expiration of the sentence imposed
39 by the court is authorized is prohibited from using any marijuana,
40 dangerous drug, narcotic drug or prescription-only drug except as lawfully
41 administered by a health care practitioner and as a condition of any
42 probation or release shall be required to submit to drug testing
43 administered under the supervision of the probation department of the
44 county or the state department of corrections, as appropriate, during the

1 duration of the term of probation or before the expiration of the sentence
2 imposed.

3 ~~H.~~ J. If a person who is convicted of a violation of this section
4 is granted probation, the court shall order that as a condition of
5 probation the person perform not less than three hundred sixty hours of
6 community restitution with an agency or organization that provides
7 counseling, rehabilitation or treatment for alcohol or drug abuse, an
8 agency or organization that provides medical treatment to persons who
9 abuse controlled substances, an agency or organization that serves persons
10 who are victims of crime or any other appropriate agency or organization.

11 K. A LAW ENFORCEMENT AGENCY THAT CONFISCATES FENTANYL DURING THE
12 COURSE OF AN INVESTIGATION OF A VIOLATION OF THIS SECTION INVOLVING
13 FENTANYL SHALL SUBMIT A SUFFICIENT SAMPLE OF THE FENTANYL TO AN ACCREDITED
14 CRIME LABORATORY FOR TESTING TO DETERMINE THE APPROPRIATE CRIMINAL
15 VIOLATION.

16 L. FOR THE PURPOSES OF THIS SECTION, "SINGLE UNIT DOSE" MEANS A
17 SINGLE AMOUNT OR UNIT OF A MATERIAL, COMPOUND, MIXTURE OR PREPARATION THAT
18 IS SEPARATELY IDENTIFIABLE AND THAT IS IN A PILL, TABLET OR CAPLET FORM OR
19 ANY OTHER FORM THAT INDICATES THAT IT IS THE AMOUNT OR UNIT BY WHICH THE
20 MATERIAL, COMPOUND, MIXTURE OR PREPARATION IS SEPARATELY ADMINISTERED TO
21 OR TAKEN BY A PERSON.