

2018 Regular Session

HOUSE BILL NO. 185

BY REPRESENTATIVES MARINO AND BACALA

CONTROLLED SUBSTANCES: Provides relative to criminal penalties for violations involving fentanyl and carfentanil

1

AN ACT

2 To amend and reenact R.S. 40:966(B)(3), (C)(4)(introductory paragraph), and (G) and to
3 enact R.S. 40:967(B)(4), (C)(4), and (E), relative to controlled dangerous substances;
4 to provide relative to the substances fentanyl and carfentanil; to provide relative to
5 criminal penalties; to provide relative to treatment; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:966(B)(3), (C)(4)(introductory paragraph), and (G) are hereby
8 amended and reenacted and R.S. 40:967(B)(4), (C)(4), and (E) are hereby enacted to read
9 as follows:

10 §966. Penalty for distribution or possession with intent to distribute narcotic drugs
11 listed in Schedule I; possession of marijuana, ~~possession of~~ synthetic
12 cannabinoids, ~~possession of~~ and heroin

13 * * *

14 B. Violations of Subsection A. Any person who violates Subsection A of
15 this Section with respect to:

16 * * *

17 (3) A substance classified in Schedule I that is the narcotic drug heroin ~~or a~~
18 ~~mixture or substance containing a detectable amount of heroin or of its analogues or~~
19 ~~a mixture or substance containing a detectable amount of heroin or its analogues, or~~
20 ~~fentanyl or a mixture of substances containing a detectable amount of fentanyl or its~~
21 ~~analogues;~~ upon conviction for any amount, shall be imprisoned at hard labor for not

1 less than five years nor more than forty years and may, in addition, be required to
2 pay a fine of not more than fifty thousand dollars.

3 C. Possession. It is unlawful for any person knowingly or intentionally to
4 possess a controlled dangerous substance classified in Schedule I unless such
5 substance was obtained directly, or pursuant to a valid prescription or order, from a
6 practitioner or as provided in R.S. 40:978, while acting in the course of his
7 professional practice, or except as otherwise authorized by this Part. Any person
8 who violates this Subsection with respect to:

9 * * *

10 (4) A substance classified in Schedule I that is the narcotic drug heroin or a
11 mixture or substance containing a detectable amount of heroin or of its analogues,
12 ~~or fentanyl or a mixture or substance containing a detectable amount of fentanyl or~~
13 ~~its analogues~~, upon conviction for an amount:

14 * * *

15 G. Treatment for heroin ~~and fentanyl~~ addiction as a condition for probation.
16 (1) Upon conviction of Paragraph (B)(3) or (C)(4) of this Section, possession with
17 intent to distribute heroin ~~or fentanyl~~ or possession of heroin ~~or fentanyl~~, the court
18 may suspend any sentence which it imposes and place the defendant on probation
19 pursuant to Code of Criminal Procedure Article 893. The court may order the
20 division of probation and parole of the Department of Public Safety and Corrections
21 to conduct a presentence investigation, or may order the defendant to obtain a
22 substance abuse evaluation, for the purpose of determining whether the defendant
23 has a substance abuse disorder.

24 * * *

25 §967. Prohibited acts--Schedule II, penalties

26 * * *

27 B. Violations of Subsection A. Any person who violates Subsection A of
28 this Section with respect to:

29 * * *

1 (4) Fentanyl or a mixture or substance containing a detectable amount of
2 fentanyl or its analogues, or carfentanil or a mixture or substance containing a
3 detectable amount of carfentanil or its analogues, upon conviction for any amount,
4 shall be imprisoned at hard labor for not less than five years nor more than forty
5 years and may, in addition, be required to pay a fine of not more than fifty thousand
6 dollars.

7 C. Possession. It is unlawful for any person knowingly or intentionally to
8 possess a controlled dangerous substance as classified in Schedule II unless such
9 substance was obtained directly or pursuant to a valid prescription or order from a
10 practitioner, as provided in R.S. 40:978 while acting in the course of his professional
11 practice, or except as otherwise authorized by this Part. Any person who violates
12 this Subsection with respect to:

13 * * *

14 (4) Fentanyl or a mixture or substance containing a detectable amount of
15 fentanyl or its analogues, or carfentanil or a mixture or substance containing a
16 detectable amount of carfentanil or its analogues, upon conviction for an amount:
17 (a) An aggregate weight of less than two grams, shall be sentenced to a term
18 of imprisonment, with or without hard labor, for not less than two years nor more
19 than four years.

20 (b) An aggregate weight of two grams or more but less than twenty-eight
21 grams, shall be sentenced to a term of imprisonment, with or without hard labor, for
22 not less than two years nor more than ten years and may, in addition be required to
23 pay a fine of not more than five thousand dollars.

24 * * *

25 E. Treatment for fentanyl or carfentanil addiction as a condition for
26 probation. (1) Upon conviction of Paragraph (B)(4) or (C)(4) of this Section,
27 possession with intent to distribute fentanyl or carfentanil or possession of fentanyl
28 or carfentanil, the court may suspend any sentence which it imposes and place the
29 defendant on probation pursuant to Article 893 of the Code of Criminal Procedure.

1 The court may order the division of probation and parole of the Department of Public
2 Safety and Corrections to conduct a presentence investigation, or may order the
3 defendant to obtain a substance abuse evaluation, for the purpose of determining
4 whether the defendant has a substance abuse disorder.

5 (2) Upon receiving the report or evaluation, the court shall, if it finds
6 probable cause from such report to believe the defendant has a substance abuse
7 disorder, order a contradictory hearing for the purpose of making a judicial
8 determination on whether the defendant has a substance abuse disorder.

9 (3) If, at such contradictory hearing, the court determines that the defendant
10 has a substance abuse disorder, it shall require as a condition of probation that the
11 defendant complete a drug treatment program if the following conditions are met:

12 (a) There is an available program in the local jurisdiction that has sufficient
13 experience in working with criminal justice participants with substance abuse
14 disorders and is certified and approved by the state of Louisiana.

15 (b) The cost of the approved treatment does not create a substantial financial
16 hardship to the defendant or his dependents. For purposes of this determination,
17 "substantial financial hardship" shall have the same meaning as provided in R.S.
18 15:175.

19 (4) If the offender does not successfully complete the drug treatment
20 program, or otherwise violates the conditions of his probation, the court may revoke
21 the probation or impose other sanctions pursuant to Article 900 of the Code of
22 Criminal Procedure.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 185 Original

2018 Regular Session

Marino

Abstract: Relocates the existing criminal penalties for fentanyl to correspond to its classification as a Schedule II controlled dangerous substance, and applies those same criminal penalties to the substance carfentanil.

Present law classifies fentanyl as a Schedule II substance in the Uniform Controlled Dangerous Substances Law but provides for criminal penalties as follows in the penalty provisions involving Schedule I substances:

- (1) Manufacture or distribution of fentanyl, or a mixture or substance including fentanyl - penalties include imprisonment at hard labor for five to forty years, and may include a fine not to exceed \$50,000.
- (2) Possession of fentanyl or a mixture or substance containing fentanyl - penalties are as follows:
 - (a) An aggregate weight of less than two grams - imprisonment, with or without hard labor, for not less than two years nor more than four years.
 - (b) An aggregate weight of two grams or more but less than twenty-eight grams - imprisonment, with or without hard labor, for not less than two years nor more than ten years and may include a fine of not more than \$5,000.

Proposed law retains the present law classification of fentanyl as a Schedule II substance and retains the present law criminal penalties, but relocates those penalties to the penalty provisions in Schedule II. Proposed law further applies these present law penalties to violations involving the substance carfentanil.

Present law authorizes substance abuse treatment and probation in certain cases of possession or possession with intent to distribute heroin or fentanyl. Requires a contradictory hearing to determine the presence of a substance abuse disorder, and provides for the revocation of probation or other sanctions for the failure to complete treatment or other conditions of probation.

Proposed law retains present law but relocates these provisions applicable to fentanyl to the penalty provisions in Schedule II, and makes the present law treatment provisions applicable to carfentanil as well.

(Amends R.S. 40:966(B)(3), (C)(4)(intro. para.), and (G); Adds R.S. 40:967(B)(4), (C)(4), and (E))