

118TH CONGRESS
1ST SESSION

S. 878

To amend the Controlled Substances Act and the Controlled Substances Import and Export Act to modify the offenses relating to fentanyl, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2023

Mr. KENNEDY (for himself, Mr. COTTON, Mr. GRAHAM, Mr. CRUZ, and Mrs. BRITT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Controlled Substances Act and the Controlled Substances Import and Export Act to modify the offenses relating to fentanyl, and for other purposes.

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 “Fairness in Fentanyl
5 Sentencing Act of 2023”.

6 **SEC. 2. CONTROLLED SUBSTANCES ACT AMENDMENTS.**

7 Section 401(b)(1) of the Controlled Substances Act
8 (21 U.S.C. 841(b)(1)) is amended—

9 (1) in subparagraph (A)(vi)—

1 (A) by striking “400” and inserting “20”;

2 (B) by striking “100” and inserting “5”;

3 and

4 (C) by inserting “scheduled or unsched-
5 uled” before “analogue of”; and

6 (2) in subparagraph (B)(vi)—

7 (A) by striking “40” and inserting “2”;

8 (B) by striking “10” and inserting “0.5”;

9 and

10 (C) by inserting “scheduled or unsched-
11 uled” before “analogue of”.

12 **SEC. 3. CONTROLLED SUBSTANCES IMPORT AND EXPORT**
13 **ACT AMENDMENTS.**

14 Section 1010(b) of the Controlled Substances Import
15 and Export Act (21 U.S.C. 960(b)) is amended—

16 (1) in paragraph (1)(F)—

17 (A) by striking “400” and inserting “20”;

18 (B) by striking “100” and inserting “5”;

19 and

20 (C) by inserting “scheduled or unsched-
21 uled” before “analogue of”; and

22 (2) in paragraph (2)(F)—

23 (A) by striking “40” and inserting “2”;

24 (B) by striking “10” and inserting “0.5”;

25 and

1 (C) by inserting “scheduled or unsched-
2 uled” before “analogue of”.

3 **SEC. 4. DIRECTIVE TO THE SENTENCING COMMISSION.**

4 (a) DEFINITION.—In this section, the term “Commis-
5 sion” means the United States Sentencing Commission.

6 (b) DIRECTIVE TO THE UNITED STATES SEN-
7 TENCING COMMISSION.—Pursuant to the authority of the
8 Commission under section 994(p) of title 28, United
9 States Code, and in accordance with this section, the Com-
10 mission shall review and amend, if appropriate, the guide-
11 lines and policy statements of the Commission applicable
12 to a person convicted of an offense under section 401 of
13 the Controlled Substances Act (21 U.S.C. 841) or section
14 1010 of the Controlled Substances Import and Export Act
15 (21 U.S.C. 960) to ensure that the guidelines and policy
16 statements are consistent with the amendments made by
17 sections 2 and 3 of this Act.

18 (c) EMERGENCY AUTHORITY.—The Commission
19 shall—

20 (1) promulgate the guidelines, policy state-
21 ments, or amendments provided for in this Act as
22 soon as practicable, and in any event not later than
23 120 days after the date of enactment of this Act, in
24 accordance with the procedure set forth in section
25 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994

1 note), as though the authority under that Act had
2 not expired; and

3 (2) pursuant to the emergency authority pro-
4 vided under paragraph (1), make such conforming
5 amendments to the Federal sentencing guidelines as
6 the Commission determines necessary to achieve
7 consistency with other guideline provisions and ap-
8 plicable law.

9 **SEC. 5. INTERDICTION OF FENTANYL, OTHER SYNTHETIC**
10 **OPIOIDS, AND OTHER NARCOTICS AND**
11 **PSYCHOACTIVE SUBSTANCES.**

12 (a) DEFINITIONS.—In this section—

13 (1) the term “chemical screening device” means
14 an immunoassay, narcotics field test kit, infrared
15 spectrophotometer, mass spectrometer, nuclear mag-
16 netic resonance spectrometer, Raman spectrophoto-
17 meter, or other scientific instrumentation able to col-
18 lect data that can be interpreted to determine the
19 presence of fentanyl, other synthetic opioids, and
20 other narcotics and psychoactive substances;

21 (2) the term “express consignment operator or
22 carrier” has the meaning given the term in section
23 128.1 of title 19, Code of Federal Regulations, or
24 any successor thereto; and

1 (3) the term “Postmaster General” means the
2 Postmaster General of the United States Postal
3 Service.

4 (b) INTERDICTION OF FENTANYL, OTHER SYN-
5 THETIC OPIOIDS, AND OTHER NARCOTICS AND
6 PSYCHOACTIVE SUBSTANCES.—

7 (1) CHEMICAL SCREENING DEVICES.—The
8 Postmaster General shall—

9 (A) increase the number of chemical
10 screening devices that are available to the
11 United States Postal Service; and

12 (B) make additional chemical screening de-
13 vices available to the United States Postal Serv-
14 ice as the Postmaster General determines are
15 necessary to interdict fentanyl, other synthetic
16 opioids, and other narcotics and psychoactive
17 substances that are illegally imported into the
18 United States, including such substances that
19 are imported through the mail or by an express
20 consignment operator or carrier.

21 (2) PERSONNEL TO INTERPRET DATA.—The
22 Postmaster General shall dedicate the appropriate
23 number of personnel of the United States Postal
24 Service, including scientists, so that those personnel

1 are available during all operational hours to inter-
2 pret data collected by chemical screening devices.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to the Postmaster General
5 \$9,000,000 to ensure that the United States Postal Serv-
6 ice has resources, including chemical screening devices,
7 personnel, and scientists, available during all operational
8 hours to prevent, detect, and interdict the unlawful impor-
9 tation of fentanyl, other synthetic opioids, and other nar-
10 cotics and psychoactive substances.

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