

1 S.22

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 12, 2017

5 Subject: Crimes; possession of fentanyl

6 Statement of purpose of bill as introduced: This bill proposes to increase the
7 penalties for possessing, selling, dispensing, or trafficking fentanyl.

8 An act relating to increased penalties for possession, sale, and dispensation
9 of fentanyl

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 18 V.S.A. § 4233a is added to read:~~

12 § 4233a. FENTANYL

13 (a) Possession.

14 (1) A person knowingly and unlawfully possessing fentanyl shall be
15 imprisoned not more than one year or fined not more than \$2,000.00, or both.

16 (2) A person knowingly and unlawfully possessing fentanyl in an
17 amount consisting of 20 milligrams or more of one or more preparations,
18 compounds, mixtures, or substances containing fentanyl shall be imprisoned
19 not more than five years or fined not more than \$100,000.00, or both.

20 ~~(3) A person knowingly and unlawfully possessing fentanyl in an~~

1 ~~amount consisting of 40 milligrams gram or more of one or more preparations,~~
2 compounds, mixtures or substances containing fentanyl shall be imprisoned
3 not more than 10 years or fined not more than \$250,000.00, or both.

4 (4) A person knowingly and unlawfully possessing fentanyl in an
5 amount consisting of 70 milligrams or more of one or more preparations,
6 compounds, mixtures, or substances containing fentanyl shall be imprisoned
7 not more than 20 years or fined not more than \$1,000,000.00, or both.

8 (b) Selling or dispensing:

9 (1) A person knowingly and unlawfully dispensing fentanyl shall be
10 imprisoned not more than three years or fined not more than \$75,000.00, or
11 both. A person knowingly and unlawfully selling fentanyl shall be imprisoned
12 not more than five years or fined not more than \$100,000.00, or both.

13 (2) A person knowingly and unlawfully selling or dispensing fentanyl in
14 an amount consisting of 20 milligrams or more of one or more preparations,
15 compounds, mixtures, or substances containing fentanyl shall be imprisoned
16 not more than 10 years or fined not more than \$250,000.00, or both.

17 (3) A person knowingly and unlawfully selling or dispensing fentanyl in
18 an amount consisting of 40 milligrams or more of one or more preparations,
19 compounds, mixtures, or substances containing fentanyl shall be imprisoned
20 not more than 20 years or fined not more than \$1,000,000.00, or both.

21 ~~(c) Trafficking. A person knowingly and unlawfully possessing fentanyl in~~

1 ~~an amount consisting of 40 milligrams or more of one or more preparations~~
2 ~~compounds, mixtures, or substances containing fentanyl with the intent to sell~~
3 ~~or dispense the fentanyl shall be imprisoned not more than 30 years or fined~~
4 ~~not more than \$1,000,000.00, or both. There shall be a permissive inference~~
5 ~~that a person who possesses fentanyl in an amount of 40 milligrams or more of~~
6 ~~one or more preparations, compounds, mixtures, or substances containing~~
7 ~~fentanyl intends to sell or dispense the fentanyl. The amount of possessed~~
8 ~~fentanyl under this subsection to sustain a charge of conspiracy under~~
9 ~~13 V.S.A. § 1404 shall be no less than 70 milligrams in the aggregate.~~

10 (d) Transportation into the State. In addition to any other penalties
11 provided by law, a person knowingly and unlawfully transporting more than
12 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the
13 fentanyl shall be imprisoned not more than 10 years or fined not more than
14 \$100,000.00, or both.

15 Sec. 2. 18 V.S.A. § 4234 is amended to read:

16 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

17 (a) Possession.

18 (1) A person knowingly and unlawfully possessing a depressant,
19 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be
20 imprisoned not more than one year or fined not more than \$2,000.00, or both.

21 ~~(2) A person knowingly and unlawfully possessing a depressant,~~

1 ~~stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting~~
2 of 100 times a benchmark unlawful dosage or its equivalent as determined by
3 the ~~board of health~~ Board of Health by rule shall be imprisoned not more than
4 five years or fined not more than \$25,000.00, or both.

5 (3) A person knowingly and unlawfully possessing a depressant,
6 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting
7 of 1,000 times a benchmark unlawful dosage or its equivalent as determined
8 by the ~~board of health~~ Board of Health by rule shall be imprisoned not more
9 than 10 years or fined not more than \$100,000.00, or both.

10 (4) A person knowingly and unlawfully possessing a depressant,
11 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting
12 of 10,000 times a benchmark unlawful dosage or its equivalent as determined
13 by the ~~board of health~~ Board of Health by rule shall be imprisoned not more
14 than 20 years or fined not more than \$500,000.00, or both.

15 (b) Selling or dispensing.

16 (1) A person knowingly and unlawfully dispensing a depressant,
17 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be
18 imprisoned not more than three years or fined not more than \$75,000.00, or
19 both. A person knowingly and unlawfully selling a depressant, stimulant, or
20 narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not
21 ~~more than five years or fined not more than \$25,000.00, or both.~~

1 ~~(2) A person knowingly and unlawfully selling or dispensing a~~
2 ~~depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,~~
3 ~~consisting of 100 times a benchmark unlawful dosage or its equivalent as~~
4 ~~determined by the ~~board of health~~ Board of Health by rule shall be imprisoned~~
5 ~~not more than 10 years or fined not more than \$100,000.00, or both.~~

6 (3) A person knowingly and unlawfully selling or dispensing a
7 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,
8 consisting of 1,000 times a benchmark unlawful dosage or its equivalent as
9 determined by the ~~board of health~~ Board of Health by rule shall be imprisoned
10 not more than 20 years or fined not more than \$500,000.00, or both.

11 Sec. 3. EFFECTIVE DATE

12 ~~This act shall take effect on July 1, 2017.~~

Sec. 1. 18 V.S.A. § 4233a is added to read:

§ 4233a. FENTANYL

(a) Possession.

(1) A person knowingly and unlawfully possessing fentanyl shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.

(c) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(d) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

Sec. 2. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

(a) Possession.

(1) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.

(2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(3) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by

~~the board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 10,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

(b) *Selling or dispensing.*

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 3. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law

enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

(1) murder in the first or second degree;

(2) arson under sections 501-504 and 506 of this title;

(3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;

(4) receiving stolen property under sections 2561-2564 of this title; or

(5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:

(A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;

(B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;

(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; ~~or~~

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine;
or

(F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

Sec. 4. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

** * **

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

(i) the name and address of the purchaser;

(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;

(iii) the date and time of purchase;

(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and

(v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than \$100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.

(d) This section shall not apply to a manufacturer which that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) "Distributor" means a person, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(2) "Knowingly" means having actual knowledge of the relevant facts.

(3) "Manufacturer" means a person who produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) "Wholesaler" means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

~~Sec. 5. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2017.~~

Sec. 5. EFFECTIVE DATES

This section and Sec. 4 (ephedrine and pseudoephedrine) shall take effect on passage. The remaining sections shall take effect on July 1, 2017.