



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3210

Introduced 2/17/2023, by Rep. Tony M. McCombie

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Controlled Substances Act. Provides that in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any scheduled drug containing a detectable amount of fentanyl is guilty of a Class X felony and shall be sentenced to a term of imprisonment of not less than 9 years and not more than 40 years or fined not more than \$250,000, or both. Provides that it is a Class 1 felony for which a fine not to exceed \$100,000 may be imposed for any person to knowingly use an electronic communication device in the furtherance of controlled substance trafficking involving a substance containing any amount of fentanyl. Provides that this penalty shall be in addition to any other penalties imposed by law. Provides that in addition to any other penalties imposed, not less than 6 years and not more than 30 years shall be imposed with respect to any amount of carfentanil or fentanyl, or any analog thereof, in excess of 150 milligrams that is stored or transmitted as a powder, blotter paper, tablet, patch, or spray. Provides that in addition to any other penalties imposed, with respect to fentanyl, or an analog thereof, an additional sentence of 5 years shall be imposed if the fentanyl or analog thereof is in a form that resembles, or was mixed, granulated, absorbed, adsorbed, spray-dried, aerosolized as or onto, coated on in whole or in part, or solubilized with or into, a product, where the product or its packaging further has at least one of the following attributes: (1) a resemblance to the trade dress of a consumer food product, branded food product, or logo food product, or incorporates an actual or satirical version of a registered trademark, service mark, or copyright; (2) a bright color or coloring scheme; (3) the appearance of a cereal, candy, vitamin, gummy, or chewable product such as a gum or gelatin-based product; (4) a cartoon character imprint; or (5) incorporation into a separate product or package approved by the United States Food and Drug Administration, or approved by a regulatory agency for food or drug products in another country, if the addition of fentanyl, carfentanil, or any analog thereof, would render the approved product an adulterated product under the standards of the Federal Food, Drug, and Cosmetic Act, or any law of this State or administrative rule. Defines "electronic communication device".

LRB103 26188 RLC 52547 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Controlled Substances Act is
5 amended by changing Sections 401 and 401.1 as follows:

6 (720 ILCS 570/401) (from Ch. 56 1/2, par. 1401)

7 Sec. 401. Manufacture or delivery, or possession with
8 intent to manufacture or deliver, a controlled substance, a
9 counterfeit substance, or controlled substance analog. Except
10 as authorized by this Act, it is unlawful for any person
11 knowingly to manufacture or deliver, or possess with intent to
12 manufacture or deliver, a controlled substance other than
13 methamphetamine and other than bath salts as defined in the
14 Bath Salts Prohibition Act sold or offered for sale in a retail
15 mercantile establishment as defined in Section 16-0.1 of the
16 Criminal Code of 2012, a counterfeit substance, or a
17 controlled substance analog. A violation of this Act with
18 respect to each of the controlled substances listed herein
19 constitutes a single and separate violation of this Act. For
20 purposes of this Section, "controlled substance analog" or
21 "analog" means a substance, other than a controlled substance,
22 which is not approved by the United States Food and Drug
23 Administration or, if approved, is not dispensed or possessed

1 in accordance with State or federal law, and that has a
2 chemical structure substantially similar to that of a
3 controlled substance in Schedule I or II, or that was
4 specifically designed to produce an effect substantially
5 similar to that of a controlled substance in Schedule I or II.
6 Examples of chemical classes in which controlled substance
7 analogs are found include, but are not limited to, the
8 following: phenethylamines, N-substituted piperidines,
9 morphinans, ecgonines, quinazolinones, substituted indoles,
10 and arylcycloalkylamines. For purposes of this Act, a
11 controlled substance analog shall be treated in the same
12 manner as the controlled substance to which it is
13 substantially similar.

14 (a) Any person who violates this Section with respect to
15 the following amounts of controlled or counterfeit substances
16 or controlled substance analogs, notwithstanding any of the
17 provisions of subsections (c), (d), (e), (f), (g) or (h) to the
18 contrary, is guilty of a Class X felony and shall be sentenced
19 to a term of imprisonment as provided in this subsection (a)
20 and fined as provided in subsection (b):

21 (1) (A) not less than 6 years and not more than 30 years
22 with respect to 15 grams or more but less than 100 grams of
23 a substance containing heroin, or an analog thereof;

24 (B) not less than 9 years and not more than 40 years
25 with respect to 100 grams or more but less than 400 grams
26 of a substance containing heroin, or an analog thereof;

1 (C) not less than 12 years and not more than 50 years
2 with respect to 400 grams or more but less than 900 grams
3 of a substance containing heroin, or an analog thereof;

4 (D) not less than 15 years and not more than 60 years
5 with respect to 900 grams or more of any substance
6 containing heroin, or an analog thereof;

7 (1.5) (A) not less than 6 years and not more than 30
8 years with respect to 15 grams or more but less than 100
9 grams of a substance containing fentanyl, or an analog
10 thereof;

11 (B) not less than 9 years and not more than 40 years
12 with respect to 100 grams or more but less than 400 grams
13 of a substance containing fentanyl, or an analog thereof;

14 (C) not less than 12 years and not more than 50 years
15 with respect to 400 grams or more but less than 900 grams
16 of a substance containing fentanyl, or an analog thereof;

17 (D) not less than 15 years and not more than 60 years
18 with respect to 900 grams or more of a substance
19 containing fentanyl, or an analog thereof;

20 (2) (A) not less than 6 years and not more than 30 years
21 with respect to 15 grams or more but less than 100 grams of
22 a substance containing cocaine, or an analog thereof;

23 (B) not less than 9 years and not more than 40 years
24 with respect to 100 grams or more but less than 400 grams
25 of a substance containing cocaine, or an analog thereof;

26 (C) not less than 12 years and not more than 50 years

1 with respect to 400 grams or more but less than 900 grams
2 of a substance containing cocaine, or an analog thereof;

3 (D) not less than 15 years and not more than 60 years
4 with respect to 900 grams or more of any substance
5 containing cocaine, or an analog thereof;

6 (3) (A) not less than 6 years and not more than 30 years
7 with respect to 15 grams or more but less than 100 grams of
8 a substance containing morphine, or an analog thereof;

9 (B) not less than 9 years and not more than 40 years
10 with respect to 100 grams or more but less than 400 grams
11 of a substance containing morphine, or an analog thereof;

12 (C) not less than 12 years and not more than 50 years
13 with respect to 400 grams or more but less than 900 grams
14 of a substance containing morphine, or an analog thereof;

15 (D) not less than 15 years and not more than 60 years
16 with respect to 900 grams or more of a substance
17 containing morphine, or an analog thereof;

18 (4) 200 grams or more of any substance containing
19 peyote, or an analog thereof;

20 (5) 200 grams or more of any substance containing a
21 derivative of barbituric acid or any of the salts of a
22 derivative of barbituric acid, or an analog thereof;

23 (6) 200 grams or more of any substance containing
24 amphetamine or any salt of an optical isomer of
25 amphetamine, or an analog thereof;

26 (6.5) (blank);

1 (6.6) (blank);

2 (7) (A) not less than 6 years and not more than 30 years
3 with respect to: (i) 15 grams or more but less than 100
4 grams of a substance containing lysergic acid diethylamide
5 (LSD), or an analog thereof, or (ii) 15 or more objects or
6 15 or more segregated parts of an object or objects but
7 less than 200 objects or 200 segregated parts of an object
8 or objects containing in them or having upon them any
9 amounts of any substance containing lysergic acid
10 diethylamide (LSD), or an analog thereof;

11 (B) not less than 9 years and not more than 40 years
12 with respect to: (i) 100 grams or more but less than 400
13 grams of a substance containing lysergic acid diethylamide
14 (LSD), or an analog thereof, or (ii) 200 or more objects or
15 200 or more segregated parts of an object or objects but
16 less than 600 objects or less than 600 segregated parts of
17 an object or objects containing in them or having upon
18 them any amount of any substance containing lysergic acid
19 diethylamide (LSD), or an analog thereof;

20 (C) not less than 12 years and not more than 50 years
21 with respect to: (i) 400 grams or more but less than 900
22 grams of a substance containing lysergic acid diethylamide
23 (LSD), or an analog thereof, or (ii) 600 or more objects or
24 600 or more segregated parts of an object or objects but
25 less than 1500 objects or 1500 segregated parts of an
26 object or objects containing in them or having upon them

1 any amount of any substance containing lysergic acid
2 diethylamide (LSD), or an analog thereof;

3 (D) not less than 15 years and not more than 60 years
4 with respect to: (i) 900 grams or more of any substance
5 containing lysergic acid diethylamide (LSD), or an analog
6 thereof, or (ii) 1500 or more objects or 1500 or more
7 segregated parts of an object or objects containing in
8 them or having upon them any amount of a substance
9 containing lysergic acid diethylamide (LSD), or an analog
10 thereof;

11 (7.5) (A) not less than 6 years and not more than 30 years
12 with respect to: (i) 15 grams or more but less than 100
13 grams of a substance listed in paragraph (1), (2), (2.1),
14 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or
15 (26) of subsection (d) of Section 204, or an analog or
16 derivative thereof, or (ii) 15 or more pills, tablets,
17 caplets, capsules, or objects but less than 200 pills,
18 tablets, caplets, capsules, or objects containing in them
19 or having upon them any amounts of any substance listed in
20 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
21 (20.1), (21), (25), or (26) of subsection (d) of Section
22 204, or an analog or derivative thereof;

23 (B) not less than 9 years and not more than 40 years
24 with respect to: (i) 100 grams or more but less than 400
25 grams of a substance listed in paragraph (1), (2), (2.1),
26 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or

1 (26) of subsection (d) of Section 204, or an analog or
2 derivative thereof, or (ii) 200 or more pills, tablets,
3 caplets, capsules, or objects but less than 600 pills,
4 tablets, caplets, capsules, or objects containing in them
5 or having upon them any amount of any substance listed in
6 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
7 (20.1), (21), (25), or (26) of subsection (d) of Section
8 204, or an analog or derivative thereof;

9 (C) not less than 12 years and not more than 50 years
10 with respect to: (i) 400 grams or more but less than 900
11 grams of a substance listed in paragraph (1), (2), (2.1),
12 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or
13 (26) of subsection (d) of Section 204, or an analog or
14 derivative thereof, or (ii) 600 or more pills, tablets,
15 caplets, capsules, or objects but less than 1,500 pills,
16 tablets, caplets, capsules, or objects containing in them
17 or having upon them any amount of any substance listed in
18 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
19 (20.1), (21), (25), or (26) of subsection (d) of Section
20 204, or an analog or derivative thereof;

21 (D) not less than 15 years and not more than 60 years
22 with respect to: (i) 900 grams or more of any substance
23 listed in paragraph (1), (2), (2.1), (2.2), (3), (14.1),
24 (19), (20), (20.1), (21), (25), or (26) of subsection (d)
25 of Section 204, or an analog or derivative thereof, or
26 (ii) 1,500 or more pills, tablets, caplets, capsules, or

1 objects containing in them or having upon them any amount
2 of a substance listed in paragraph (1), (2), (2.1), (2.2),
3 (3), (14.1), (19), (20), (20.1), (21), (25), or (26) of
4 subsection (d) of Section 204, or an analog or derivative
5 thereof;

6 (8) 30 grams or more of any substance containing
7 pentazocine or any of the salts, isomers and salts of
8 isomers of pentazocine, or an analog thereof;

9 (9) 30 grams or more of any substance containing
10 methaqualone or any of the salts, isomers and salts of
11 isomers of methaqualone, or an analog thereof;

12 (10) 30 grams or more of any substance containing
13 phencyclidine or any of the salts, isomers and salts of
14 isomers of phencyclidine (PCP), or an analog thereof;

15 (10.5) 30 grams or more of any substance containing
16 ketamine or any of the salts, isomers and salts of isomers
17 of ketamine, or an analog thereof;

18 (10.6) 100 grams or more of any substance containing
19 hydrocodone, or any of the salts, isomers and salts of
20 isomers of hydrocodone, or an analog thereof;

21 (10.7) (blank);

22 (10.8) 100 grams or more of any substance containing
23 dihydrocodeine, or any of the salts, isomers and salts of
24 isomers of dihydrocodeine, or an analog thereof;

25 (10.9) 100 grams or more of any substance containing
26 oxycodone, or any of the salts, isomers and salts of

1 isomers of oxycodone, or an analog thereof;

2 (11) 200 grams or more of any substance containing any
3 other controlled substance classified in Schedules I or
4 II, or an analog thereof, which is not otherwise included
5 in this subsection.

6 (b) Any person sentenced with respect to violations of
7 paragraph (1), (2), (3), (7), or (7.5) of subsection (a)
8 involving 100 grams or more of the controlled substance named
9 therein, may in addition to the penalties provided therein, be
10 fined an amount not more than \$500,000 or the full street value
11 of the controlled or counterfeit substance or controlled
12 substance analog, whichever is greater. The term "street
13 value" shall have the meaning ascribed in Section 110-5 of the
14 Code of Criminal Procedure of 1963. Any person sentenced with
15 respect to any other provision of subsection (a), may in
16 addition to the penalties provided therein, be fined an amount
17 not to exceed \$500,000.

18 (b-1) Excluding violations of this Act when the controlled
19 substance is fentanyl, any person sentenced to a term of
20 imprisonment with respect to violations of Section 401, 401.1,
21 405, 405.1, 405.2, or 407, when the substance containing the
22 controlled substance contains any amount of fentanyl, 3 years
23 shall be added to the term of imprisonment imposed by the
24 court, and the maximum sentence for the offense shall be
25 increased by 3 years.

26 (c) Any person who violates this Section with regard to

1 the following amounts of controlled or counterfeit substances
2 or controlled substance analogs, notwithstanding any of the
3 provisions of subsections (a), (b), (d), (e), (f), (g) or (h)
4 to the contrary, is guilty of a Class 1 felony. The fine for
5 violation of this subsection (c) shall not be more than
6 \$250,000:

7 (1) 1 gram or more but less than 15 grams of any
8 substance containing heroin, or an analog thereof;

9 (1.5) 1 gram or more but less than 15 grams of any
10 substance containing fentanyl, or an analog thereof;

11 (2) 1 gram or more but less than 15 grams of any
12 substance containing cocaine, or an analog thereof;

13 (3) 10 grams or more but less than 15 grams of any
14 substance containing morphine, or an analog thereof;

15 (4) 50 grams or more but less than 200 grams of any
16 substance containing peyote, or an analog thereof;

17 (5) 50 grams or more but less than 200 grams of any
18 substance containing a derivative of barbituric acid or
19 any of the salts of a derivative of barbituric acid, or an
20 analog thereof;

21 (6) 50 grams or more but less than 200 grams of any
22 substance containing amphetamine or any salt of an optical
23 isomer of amphetamine, or an analog thereof;

24 (6.5) (blank);

25 (7) (i) 5 grams or more but less than 15 grams of any
26 substance containing lysergic acid diethylamide (LSD), or

1 an analog thereof, or (ii) more than 10 objects or more
2 than 10 segregated parts of an object or objects but less
3 than 15 objects or less than 15 segregated parts of an
4 object containing in them or having upon them any amount
5 of any substance containing lysergic acid diethylamide
6 (LSD), or an analog thereof;

7 (7.5) (i) 5 grams or more but less than 15 grams of any
8 substance listed in paragraph (1), (2), (2.1), (2.2), (3),
9 (14.1), (19), (20), (20.1), (21), (25), or (26) of
10 subsection (d) of Section 204, or an analog or derivative
11 thereof, or (ii) more than 10 pills, tablets, caplets,
12 capsules, or objects but less than 15 pills, tablets,
13 caplets, capsules, or objects containing in them or having
14 upon them any amount of any substance listed in paragraph
15 (1), (2), (2.1), (2.2), (3), (14.1), (19), (20), (20.1),
16 (21), (25), or (26) of subsection (d) of Section 204, or an
17 analog or derivative thereof;

18 (8) 10 grams or more but less than 30 grams of any
19 substance containing pentazocine or any of the salts,
20 isomers and salts of isomers of pentazocine, or an analog
21 thereof;

22 (9) 10 grams or more but less than 30 grams of any
23 substance containing methaqualone or any of the salts,
24 isomers and salts of isomers of methaqualone, or an analog
25 thereof;

26 (10) 10 grams or more but less than 30 grams of any

1 substance containing phencyclidine or any of the salts,
2 isomers and salts of isomers of phencyclidine (PCP), or an
3 analog thereof;

4 (10.5) 10 grams or more but less than 30 grams of any
5 substance containing ketamine or any of the salts, isomers
6 and salts of isomers of ketamine, or an analog thereof;

7 (10.6) 50 grams or more but less than 100 grams of any
8 substance containing hydrocodone, or any of the salts,
9 isomers and salts of isomers of hydrocodone, or an analog
10 thereof;

11 (10.7) (blank);

12 (10.8) 50 grams or more but less than 100 grams of any
13 substance containing dihydrocodeine, or any of the salts,
14 isomers and salts of isomers of dihydrocodeine, or an
15 analog thereof;

16 (10.9) 50 grams or more but less than 100 grams of any
17 substance containing oxycodone, or any of the salts,
18 isomers and salts of isomers of oxycodone, or an analog
19 thereof;

20 (11) 50 grams or more but less than 200 grams of any
21 substance containing a substance classified in Schedules I
22 or II, or an analog thereof, which is not otherwise
23 included in this subsection.

24 (c-5) (Blank).

25 (d) Any person who violates this Section with regard to
26 any other amount of a controlled or counterfeit substance

1 containing dihydrocodeine or classified in Schedules I or II,
2 or an analog thereof, which is (i) a narcotic drug, (ii)
3 lysergic acid diethylamide (LSD) or an analog thereof, (iii)
4 any substance containing amphetamine or fentanyl or any salt
5 or optical isomer of amphetamine or fentanyl, or an analog
6 thereof, or (iv) any substance containing N-Benzylpiperazine
7 (BZP) or any salt or optical isomer of N-Benzylpiperazine
8 (BZP), or an analog thereof, is guilty of a Class 2 felony. The
9 fine for violation of this subsection (d) shall not be more
10 than \$200,000.

11 (d-1) In addition to any other penalties provided by law,
12 a person knowingly and unlawfully selling or dispensing any
13 scheduled drug containing a detectable amount of fentanyl is
14 guilty of a Class X felony and shall be sentenced to a term of
15 imprisonment of not less than 9 years and not more than 40
16 years or fined not more than \$250,000, or both.

17 (d-2) In addition to any other penalties imposed under
18 this Section, not less than 6 years and not more than 30 years
19 shall be imposed with respect to any amount of carfentanil or
20 fentanyl, or any analog thereof, in excess of 150 milligrams
21 that is stored or transmitted as a powder, blotter paper,
22 tablet, patch, or spray.

23 (d-3) In addition to any other penalties imposed under
24 this Section, with respect to fentanyl, or an analog thereof,
25 an additional sentence of 5 years shall be imposed if the
26 fentanyl or analog thereof is in a form that resembles, or was

1 mixed, granulated, absorbed, adsorbed, spray-dried,
2 aerosolized as or onto, coated on in whole or in part, or
3 solubilized with or into, a product, where the product or its
4 packaging further has at least one of the following
5 attributes:

6 (1) a resemblance to the trade dress of a consumer
7 food product, branded food product, or logo food product,
8 or incorporates an actual or satirical version of a
9 registered trademark, service mark, or copyright;

10 (2) a bright color or coloring scheme;

11 (3) the appearance of a cereal, candy, vitamin, gummy,
12 or chewable product such as a gum or gelatin-based
13 product;

14 (4) a cartoon character imprint; or

15 (5) incorporation into a separate product or package
16 approved by the United States Food and Drug
17 Administration, or approved by a regulatory agency for
18 food or drug products in another country, if the addition
19 of fentanyl, carfentanil, or any analog thereof, would
20 render the approved product an adulterated product under
21 the standards of the Federal Food, Drug, and Cosmetic Act,
22 or any law of this State or administrative rule.

23 (d-5) (Blank).

24 (e) Any person who violates this Section with regard to
25 any other amount of a controlled substance other than
26 methamphetamine or counterfeit substance classified in

1 Schedule I or II, or an analog thereof, which substance is not
2 included under subsection (d) of this Section, is guilty of a
3 Class 3 felony. The fine for violation of this subsection (e)
4 shall not be more than \$150,000.

5 (f) Any person who violates this Section with regard to
6 any other amount of a controlled or counterfeit substance
7 classified in Schedule III is guilty of a Class 3 felony. The
8 fine for violation of this subsection (f) shall not be more
9 than \$125,000.

10 (g) Any person who violates this Section with regard to
11 any other amount of a controlled or counterfeit substance
12 classified in Schedule IV is guilty of a Class 3 felony. The
13 fine for violation of this subsection (g) shall not be more
14 than \$100,000.

15 (h) Any person who violates this Section with regard to
16 any other amount of a controlled or counterfeit substance
17 classified in Schedule V is guilty of a Class 3 felony. The
18 fine for violation of this subsection (h) shall not be more
19 than \$75,000.

20 (i) This Section does not apply to the manufacture,
21 possession or distribution of a substance in conformance with
22 the provisions of an approved new drug application or an
23 exemption for investigational use within the meaning of
24 Section 505 of the Federal Food, Drug and Cosmetic Act.

25 (j) (Blank).

26 (Source: P.A. 99-371, eff. 1-1-16; 99-585, eff. 1-1-17;

1 100-368, eff. 1-1-18.)

2 (720 ILCS 570/401.1) (from Ch. 56 1/2, par. 1401.1)

3 Sec. 401.1. Controlled Substance Trafficking.

4 (a) Except for purposes as authorized by this Act, any
5 person who knowingly brings or causes to be brought into this
6 State for the purpose of manufacture or delivery or with the
7 intent to manufacture or deliver a controlled substance other
8 than methamphetamine or counterfeit substance in this or any
9 other state or country is guilty of controlled substance
10 trafficking.

11 (b) A person convicted of controlled substance trafficking
12 shall be sentenced to a term of imprisonment not less than
13 twice the minimum term and fined an amount as authorized by
14 Section 401 of this Act, based upon the amount of controlled or
15 counterfeit substance brought or caused to be brought into
16 this State, and not more than twice the maximum term of
17 imprisonment and fined twice the amount as authorized by
18 Section 401 of this Act, based upon the amount of controlled or
19 counterfeit substance brought or caused to be brought into
20 this State.

21 (c) It shall be a Class 2 felony for which a fine not to
22 exceed \$100,000 may be imposed for any person to knowingly use
23 a cellular radio telecommunication device in the furtherance
24 of controlled substance trafficking. This penalty shall be in
25 addition to any other penalties imposed by law.

1 (d) It shall be a Class 1 felony for which a fine not to
2 exceed \$100,000 may be imposed for any person to knowingly use
3 an electronic communication device in the furtherance of
4 controlled substance trafficking involving a substance
5 containing any amount of fentanyl. This penalty shall be in
6 addition to any other penalties imposed by law. For purposes
7 of this subsection (d):

8 "Computer" has the meaning ascribed to it in Section
9 17-0.5 of the Criminal Code of 2012.

10 "Electronic communication device" means an electronic
11 device, including, but not limited to, a wireless telephone,
12 personal digital assistant, or a portable or mobile computer,
13 that is capable of transmitting images or pictures.

14 (Source: P.A. 94-556, eff. 9-11-05.)

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 570/401 from Ch. 56 1/2, par. 1401

4 720 ILCS 570/401.1 from Ch. 56 1/2, par. 1401.1