COMMITTEE REPORT

February 23, 2022

**S. 429**

Introduced by Senators Alexander and Senn

S. Printed 2/23/22--S.

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 429) to amend Article 1, Chapter 3, Title 16 of the 1976 Code, relating to homicide, by adding Section 16‑3‑80, to create the offense of, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Article 1, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16-3-80. (A) A person who unlawfully delivers, dispenses, or otherwise provides a fentanyl or a fentanyl-related substance as defined in Section 44-53-190(B) and Section 44-53-210(c)(6) to another person, in violation of the provisions of Section 44-53-370, if the proximate cause of the death of any other person is the injection, inhalation, absorption, or ingestion of any amount of the fentanyl or fentanyl-related substance, commits the felony offense of fentanyl-induced homicide.

(B) A person convicted of a fentanyl-induced homicide pursuant to the provisions of this section must be imprisoned not more than thirty years.

(C) It is not a defense pursuant to this section that a decedent contributed to his own death by his purposeful, knowing, reckless, or negligent injection, inhalation, absorption, or ingestion of the controlled substance or by his consenting to the administration of the controlled substance by another person.”

SECTION 2. Section 16-1-10(D) of the 1976 Code is amended by adding a new offense to read:

“16-3-80 Fentanyl-induced homicide”

SECTION 3. Section 44‑53‑190(B) of the 1976 Code is amended by adding an appropriately numbered new item at the end to read:

“\_\_. Fentanyl‑related substances. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, that is structurally related to fentanyl by one or more of the following modifications:

a. replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

b. substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

c. substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

d. replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

e. replacement of the N‑propionyl group by another acyl group.

This definition includes, but is not limited to, the following substances: Methylacetyl fentanyl, Alpha‑methylfentanyl, Methylthiofentanyl, Benzylfentanyl, Beta‑hydroxyfentanyl, Beta‑hydroxy‑3‑methylfentanyl, 3‑Methylfentanyl, Methylthiofentanyl, Fluorofentanyl, Thenylfentanyl or Thienyl fentanyl, Thiofentanyl, Acetylfentanyl, Butyrylfentanyl, Beta‑Hydroxythiofentanyl, Lofentanil, Ocfentanil, Ohmfentanyl, Benzodioxolefentanyl, Furanyl fentanyl, Pentanoyl fentanyl, Cyclopentyl fentanyl, Isobutyryl fentanyl, Remifentanil, Crotonyl fentanyl, Cyclopropyl fentanyl, Valeryl fentanyl, Fluorobutyryl fentanyl, Fluoroisobutyryl fentanyl, Methoxybutyryl Fentanyl, Isobutyryl fentanyl, Chloroisobutyryl fentanyl, Acryl fentanyl, Tetrahydrofuran fentanyl, Methoxyacetyl fentanyl, Fluorocrotonyl fentanyl, Cyclopentenyl fentanyl, Phenyl fentanyl, Cyclobutyl fentanyl, Methylcyclopropyl fenantyl.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent, or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill provides that a person who unlawfully delivers a controlled substance to a recipient who dies after injection, inhalation, absorption, or ingestion of any amount of the substance is guilty of the felony act of drug-induced homicide. A conviction for this offense is punishable by imprisonment for not more than thirty years nor less than two years and a fine between $10,000 and $50,000. Court fines and fees are distributed to various law enforcement agencies using the general fund and other funds by the State Treasurer.

**Judicial.** This bill creates the offense of drug-induced homicide. This bill may alter the number of cases or the duration of cases heard in court. However, Judicial intends to use existing general fund resources to manage any modification in caseloads. Therefore, this bill will have no expenditure impact for Judicial.

**Commission on Prosecution Coordination.** As this bill does not require PCC to perform activities that fall outside of the scope of normal agency business, it will have no expenditure impact.

**Commission on Indigent Defense.** As this bill does not require Indigent Defense to perform activities that fall outside of the scope of normal agency business, it will have no expenditure impact.

**Department of Juvenile Justice.** As this bill does not require DJJ to perform activities that fall outside of the scope of normal agency business, it will have no expenditure impact.

**Department of Corrections.** A determination of the bill’s fiscal impact is pending, as the agency is still reviewing the bill.

**State Revenue**

This bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the general fund, other funds and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to general fund revenue, other funds revenue, and local revenue due to the modifications in fines and fees collections in court.

**Local Revenue**

This bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the general fund, other funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to general fund revenue, other funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 3, TITLE 16 OF THE 1976 CODE, RELATING TO HOMICIDE, BY ADDING SECTION 16‑3‑80, TO CREATE THE OFFENSE OF DRUG-INDUCED HOMICIDE, TO PROVIDE A PENALTY FOR A VIOLATION, AND TO PROHIBIT AN AFFIRMATIVE DEFENSE; AND TO AMEND SECTION 16-1-10(D) OF THE 1976 CODE, RELATING TO A LIST OF EXCEPTIONS FOR FELONIES AND MISDEMEANORS, TO ADD DRUG-INDUCED HOMICIDE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑80. (A) A person who unlawfully delivers a controlled substance to another person, in violation of the provisions of Section 44‑53‑370 or 44‑53‑375, if the proximate cause of the death of the other person is the injection, inhalation, absorption, or ingestion of any amount of the controlled substance, commits the felony offense of drug‑induced homicide.

(B) A person convicted of a drug‑induced homicide pursuant to the provisions of this section must be imprisoned not more than thirty years and not less than two years.

(C) It is not a defense pursuant to this section that a decedent contributed to his own death by his purposeful, knowing, reckless, or negligent injection, inhalation, absorption, or ingestion of the controlled substance or by his consenting to the administration of the controlled substance by another person.”

SECTION 2. Section 16-1-10(D) of the 1976 Code is amended by adding a new offense to read:

“16-3-65 Drug-induced homicide”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent, or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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