COMMITTEE REPORT

February 23, 2022

**S. 458**

Introduced by Senators Adams, Talley, Bennett, Senn and Alexander

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

Read the first time January 13, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 458) to amend Sections 44-53-190(b) and 44‑53‑370(e) of the 1976 Code, relating in part to the trafficking offenses for, 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, page 2, by striking lines 28 through 35, and inserting therein:

/ granted, and a fine of fifty thousand dollars; or

(b) for a second or subsequent offense, a term of imprisonment of not more than thirty years, no part of which may be suspended or probation granted, and a fine of one hundred thousand dollars.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 13, 2021**

**State Expenditure**

This bill creates the felony offense of trafficking in fentanyl or fentanyl-related substances and adds those substances to the list of Schedule I controlled substances. Possession of four grams or more of fentanyl or any mixture containing fentanyl or a fentanyl-related substance is considered trafficking. A first offense is punishable by imprisonment for not more than twenty years and a fine of up to $50,000. A second or subsequent offense is punishable by imprisonment for not more than thirty years and a fine of up to $100,000. An additional term of imprisonment up to twenty years, to run consecutively to the sentence assigned for the original conviction, must be served when the offense results in a fatal overdose.

**Judicial.** This bill creates a new offense and there is no data available with which to estimate the number of hearings or trials that may be initiated in general sessions as a result of this legislation. Judicial anticipates that any impact from the increased caseload in general sessions would be absorbed. Therefore, this bill will have no expenditure impact.

**Commission on Prosecution Coordination.** The bill requires the agency to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact.

**Commission on Indigent Defense.** The bill requires the agency to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact.

**Department of Juvenile Justice.** The bill requires the agency to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an 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**

The bill creates new fines of up to $100,000 for offenses related to trafficking in fentanyl. South Carolina law states that the revenue collected from any fines must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. As there is no data to estimate the amount of revenue that may be generated from the new fines, any state or local revenue generated is undetermined.

**Local Revenue**

The bill creates new fines of up to $100,000 for offenses related to trafficking in fentanyl. South Carolina law states that the revenue collected from any fines must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. As there is no data to estimate the amount of revenue that may be generated from the new fines, any state or local revenue generated is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTIONS 44-53-190(B) AND 44‑53‑370(e) OF THE 1976 CODE, RELATING IN PART TO THE TRAFFICKING OFFENSES FOR CERTAIN CONTROLLED SUBSTANCES, TO ADD AN OFFENSE FOR “TRAFFICKING IN FENTANYL”, AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. 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 2. Section 44‑53‑370(e) of the 1976 Code is amended by adding an appropriately numbered new item at the end to read:

“( ) four grams or more of any fentanyl or fentanyl‑related substance, as described in Section 44‑53‑190 or 44‑53‑210, or four grams or more of any mixture containing fentanyl or any fentanyl-related substance, is guilty of a felony which is known as ‘trafficking in fentanyl’ and, upon conviction, must be punished as follows:

(a) for a first offense, a term of imprisonment of not more than twenty years, no part of which may be suspended or probation granted, and a fine of fifty thousand dollars;

(b) for a second or subsequent offense, a term of imprisonment of not more than thirty years, no part of which may be suspended or probation granted, and a fine of one hundred thousand dollars;

(c) for an offense that results in a fatal overdose, the term of imprisonment must be increased by an additional sentence of up to twenty years to run consecutively.”

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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