**South Carolina General Assembly**

125th Session, 2023-2024

**A72, R97, H3503**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Gilliam, Pope, Taylor, Chumley, Haddon, McCravy, Oremus, Hiott, Burns, Wooten, Hixon, Bailey, Caskey, Thayer, Trantham, Forrest, Yow, S. Jones, Sessions, Guffey, Lawson, Chapman, Leber, O'Neal, Vaughan, Robbins, B.J. Cox, M.M. Smith, Davis, Brewer, Murphy, Whitmire, Ligon, Felder, Mitchell, Hager, Connell, Carter, West, Calhoon, B. Newton, Neese, Landing, Blackwell, Pedalino, Willis and W. Newton

Companion/Similar bill(s): 153, 236, 242

Document Path: LC-0010SA23.docx

Introduced in the House on January 10, 2023

Introduced in the Senate on February 2, 2023

Last Amended on May 23, 2023

Currently residing in the House

Governor's Action: June 15, 2023, Signed

Summary: Trafficking in Fentanyl

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/8/2022 House Prefiled

 12/8/2022 House Referred to Committee on **Judiciary**

 1/10/2023 House Introduced and read first time (House Journal‑page 191)

 1/10/2023 House Referred to Committee on **Judiciary** (House Journal‑page 191)

 1/19/2023 House Member(s) request name added as sponsor: Vaughan,
 Robbins, B.J. Cox, M.M. Smith, Davis

 1/24/2023 House Member(s) request name added as sponsor: Brewer,
 Murphy

 1/25/2023 House Member(s) request name added as sponsor:
 Whitmire, Ligon, Felder, Yow, Mitchell,
 Hager, Connell

 1/25/2023 House Committee report: Favorable with amendment **Judiciary** (House Journal‑page 6)

 1/26/2023 House Member(s) request name added as sponsor: Carter, West

 1/26/2023 Scrivener's error corrected

 1/31/2023 House Member(s) request name added as sponsor: Calhoon,
 B. Newton, Neese, Landing, Blackwell

 1/31/2023 House Requests for debate-Rep(s). JE Johnson, Rutherford, Forrest, Pope, Bamberg, Hixon, Sessions, Guffey, B Newton, MM Smith, Brittain, Blackwell, Thayer, Hardee, McCravy, Hiott, Hosey, Hart, Mitchell, Guest, Lawson, Gilliam, Yow (House Journal‑page 24)

 2/1/2023 House Member(s) request name added as sponsor:
 Pedalino, Willis, W. Newton

 2/1/2023 House Amended (House Journal‑page 20)

 2/1/2023 House Read second time (House Journal‑page 20)

 2/1/2023 House Roll call Yeas-96 Nays-21 (House Journal‑page 27)

 2/2/2023 House Read third time and sent to Senate (House Journal‑page 18)

 2/2/2023 Senate Introduced and read first time

 2/2/2023 Senate Referred to Committee on **Judiciary**

 5/3/2023 Senate Referred to Subcommittee: Hutto (ch), Matthews,
 Rice, Senn, Adams

 5/9/2023 Senate Committee report: Favorable with amendment **Judiciary** (Senate Journal‑page 18)

 5/10/2023 Scrivener's error corrected

 5/11/2023 Senate Committee Amendment Adopted (Senate Journal‑page 157)

 5/11/2023 Senate Read second time (Senate Journal‑page 157)

 5/12/2023 Scrivener's error corrected

 5/23/2023 Senate Amended (Senate Journal‑page 44)

 5/23/2023 Senate Read third time and returned to House with amendments (Senate Journal‑page 44)

 5/23/2023 Senate Roll call Ayes-45 Nays-0 (Senate Journal‑page 44)

 5/26/2023 Scrivener's error corrected

 6/7/2023 House Concurred in Senate amendment and enrolled (House Journal‑page 24)

 6/7/2023 House Roll call Yeas-103 Nays-1 (House Journal‑page 24)

 6/14/2023 Ratified R 97

 6/15/2023 Signed By Governor

 6/17/2023 Effective date 6/15/23

 6/17/2023 Act No. 72

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[05/12/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3503_20230512.docx)

[05/23/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3503_20230523.docx)

[05/26/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3503_20230526.docx)

 2/1/2023 House Roll call Yeas-96 Nays-21 ([House Journal‑page 27](file:///h%3A%5Chj%5C20230201.docx))

 2/2/2023 House Read third time and sent to Senate ([House Journal‑page 18](file:///h%3A%5Chj%5C20230202.docx))

 2/2/2023 Senate Introduced and read first time

 2/2/2023 Senate Referred to Committee on **Judiciary**

 5/3/2023 Senate Referred to Subcommittee: Hutto (ch), Matthews, Rice, Senn, Adams

 5/9/2023 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 18](file:///h%3A%5Csj%5C20230509.docx))

 5/10/2023 Scrivener's error corrected

 5/11/2023 Senate Committee Amendment Adopted ([Senate Journal‑page 157](file:///h%3A%5Csj%5C20230511.docx))

 5/11/2023 Senate Read second time ([Senate Journal‑page 157](file:///h%3A%5Csj%5C20230511.docx))

 5/12/2023 Scrivener's error corrected

 5/23/2023 Senate Amended ([Senate Journal‑page 44](file:///h%3A%5Csj%5C20230523.docx))

 5/23/2023 Senate Read third time and returned to House with amendments ([Senate Journal‑page 44](file:///h%3A%5Csj%5C20230523.docx))

 5/23/2023 Senate Roll call Ayes-45 Nays-0 ([Senate Journal‑page 44](file:///h%3A%5Csj%5C20230523.docx))

 5/26/2023 Scrivener's error corrected

 6/7/2023 House Concurred in Senate amendment and enrolled ([House Journal‑page 24](file:///h%3A%5Chj%5C20230607.docx))

 6/7/2023 House Roll call Yeas-103 Nays-1 ([House Journal‑page 24](file:///h%3A%5Chj%5C20230607.docx))

 6/14/2023 Ratified R 97

 6/15/2023 Signed By Governor

 6/17/2023 Effective date 6/15/23

 6/17/2023 Act No. 72

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(A72, R97, H3503)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 44‑53‑190, RELATING TO SCHEDULE I SUBSTANCES, SO AS TO ADD FENTANYL‑RELATED SUBSTANCES; BY AMENDING SECTION 44‑53‑370, RELATING TO PROHIBITED ACTS AND PENALTIES, SO AS TO ADD AN OFFENSE FOR TRAFFICKING IN FENTANYL; BY AMENDING SECTION 44‑53‑370, RELATING TO NARCOTICS AND CONTROLLED SUBSTANCES PROHIBITED ACTS AND PENALITIES, SO AS TO ADD TRAFFICKING IN FENTANYL; BY ADDING SECTION 44-53-393 SO AS TO PROVIDE THAT THE TERM “DRUG PARAPHERNALIA” DOES NOT INCLUDE CERTAIN TESTING EQUIPMENT; AND BY ADDING SECTION 44-53-379 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR CERTAIN INDIVIDUALS WHO HAVE BEEN CONVICTED OF CERTAIN DRUG‑RELATED CRIMES TO POSSESS A FIREARM OR AMMUNITION WITHIN THIS STATE.

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

Fentanyl-related substances

SECTION 1. Section 44-53-190(B) of the S.C. Code is amended by adding an item to read:

 (48) 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; or

 (e) replacement of the N propionyl group by another acyl group or hydrogen.

 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 fentanyl.

Trafficking in fentanyl offense and penalty

SECTION 2. Section 44-53-370(d) of the S.C. Code is amended to read:

 (d) A person who violates subsection (c) with respect to:

 (1) a controlled substance classified in Schedule I (B) and (C) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

 (2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than two thousand dollars, or both, except as provided in subsection (d)(4). Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

 (3) cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense, the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

 (4) more than two grains of fentanyl or fentanyl-related substance is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years or fined not more than ten thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

 (5) possession of more than: one gram of cocaine, one hundred milligrams of alpha- or beta‑eucaine, four grains of opium, four grains of morphine, two grains of heroin, two grains of fentanyl or a fentanyl-related substance as described in Section 44-53-190 or 44-53-210, one hundred milligrams of isonipecaine, twenty-eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4-methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to twenty-eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44-53-450 upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections 17-22-10 through 17-22-160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

 When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14-1-206, 14-1-207, or 14‑1‑208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14-1-205. The assessment portion of the bail must be distributed as provided in Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable.

Trafficking in fentanyl

SECTION 3. Section 44-53-370(e) of the S.C. Code is amended by adding an item to read:

 (9) 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 if the quantity involved is:

 (a) four grams or more, but less than fourteen grams:

 1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 2. for a second or subsequent offense, a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

 (b) fourteen grams or more but less than twenty‑eight grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

 (c) twenty‑eight grams or more, a mandatory term of imprisonment of not less than twenty‑five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

Drug paraphernalia

SECTION 4. Chapter 53, Title 44 of the S.C. Code is amended by adding:

 Section 44-53-393. Notwithstanding any provision of law to the contrary, the term “drug paraphernalia” as defined in Section 44-53-110 shall not include rapid fentanyl test strips or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.

Savings clause

SECTION 5. 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.

Felony possession of a firearm

SECTION 6. Chapter 53, Title 44 of the S.C. Code is amended by adding:

 Section 44-53-379. (A) It is unlawful for a person who has been convicted of possession with intent to distribute, distribution or delivery of, manufacturing of, or trafficking in a controlled substance as defined in Sections 44-53-370 and 44-53-375, to possess a firearm or ammunition within this State.

 (B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

 (C)(1) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy it. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the firearm or ammunition, the division may keep the firearm or ammunition for use by its forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies under the provisions of this section.

 (2) A law enforcement agency that receives a firearm or ammunition pursuant to this section shall administratively release the firearm or ammunition to an innocent owner. The firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally determined. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this section which resulted in the confiscation of the firearm or ammunition. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this section.

 (D) The court with jurisdiction over an offense, as defined by subsections (A) or (B), shall make a specific finding on the record that the conviction is for possession with intent to distribute, distribution or delivery of, manufacturing of, or trafficking in a controlled substance as defined in Sections 44‑53‑370 and 44-53-375, and the person would be subject to the prohibitions of this section. A judge’s failure to make a specific finding on the record does not bar or otherwise affect prosecution pursuant to this subsection and does not constitute a defense to prosecution pursuant to this subsection.

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 14th day of June, 2023.

Approved the 15th day of June, 2023.

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