

CHAPTER 2023-26

Committee Substitute for Committee Substitute for House Bill No. 1359

An act relating to offenses involving fentanyl or fentanyl analogs; amending s. 893.13, F.S.; providing criminal penalties; providing for a mandatory minimum term of imprisonment if a person sells, manufactures, or delivers or possesses with intent to sell, manufacture, or deliver specified substances or mixtures, and such substance or mixture has at least one specified attribute; amending s. 893.135, F.S.; providing enhanced criminal penalties; providing for a mandatory minimum term of imprisonment if a person commits specified prohibited acts relating to controlled substances, and such substance or mixture has at least one specified attribute; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) is added to subsection (1) of section 893.13, Florida Statutes, to read:

893.13 Prohibited acts; penalties.—

(1)

(i) Except as authorized by this chapter, a person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be sentenced to a mandatory minimum term of imprisonment of 3 years, if:

1. The person sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or deliver, any of the following:

a. Alfentanil, as described in s. 893.03(2)(b)1.;

b. Carfentanil, as described in s. 893.03(2)(b)6.;

c. Fentanyl, as described in s. 893.03(2)(b)9.;

d. Sufentanil, as described in s. 893.03(2)(b)30.;

e. A fentanyl derivative, as described in s. 893.03(1)(a)62.;

f. A controlled substance analog, as described in s. 893.0356, of any substance described in sub-subparagraphs a.-e.; or

g. A mixture containing any substance described in sub-subparagraphs a.-f.; and

2. The substance or mixture listed in subparagraph 1. is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

a. Resembles the trade dress of a branded food product, consumer food product, or logo food product;

b. Incorporates an actual or fake registered copyright, service mark, or trademark;

c. Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or

d. Contains a cartoon character imprint.

Section 2. Paragraph (c) of subsection (1) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as “trafficking in illegal drugs,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s.

893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in hydrocodone,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 50 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 100 grams or more, but less than 300 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 300 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in oxycodone,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

- (II) Carfentanil, as described in s. 893.03(2)(b)6.;
- (III) Fentanyl, as described in s. 893.03(2)(b)9.;
- (IV) Sufentanil, as described in s. 893.03(2)(b)30.;
- (V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;
- (VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or
- (VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as “trafficking in dangerous fentanyl or fentanyl analogues,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and shall be ordered to pay a fine of \$50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 20 years, and shall be ordered to pay a fine of \$100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of \$500,000.

c. A person 18 years of age or older who violates sub-subparagraph a. by knowingly selling or delivering to a minor at least 4 grams of a substance or mixture listed in sub-subparagraph a. shall be sentenced to a mandatory minimum term of not less than 25 years and not exceeding life imprisonment, and shall be ordered to pay a fine of \$1 million if the substance or mixture listed in sub-subparagraph a. is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

(I) Resembles the trade dress of a branded food product, consumer food product, or logo food product;

(II) Incorporates an actual or fake registered copyright, service mark, or trademark;

(III) Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or

(IV) Contains a cartoon character imprint.

5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 3. This act shall take effect October 1, 2023.

Approved by the Governor May 1, 2023.

Filed in Office Secretary of State May 1, 2023.