

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 22
3 entitled “An act relating to increased penalties for possession, sale, and
4 dispensation of fentanyl” respectfully reports that it has considered the same
5 and recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 18 V.S.A. § 4233a is added to read:

8 § 4233a. FENTANYL

9 (a) Possession.

10 (1) A person knowingly and unlawfully possessing fentanyl shall be
11 imprisoned not more than two years or fined not more than \$10,000.00, or
12 both.

13 (b) Selling or dispensing.

14 (1) A person knowingly and unlawfully dispensing fentanyl shall be
15 imprisoned not more than three years or fined not more than \$75,000.00, or
16 both. A person knowingly and unlawfully selling fentanyl shall be imprisoned
17 not more than five years or fined not more than \$100,000.00, or both.

18 (2) A person knowingly and unlawfully selling or dispensing fentanyl in
19 an amount consisting of four milligrams or more of one or more preparations,
20 compounds, mixtures, or substances containing fentanyl shall be imprisoned
21 not more than 10 years or fined not more than \$250,000.00, or both.

1 (3) A person knowingly and unlawfully selling or dispensing fentanyl in
2 an amount consisting of 20 milligrams or more of one or more preparations,
3 compounds, mixtures, or substances containing fentanyl shall be imprisoned
4 not more than 20 years or fined not more than \$1,000,000.00, or both.

5 (4) In lieu of a charge under this subsection, but in addition to any other
6 penalties provided by law, a person knowingly and unlawfully selling or
7 dispensing any regulated drug containing a detectable amount of fentanyl shall
8 be imprisoned not more than five years or fined not more than \$250,000.00,
9 or both.

10 (c) Trafficking. A person knowingly and unlawfully possessing fentanyl in
11 an amount consisting of 70 milligrams or more of one or more preparations,
12 compounds, mixtures, or substances containing fentanyl with the intent to sell
13 or dispense the fentanyl shall be imprisoned not more than 30 years or fined
14 not more than \$1,000,000.00, or both. There shall be a permissive inference
15 that a person who possesses fentanyl in an amount of 70 milligrams or more of
16 one or more preparations, compounds, mixtures, or substances containing
17 fentanyl intends to sell or dispense the fentanyl. The amount of possessed
18 fentanyl under this subsection to sustain a charge of conspiracy under
19 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

20 (d) Transportation into the State. In addition to any other penalties
21 provided by law, a person knowingly and unlawfully transporting more than

1 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the
2 fentanyl shall be imprisoned not more than 10 years or fined not more than
3 \$100,000.00, or both.

4 Sec. 2. 18 V.S.A. § 4234 is amended to read:

5 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

6 (a) Possession.

7 (1) A person knowingly and unlawfully possessing a depressant,
8 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be
9 imprisoned not more than one year or fined not more than \$2,000.00, or both.

10 (2) A person knowingly and unlawfully possessing a depressant,
11 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting
12 of 100 times a benchmark unlawful dosage or its equivalent as determined by
13 the ~~board of health~~ Board of Health by rule shall be imprisoned not more than
14 five years or fined not more than \$25,000.00, or both.

15 (3) A person knowingly and unlawfully possessing a depressant,
16 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting
17 of 1,000 times a benchmark unlawful dosage or its equivalent as determined by
18 the ~~board of health~~ Board of Health by rule shall be imprisoned not more than
19 10 years or fined not more than \$100,000.00, or both.

20 (4) A person knowingly and unlawfully possessing a depressant,
21 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting

1 of 10,000 times a benchmark unlawful dosage or its equivalent as determined
2 by the ~~board of health~~ Board of Health by rule shall be imprisoned not more
3 than 20 years or fined not more than \$500,000.00, or both.

4 (b) Selling or dispensing.

5 (1) A person knowingly and unlawfully dispensing a depressant,
6 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be
7 imprisoned not more than three years or fined not more than \$75,000.00, or
8 both. A person knowingly and unlawfully selling a depressant, stimulant, or
9 narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not
10 more than five years or fined not more than \$25,000.00, or both.

11 (2) A person knowingly and unlawfully selling or dispensing a
12 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,
13 consisting of 100 times a benchmark unlawful dosage or its equivalent as
14 determined by the ~~board of health~~ Board of Health by rule shall be imprisoned
15 not more than 10 years or fined not more than \$100,000.00, or both.

16 (3) A person knowingly and unlawfully selling or dispensing a
17 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,
18 consisting of 1,000 times a benchmark unlawful dosage or its equivalent as
19 determined by the ~~board of health~~ Board of Health by rule shall be imprisoned
20 not more than 20 years or fined not more than \$500,000.00, or both.

1 Sec. 3. 13 V.S.A. § 1404 is amended to read:

2 § 1404. CONSPIRACY

3 (a) A person is guilty of conspiracy if, with the purpose that an offense
4 listed in subsection (c) of this section be committed, that person agrees with
5 one or more persons to commit or cause the commission of that offense, and at
6 least two of the co-conspirators are persons who are neither law enforcement
7 officials acting in official capacity nor persons acting in cooperation with a law
8 enforcement official.

9 (b) No person shall be convicted of conspiracy unless a substantial overt
10 act in furtherance of the conspiracy is alleged and proved to have been done by
11 the defendant or by a co-conspirator, other than a law enforcement official
12 acting in an official capacity or a person acting in cooperation with a law
13 enforcement official, and subsequent to the defendant's entrance into the
14 conspiracy. Speech alone may not constitute an overt act.

15 (c) This section applies only to a conspiracy to commit or cause the
16 commission of one or more of the following offenses:

17 (1) murder in the first or second degree;

18 (2) arson under sections 501-504 and 506 of this title;

19 (3) sexual exploitation of children under sections 2822, 2823, and 2824
20 of this title;

21 (4) receiving stolen property under sections 2561-2564 of this title; or

1 (5) an offense involving the sale, delivery, manufacture, or cultivation of
2 a regulated drug or an offense under:

3 (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;

4 (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;

5 (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;

6 (D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing
7 of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; ~~or~~

8 (E) 18 V.S.A. § 4234a(c), relating to trafficking in
9 methamphetamine; or

10 (F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

11 Sec. 4. 18 V.S.A. § 4234b is amended to read:

12 § 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

13 * * *

14 (c) Electronic registry system.

15 (1)(A) Retail establishments shall use an electronic registry system to
16 record the sale of products made pursuant to subsection (b) of this section. The
17 electronic registry system shall have the capacity to block a sale of
18 nonprescription drug products containing ephedrine base, pseudoephedrine
19 base, or phenylpropanolamine base that would result in a purchaser exceeding
20 the lawful daily or monthly amount. The system shall contain an override
21 function that may be used by an agent of a retail establishment who is

1 dispensing the drug product and who has a reasonable fear of imminent bodily
2 harm to his or her person or to another person if the transaction is not
3 completed. The system shall create a record of each use of the override
4 mechanism.

5 (B) The electronic registry system shall be available free of charge to
6 the State of Vermont, retail establishments, and local law enforcement
7 agencies.

8 (C) The electronic registry system shall operate in real time to enable
9 communication among in-state users and users of similar systems in
10 neighboring states.

11 (D) The State shall use the National Precursor Log Exchange
12 (NPLEx) online portal or its equivalent to host Vermont's electronic registry
13 system.

14 (2)(A) Prior to completing a sale under subsection (b) of this section, a
15 retail establishment shall require the person purchasing the drug product to
16 present a current, valid government-issued identification document. The retail
17 establishment shall record in the electronic registry system:

18 (i) the name and address of the purchaser;

19 (ii) the name of the drug product and quantity of ephedrine,
20 pseudoephedrine, and phenylpropanolamine base sold in grams;

21 (iii) the date and time of purchase;

1 (iv) the form of identification presented, the issuing government
2 entity, and the corresponding identification number; and

3 (v) the name of the person selling or furnishing the drug product.

4 (B)(i) If the retail establishment experiences an electronic or
5 mechanical failure of the electronic registry system and is unable to comply
6 with the electronic recording requirement, the retail establishment shall
7 maintain a written log or an alternative electronic record-keeping mechanism
8 until the retail establishment is able to comply fully with this subsection (c).

9 (ii) If the region of the State where the retail establishment is
10 located does not have broadband Internet access, the retail establishment shall
11 maintain a written log or an alternative electronic record-keeping mechanism
12 until broadband Internet access becomes accessible in that region. At that
13 time, the retail establishment shall come into compliance with this
14 subsection (c).

15 (C) A retail establishment shall maintain all records of drug product
16 purchases made pursuant to this subsection (c) for a minimum of two years.

17 (3) A retail establishment shall display a sign at the register provided by
18 NPLEx or its equivalent to notify purchasers of drug products containing
19 ephedrine, pseudoephedrine, or phenylpropanolamine base that:

20 (A) the purchase of the drug product or products shall result in the
21 purchaser's identity being listed on a national database; and

1 (B) the purchaser has the right to request the transaction number for
2 any purchase that was denied pursuant to this subsection (c).

3 (4) Except as provided in subdivision (5) of this subsection (c), a person
4 or retail establishment that violates this subsection shall:

5 (A) for a first violation be assessed a civil penalty of not more than
6 \$100.00; and

7 (B) for a second or subsequent violation be assessed a civil penalty of
8 not more than \$500.00.

9 (d) This section shall not apply to a manufacturer ~~which~~ that has obtained
10 an exemption from the Attorney General of the United States under Section
11 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

12 (e) As used in this section:

13 (1) “Distributor” means a person, other than a manufacturer or
14 wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug
15 product to any person who is not the ultimate user or consumer of the product.

16 (2) “Knowingly” means having actual knowledge of the relevant facts.

17 (3) “Manufacturer” means a person who produces, compounds,
18 packages, or in any manner initially prepares a drug product for sale or use.

19 (4) “Wholesaler” means a person, other than a manufacturer, who sells,
20 transfers, or in any manner furnishes a drug product to any other person for the
21 purpose of being resold.

1 Sec. 5. EFFECTIVE DATE

2 This act shall take effect on July 1, 2017.

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5 (Committee vote: _____)

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Senator _____

8

FOR THE COMMITTEE