

1 S.58

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Regulated drugs; fentanyl; second and subsequent offenses; selling or
6 dispensing a regulated drug with death resulting

7 Statement of purpose of bill as introduced: This bill proposes to amend the
8 definition of knowingly for purposes of liability in drug offenses; increase
9 penalties for second and subsequent offenses for trafficking; in a prosecution
10 for dispensing or selling a regulated drug with death resulting, prohibit using
11 the fact that a substance contained more than one regulated drug from being a
12 defense if the proximate cause of death is the use of the dispensed or sold
13 substance containing more than one regulated drug; and require that the
14 mandatory minimum sentences for subsequent trafficking offenses and
15 dispensing or sale of a regulated drug with death resulting be served unless the
16 court makes written findings on the record that such an alternative sentence
17 will serve the interests of justice.

18 An act relating to increasing the penalties for subsequent offenses for
19 trafficking and dispensing or sale of a regulated drug with death resulting

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 18 V.S.A. § 4201 is amended to read:

3 § 4201. DEFINITIONS

4 * * *

5 (45) “Fentanyl” means fentanyl or any compound, mixture, or
6 preparation including salts, isomers, or salts of isomers containing fentanyl or
7 fentanyl-related substances as defined by rule in accordance with this chapter.

8 (46) “Knowingly” means actual knowledge that one or more
9 preparations, compounds, mixtures, or substances contains the regulated drug
10 identified in the applicable section of this chapter, or consciously ignoring a
11 substantial risk that one or more preparations, compounds, mixtures, or
12 substances contains the regulated drug identified in the applicable section of
13 this chapter.

14 Sec. 2. 18 V.S.A. § 4238 is amended:

15 § 4238. SECOND AND SUBSEQUENT OFFENSES

16 (a) Penalty. A Except as provided in subsection (b) of this section, a
17 person convicted of a second or subsequent offense of violating section 4228,
18 4230, 4231, 4232, 4233, 4234, 4235, 4236 or 4237 of this title, except a
19 violation of subdivision 4230(a)(1), or a comparable offense in another
20 jurisdiction of the United States, shall be subject to a term of imprisonment or
21 fined up to twice that authorized by those sections, or both.

1 (b) Trafficking.

2 (1) A person convicted of a second or subsequent offense for trafficking
3 a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c),
4 4233a(b), or 4234a(c) of this title, or a comparable offense in another
5 jurisdiction of the United States, shall be imprisoned not less than three years
6 and not more than 30 years or fined not more than \$2,000,000.00, or both.

7 (2) Except as provided in subdivision (3) of this subsection, the three-
8 year minimum term of imprisonment required by this section shall be served
9 and may not be suspended, deferred, or served as a supervised sentence. The
10 defendant shall not be eligible for probation, parole, furlough, or any other type
11 of early release until the expiration of the three-year term of imprisonment.

12 (3) Notwithstanding subdivision (2) of this subsection, the court may
13 impose a sentence that does not include a term of imprisonment or that
14 includes a term of imprisonment of less than three years if the court makes
15 written findings on the record that such a sentence will serve the interests of
16 justice.

17 Sec. 3. 18 V.S.A. § 4250 is amended to read:

18 § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH
19 DEATH RESULTING

20 (a) If the death of a person results from the selling or dispensing of a
21 regulated drug to the person in violation of this chapter, the person convicted

1 of the violation shall be imprisoned not less than two years nor more than 20
2 years.

3 (b) This section shall apply only if the person's use of the regulated drug is
4 the proximate cause of ~~his or her~~ the person's death. The fact that a dispensed
5 or sold substance contains more than one regulated drug shall not be a defense
6 under this section if the proximate cause of death is the use of the dispensed or
7 sold substance containing more than one regulated drug. There shall be a
8 permissive inference that the proximate cause of death is the person's use of
9 the regulated drug if the regulated drug contains fentanyl.

10 (c)(1) Except as provided in subdivision (2) of this subsection, the two-year
11 minimum term of imprisonment required by this section shall be served and
12 may not be suspended, deferred, or served as a supervised sentence. The
13 defendant shall not be eligible for probation, parole, furlough, or any other type
14 of early release until the expiration of the two-year term of imprisonment.

15 (2) Notwithstanding subdivision (1) of this subsection, the court may
16 impose a sentence that does not include a term of imprisonment or that
17 includes a term of imprisonment of less than two years if the court makes
18 written findings on the record that the sentence will serve the interests of
19 justice.

20 Sec. 4. EFFECTIVE DATE

21 This act shall take effect on July 1, 2023.