



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4694

Introduced 2/6/2024, by Rep. Tim Ozinga

SYNOPSIS AS INTRODUCED:

720 ILCS 570/401

from Ch. 56 1/2, par. 1401

720 ILCS 570/401.3 new

Amends the Illinois Controlled Substances Act. Provides that if a controlled substance analog is at least 5 times as potent as the controlled substance of which it is an analog, then the weight of the controlled substance analog for purposes of the Act shall be deemed to be the weight of the controlled substance analog multiplied by the increase in potency. Provides that, in addition to any other penalties imposed for the manufacture or delivery, or possession with intent to manufacture or deliver, not less than 6 years and not more than 30 years shall be imposed for any amount of carfentanil in excess of 150 milligrams that is stored or transmitted as a powder, blotter paper, tablet, patch, or spray if the product fails to include a warning label and an accompanying rescue level of naloxone. Provides that, in addition to any other penalties imposed, with respect to fentanyl or an analog thereof, an additional sentence of 5 years shall be imposed if the fentanyl or analog thereof is in certain forms. Establishes penalties. Contains a severability provision. Makes other changes.

LRB103 38568 RLC 68704 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Findings. The General Assembly finds that:

5 (1) Fentanyl and its analogs present a serious risk to
6 public safety.

7 (2) The analog carfentanil, also known as carfentanyl,
8 is approximately 100 times more potent than fentanyl, and
9 2 milligrams of carfentanil is lethal.

10 Section 5. The Illinois Controlled Substances Act is
11 amended by changing Section 401 and by adding Section 401.3 as
12 follows:

13 (720 ILCS 570/401) (from Ch. 56 1/2, par. 1401)

14 Sec. 401. Manufacture or delivery, or possession with
15 intent to manufacture or deliver, a controlled substance, a
16 counterfeit substance, or controlled substance analog. Except
17 as authorized by this Act, it is unlawful for any person
18 knowingly to manufacture or deliver, or possess with intent to
19 manufacture or deliver, a controlled substance other than
20 methamphetamine and other than bath salts as defined in the
21 Bath Salts Prohibition Act sold or offered for sale in a retail
22 mercantile establishment as defined in Section 16-0.1 of the

1 Criminal Code of 2012, a counterfeit substance, or a
2 controlled substance analog. A violation of this Act with
3 respect to each of the controlled substances listed herein
4 constitutes a single and separate violation of this Act. For
5 purposes of this Section, "controlled substance analog" or
6 "analog" means a substance, other than a controlled substance,
7 which is not approved by the United States Food and Drug
8 Administration or, if approved, is not dispensed or possessed
9 in accordance with State or federal law, and that has a
10 chemical structure substantially similar to that of a
11 controlled substance in Schedule I or II, or that was
12 specifically designed to produce an effect substantially
13 similar to that of a controlled substance in Schedule I or II.
14 Examples of chemical classes in which controlled substance
15 analogs are found include, but are not limited to, the
16 following: phenethylamines, N-substituted piperidines,
17 morphinans, ecgonines, quinazolinones, substituted indoles,
18 and arylcycloalkylamines. For purposes of this Act, a
19 controlled substance analog shall be treated in the same
20 manner as the controlled substance to which it is
21 substantially similar; however, if a controlled substance
22 analog is at least 5 times as potent as the controlled
23 substance of which it is an analog, then the weight of the
24 controlled substance analog for purposes of this Act shall be
25 deemed to be the weight of the controlled substance analog
26 multiplied by the increase in potency.

1 (a) Any person who violates this Section with respect to
2 the following amounts of controlled or counterfeit substances
3 or controlled substance analogs, notwithstanding any of the
4 provisions of subsections (c), (d), (e), (f), (g) or (h) to the
5 contrary, is guilty of a Class X felony and shall be sentenced
6 to a term of imprisonment as provided in this subsection (a)
7 and fined as provided in subsection (b):

8 (1) (A) not less than 6 years and not more than 30 years
9 with respect to 15 grams or more but less than 100 grams of
10 a substance containing heroin, or an analog thereof;

11 (B) not less than 9 years and not more than 40 years
12 with respect to 100 grams or more but less than 400 grams
13 of a substance containing heroin, or an analog thereof;

14 (C) not less than 12 years and not more than 50 years
15 with respect to 400 grams or more but less than 900 grams
16 of a substance containing heroin, or an analog thereof;

17 (D) not less than 15 years and not more than 60 years
18 with respect to 900 grams or more of any substance
19 containing heroin, or an analog thereof;

20 (1.5) (A) not less than 6 years and not more than 30
21 years with respect to 15 grams or more but less than 100
22 grams of a substance containing fentanyl, or an analog
23 thereof;

24 (B) not less than 9 years and not more than 40 years
25 with respect to 100 grams or more but less than 400 grams
26 of a substance containing fentanyl, or an analog thereof;

1 (C) not less than 12 years and not more than 50 years
2 with respect to 400 grams or more but less than 900 grams
3 of a substance containing fentanyl, or an analog thereof;

4 (D) not less than 15 years and not more than 60 years
5 with respect to 900 grams or more of a substance
6 containing fentanyl, or an analog thereof;

7 (1.6) in addition to any other penalties in this
8 Section, not less than 6 years and not more than 30 years
9 for any amount of carfentanil in excess of 150 milligrams
10 that is stored or transmitted as a powder, blotter paper,
11 tablet, patch, or spray if the product fails to include:

12 (A) a warning label, in a bright color, in a
13 typeface that is at least 0.5 inches tall, that
14 states, "WARNING: CONTAINS LEVELS OF CARFENTANIL
15 LETHAL TO HUMANS"; and

16 (B) an accompanying rescue level of naloxone;

17 (2) (A) not less than 6 years and not more than 30 years
18 with respect to 15 grams or more but less than 100 grams of
19 a substance containing cocaine, or an analog thereof;

20 (B) not less than 9 years and not more than 40 years
21 with respect to 100 grams or more but less than 400 grams
22 of a substance containing cocaine, or an analog thereof;

23 (C) not less than 12 years and not more than 50 years
24 with respect to 400 grams or more but less than 900 grams
25 of a substance containing cocaine, or an analog thereof;

26 (D) not less than 15 years and not more than 60 years

1 with respect to 900 grams or more of any substance
2 containing cocaine, or an analog thereof;

3 (3) (A) not less than 6 years and not more than 30 years
4 with respect to 15 grams or more but less than 100 grams of
5 a substance containing morphine, or an analog thereof;

6 (B) not less than 9 years and not more than 40 years
7 with respect to 100 grams or more but less than 400 grams
8 of a substance containing morphine, or an analog thereof;

9 (C) not less than 12 years and not more than 50 years
10 with respect to 400 grams or more but less than 900 grams
11 of a substance containing morphine, or an analog thereof;

12 (D) not less than 15 years and not more than 60 years
13 with respect to 900 grams or more of a substance
14 containing morphine, or an analog thereof;

15 (4) 200 grams or more of any substance containing
16 peyote, or an analog thereof;

17 (5) 200 grams or more of any substance containing a
18 derivative of barbituric acid or any of the salts of a
19 derivative of barbituric acid, or an analog thereof;

20 (6) 200 grams or more of any substance containing
21 amphetamine or any salt of an optical isomer of
22 amphetamine, or an analog thereof;

23 (6.5) (blank);

24 (6.6) (blank);

25 (7) (A) not less than 6 years and not more than 30 years
26 with respect to: (i) 15 grams or more but less than 100

1 grams of a substance containing lysergic acid diethylamide
2 (LSD), or an analog thereof, or (ii) 15 or more objects or
3 15 or more segregated parts of an object or objects but
4 less than 200 objects or 200 segregated parts of an object
5 or objects containing in them or having upon them any
6 amounts of any substance containing lysergic acid
7 diethylamide (LSD), or an analog thereof;

8 (B) not less than 9 years and not more than 40 years
9 with respect to: (i) 100 grams or more but less than 400
10 grams of a substance containing lysergic acid diethylamide
11 (LSD), or an analog thereof, or (ii) 200 or more objects or
12 200 or more segregated parts of an object or objects but
13 less than 600 objects or less than 600 segregated parts of
14 an object or objects containing in them or having upon
15 them any amount of any substance containing lysergic acid
16 diethylamide (LSD), or an analog thereof;

17 (C) not less than 12 years and not more than 50 years
18 with respect to: (i) 400 grams or more but less than 900
19 grams of a substance containing lysergic acid diethylamide
20 (LSD), or an analog thereof, or (ii) 600 or more objects or
21 600 or more segregated parts of an object or objects but
22 less than 1500 objects or 1500 segregated parts of an
23 object or objects containing in them or having upon them
24 any amount of any substance containing lysergic acid
25 diethylamide (LSD), or an analog thereof;

26 (D) not less than 15 years and not more than 60 years

1 with respect to: (i) 900 grams or more of any substance
2 containing lysergic acid diethylamide (LSD), or an analog
3 thereof, or (ii) 1500 or more objects or 1500 or more
4 segregated parts of an object or objects containing in
5 them or having upon them any amount of a substance
6 containing lysergic acid diethylamide (LSD), or an analog
7 thereof;

8 (7.5) (A) not less than 6 years and not more than 30 years
9 with respect to: (i) 15 grams or more but less than 100
10 grams of a substance listed in paragraph (1), (2), (2.1),
11 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or
12 (26) of subsection (d) of Section 204, or an analog or
13 derivative thereof, or (ii) 15 or more pills, tablets,
14 caplets, capsules, or objects but less than 200 pills,
15 tablets, caplets, capsules, or objects containing in them
16 or having upon them any amounts of any substance listed in
17 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
18 (20.1), (21), (25), or (26) of subsection (d) of Section
19 204, or an analog or derivative thereof;

20 (B) not less than 9 years and not more than 40 years
21 with respect to: (i) 100 grams or more but less than 400
22 grams of a substance listed in paragraph (1), (2), (2.1),
23 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or
24 (26) of subsection (d) of Section 204, or an analog or
25 derivative thereof, or (ii) 200 or more pills, tablets,
26 caplets, capsules, or objects but less than 600 pills,

1 tablets, caplets, capsules, or objects containing in them
2 or having upon them any amount of any substance listed in
3 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
4 (20.1), (21), (25), or (26) of subsection (d) of Section
5 204, or an analog or derivative thereof;

6 (C) not less than 12 years and not more than 50 years
7 with respect to: (i) 400 grams or more but less than 900
8 grams of a substance listed in paragraph (1), (2), (2.1),
9 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or
10 (26) of subsection (d) of Section 204, or an analog or
11 derivative thereof, or (ii) 600 or more pills, tablets,
12 caplets, capsules, or objects but less than 1,500 pills,
13 tablets, caplets, capsules, or objects containing in them
14 or having upon them any amount of any substance listed in
15 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
16 (20.1), (21), (25), or (26) of subsection (d) of Section
17 204, or an analog or derivative thereof;

18 (D) not less than 15 years and not more than 60 years
19 with respect to: (i) 900 grams or more of any substance
20 listed in paragraph (1), (2), (2.1), (2.2), (3), (14.1),
21 (19), (20), (20.1), (21), (25), or (26) of subsection (d)
22 of Section 204, or an analog or derivative thereof, or
23 (ii) 1,500 or more pills, tablets, caplets, capsules, or
24 objects containing in them or having upon them any amount
25 of a substance listed in paragraph (1), (2), (2.1), (2.2),
26 (3), (14.1), (19), (20), (20.1), (21), (25), or (26) of

1 subsection (d) of Section 204, or an analog or derivative
2 thereof;

3 (8) 30 grams or more of any substance containing
4 pentazocine or any of the salts, isomers and salts of
5 isomers of pentazocine, or an analog thereof;

6 (9) 30 grams or more of any substance containing
7 methaqualone or any of the salts, isomers and salts of
8 isomers of methaqualone, or an analog thereof;

9 (10) 30 grams or more of any substance containing
10 phencyclidine or any of the salts, isomers and salts of
11 isomers of phencyclidine (PCP), or an analog thereof;

12 (10.5) 30 grams or more of any substance containing
13 ketamine or any of the salts, isomers and salts of isomers
14 of ketamine, or an analog thereof;

15 (10.6) 100 grams or more of any substance containing
16 hydrocodone, or any of the salts, isomers and salts of
17 isomers of hydrocodone, or an analog thereof;

18 (10.7) (blank);

19 (10.8) 100 grams or more of any substance containing
20 dihydrocodeine, or any of the salts, isomers and salts of
21 isomers of dihydrocodeine, or an analog thereof;

22 (10.9) 100 grams or more of any substance containing
23 oxycodone, or any of the salts, isomers and salts of
24 isomers of oxycodone, or an analog thereof;

25 (11) 200 grams or more of any substance containing any
26 other controlled substance classified in Schedules I or

1 II, or an analog thereof, which is not otherwise included
2 in this subsection.

3 (b) Any person sentenced with respect to violations of
4 paragraph (1), (2), (3), (7), or (7.5) of subsection (a)
5 involving 100 grams or more of the controlled substance named
6 therein, may in addition to the penalties provided therein, be
7 fined an amount not more than \$500,000 or the full street value
8 of the controlled or counterfeit substance or controlled
9 substance analog, whichever is greater. The term "street
10 value" shall have the meaning ascribed in Section 110-5 of the
11 Code of Criminal Procedure of 1963. Any person sentenced with
12 respect to any other provision of subsection (a), may in
13 addition to the penalties provided therein, be fined an amount
14 not to exceed \$500,000.

15 (b-1) Excluding violations of this Act when the controlled
16 substance is fentanyl, any person sentenced to a term of
17 imprisonment with respect to violations of Section 401, 401.1,
18 405, 405.1, 405.2, or 407, when the substance containing the
19 controlled substance contains any amount of fentanyl, 3 years
20 shall be added to the term of imprisonment imposed by the
21 court, and the maximum sentence for the offense shall be
22 increased by 3 years.

23 (b-2) In addition to any other penalties imposed under
24 this Section, with respect to fentanyl, or an analog thereof,
25 an additional sentence of 5 years shall be imposed if the
26 fentanyl or analog thereof is in a form that resembles, or was

1 mixed, granulated, absorbed, adsorbed, spray-dried,
2 aeorsolized as or onto, coated on in whole or in part, or
3 solubilized with or into, a product, where the product or its
4 packaging further has at least one of the following
5 attributes:

6 (1) a resemblance to the trade dress of a consumer
7 food product, branded food product, or logo food product,
8 or incorporates an actual or satirical version of a
9 registered trademark, service mark, or copyright;

10 (2) a bright color or coloring scheme;

11 (3) the appearance of a cereal, candy, vitamin, gummy,
12 or chewable product such as a gum or gelatin-based
13 product;

14 (4) a cartoon character imprint; or

15 (5) is incorporated into a separate product or package
16 approved by the United States Food and Drug
17 Administration, or approved by a regulatory agency for
18 food or drug products in another country, if the addition
19 of fentanyl, carfentanil, or any analog thereof, would
20 render the approved product an adulterated product under
21 the standards of the Federal Food, Drug, and Cosmetic Act,
22 or any State of Illinois Act or administrative rule.

23 (c) Any person who violates this Section with regard to
24 the following amounts of controlled or counterfeit substances
25 or controlled substance analogs, notwithstanding any of the
26 provisions of subsections (a), (b), (d), (e), (f), (g) or (h)

1 to the contrary, is guilty of a Class 1 felony. The fine for
2 violation of this subsection (c) shall not be more than
3 \$250,000:

4 (1) 1 gram or more but less than 15 grams of any
5 substance containing heroin, or an analog thereof;

6 (1.5) 1 gram or more but less than 15 grams of any
7 substance containing fentanyl, or an analog thereof;

8 (2) 1 gram or more but less than 15 grams of any
9 substance containing cocaine, or an analog thereof;

10 (3) 10 grams or more but less than 15 grams of any
11 substance containing morphine, or an analog thereof;

12 (4) 50 grams or more but less than 200 grams of any
13 substance containing peyote, or an analog thereof;

14 (5) 50 grams or more but less than 200 grams of any
15 substance containing a derivative of barbituric acid or
16 any of the salts of a derivative of barbituric acid, or an
17 analog thereof;

18 (6) 50 grams or more but less than 200 grams of any
19 substance containing amphetamine or any salt of an optical
20 isomer of amphetamine, or an analog thereof;

21 (6.5) (blank);

22 (7) (i) 5 grams or more but less than 15 grams of any
23 substance containing lysergic acid diethylamide (LSD), or
24 an analog thereof, or (ii) more than 10 objects or more
25 than 10 segregated parts of an object or objects but less
26 than 15 objects or less than 15 segregated parts of an

1 object containing in them or having upon them any amount
2 of any substance containing lysergic acid diethylamide
3 (LSD), or an analog thereof;

4 (7.5) (i) 5 grams or more but less than 15 grams of any
5 substance listed in paragraph (1), (2), (2.1), (2.2), (3),
6 (14.1), (19), (20), (20.1), (21), (25), or (26) of
7 subsection (d) of Section 204, or an analog or derivative
8 thereof, or (ii) more than 10 pills, tablets, caplets,
9 capsules, or objects but less than 15 pills, tablets,
10 caplets, capsules, or objects containing in them or having
11 upon them any amount of any substance listed in paragraph
12 (1), (2), (2.1), (2.2), (3), (14.1), (19), (20), (20.1),
13 (21), (25), or (26) of subsection (d) of Section 204, or an
14 analog or derivative thereof;

15 (8) 10 grams or more but less than 30 grams of any
16 substance containing pentazocine or any of the salts,
17 isomers and salts of isomers of pentazocine, or an analog
18 thereof;

19 (9) 10 grams or more but less than 30 grams of any
20 substance containing methaqualone or any of the salts,
21 isomers and salts of isomers of methaqualone, or an analog
22 thereof;

23 (10) 10 grams or more but less than 30 grams of any
24 substance containing phencyclidine or any of the salts,
25 isomers and salts of isomers of phencyclidine (PCP), or an
26 analog thereof;

1 (10.5) 10 grams or more but less than 30 grams of any
2 substance containing ketamine or any of the salts, isomers
3 and salts of isomers of ketamine, or an analog thereof;

4 (10.6) 50 grams or more but less than 100 grams of any
5 substance containing hydrocodone, or any of the salts,
6 isomers and salts of isomers of hydrocodone, or an analog
7 thereof;

8 (10.7) (blank);

9 (10.8) 50 grams or more but less than 100 grams of any
10 substance containing dihydrocodeine, or any of the salts,
11 isomers and salts of isomers of dihydrocodeine, or an
12 analog thereof;

13 (10.9) 50 grams or more but less than 100 grams of any
14 substance containing oxycodone, or any of the salts,
15 isomers and salts of isomers of oxycodone, or an analog
16 thereof;

17 (11) 50 grams or more but less than 200 grams of any
18 substance containing a substance classified in Schedules I
19 or II, or an analog thereof, which is not otherwise
20 included in this subsection.

21 (c-5) (Blank).

22 (d) Any person who violates this Section with regard to
23 any other amount of a controlled or counterfeit substance
24 containing dihydrocodeine or classified in Schedules I or II,
25 or an analog thereof, which is (i) a narcotic drug, (ii)
26 lysergic acid diethylamide (LSD) or an analog thereof, (iii)

1 any substance containing amphetamine or fentanyl or any salt
2 or optical isomer of amphetamine or fentanyl, or an analog
3 thereof, or (iv) any substance containing N-Benzylpiperazine
4 (BZP) or any salt or optical isomer of N-Benzylpiperazine
5 (BZP), or an analog thereof, is guilty of a Class 2 felony. The
6 fine for violation of this subsection (d) shall not be more
7 than \$200,000.

8 (d-5) (Blank).

9 (e) Any person who violates this Section with regard to
10 any other amount of a controlled substance other than
11 methamphetamine or counterfeit substance classified in
12 Schedule I or II, or an analog thereof, which substance is not
13 included under subsection (d) of this Section, is guilty of a
14 Class 3 felony. The fine for violation of this subsection (e)
15 shall not be more than \$150,000.

16 (f) Any person who violates this Section with regard to
17 any other amount of a controlled or counterfeit substance
18 classified in Schedule III is guilty of a Class 3 felony. The
19 fine for violation of this subsection (f) shall not be more
20 than \$125,000.

21 (g) Any person who violates this Section with regard to
22 any other amount of a controlled or counterfeit substance
23 classified in Schedule IV is guilty of a Class 3 felony. The
24 fine for violation of this subsection (g) shall not be more
25 than \$100,000.

26 (h) Any person who violates this Section with regard to

1 any other amount of a controlled or counterfeit substance
2 classified in Schedule V is guilty of a Class 3 felony. The
3 fine for violation of this subsection (h) shall not be more
4 than \$75,000.

5 (i) This Section does not apply to the manufacture,
6 possession or distribution of a substance in conformance with
7 the provisions of an approved new drug application or an
8 exemption for investigational use within the meaning of
9 Section 505 of the Federal Food, Drug and Cosmetic Act.

10 (j) (Blank).

11 (Source: P.A. 99-371, eff. 1-1-16; 99-585, eff. 1-1-17;
12 100-368, eff. 1-1-18.)

13 (720 ILCS 570/401.3 new)

14 Sec. 401.3. Fentanyl trafficking.

15 (a) Except for purposes as authorized by this Act, any
16 person who knowingly brings or causes to be brought into this
17 State for the purpose of manufacture or delivery or with the
18 intent to manufacture or deliver fentanyl, carfentanil, or any
19 fentanyl analog in this or any other state or country is guilty
20 of fentanyl trafficking.

21 (b) A person convicted of fentanyl trafficking shall be
22 sentenced to a term of imprisonment of not less than twice the
23 minimum term and fined an amount as authorized by Section 401
24 of this Act, based upon the amount of fentanyl brought or
25 caused to be brought into this State, and not more than twice

1 the maximum term of imprisonment and fined twice the amount as
2 authorized by Section 401 of this Act, based upon the amount of
3 fentanyl brought or caused to be brought into this State.

4 (c) A person convicted of fentanyl trafficking for a
5 substance or any part thereof that contains carfentanil shall
6 be sentenced to a term of imprisonment of not less than twice
7 the minimum term and fined an amount as authorized by Section
8 401 of this Act, based upon the amount of carfentanil brought
9 or caused to be brought into this State, and not more than
10 twice the maximum term of imprisonment and fined twice the
11 amount as authorized by Section 401 of this Act, based upon the
12 amount of carfentanil brought or caused to be brought into
13 this State.

14 (d) It is a Class 2 felony for which a fine not to exceed
15 \$100,000 may be imposed for any person to knowingly use a
16 cellular radio telecommunication device in the furtherance of
17 fentanyl trafficking. This penalty shall be in addition to any
18 other penalties imposed by law. In this subsection (d),
19 "cellular radio telecommunication device" has the meaning
20 provided in Section 12-813.1 of the Illinois Vehicle Code.

21 (e) In addition to any other penalties under this Section,
22 the court shall impose a sentence of not less than 6 years and
23 not more than 30 years for any amount of carfentanil in excess
24 of 150 milligrams that is stored or transmitted as a powder,
25 blotter paper, tablet, patch, or spray if the product fails to
26 include:

- 1 (A) a warning label, in a bright color, in a typeface
2 that is at least 0.5 inches tall, that states, "WARNING:
3 CONTAINS LEVELS OF CARFENTANIL LETHAL TO HUMANS"; and
4 (B) an accompanying rescue level of naloxone.

5 Section 97. Severability. The provisions of this Act are
6 severable under Section 1.31 of the Statute on Statutes.