

2022 Regular Session

SENATE BILL NO. 315

BY SENATORS WOMACK, ABRAHAM, BERNARD, BOUIE, CATHEY, CONNICK,
CORTEZ, FESI, FOIL, JACKSON, LAMBERT, MCMATH, FRED
MILLS, ROBERT MILLS, MIZELL, MORRIS, PEACOCK, POPE,
SMITH, STINE, TALBOT, TARVER AND WHITE

CONTROL DANGER SUBSTANCE. Provides relative to fentanyl and carfentanil. (8/1/22)

1 AN ACT
2 To amend and reenact R.S. 40:967(B)(4) and to enact R.S. 14:2(B)(8) and R.S. 40:967(F)
3 and 1024.1, relative to fentanyl; to provide for enhanced criminal penalties for
4 certain acts involving fentanyl; to provide for the possession or sale of fentanyl
5 testing equipment; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:967(B)(4) is hereby amended and reenacted and R.S. 40:967(F)
8 and 1024.1 are hereby enacted to read as follows:

9 §967. Prohibited acts - Schedule II, penalties

10 * * *

11 B. Violations of Subsection A. Any person who violates Subsection A of this
12 Section with respect to:

13 * * *

14 (4)(a) Fentanyl or a mixture or substance containing a detectable amount of
15 fentanyl or its analogues, or carfentanil or a mixture or substance containing a
16 detectable amount of carfentanil or its analogues, upon conviction for any amount,
17 shall be imprisoned at hard labor for not less than five years nor more than forty

1 years and may, in addition, be required to pay a fine of not more than fifty thousand
2 dollars.

3 (b) If an individual knowingly misrepresented or knowingly marketed
4 a mixture or substance containing fentanyl or a fentanyl analogue as another
5 substance, the individual may be subject to enhanced penalties as provided for
6 in Subsection F of this Section.

7 (c) If the offender unlawfully distributes or dispenses fentanyl or a
8 mixture or substance containing a detectable amount of fentanyl or its
9 analogues, or carfentanil or a mixture or substance containing a detectable
10 amount of carfentanil or its analogues, which is the direct cause of serious
11 bodily injury, as defined in R.S. 14:2(C), to the person who ingested or
12 consumed the substance, the offense shall be classified as a crime of violence and
13 the offender may be subject to the following enhanced penalties:

14 (i) An additional five years at hard labor may be added to the term of
15 imprisonment imposed by the court pursuant to Paragraph (B)(4) of this
16 Section. However, the total sentence imposed, including the enhancement, shall
17 not exceed forty-five years.

18 (ii) An additional fine of not more than fifty thousand dollars, or an
19 additional fine in the amount of the full street value of the controlled or
20 counterfeit substance or controlled substances analogue, whichever is greater.
21 However, the total fine imposed, including the enhancement, shall not exceed
22 one hundred thousand dollars.

23 * * *

24 F. If an individual knowingly misrepresented or knowingly marketed a
25 mixture or substance containing fentanyl or a fentanyl analogue as another
26 substance, in addition to the penalties provided in Paragraph (B)(4) of this
27 Section, the individual may be subject to the following enhanced penalties:

28 (1) An additional five years at hard labor may be added to the term of
29 imprisonment imposed by the court pursuant to Paragraph (B)(4) of this

1 Section. However, the total sentence imposed, including the enhancement, shall
2 not exceed forty-five years.

3 (2) An additional fine of not more than fifty thousand dollars, or an
4 additional fine in the amount of the full street value of the controlled or
5 counterfeit substance or controlled substances analogue, whichever is greater.
6 However, the total fine imposed, including the enhancement, shall not exceed
7 one hundred thousand dollars.

8 (3) This Subsection shall be known and may be cited as "Millie's Law".

9 * * *

10 §1024.1. Exceptions; fentanyl testing equipment

11 Notwithstanding any provision of law to the contrary, the term "drug
12 paraphernalia" shall not include rapid fentanyl test strips (FTS) or any testing
13 equipment or devices solely used, intended for use, or designed to determine
14 whether a substance contains fentanyl or its analogues.

15 Section 2. R.S. 14:2(B)(8) is hereby enacted to read as follows:

16 §2. Definitions

17 * * *

18 B. In this Code, "crime of violence" means an offense that has, as an element,
19 the use, attempted use, or threatened use of physical force against the person or
20 property of another, and that, by its very nature, involves a substantial risk that
21 physical force against the person or property of another may be used in the course
22 of committing the offense or an offense that involves the possession or use of a
23 dangerous weapon. The following enumerated offenses and attempts to commit any
24 of them are included as "crimes of violence":

25 * * *

26 (8) Distribution of fentanyl or carfentanil punishable under R.S.
27 40:967(B)(4)(c).

28 * * *

The original instrument was prepared by Brandi Cannon. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl Serrett.

DIGEST

SB 315 Reengrossed

2022 Regular Session

Womack

Present law provides that it is illegal to produce, manufacture, distribute, or dispense, or possess with intent to produce, manufacture, distribute, or dispense, fentanyl or a fentanyl analogue. Present law further provides that a person who violates present law is to be imprisoned at hard labor for not less than five years nor more than 40 years and may, in addition, be required to pay a fine of not more than \$50,000.

Proposed law retains present law and provides for enhanced penalties if an individual knowingly misrepresented or knowingly marketed a mixture or substance containing fentanyl, a fentanyl analogue, carfentanil, or a carfentanil analogue as another substance.

Present law provides that it is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug paraphernalia. Present law defines "drug paraphernalia".

Proposed law retains present law but provides that drug paraphernalia does not include rapid fentanyl test strips or any testing equipment that tests for fentanyl or its analogue.

Present law provides for a crime of violence and lists offenses included as a crime of violence.

Proposed law retains present law and adds the distribution of fentanyl or carfentanil to the offenses included as a crime of violence.

Effective August 1, 2022.

(Amends R.S. 40:967(B)(4); adds R.S. 14:2(B)(8) and R.S. 40:967(F) and 1024.1)

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Name proposed law relative to knowing misrepresentation "Millie's Law".
2. Add exception for rapid fentanyl test strips to proposed law.
3. Change the additional penalty for an individual who knowingly misrepresents or knowingly markets a mixture of substance containing fentanyl from three years to five years.
4. Increase the maximum possible penalty from three years to five years.

Senate Floor Amendments to engrossed bill

1. Adds distribution and dispensing fentanyl or carfentanil or mixtures thereof as crime of violence with enhanced penalties.
2. Makes technical corrections.

3. Clarifies the enhanced penalties for knowingly misrepresents or knowingly markets a mixture of substance containing fentanyl.
4. Adds the distribution of fentanyl or carfentanil to the list of offenses designated as a crime of violence.