HLS 18RS-609 ORIGINAL

2018 Regular Session

HOUSE BILL NO. 165

1

BY REPRESENTATIVE MACK

DRUGS/CONTROLLED: Provides relative to the Uniform Controlled Dangerous Substances Law

AN ACT

2 To amend and reenact R.S. 40:966(B)(3), (C)(4)(introductory paragraph), and (G)(1) and to 3 enact R.S. 40:961(3.1) and 967(B)(4), (C)(4), and (E), relative to controlled 4 dangerous substances; to define the term "aggregate" for purposes of the Uniform 5 Controlled Dangerous Substances Law; to provide relative to the substance fentanyl; 6 to provide relative to criminal penalties; to provide relative to treatment; and to 7 provide for related matters. 8 Be it enacted by the Legislature of Louisiana: 9 Section 1. R.S. 40:966(B)(3), (C)(4)(introductory paragraph), and (G)(1) are hereby 10 amended and reenacted and R.S. 40:961(3.1) and 967(B)(4), (C)(4), and (E) are hereby 11 enacted to read as follows: 12 §961. Definitions 13 As used in this Part, the following terms shall have the meaning ascribed to 14 them in this Section unless the context clearly indicates otherwise: 15 16 (3.1) "Aggregate" means the gross weight of an exhibit of evidence. 17

1	§966. Penalty for distribution or possession with intent to distribute narcotic drugs
2	listed in Schedule I; possession of marijuana, possession of synthetic
3	cannabinoids, possession of and heroin
4	* * *
5	B. Violations of Subsection A. Any person who violates Subsection A of
6	this Section with respect to:
7	* * *
8	(3) A substance classified in Schedule I that is the narcotic drug heroin or a
9	mixture or substance containing a detectable amount of heroin or of its analogues or
10	a mixture or substance containing a detectable amount of heroin or its analogues, or
11	fentanyl or a mixture of substances containing a detectable amount of fentanyl or its
12	analogues, upon conviction for any amount, shall be imprisoned at hard labor for not
13	less than five years nor more than forty years and may, in addition, be required to
14	pay a fine of not more than fifty thousand dollars.
15	C. Possession. It is unlawful for any person knowingly or intentionally to
16	possess a controlled dangerous substance classified in Schedule I unless such
17	substance was obtained directly, or pursuant to a valid prescription or order, from a
18	practitioner or as provided in R.S. 40:978, while acting in the course of his
19	professional practice, or except as otherwise authorized by this Part. Any person
20	who violates this Subsection with respect to:
21	* * *
22	(4) A substance classified in Schedule I that is the narcotic drug heroin or a
23	mixture or substance containing a detectable amount of heroin or of its analogues,
24	or fentanyl or a mixture or substance containing a detectable amount of fentanyl or
25	its analogues, upon conviction for an amount:
26	* * *
27	G. Treatment for heroin and fentanyl addiction as a condition for probation.
28	(1) Upon conviction of Paragraph (B)(3) or (C)(4) of this Section, possession with
29	intent to distribute heroin or fentanyl or possession of heroin or fentanyl, the court

1	may suspend any sentence which it imposes and place the defendant on probation
2	pursuant to Code of Criminal Procedure Article 893. The court may order the
3	division of probation and parole of the Department of Public Safety and Corrections
4	to conduct a presentence investigation, or may order the defendant to obtain a
5	substance abuse evaluation, for the purpose of determining whether the defendant
6	has a substance abuse disorder.
7	* * *
8	§967. Prohibited actsSchedule II, penalties
9	* * *
10	B. Violations of Subsection A. Any person who violates Subsection A of
11	this Section with respect to:
12	* * *
13	(4) Fentanyl or a mixture or substance containing a detectable amount of
14	fentanyl or its analogues, upon conviction for any amount, shall be imprisoned at
15	hard labor for not less than five years nor more than forty years and may, in addition,
16	be required to pay a fine of not more than fifty thousand dollars.
17	C. Possession. It is unlawful for any person knowingly or intentionally to
18	possess a controlled dangerous substance as classified in Schedule II unless such
19	substance was obtained directly or pursuant to a valid prescription or order from a
20	practitioner, as provided in R.S. 40:978 while acting in the course of his professional
21	practice, or except as otherwise authorized by this Part. Any person who violates
22	this Subsection with respect to:
23	* * *
24	(4) Fentanyl or a mixture or substance containing a detectable amount of
25	fentanyl or its analogues, upon conviction for an amount:
26	(a) An aggregate weight of less than two grams, shall be sentenced to a term
27	of imprisonment, with or without hard labor, for not less than two years nor more
28	than four years.

1	(b) An aggregate weight of two grams or more but less than twenty-eight
2	grams, shall be sentenced to a term of imprisonment, with or without hard labor, for
3	not less than two years nor more than ten years and may, in addition be required to
4	pay a fine of not more than five thousand dollars.
5	* * *
6	E. Treatment for fentanyl addiction as a condition for probation. (1) Upon
7	conviction of Paragraph (B)(4) or (C)(4) of this Section, possession with intent to
8	distribute fentanyl or possession of fentanyl, the court may suspend any sentence
9	which it imposes and place the defendant on probation pursuant to Article 893 of the
10	Code of Criminal Procedure. The court may order the division of probation and
11	parole of the Department of Public Safety and Corrections to conduct a presentence
12	investigation, or may order the defendant to obtain a substance abuse evaluation, for
13	the purpose of determining whether the defendant has a substance abuse disorder.
14	(2) Upon receiving the report or evaluation, the court shall, if it finds
15	probable cause from such report to believe the defendant has a substance abuse
16	disorder, order a contradictory hearing for the purpose of making a judicial
17	determination on whether the defendant has a substance abuse disorder.
18	(3) If, at such contradictory hearing, the court determines that the defendant
19	has a substance abuse disorder, it shall require as a condition of probation that the
20	defendant complete a drug treatment program if the following conditions are met:
21	(a) There is an available program in the local jurisdiction that has sufficient
22	experience in working with criminal justice participants with substance abuse
23	disorders and is certified and approved by the state of Louisiana.
24	(b) The cost of the approved treatment does not create a substantial financial
25	hardship to the defendant or his dependents. For purposes of this determination,
26	"substantial financial hardship" shall have the same meaning as provided in R.S.
27	<u>15:175.</u>
28	(4) If the offender does not successfully complete the drug treatment
29	program, or otherwise violates the conditions of his probation, the court may revoke

- 1 the probation or impose other sanctions pursuant to Article 900 of the Code of
- 2 Criminal Procedure.
- 3 Section 2.(A) The Louisiana State Law Institute is hereby authorized and directed
- 4 to renumber the terms defined in R.S. 40:961 to ensure that such terms are in alphabetical
- 5 order and to remove the use of decimalization in numbering such terms.
- 6 (B) The Louisiana State Law Institute is hereby authorized and directed to correct
- 7 the citations in the following provisions to reflect the renumbering of the defined terms in
- 8 R.S. 40:961 as provided by Subsection A of this Section: R.S. 17:416.3(D)(1) and 491.2(A),
- 9 R.S. 37:1360.52(2) and 2371(3), and R.S. 40:991(B), 971.2(B)(introductory paragraph), and
- 10 1060.13(A).

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 165 Original

2018 Regular Session

Mack

Abstract: Provides a definition of "aggregate" for purposes of determining the weight of certain controlled dangerous substances, and relocates the existing criminal penalties for fentanyl to correspond to its classification as a Schedule II controlled dangerous substance.

<u>Present law</u> provides for the Uniform Controlled Dangerous Substances Law which imposes criminal penalties upon any person who manufactures, produces, distributes, possesses with the intent to distribute, or possesses a controlled dangerous substance or who engages in other unlawful acts set forth in present law relative to controlled dangerous substances.

Imposition of certain penalties in <u>present law</u> depend upon the aggregate weight of the substance involved.

<u>Proposed law</u> retains <u>present law</u> but adds a definition of the term "aggregate" to mean the gross weight of an exhibit of evidence.

<u>Present law</u> classifies fentanyl as a Schedule II substance in the Uniform Controlled Dangerous Substances Law but provides for criminal penalties as follows in the penalty provisions involving Schedule I substances:

- (1) Manufacture or distribution of fentanyl, or a mixture or substance including fentanyl-penalties include imprisonment at hard labor for five to forty years, and may include a fine not to exceed \$50,000.
- (2) Possession of fentanyl or a mixture or substance containing fentanyl-penalties are as follows:
 - (a) An aggregate weight of less than two grams-imprisonment, with or without hard labor, for not less than two years nor more than four years.

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

(b) An aggregate weight of two grams or more but less than twenty-eight grams imprisonment, with or without hard labor, for not less than two years nor more than ten years and may include a fine of not more than \$5,000.

<u>Proposed law</u> retains the <u>present law</u> classification of fentanyl as a Schedule II substance and retains the <u>present law</u> criminal penalties, but relocates those penalties to the penalty provisions in Schedule II.

<u>Present law</u> authorizes substance abuse treatment and probation in certain cases of possession or possession with intent to distribute heroin or fentanyl. Requires a contradictory hearing to determine the presence of a substance abuse disorder, and provides for the revocation of probation or other sanctions for the failure to complete treatment or other conditions of probation.

<u>Proposed law</u> retains <u>present law</u> but relocates these provisions applicable to fentanyl to the penalty provisions in Schedule II.

(Amends R.S. 40:966(B)(3), (C)(4)(intro. para.), and (G)(1); Adds R.S. 40:961(3.1) and 967(B)(4), (C)(4), and (E))