

SENATE, No. 291

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JAMES W. HOLZAPFEL

District 10 (Ocean)

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District 14 (Mercer and Middlesex)

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SYNOPSIS

Increases penalties for unlawfully manufacturing, distributing, or dispensing fentanyl.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/27/2018)

1 AN ACT concerning certain controlled dangerous substances and
2 amending N.J.S.2C:35-5.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. N.J.S.2C:35-5 is amended to read as follows:

8 2C:35-5. Manufacturing, Distributing or Dispensing.

9 a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.),
10 it shall be unlawful for any person knowingly or purposely:

11 (1) To manufacture, distribute or dispense, or to possess or have
12 under his control with intent to manufacture, distribute or dispense,
13 a controlled dangerous substance or controlled substance analog; or

14 (2) To create, distribute, or possess or have under his control
15 with intent to distribute, a counterfeit controlled dangerous
16 substance.

17 b. Any person who violates subsection a. with respect to:

18 (1) (a) Heroin, or its analog, **[or coca]** in a quantity of five
19 ounces or more including any adulterants or dilutants;

20 (b) Coca leaves and any salt, compound, derivative, or
21 preparation of coca leaves, and any salt, compound, derivative, or
22 preparation thereof which is chemically equivalent or identical with
23 any of these substances, or analogs, except that the substances shall
24 not include decocainized coca leaves or extractions which do not
25 contain cocaine or ecogine, or 3,4-
26 methylenedioxyamphetamine or 3,4-
27 methylenedioxyamphetamine, in a quantity of five ounces or more
28 including any adulterants or dilutants; or

29 (c) Fentanyl in a quantity of five ounces or more including any
30 adulterants or dilutants.

31 is guilty of a crime of the first degree. The defendant shall,
32 except as provided in N.J.S.2C:35-12, be sentenced to a term of
33 imprisonment by the court. The term of imprisonment shall include
34 the imposition of a minimum term which shall be fixed at, or
35 between, one-third and one-half of the sentence imposed, during
36 which the defendant shall be ineligible for parole. Notwithstanding
37 the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to
38 \$500,000.00 may be imposed;

39 (2) A substance referred to in paragraph (1) of this subsection,
40 in a quantity of one-half ounce or more but less than five ounces,
41 including any adulterants or dilutants is guilty of a crime of the
42 second degree;

43 (3) A substance referred to in paragraph (1) of this subsection in
44 a quantity less than one-half ounce including any adulterants or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

- 1 dilutants is guilty of a crime of the third degree except that,
2 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
3 fine of up to \$75,000.00 may be imposed;
- 4 (4) A substance classified as a narcotic drug in Schedule I or II
5 other than those specifically covered in this section, or the analog of
6 any such substance, in a quantity of one ounce or more including
7 any adulterants or dilutants is guilty of a crime of the second
8 degree;
- 9 (5) A substance classified as a narcotic drug in Schedule I or II
10 other than those specifically covered in this section, or the analog of
11 any such substance, in a quantity of less than one ounce including
12 any adulterants or dilutants is guilty of a crime of the third degree
13 except that, notwithstanding the provisions of subsection b. of
14 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;
- 15 (6) Lysergic acid diethylamide, or its analog, in a quantity of
16 100 milligrams or more including any adulterants or dilutants, or
17 phencyclidine, or its analog, in a quantity of 10 grams or more
18 including any adulterants or dilutants, is guilty of a crime of the
19 first degree. Except as provided in N.J.S.2C:35-12, the court shall
20 impose a term of imprisonment which shall include the imposition
21 of a minimum term, fixed at, or between, one-third and one-half of
22 the sentence imposed by the court, during which the defendant shall
23 be ineligible for parole. Notwithstanding the provisions of
24 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be
25 imposed;
- 26 (7) Lysergic acid diethylamide, or its analog, in a quantity of
27 less than 100 milligrams including any adulterants or dilutants, or
28 where the amount is undetermined, or phencyclidine, or its analog,
29 in a quantity of less than 10 grams including any adulterants or
30 dilutants, or where the amount is undetermined, is guilty of a crime
31 of the second degree;
- 32 (8) Methamphetamine, or its analog, or phenyl-2-propanone
33 (P2P), in a quantity of five ounces or more including any
34 adulterants or dilutants is guilty of a crime of the first degree.
35 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
36 fine of up to \$300,000.00 may be imposed;
- 37 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
38 (P2P), in a quantity of one-half ounce or more but less than five
39 ounces including any adulterants or dilutants is guilty of a crime of
40 the second degree;
- 41 (b) Methamphetamine, or its analog, or phenyl-2-propanone
42 (P2P), in a quantity of less than one-half ounce including any
43 adulterants or dilutants is guilty of a crime of the third degree
44 except that notwithstanding the provisions of subsection b. of
45 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;
- 46 (10) (a) Marijuana in a quantity of 25 pounds or more including
47 any adulterants or dilutants, or 50 or more marijuana plants,
48 regardless of weight, or hashish in a quantity of five pounds or

1 more including any adulterants or dilutants, is guilty of a crime of
2 the first degree. Notwithstanding the provisions of subsection a. of
3 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

4 (b) Marijuana in a quantity of five pounds or more but less than
5 25 pounds including any adulterants or dilutants, or 10 or more but
6 fewer than 50 marijuana plants, regardless of weight, or hashish in a
7 quantity of one pound or more but less than five pounds, including
8 any adulterants and dilutants, is guilty of a crime of the second
9 degree;

10 (11) Marijuana in a quantity of one ounce or more but less than
11 five pounds including any adulterants or dilutants, or hashish in a
12 quantity of five grams or more but less than one pound including
13 any adulterants or dilutants, is guilty of a crime of the third degree
14 except that, notwithstanding the provisions of subsection b. of
15 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;

16 (12) Marijuana in a quantity of less than one ounce including
17 any adulterants or dilutants, or hashish in a quantity of less than five
18 grams including any adulterants or dilutants, is guilty of a crime of
19 the fourth degree;

20 (13) Any other controlled dangerous substance classified in
21 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
22 third degree, except that, notwithstanding the provisions of
23 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be
24 imposed; or

25 (14) Any Schedule V substance, or its analog, is guilty of a
26 crime of the fourth degree except that, notwithstanding the
27 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
28 \$25,000.00 may be imposed.

29 c. Where the degree of the offense for violation of this section
30 depends on the quantity of the substance, the quantity involved
31 shall be determined by the trier of fact. Where the indictment or
32 accusation so provides, the quantity involved in individual acts of
33 manufacturing, distribution, dispensing or possessing with intent to
34 distribute may be aggregated in determining the grade of the
35 offense, whether distribution or dispensing is to the same person or
36 several persons, provided that each individual act of manufacturing,
37 distribution, dispensing or possession with intent to distribute was
38 committed within the applicable statute of limitations.

39 (cf: P.L.2000, c.136, s.1)

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41 2. This act shall take effect immediately.

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44 STATEMENT

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46 This bill would increase the penalties for unlawfully
47 manufacturing, distributing, or dispensing fentanyl. Fentanyl is an
48 anesthetic and analgesic, first synthesized in the 1950's, that in

1 recent years has become a drug of abuse. According to the Drug
2 Enforcement Administration, fentanyl is 30 to 50 times more potent
3 than heroin and is potentially lethal even at very low doses.

4 Under current law, set out in paragraphs (4) and (5) of subsection
5 b. of N.J.S.2C:35-5 and section 6 of P.L.1970, c.226 (C.24:21-6),
6 unlawfully manufacturing, distributing, or dispensing fentanyl in a
7 quantity of one ounce or more is a crime of the second degree. A
8 crime of the second degree is generally punishable by a term of
9 imprisonment of five to ten years or a fine up to \$150,000, or both.
10 Unlawfully manufacturing, distributing or dispensing fentanyl in a
11 quantity of less than one ounce is a crime of the third degree. A
12 crime of the third degree is generally punishable by a term of three
13 to five years or a fine up to \$15,000, or both. However, the fine
14 imposed for the third degree offense involving fentanyl is increased
15 to up to \$75,000.

16 Under the bill, the penalties for unlawfully manufacturing,
17 distributing, or dispensing fentanyl would match the penalties for
18 manufacturing, distributing, or dispensing heroin or cocaine under
19 current law. The bill provides that unlawfully manufacturing,
20 distributing, or dispensing fentanyl in a quantity of five ounces or
21 more would be a crime of the first degree. A crime of the first
22 degree is generally punishable by a term of imprisonment of 10 to
23 20 years or a fine of up to \$200,000, or both. Under the bill the
24 defendant would be sentenced to a mandatory minimum term of
25 imprisonment of one-third to one-half of the sentence imposed,
26 during which the defendant would be ineligible for parole. The
27 defendant would also be sentenced to pay an increased fine of up to
28 \$500,000.

29 The bill provides that if the quantity of fentanyl unlawfully
30 manufactured, distributed, or dispensed is one-half ounce or more
31 but less than five ounces, the defendant would be guilty of a crime
32 of the second degree. If the quantity is less than one-half ounce, the
33 defendant would be guilty of a crime of the third degree with an
34 increased fine of up to \$75,000.