

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2017 REGULAR SESSION
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Amend printed copy of **HB 333**

On page 19, line 2, through page 20, line 20, by deleting Section 5 in its entirety, and inserting in lieu thereof:

"➔Section 5. KRS 218A.1412 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully traffics in:

- (a) Four (4) grams or more of cocaine;
- (b) Two (2) grams or more of ~~heroin, fentanyl, or~~ methamphetamine;
- (c) Ten (10) or more dosage units of a controlled substance that is classified in Schedules I or II and is a narcotic drug, or a controlled substance analogue;
- (d) Any quantity of lysergic acid diethylamide; phencyclidine; gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers;~~or~~
- (e) **Any quantity of fentanyl, carfentanil, or fentanyl derivatives;**
- (f) **Two (2) grams or more of heroin;**
- (g) **Less than two (2) grams of heroin; or**
- (h) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.

(2) The amounts specified in subsection (1) of this section may occur in a single transaction or

Amendment No. HFA 3

Rep. Rep. Kimberly Poore Moser

Committee Amendment

Signed: _____

Floor Amendment

LRC Drafter: Nardy, Dale

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

may occur in a series of transactions over a period of time not to exceed ninety (90) days that cumulatively result in the quantities specified in this section.

- (3) (a) Any person who violates the provisions of subsection (1)(a), (b), (c), ~~(d)~~, (e), or (f) of this section shall be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense.
- (b) Any person who violates the provisions of subsection (1)(g) of this section shall be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense, except that if the finder of fact, during the guilt phase of a trial, finds by a preponderance of the evidence that a person had a substance use disorder involving the use of heroin at the time of the commission of the offense, the person shall be guilty of a Class D felony. "Substance use disorder" shall have the same meaning as in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.
- (c) Any person who violates the provisions of subsection (1)~~(h)~~~~(e)~~ of this section:
1. Shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense; and
 2. a. Except as provided in subdivision b. of this subparagraph, where the trafficked substance was heroin and the defendant committed the offense while possessing more than one (1) items of paraphernalia, including but not limited to scales, ledgers, instruments and material to cut, package, or mix the final product, excess cash, multiple subscriber identity modules in excess of the number of communication devices possessed by the person at the time of arrest, or weapons, which given the totality of the circumstances indicate the trafficking to have been a commercial activity,

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shall not be released on parole until he or she has served at least fifty percent (50%) of the sentence imposed.

- b. This subparagraph shall not apply to a person who has been determined by a court to have had a substance use disorder relating to a controlled substance at the time of the offense. "Substance use disorder" shall have the same meaning as in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

~~(d)(e)~~ Any person convicted of a Class C felony offense or higher under this section shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed in cases where the trafficked substance was heroin."; and

On page 23, line 5, by deleting "or"; and

On page 23, by deleting lines 6 through 8 and inserting in place thereof:

- "6. The prescription for a Schedule II controlled substance is prescribed to treat pain following a major surgery or the treatment of significant trauma, as defined by the state licensing board in consultation with the Kentucky Office of Drug Control Policy;**
- 7. The Schedule II controlled substance is dispensed or administered directly to an ultimate user in an inpatient setting; or**
- 8. Any additional treatment scenario deemed medically necessary by the state licensing board in consultation with the Kentucky Office of Drug Control Policy;**"; and

On page 25, by deleting lines 1 through 24, and inserting in lieu thereof:

"(4) **For the purposes of pharmacy dispensing, the medical necessity for a Schedule II**

controlled substance as documented by the practitioner in the patient's medical record and the prescription for more than a three (3) day supply of that controlled substance are presumed to be valid.

- (5) A state licensing board shall employ or obtain the services of a specialist in the treatment of pain and a specialist in drug addiction to evaluate information received regarding a licensee's prescribing or dispensing practices related to controlled substances if the board or its staff does not possess such expertise, to ascertain if the licensee under investigation is engaging in improper, inappropriate, or illegal practices.
- ~~(6)~~(5) Any statute to the contrary notwithstanding, no state licensing board shall require that a grievance or complaint against a licensee relating to controlled substances be sworn to or notarized, but the grievance or complaint shall identify the name and address of the grievant or complainant, unless the board by administrative regulation authorizes the filing of anonymous complaints. Any such authorizing administrative regulation shall require that an anonymous complaint or grievance be accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint or grievance is meritorious.
- ~~(7)~~(6) Every state licensing board shall cooperate to the maximum extent permitted by law with all state, local, and federal law enforcement agencies, and all professional licensing boards and agencies, state and federal, in the United States or its territories in the coordination of actions to deter the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.
- ~~(8)~~(7) Each state licensing board shall require a fingerprint-supported criminal record check by the Department of Kentucky State Police and the Federal Bureau of Investigation of any applicant for initial licensure to practice any profession authorized to prescribe or dispense

controlled substances.".