

**First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0696.01 Michael Dohr x4347

**SENATE BILL 23-109**

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**SENATE SPONSORSHIP**

**Pelton B. and Mullica,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING A CRIMINAL PENALTY FOR THE SUPPLIER WHEN A**  
102              **PERSON DIES AS A RESULT OF THE USE OF A CONTROLLED**  
103              **SUBSTANCE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill makes it a level 1 drug felony if a person sells, dispenses, distributes, or otherwise transfers any quantity of a controlled substance or any material, compound, mixture, or preparation that contains any amount of a controlled substance and the sale, dispensing, distribution, or transfer is the proximate cause of the death of another person who used

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing law.  
Dashes through the words or numbers indicate deletions from existing law.*

or consumed the controlled substance material, compound, mixture, or preparation.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. In Colorado Revised Statutes, 18-18-405, amend**  
3 **(2)(a)(III) as follows:**

4 **18-18-405. Unlawful distribution, manufacturing, dispensing,**  
5 **or sale.** (2) Except as otherwise provided for an offense concerning  
6 marijuana and marijuana concentrate in section 18-18-406 and for special  
7 offenders as provided in section 18-18-407, any person who violates any  
8 of the provisions of subsection (1) of this section:

9 (a) Commits a level 1 drug felony and is subject to the mandatory  
10 sentencing provisions in section 18-1.3-401.5 (7) if:

11 (III) (A) Except as provided in section 18-1-711 (3)(i), the  
12 defendant committed a violation of subsection (2)(a)(I)(D), (2)(b)(I)(D),  
13 or (2)(c)(V) SUBSECTION (2)(a)(I), (2)(b)(I), OR (2)(c) of this section, and  
14 the actions in violation of subsection (2)(a)(I)(D), (2)(b)(I)(D), or  
15 (2)(c)(V) SUBSECTION (2)(a)(I), (2)(b)(I), OR (2)(c) of this section are the  
16 proximate cause of the death of another person who used or consumed the  
17 material, compound, mixture, or preparation that contained fentanyl,  
18 carfentanil, benzimidazole opiate, or an analog thereof as described in  
19 section 18-18-204 (2)(g) ANY AMOUNT OF A SCHEDULE I OR SCHEDULE II  
20 CONTROLLED SUBSTANCE.

21 (B) Notwithstanding subsection (2)(a)(III)(A) of this section, a  
22 defendant who committed a violation of subsection (2)(c)(V) SUBSECTION  
23 (2)(c) of this section, and the actions in violation of subsection (2)(c)(V)  
24 SUBSECTION (2)(c) of this section are the proximate cause of the death of  
25 another person who used or consumed the material, compound, mixture,

1 or preparation that contained fentanyl, carfentanil, benzimidazole opiate,  
2 or an analog thereof as described in section 18-18-204 (2)(g) ANY  
3 AMOUNT OF A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE, is  
4 not subject to the mandatory sentencing requirement as described in  
5 section 18-1.3-401.5 (7).

6 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-401.5, amend  
7 (10)(a)(V) as follows:

8 **18-1.3-401.5. Drug felonies classified - presumptive and**  
9 **aggravated penalties - legislative intent.** (10) (a) Except for a level 1  
10 drug felony, the presence of one or more of the following aggravating  
11 circumstances at the time of the commission of a drug felony offense  
12 requires the court, if it sentences the defendant to incarceration, to  
13 sentence the defendant to a term of at least the midpoint in the  
14 presumptive range but not more than the maximum term of the  
15 aggravated range:

16 (V) The defendant committed a violation of section 18-18-405  
17 (2)(a)(III)(A), and the unlawful distribution, manufacturing, dispensing,  
18 or sale of the material, compound, mixture, or preparation weighed more  
19 than fifty grams and contained fentanyl, carfentanil, benzimidazole  
20 opiate, MORE THAN TWO HUNDRED TWENTY-FIVE GRAMS AND CONTAINS  
21 A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE; MORE THAN ONE  
22 HUNDRED TWELVE GRAMS AND CONTAINS METHAMPHETAMINE, HEROIN,  
23 KETAMINE, OR CATHINONES; MORE THAN FIFTY MILLIGRAMS AND  
24 CONTAINS FLUNITRAZEPAM; OR MORE THAN FIFTY GRAMS AND CONTAINS  
25 FENTANYL, CARGENTANIL, BENZIMIDAZOLE OPIATE, or an analog thereof  
26 as described in section 18-18-204 (2)(g).

27 **SECTION 3.** Act subject to petition - effective date -

1     **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
2     the expiration of the ninety-day period after final adjournment of the  
3     general assembly; except that, if a referendum petition is filed pursuant  
4     to section 1 (3) of article V of the state constitution against this act or an  
5     item, section, or part of this act within such period, then the act, item,  
6     section, or part will not take effect unless approved by the people at the  
7     general election to be held in November 2024 and, in such case, will take  
8     effect on the date of the official declaration of the vote thereon by the  
9     governor.

10           (2) This act applies to offenses committed on or after the  
11     applicable effective date of this act.