

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 23-0696.01 Michael Dohr x4347

SENATE BILL 23-109

SENATE SPONSORSHIP

Pelton B. and Mullica, Baisley, Gardner, Kirkmeyer, Liston, Lundeen, Pelton R., Rich, Roberts, Simpson, Smallwood, Van Winkle, Will

HOUSE SPONSORSHIP

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House Committees

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.**

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.

SENATE
3rd Reading Unamended
March 22, 2023

SENATE
Amended 2nd Reading
March 21, 2023

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

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 (C) IT IS NOT A VIOLATION OF SUBSECTION (2)(a)(III)(A) OF THIS
7 SECTION IF THE VIOLATION INVOLVES DISTRIBUTION OR TRANSFER OF THE
8 CONTROLLED SUBSTANCE IF THE DISTRIBUTION OR TRANSFER IS DONE
9 WITHOUT REMUNERATION AND IS FOR THE PURPOSE OF CONSUMING ALL OF
10 THE CONTROLLED SUBSTANCE WITH ANOTHER PERSON OR PERSONS AT A
11 TIME SUBSTANTIALLY CONTEMPORANEOUS WITH THE TRANSFER; EXCEPT
12 THAT THIS SUBSECTION (2)(a)(III)(C) APPLIES ONLY IF THE DISTRIBUTION
13 OR TRANSFER INVOLVES NOT MORE THAN FOUR GRAMS OF A SCHEDULE I
14 OR II CONTROLLED SUBSTANCE, NOT MORE THAN TWO GRAMS OF
15 METHAMPHETAMINE, HEROIN, KETAMINE, OR CATHINONES, OR NOT MORE
16 THAN 1 GRAM OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR
17 AN ANALOG THEREOF.

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

20 **18-1.3-401.5. Drug felonies classified - presumptive and**
21 **aggravated penalties - legislative intent.** (10) (a) Except for a level 1
22 drug felony, the presence of one or more of the following aggravating
23 circumstances at the time of the commission of a drug felony offense
24 requires the court, if it sentences the defendant to incarceration, to
25 sentence the defendant to a term of at least the midpoint in the
26 presumptive range but not more than the maximum term of the
27 aggravated range:

1 (V) The defendant committed a violation of section 18-18-405
2 (2)(a)(III)(A), and the unlawful distribution, manufacturing, dispensing,
3 or sale of the material, compound, mixture, or preparation weighed more
4 than fifty grams and contained fentanyl, carfentanil, benzimidazole
5 opiate; MORE THAN TWO HUNDRED TWENTY-FIVE GRAMS AND CONTAINS
6 A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE; MORE THAN ONE
7 HUNDRED TWELVE GRAMS AND CONTAINS METHAMPHETAMINE, HEROIN,
8 KETAMINE, OR CATHINONES; MORE THAN FIFTY MILLIGRAMS AND
9 CONTAINS FLUNITRAZEPAM; OR MORE THAN FIFTY GRAMS AND CONTAINS
10 FENTANYL, CARGENTANIL, BENZIMIDAZOLE OPIATE, or an analog thereof
11 as described in section 18-18-204 (2)(g).

12 **SECTION 3. Act subject to petition - effective date -**
13 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
14 the expiration of the ninety-day period after final adjournment of the
15 general assembly; except that, if a referendum petition is filed pursuant
16 to section 1 (3) of article V of the state constitution against this act or an
17 item, section, or part of this act within such period, then the act, item,
18 section, or part will not take effect unless approved by the people at the
19 general election to be held in November 2024 and, in such case, will take
20 effect on the date of the official declaration of the vote thereon by the
21 governor.

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