

REFERENCE TITLE: drug possession; classification

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1450

Introduced by
Senator Quezada

AN ACT

AMENDING SECTIONS 13-3403, 13-3404.01, 13-3407 AND 13-3408, ARIZONA
REVISED STATUTES; RELATING TO DRUG OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3403, Arizona Revised Statutes, is amended to
3 read:

4 13-3403. Possession and sale of a vapor-releasing substance
5 containing a toxic substance; regulation of sale;
6 exceptions; classification

7 A. A person shall not knowingly:

8 1. Breathe, inhale or drink a vapor-releasing substance containing
9 a toxic substance.

10 2. Sell, transfer or offer to sell or transfer a vapor-releasing
11 substance containing a toxic substance to a person WHO IS under eighteen
12 years of age.

13 3. Sell, transfer or offer to sell or transfer a vapor-releasing
14 substance containing a toxic substance if ~~such~~ THE person is not, at the
15 time of sale, transfer or offer, employed by or engaged in operating a
16 licensed commercial establishment at a fixed location regularly offering
17 such substance for sale and ~~such~~ THE sale, transfer or offer is made in
18 the course of employment or operation.

19 B. A person making a sale or transfer of a vapor-releasing glue
20 containing a toxic substance shall:

21 1. Require identification of the purchaser and shall record:

22 ~~1.~~ (a) The name of the glue.

23 ~~2.~~ (b) The date and hour of delivery.

24 ~~3.~~ (c) The intended use of the glue.

25 ~~4.~~ (d) The signature and address of the purchaser.

26 ~~5.~~ (e) The signature of the seller or deliverer.

27 ~~Such record shall be kept~~

28 2. KEEP THE RECORD PRESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION for
29 three years and ~~be~~ MAKE THE RECORD available to board inspectors and peace
30 officers.

31 C. The operator of a commercial establishment shall keep all
32 vapor-releasing glue containing a toxic substance in a place that is
33 unavailable to customers without the assistance of the operator or an
34 employee of the establishment.

35 D. The operator of a commercial establishment selling
36 vapor-releasing paints and varnishes containing a toxic substance
37 dispensed by the use of any aerosol spray device shall conspicuously
38 display an easily legible sign of not less than eleven by fourteen inches
39 ~~which~~ THAT states: "Warning: inhalation of vapors can be dangerous".

40 E. This section is not applicable to the transfer of a
41 vapor-releasing substance containing a toxic substance from a parent or
42 guardian to ~~his~~ THE PARENT'S OR GUARDIAN'S child or ward, or the sale or
43 transfer made for manufacturing or industrial purposes.

1 F. Subsection A, paragraphs 2 and 3 and subsections B and C OF THIS
2 SECTION do not apply to substances certified by the department of health
3 services as containing an additive that inhibits inhalation or induces
4 sneezing.

5 G. A person who violates ~~any provision:~~

6 1. SUBSECTION A, PARAGRAPH 2 OR 3 OR SUBSECTION B, C OR D of this
7 section is guilty of a class 5 felony, but the court, having regard to the
8 nature and circumstances of the offense, may enter judgment of conviction
9 for a class 1 misdemeanor and make disposition accordingly or may place
10 the defendant on probation in accordance with chapter 9 of this title and
11 refrain from designating the offense as a felony or misdemeanor until the
12 probation is terminated. The offense shall be treated as a felony for all
13 purposes until such time as the court enters an order designating the
14 offense a misdemeanor.

15 2. SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IS GUILTY OF A CLASS 6
16 FELONY.

17 H. For the purposes of subsections A and E OF THIS SECTION,
18 "vapor-releasing substance containing a toxic substance" means paint or
19 varnish dispensed by the use of aerosol spray, or any glue, that releases
20 vapors or fumes containing acetone, volatile acetates, benzene, butyl
21 alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl
22 alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene,
23 volatile ketones, isophorone, chloroform, methylene chloride, mesityl
24 oxide, xylene, cumene, ethylbenzene, trichloroethylene, mibk, miak, mek or
25 diacetone alcohol or isobutyl nitrite.

26 Sec. 2. Section 13-3404.01, Arizona Revised Statutes, is amended to
27 read:

28 13-3404.01. Possession or sale of precursor chemicals,
29 regulated chemicals, substances or equipment;
30 exceptions; classification

31 A. A person shall not do any of the following:

32 1. Knowingly possess a precursor chemical II.

33 2. Knowingly possess more than twenty-four grams of
34 pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine without a
35 license or permit issued pursuant to title 32, chapter 18.

36 3. Knowingly purchase more than three packages, not to exceed nine
37 grams of pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine
38 without a valid prescription order as defined in section 32-1901 or a
39 license or permit issued pursuant to title 32, chapter 18.

40 4. Knowingly possess any ephedrine that is uncombined or that is
41 the sole active ingredient of a product or more than twenty-four grams of
42 ephedrine that is combined with another active ingredient in any ephedrine
43 product without a license or permit issued pursuant to title 32,
44 chapter 18.

1 5. Knowingly purchase any ephedrine that is uncombined or is the
2 sole active ingredient of a product or more than three packages, not to
3 exceed nine grams of ephedrine that is combined with another active
4 ingredient in any ephedrine product without a license or permit issued
5 pursuant to title 32, chapter 18.

6 6. Sell, transfer or otherwise furnish any precursor chemical,
7 regulated chemical or other substance or equipment with knowledge that the
8 recipient will use the precursor chemical, regulated chemical, substance
9 or equipment to unlawfully manufacture a dangerous drug or narcotic drug.

10 7. As a manufacturer, wholesaler or retailer, knowingly possess any
11 precursor chemical or regulated chemical from which the label, the
12 national drug control number or the manufacturer's lot number has been
13 removed, altered or obliterated, except that a licensed manufacturer may
14 relabel products as permitted under the federal act.

15 8. Knowingly sell, transfer or otherwise furnish more than nine
16 grams of any precursor chemical without a license or permit issued
17 pursuant to title 32, chapter 18.

18 9. Sell, transfer or furnish ephedrine, pseudoephedrine,
19 (-)-norpseudoephedrine or phenylpropanolamine in a total amount of more
20 than nine grams in a single transaction in this state unless the recipient
21 possesses a valid and current permit issued by the board pursuant to title
22 32, chapter 18.

23 10. Sell, transfer or otherwise furnish a precursor chemical in
24 violation of any rule of the board or the department of public safety.

25 11. As a wholesaler or retailer, purchase or otherwise acquire or
26 receive a precursor chemical from any person who does not possess a valid
27 and current permit issued pursuant to title 32, chapter 18.

28 12. Knowingly participate in any transaction or series of
29 transactions that is structured by any person with the intent to avoid or
30 circumvent the prohibitions or limits on sales established by this
31 section.

32 B. A retailer shall not knowingly sell, transfer or otherwise
33 furnish a precursor chemical unless:

34 1. The transaction occurs in the normal course of business at
35 premises that are permitted pursuant to title 32, chapter 18.

36 2. The retailer has a valid and current permit that is issued
37 pursuant to title 32, chapter 18 and that is prominently displayed at the
38 premises where the transaction occurs.

39 C. A retailer shall not sell more than a total of three packages,
40 not to exceed nine grams of ephedrine, pseudoephedrine,
41 (-)-norpseudoephedrine or phenylpropanolamine in a single transaction
42 unless the person has a valid prescription order as defined in section
43 32-1901.

1 D. A wholesaler shall not sell, transfer or otherwise furnish a
2 precursor chemical to any person unless:

3 1. The wholesaler has a valid and current permit issued pursuant to
4 title 32, chapter 18.

5 2. The recipient has a permit issued pursuant to title 32, chapter
6 18, is a pharmacy or is a practitioner.

7 3. The transaction does not involve payment in cash or money orders
8 in an amount of more than ~~one thousand dollars~~ \$1,000.

9 E. A manufacturer shall not sell, transfer or otherwise furnish a
10 precursor chemical to any person unless:

11 1. The recipient is licensed or has a permit issued pursuant to
12 title 32, chapter 18, is a pharmacy or is a practitioner.

13 2. The transaction does not involve payment in cash or money orders
14 in an amount of more than ~~one thousand dollars~~ \$1,000.

15 F. This section does not apply to any of the following:

16 1. The transfer by a licensee or permittee to a reclamation
17 facility for destruction.

18 2. The movement from one facility of a licensee or permittee to
19 another facility of the same licensee or permittee without sale.

20 G. Notwithstanding any other law, a county, city or town shall not
21 enact an ordinance that is more restrictive than the requirements of this
22 section.

23 H. A violation of subsection A, paragraph ~~1 or~~ 6 OF THIS SECTION is
24 a class 2 felony. A violation of subsection A, paragraph ~~2, 3,~~ 4, 5, 7,
25 9, 11 or 12 OF THIS SECTION is a class 5 felony. A violation of
26 subsection A, paragraph 1, 2, 3, 8 or 10 OF THIS SECTION is a class 6
27 felony. A violation of subsection B, D or E OF THIS SECTION is a class 5
28 felony. A violation of subsection C OF THIS SECTION is a class 5 felony,
29 except that if the violation involves less than a total of fifty grams of
30 ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine,
31 the first violation is a class 2 misdemeanor and the second violation is a
32 class 1 misdemeanor. An enterprise is not criminally accountable for a
33 violation of subsection C OF THIS SECTION unless the conduct constituting
34 the offense is engaged in, authorized, commanded or recklessly tolerated
35 by the directors of the enterprise in any manner or by a high managerial
36 agent acting within the scope of employment.

37 Sec. 3. Section 13-3407, Arizona Revised Statutes, is amended to
38 read:

39 13-3407. Possession, use, administration, acquisition, sale,
40 manufacture or transportation of dangerous drugs;
41 classification

42 A. A person shall not knowingly:

43 1. Possess or use a dangerous drug.

44 2. Possess a dangerous drug for sale.

1 3. Possess equipment or chemicals, or both, for the purpose of
2 manufacturing a dangerous drug.

3 4. Manufacture a dangerous drug.

4 5. Administer a dangerous drug to another person.

5 6. Obtain or procure the administration of a dangerous drug by
6 fraud, deceit, misrepresentation or subterfuge.

7 7. Transport for sale, import into this state or offer to transport
8 for sale or import into this state, sell, transfer or offer to sell or
9 transfer a dangerous drug.

10 B. A person who violates:

11 1. Subsection A, paragraph 1 of this section is guilty of a class
12 ~~4~~ 6 felony. Unless the drug involved is lysergic acid diethylamide,
13 methamphetamine, amphetamine or phencyclidine or the person was previously
14 convicted of a felony offense or a violation of this section or section
15 13-3408, the court on motion of the state, considering the nature and
16 circumstances of the offense, for a person not previously convicted of any
17 felony offense or a violation of this section or section 13-3408 may enter
18 judgment of conviction for a class 1 misdemeanor and make disposition
19 accordingly or may place the defendant on probation in accordance with
20 chapter 9 of this title and refrain from designating the offense as a
21 felony or misdemeanor until the probation is successfully terminated. The
22 offense shall be treated as a felony for all purposes until the court
23 enters an order designating the offense a misdemeanor.

24 2. Subsection A, paragraph 2 of this section is guilty of a class 2
25 felony.

26 3. Subsection A, paragraph 3 of this section is guilty of a class 3
27 felony, except that if the offense involved methamphetamine, the person is
28 guilty of a class 2 felony.

29 4. Subsection A, paragraph 4 of this section is guilty of a class 2
30 felony.

31 5. Subsection A, paragraph 5 of this section is guilty of a class 2
32 felony.

33 6. Subsection A, paragraph 6 of this section is guilty of a class 3
34 felony.

35 7. Subsection A, paragraph 7 of this section is guilty of a class 2
36 felony.

37 C. Except as provided in subsection E of this section, a person who
38 is convicted of a violation of subsection A, paragraph 1, 3 or 6 and who
39 has not previously been convicted of any felony or who has not been
40 sentenced pursuant to section 13-703, section 13-704, section 13-706,
41 subsection A, section 13-708, subsection D or any other law making the
42 convicted person ineligible for probation is eligible for probation.

43 D. Except as provided in subsection E of this section, if the
44 aggregate amount of dangerous drugs involved in one offense or all of the
45 offenses that are consolidated for trial equals or exceeds the statutory

1 threshold amount, a person who is convicted of a violation of subsection
2 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of
3 sentence, probation, pardon or release from confinement on any basis until
4 the person has served the sentence imposed by the court, the person is
5 eligible for release pursuant to section 41-1604.07 or the sentence is
6 commuted.

7 E. If ~~the~~ A person is convicted of a violation of subsection A,
8 paragraph 2, 3, 4 or 7 of this section and the drug involved is
9 methamphetamine, the person shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 calendar years	10 calendar years	15 calendar years

12 A person who has previously been convicted of a violation of subsection A,
13 paragraph 2, 3, 4 or 7 of this section involving methamphetamine or
14 section 13-3407.01 shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 calendar years	15 calendar years	20 calendar years

17 F. A person who is convicted of a violation of subsection A,
18 paragraph 4 of this section or subsection A, paragraph 2, 3 or 7 of this
19 section involving methamphetamine is not eligible for suspension of
20 sentence, probation, pardon or release from confinement on any basis until
21 the person has served the sentence imposed by the court, the person is
22 eligible for release pursuant to section 41-1604.07 or the sentence is
23 commuted.

24 G. If a person is convicted of a violation of subsection A,
25 paragraph 5 of this section, if the drug is administered without the other
26 person's consent, if the other person is under eighteen years of age and
27 if the drug is flunitrazepam, gamma hydroxy butrate or ketamine
28 hydrochloride, the convicted person is not eligible for suspension of
29 sentence, probation, pardon or release from confinement on any basis until
30 the person has served the sentence imposed by the court, the person is
31 eligible for release pursuant to section 41-1604.07 or the sentence is
32 commuted.

33 H. In addition to any other penalty prescribed by this title, the
34 court shall order a person who is convicted of a violation of this section
35 to pay a fine of not less than ~~one thousand dollars~~ \$1,000 or three times
36 the value as determined by the court of the dangerous drugs involved in or
37 giving rise to the charge, whichever is greater, and not more than the
38 maximum authorized by chapter 8 of this title. A judge shall not suspend
39 any part or all of the imposition of any fine required by this subsection.

40 I. A person who is convicted of a violation of this section for
41 which probation or release before the expiration of the sentence imposed
42 by the court is authorized is prohibited from using any marijuana,
43 dangerous drug, narcotic drug or prescription-only drug except as lawfully
44 administered by a health care practitioner and as a condition of any
45 probation or release shall be required to submit to drug testing

1 administered under the supervision of the probation department of the
2 county or the state department of corrections, as appropriate, during the
3 duration of the term of probation or before the expiration of the sentence
4 imposed.

5 J. If a person who is convicted of a violation of this section is
6 granted probation, the court shall order that as a condition of probation
7 the person perform not less than three hundred sixty hours of community
8 restitution with an agency or organization that provides counseling,
9 rehabilitation or treatment for alcohol or drug abuse, an agency or
10 organization that provides medical treatment to persons who abuse
11 controlled substances, an agency or organization that serves persons who
12 are victims of crime or any other appropriate agency or organization.

13 K. The presumptive term imposed pursuant to subsection E of this
14 section may be mitigated or aggravated pursuant to section 13-701,
15 subsections D and E.

16 Sec. 4. Section 13-3408, Arizona Revised Statutes, is amended to
17 read:

18 13-3408. Possession, use, administration, acquisition, sale,
19 manufacture or transportation of narcotic drugs;
20 classification

21 A. Except as provided in section 36-2850, paragraph 16, subdivision
22 (b), section 36-2852 and section 36-2853, subsection C, a person shall not
23 knowingly:

- 24 1. Possess or use a narcotic drug.
- 25 2. Possess a narcotic drug for sale.
- 26 3. Possess equipment or chemicals, or both, for the purpose of
27 manufacturing a narcotic drug.
- 28 4. Manufacture a narcotic drug.
- 29 5. Administer a narcotic drug to another person.
- 30 6. Obtain or procure the administration of a narcotic drug by
31 fraud, deceit, misrepresentation or subterfuge.
- 32 7. Transport for sale, import into this state, offer to transport
33 for sale or import into this state, sell, transfer or offer to sell or
34 transfer a narcotic drug.

35 B. A person who violates:

- 36 1. Subsection A, paragraph 1 of this section is guilty of a class
37 ~~4~~ 6 felony.
- 38 2. Subsection A, paragraph 2 of this section is guilty of a class 2
39 felony.
- 40 3. Subsection A, paragraph 3 of this section is guilty of a class 3
41 felony.
- 42 4. Subsection A, paragraph 4 of this section is guilty of a class 2
43 felony.
- 44 5. Subsection A, paragraph 5 of this section is guilty of a class 2
45 felony.

1 6. Subsection A, paragraph 6 of this section is guilty of a class 3
2 felony.

3 7. Subsection A, paragraph 7 of this section is guilty of a class 2
4 felony.

5 C. A person who is convicted of a violation of subsection A,
6 paragraph 1, 3 or 6 of this section and who has not previously been
7 convicted of any felony or who has not been sentenced pursuant to section
8 13-703, section 13-704, subsection A, B, C, D or E, section 13-706,
9 subsection A, section 13-708, subsection D or any other provision of law
10 making the convicted person ineligible for probation is eligible for
11 probation.

12 D. If the aggregate amount of narcotic drugs involved in one
13 offense or all of the offenses that are consolidated for trial equals or
14 exceeds the statutory threshold amount, a person who is convicted of a
15 violation of subsection A, paragraph 2, 5 or 7 of this section is not
16 eligible for suspension of sentence, probation, pardon or release from
17 confinement on any basis until the person has served the sentence imposed
18 by the court, the person is eligible for release pursuant to section
19 41-1604.07 or the sentence is commuted.

20 E. A person who is convicted of a violation of subsection A,
21 paragraph 4 of this section is not eligible for suspension of sentence,
22 probation, pardon or release from confinement on any basis until the
23 person has served the sentence imposed by the court, the person is
24 eligible for release pursuant to section 41-1604.07 or the sentence is
25 commuted.

26 F. In addition to any other penalty prescribed by this title, the
27 court shall order a person who is convicted of a violation of this section
28 to pay a fine of not less than \$2,000 or three times the value as
29 determined by the court of the narcotic drugs involved in or giving rise
30 to the charge, whichever is greater, and not more than the maximum
31 authorized by chapter 8 of this title. A judge shall not suspend any part
32 or all of the imposition of any fine required by this subsection.

33 G. A person who is convicted of a violation of this section for
34 which probation or release before the expiration of the sentence imposed
35 by the court is authorized is prohibited from using any marijuana,
36 dangerous drug, narcotic drug or prescription-only drug except as lawfully
37 administered by a health care practitioner and as a condition of any
38 probation or release shall be required to submit to drug testing
39 administered under the supervision of the probation department of the
40 county or the state department of corrections, as appropriate, during the
41 duration of the term of probation or before the expiration of the sentence
42 imposed.

1 H. If a person who is convicted of a violation of this section is
2 granted probation, the court shall order that as a condition of probation
3 the person perform not less than three hundred sixty hours of community
4 restitution with an agency or organization that provides counseling,
5 rehabilitation or treatment for alcohol or drug abuse, an agency or
6 organization that provides medical treatment to persons who abuse
7 controlled substances, an agency or organization that serves persons who
8 are victims of crime or any other appropriate agency or organization.