

I am a supporter of the intent of SB236 and voted for it when it first passed the senate floor. It isn't necessary for me write specifically about the dangers of fentanyl, because everyone who is paying attention realizes how horrible it is. I am very much in favor of criminalizing its illegal use and particular its distribution by illegal drug dealers.

My NO vote for the concurrence (I was the only NO vote) was simply over a technical error which existed in the previous version as well, but which bothered me enough to decide to vote NO this time to flag it and explain in this vote explanation.

Section 2(2)b states: Notwithstanding paragraph (a) of this subsection, unlawful possession of fentanyl is a Class A misdemeanor if the person possesses one gram or more or five or more user units of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the State Board of Pharmacy. (emphasis added)

As a chemist, I know how analytical techniques have become increasingly more sensitive. A detectable amount of fentanyl in a solution could be an extremely small and harmless amount and be inadvertent. This is true of many substances. Most US currency is known to have cocaine residue on it and a common fun laboratory experiment for students is to isolate and show that it is there. Those who carry money with them are not usually drug dealers – even though most of them have detectable amounts of cocaine in their wallets.

Even the cleanest drinking water contains safe but possibly detectable amounts of substances that are dangerous at higher concentrations, like arsenic.

Also, as a relatively simple molecule, trace amounts of fentanyl (or fentanyl derivatives) could be inadvertently synthesized while producing something else. While SB236 is unlikely to be misinterpreted that way in the sections outlawing manufacturing, putting possession of “detectable” amounts into law as a class A misdemeanor is a bad idea.

I do not expect this to be a problem. State Board of Pharmacy rules as well the court system is unlikely to convict someone for possessing detectable amounts of fentanyl when they clearly did not intend to be involved with drugs.

I do think, however, that we should not have put this language into law in this way.

I strongly support the intent of the bill itself.