

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

SENATE BILL 766

By: Senator Hester

## For An Act To Be Entitled

AN ACT CONCERNING VARIOUS AMOUNT THRESHOLDS IN THE  
CONTROLLED SUBSTANCES CRIMINAL OFFENSE STATUTES;  
CONCERNING THE OFFENSES OF TRAFFICKING A CONTROLLED  
SUBSTANCE AND POSSESSION OF A COUNTERFEIT SUBSTANCE;  
AND FOR OTHER PURPOSES.

## Subtitle

CONCERNING VARIOUS AMOUNT THRESHOLDS IN  
THE CONTROLLED SUBSTANCES CRIMINAL  
OFFENSE STATUTES; CONCERNING THE OFFENSES  
OF TRAFFICKING A CONTROLLED SUBSTANCE AND  
POSSESSION OF A COUNTERFEIT SUBSTANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-64-419(b)(3) through (5), concerning the criminal offense of possession of a controlled substance, is amended to read as follows:

(3) A Schedule III controlled substance with an aggregate weight, including an adulterant or diluent, of:

(A) (i) Less than two grams (2g) upon conviction is guilty of a Class A misdemeanor~~+~~.

(ii) However, if the person has four (4) or more prior convictions under this section or the former § 5-64-401(c), upon conviction the person is guilty of a Class D felony for a violation of subdivision (b)(3)(A)(i) of this section;

(B) Two grams (2g) or more but less than twenty-eight



grams (28g) upon conviction is guilty of a Class D felony;

(C) Twenty-eight grams (28g) or more but less than two hundred (200g) upon conviction is guilty of a Class C felony; or

(D) Two hundred grams (200g) or more but less than four hundred grams (400g) upon conviction is guilty of a Class B felony;

(4) A Schedule IV or Schedule V controlled substance with an aggregate weight, including an adulterant or diluent, of:

(A)(i) Less than twenty-eight grams (28g) upon conviction is guilty of a Class A misdemeanor;

(ii) However, if the person has four (4) or more prior convictions under this section or the former § 5-64-401(c), upon conviction the person is guilty of a Class D felony for a violation of subdivision (b)(4)(A)(i) of this section;

(B) Twenty-eight grams (28g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class D felony;

(C) Two hundred grams (200g) or more but less than four hundred grams (400g) upon conviction is guilty of a Class C felony; or

(D) Four hundred grams (400g) or more but less than eight hundred grams (800g) upon conviction is guilty of a Class B felony; or

(5) A Schedule VI controlled substance with an aggregate weight, including an adulterant or diluent, of:

(i) Less than four ounces (4 oz.) upon conviction is guilty of a Class A misdemeanor;

(ii) One ounce (1 oz.) or more but less than four ounces (4 oz.) and the person has ~~two (2)~~ four (4) previous convictions under this section or the former § 5-64-401(c) upon conviction is guilty of a Class D felony;

(iii) Four ounces (4 oz.) or more but less than ten pounds (10 lbs.) upon conviction is guilty of a Class D felony;

(iv) Ten pounds (10 lbs.) or more but less than twenty-five pounds (25 lbs.) upon conviction is guilty of a Class C felony;

(v) Twenty-five pounds (25 lbs.) or more but less than one hundred pounds (100 lbs.) upon conviction is guilty of a Class B felony; or

(vi) One hundred pounds (100 lbs.) or more but less than five hundred pounds (500 lbs.) upon conviction is guilty of a Class A felony.

SECTION 2. Arkansas Code § 5-64-428(b)(1), concerning the criminal offense of possession of a Schedule III controlled substance with the purpose to deliver, is amended to read as follows:

(1) Class C felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Less than twenty-eight grams (28g) of a Schedule III controlled substance that is not a controlled substance listed in this subdivision (b)(1);

(B) ~~Forty (40) or more but less~~ Less than eighty (80) dosage units for any other Schedule III depressant or hallucinogenic drug; or

(C) ~~Forty (40) or more but less~~ Less than eighty (80) dosage units for any other Schedule III stimulant drug;

SECTION 3. Arkansas Code § 5-64-432(b)(1), concerning the criminal offense of possession of a Schedule IV or V controlled substance with the purpose to deliver, is amended to read as follows:

(1) Class D felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Less than two hundred grams (200g) of a Schedule IV or Schedule V controlled substance that is not a controlled substance listed in this subdivision (b)(1);

(B) ~~Forty (40) or more but less~~ Less than eighty (80) dosage units for any other Schedule IV or Schedule V depressant or hallucinogenic drug; or

(C) ~~Forty (40) or more but less~~ Less than eighty (80) dosage units for any other Schedule IV or Schedule V stimulant drug;

SECTION 4. Arkansas Code § 5-64-440(b), concerning the criminal offense of trafficking a controlled substance, is amended to read as follows:

(b) A person engages in trafficking a controlled substance if he or she possesses, possesses with the purpose to deliver, delivers, or manufactures a controlled substance by aggregate weight, including an adulterant or diluent, in the following amounts:

SECTION 5. Arkansas Code § 5-64-442(a), concerning the criminal offense of possession of a counterfeit substance, is amended to read as

follows:

5-64-442. Delivery Possession with the purpose to deliver, delivery, or manufacture of a counterfeit substance.

(a) Except as authorized by this chapter, it is unlawful for any person to possess with the purpose to deliver, deliver, or manufacture a counterfeit substance. Purpose to deliver may be shown by any of the following factors:

(1) The person possesses the means to weigh, separate, or package a counterfeit substance;

(2) The person possesses a record indicating a drug-related transaction;

(3) The counterfeit substance is separated and packaged in a manner to facilitate delivery;

(4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the counterfeit substance;

(5) The person possesses at least two (2) other controlled substances or counterfeit substances in any amount; or

(6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a counterfeit substance.

APPROVED: 03/28/2013