



SENATE BILL 350: Amend Drug Laws/Ellison v. Treadway.

2017-2018 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: April 24, 2017
Introduced by: Sens. Britt, Tucker, J. Jackson	Prepared by: Augustus D. Willis
Analysis of: Third Edition	Staff Attorney

OVERVIEW: *Senate Bill 350 would specify that pharmaceutical pills do not fall under the felony "trafficking in opium" sentencing regime and create a new felony "trafficking in pharmaceuticals" offense and sentencing regime.*

CURRENT LAW and BACKGROUND: Subsection (h) of G.S. 90-95 sets forth the violations and penalties for trafficking offenses in the Controlled Substances Act. "Trafficking in opium or heroin" is found in G.S. 90-95(h)(4) which provides the following mandatory sentencing structure based upon the amount of opium, opiate, salt, compound, derivative, or preparation of opium, including heroin, or mixture containing such substances involved:

4g – 14g	Class F	70 – 93 months	At least \$50,000 fine
14g – 28g	Class E	90 – 120 months	At least \$100,000 fine
28g or more	Class C	225 – 282 months	At least \$500,000 fine

In 2013, the companion cases of State v. Ellison and State v. Treadway presented the question of whether prescription pharmaceutical tablets and pills could serve as opium for purposes of "trafficking in opium or heroin" pursuant to G.S. 90-95(h)(4). The Supreme Court held that, because G.S. 90-95(h)(4) explicitly provides that a defendant's criminal liability is based upon the total weight of the mixture involved, and because tablets and pills are mixtures, pharmaceutical tablets and pills that contain controlled substances prohibited under the statute may be considered opium for purposes of the trafficking statute. In its holding, the Court noted the "harsh results imposed by the statute" but determined that "[h]ad the General Assembly intended for prescription tablets and pills to fall outside the scope of the statute, it could have easily included plain language to that effect."

BILL ANALYSIS: Senate Bill 350 would specify that pharmaceutical pills, tablets, or capsules of an FDA approved substance containing an opiate do not qualify as "trafficking in opium." Instead, the bill clarifies that an offense involving less than 100 pills, tablets or capsules is to be punished pursuant to existing laws pertaining to Schedule I through VI controlled substances. For offenses involving 100 pills or more, the bill would create the following new mandatory sentencing regime for "trafficking in pharmaceuticals" based upon the number of pills involved:

100 pills – 400 pills	Class G	35 – 51 months	At least \$25,000 fine
400 pills – 600 pills	Class F	70 – 93 months	At least \$50,000 fine
600 pills or more	Class D	175 – 222 months	At least \$200,000 fine

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Legislative Analysis
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Senate Bill 350

Page 2

EFFECTIVE DATE: This act would become effective December 1, 2017 and apply to offenses committed on or after that date.