

LAWS OF DELAWARE  
VOLUME 83  
CHAPTER 21  
151st GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 76

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO FENTANYL TESTING STRIPS.

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

Section 1. Amend Chapter 22, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2226. Distribution of fentanyl testing strips; immunity.

(a) The purpose of this section is to expand the harm reduction strategies available in Delaware to address the epidemic level of drug overdose deaths through the distribution of fentanyl testing strips. Fentanyl is a potent opioid that is increasingly being mixed into illicitly sold drugs, often without the buyer's knowledge. In 2018, fentanyl was involved in 72% of overdose deaths in Delaware. The distribution of fentanyl testing strips provides an opportunity to prevent potential overdose deaths.

(b) For purposes of this section, "person" means one of the following that provides aid to drug users without the expectation of monetary or other compensation from the individual aided:

(1) A lay individual.

(2) A nonprofit organization.

(c) This section does not apply to any of the following:

(1) A manufacturer or distributor of fentanyl testing strips.

(2) A pharmacy.

(3) A hospital.

(4) A medical clinic.

(5) A for profit organization.

(6) A credentialed individual.

(d) A person may distribute functional fentanyl testing strips to determine the presence of fentanyl or fentanyl-related substances.

(e) A person who provides functional fentanyl testing strips to an individual to determine the presence of fentanyl or fentanyl-related substances under this section must do so in good faith and with reasonable care.

(f) A person who provides functional fentanyl testing strips to an individual to determine the presence of fentanyl or fentanyl-related substances is not subject to civil damages in excess of the limits of any applicable insurance coverage, unless it is established that the person caused injuries or death willfully, wantonly, or recklessly or by gross negligence.

(g) Nothing in this section is intended to waive the State's sovereign immunity or the privileges and immunities under Chapter 40 of Title 10.

Section 2. Amend § 4773, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4773. Exemptions.

This subchapter ~~will~~ does not apply ~~to:~~ to any of the following:

(1) Any person authorized by local, ~~state~~ state, or federal law to manufacture, ~~possess~~ possess, or distribute such ~~items;~~ or items.

(2) Any item that in the normal lawful course of business is imported, exported, ~~transported~~ transported, or sold and traditionally intended for use with tobacco products, including any pipe, ~~paper~~ paper, or accessory.

(3) Testing strips to determine the presence of fentanyl or fentanyl-related substances.

Approved June 3, 2021