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DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

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:

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

3 § 2226. Distribution of fentanyl testing strips; immunity.

4 (a) The purpose of this section is to expand the harm reduction strategies available in Delaware to address the  
5 epidemic level of drug overdose deaths through the distribution of fentanyl testing strips. Fentanyl is a potent opioid that is  
6 increasingly being mixed into illicitly sold drugs, often without the buyer's knowledge. In 2018, fentanyl was involved in  
7 72% of overdose deaths in Delaware. The distribution of fentanyl testing strips provides an opportunity to prevent potential  
8 overdose deaths.

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

11 (1) A lay individual.

12 (2) A nonprofit organization.

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

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

15 (2) A pharmacy.

16 (3) A hospital.

17 (4) A medical clinic.

18 (5) A for profit organization.

19 (6) A credentialed individual.

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

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

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

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

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

31 § 4773. Exemptions.

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

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

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

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

#### SYNOPSIS

This Act authorizes the distribution of testing strips to determine the presence of fentanyl or fentanyl-related substances. Fentanyl testing strips could be distributed to the community along with opioid overdose reversal medication as a harm reduction strategy in the opioid addiction crisis. A number of states have authorized fentanyl testing strips distribution in recent years including Maryland, Rhode Island, the District of Columbia, and North Carolina. Twenty-seven states currently provide fentanyl testing strips through needle exchange programs.

According to an April 2019 Delaware Health Alert published by the Department of Health and Social Services, fentanyl is a potent opioid that is increasingly being mixed into illicitly sold drugs, often without the buyer's knowledge. In Delaware, fentanyl was involved in 72% of overdose deaths during 2018, up from 58% in 2017 according to the state's Division of Forensic Science. During 2018, there were more fatal overdoses than any year on record with 400 deaths.

This Act exempts fentanyl testing strips from the drug paraphernalia statute. This Act provides the limitations on liability for lay individuals and organizations in Section 1 of this Act because of the extraordinary epidemic of death that is occurring in Delaware as a result of fentanyl being mixed into illicit drugs. It is similar to liability exemptions under § 8135(b) of Title 10 and § 6801 of Title 16 of the Delaware Code for certain types of volunteers and Good Samaritans and is an exception to the general public policy against civil immunity.

Author: Senator Sturgeon