



SPONSOR: Sen. Poore & Rep. Minor-Brown  
Sens. Mantzavinos, Pettyjohn, Richardson, Townsend;  
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DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 189

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT AND DRUG TESTING STRIPS.

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

1 Section 1. Amend § 4718 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 4718. Schedule III.

4 ~~(l)~~ xylazine and its isomers, esters, ethers, salts and salts of isomers, esters and ethers.

5 ~~(+)~~ (m) The Secretary may except by rule any compound, mixture or preparation containing any stimulant or  
6 depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound,  
7 mixture or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the  
8 central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration  
9 that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous  
10 system.

11 ~~(m)~~ (n) Any anabolic steroid, as listed in subsection (f) of this section, which is a combination of estrogen and  
12 anabolic steroid and which is expressly intended for administration to hormone-deficient women, shall be exempt from the  
13 provisions of this chapter. If any person prescribes, dispenses or distributes an anabolic steroid which is a combination of  
14 estrogen and anabolic steroid for use by persons who are not hormone-deficient women, such person shall be considered to  
15 have prescribed, dispensed or distributed an anabolic steroid within the meaning of this chapter.

16 ~~(n)~~ (o) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug  
17 Administration approved drug product.

18 Section 2. Amend § 2226 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
19 insertions as shown by underline as follows and by redesignating accordingly:

20 § 2226. Distribution of ~~fentanyl~~ drug testing strips; immunity.

21 (a) The purpose of this section is to expand the harm reduction strategies available in Delaware to address the  
22 epidemic level of drug overdose deaths through the ~~distribution provision of fentanyl~~ drug testing strips. ~~Fentanyl~~ is a

23 potent opioid that is increasingly being mixed into illicitly sold drugs, often without the buyer's knowledge. In 2018,  
24 fentanyl was involved in 72% of overdose deaths in Delaware. The distribution provision of fentanyl drug testing strips  
25 provides an opportunity to prevent potential overdose deaths.

26 (b) ~~For purposes of As used in this section, "person" means 1 of the following that provides aid to drug users~~  
27 ~~without the expectation of monetary or other compensation from the individual aided:~~

28 (1) ~~A lay individual. "Drug" means any 1 or more of the following:~~

29 ~~a. Fentanyl.~~

30 ~~b. Xylazine.~~

31 (2) ~~A nonprofit organization. "Drug testing strip" means a test used to determine the presence of a drug or~~  
32 ~~drug-related substance.~~

33 (3) ~~"Person" means an individual or legal entity that provides a drug testing strip to an individual who~~  
34 ~~uses drugs to reduce the likelihood of the individual experiencing harm.~~

35 (e) ~~This section does not apply to any of the following:~~

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

37 (2) ~~A pharmacy.~~

38 (3) ~~A hospital.~~

39 (4) ~~A medical clinic.~~

40 (5) ~~A for-profit organization.~~

41 (6) ~~A credentialed individual.~~

42 (c) ~~(d) A Subject to subsection (e) of this section, a person may provide distribute functional fentanyl a drug~~  
43 ~~testing strip to an individual strips to determine the presence of fentanyl or fentanyl-related substances.~~

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

46 (e) ~~(f) A Except if the person willfully, wantonly, recklessly, or by gross negligence causes injuries or death, a~~  
47 ~~person who provides functional fentanyl providing a drug testing strips strip to an individual to determine the presence of~~  
48 ~~fentanyl or fentanyl-related substances under this section is not subject to civil damages in excess of exceeding the limits~~  
49 ~~limit of any an applicable insurance policy coverage, unless it is established that the person caused injuries or death~~  
50 ~~wilfully, wantonly, or recklessly or by gross negligence.~~

51 Section 3. Amend § 4773 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
52 insertions as shown by underline as follows:

53 § 4773. Exemptions.

54 This subchapter does not apply to any of the following:

55 (3) ~~Testing strips to determine the presence of fentanyl or fentanyl-related substances. A drug testing strip as~~  
56 defined under § 2226 of this title.

57 Section 4. This Act shall be effective upon the expiration of the Emergency Order issued by the Secretary of State  
58 placing Xylazine in Schedule III of the Uniform Controlled Substance Act or November 29, 2023, whichever is earlier.

#### SYNOPSIS

This Act adds xylazine and its isomers, esters, ethers, salts and salts of isomers, esters and ethers to Schedule III of the Delaware Uniform Controlled Substances Act and expands the authorization for the distribution of testing strips to determine the presence of controlled substances. According to the United States Drug Enforcement Administration, the emergence of xylazine across the United States appears to be following the same path as fentanyl, starting in the Northeast and then spreading to the South and working its way into drug markets westward, and the low cost of xylazine contributes to xylazine's increased presence in the nation's illegal drug supply. Xylazine is approved only for veterinary use, xylazine is a non-opioid with increasing presence as an adulterant, often in conjunction with opioids, in the illicit drug supply. When used alone and in conjunction with other drugs, xylazine is implicated as a cause or contributing cause of death in the United States. When used in conjunction with an opioid, such as heroin or fentanyl, xylazine may worsen respiratory depression in the event of a drug overdose, and because xylazine is not an opioid, naloxone is not known to be effective at reversing overdoses, and there is no known antidote or reversal agent for xylazine overdose in humans. This Act also exempts testing strips from the drug paraphernalia statute and expands the limitations on liability for lay individuals and organizations that provide a drug testing strip to an individual who uses drugs to reduce the likelihood of the individual experiencing harm.

This Act becomes effective upon the expiration of the Emergency Order issued by the Secretary of State placing Xylazine in Schedule III of the Uniform Controlled Substance Act or November 29, 2023, whichever is earlier.

Author: Senator Poore