SPONSOR: Sen. Poore & Rep. Minor-Brown
Sens. Mantzavinos, Pettyjohn, Richardson, Townsend;
Reps. Heffernan, Hilovsky

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 189
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

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

§ 4718. Schedule III.

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

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

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

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

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

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

SD : FJM : ALW : 2711520066
LC : HVW : CBM : 5081520112
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(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~~ provision of ~~fentanyl~~ drug 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~~ provision of ~~fentanyl~~ drug testing strips provides an opportunity to prevent potential overdose deaths.

(b) ~~For purposes of~~ As used in this section~~, "person" means 1 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.~~ "Drug" means any 1 or more of the following:

a. Fentanyl.

b. Xylazine.

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

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

~~(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.~~

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

(d) ~~(e)~~ A person ~~who provides functional fentanyl~~ providing a drug testing ~~strips~~ strip 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.

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

Section 3. Amend § 4773 of 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 does not apply to any of the following:

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

Section 4. This Act shall be 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.

Section 5. This Act expires on November 29, 2024.