

PROHIBIT THE ILLICIT DISTRIBUTION, POSSESSION, AND USE OF XYLAZINE

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House Bills 5834 (H-1) and 5835 as reported from committee
Sponsor: Rep. Kelly Breen
Committee: Judiciary
Complete to 12-10-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5834 would amend the Public Health Code to prohibit and penalize the illicit use of xylazine. As described further in **Background** below, xylazine is a nonopioid drug used by veterinarians as a potent tranquilizer and sedative for larger animals such as horses, cattle, and deer. In humans, xylazine causes significant slowing of the heart rate, sharp decreases in blood pressure, and severe necrotic skin ulcerations. Xylazine is increasingly being found in samples of other illicit drugs and is commonly used in combination with fentanyl.

Current law does not classify xylazine as a controlled substance.¹ House Bill 5834 would not add xylazine to the existing drug schedules, but would prohibit any use of xylazine outside of the following authorized cases:

- The buying, possessing, or administering of xylazine hydrochloride by a in accordance with the “good faith” requirements that apply to the dispensing of a controlled substance by a practitioner licensed to do so.
- Dispensing, prescribing, or administering a drug containing xylazine to an animal, provided that the action is authorized by the federal Department of Health and Human Services.
- Manufacturing, distributing, or using xylazine as an active pharmaceutical ingredient to manufacture a drug approved for animal use or testing under federal law.
- Manufacturing, distributing, or using xylazine as a bulk chemical for pharmaceutical compounding by a pharmacist or veterinarian.
- Any other use that is already approved or authorized under the Federal Food, Drug, and Cosmetic Act.

In addition, among other existing provisions of state law, the bill would provide that an individual convicted of any of the following offenses would be guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$15,000, or both:

- Knowingly or intentionally possessing xylazine for illicit use.
- Fraudulently obtaining or attempting to obtain xylazine for illicit use.
- Selling *drug paraphernalia* (defined by section 7451 of the code as any equipment or product designed to aid in the manufacture, use, or distribution of a controlled substance) that is related to the illicit use of xylazine.

MCL 333.7103 et seq., MCL 333.7401 et seq.

¹ At the federal level, xylazine is not designated as a controlled substance under the Controlled Substances Act and is not regulated by the Drug Enforcement Administration (DEA). Xylazine is, however, subject to regulation by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act, and the agency has taken steps in recent years to restrict the unauthorized importation of xylazine (<https://www.fda.gov/news-events/press-announcements/fda-takes-action-restrict-unlawful-import-xylazine>).

House Bill 5835 would make complementary changes to the Code of Criminal Procedure by adding xylazine-related offenses to the list of felonies under the sentencing guidelines:

- The delivery, manufacture, or possession with intent to manufacture or deliver of xylazine for illicit use would be designated as a Class E controlled substance felony punishable by imprisonment of up to five years. [MCL 333.7401(2)(g) (proposed)]
- The possession of xylazine for illicit use would be designated as a Class E controlled substance felony punishable by imprisonment of up to five years. [MCL 333.7403(2)(f) (proposed)]
- Fraudulently obtaining xylazine for illicit use would be designated as a Class E controlled substance felony punishable by imprisonment of up to five years.² [MCL 333.7403a(4)(b) (proposed)]
- The possession of a counterfeit prescription form for xylazine would be designated as a Class E controlled substance felony punishable by imprisonment of up to four years. [MCL 333.7407(1)(f) (amended)]
- The sale of, or offer to sell, certain objects for the illicit use of xylazine would be designated as a Class E controlled substance felony punishable by imprisonment of up to five years. [MCL 333.7455(1)(a) (proposed)]

The bill cannot take effect unless House Bill 5834 is also enacted.

MCL 777.13m

BACKGROUND:

Xylazine is a nonopioid drug approved by the U.S. Food and Drug Administration (FDA) in 1972 for use by veterinarians as an injectable sedative, analgesic, and muscle relaxant for animals. In higher doses, it is commonly used as a tranquilizer and anesthetic on larger animals such as cows and horses. Xylazine was originally developed to treat hypertension in humans, but clinical trials in the 1960s were discontinued because of the drug's severe impact on vital bodily functions, most notably its excessive sedative effects. While the FDA continues to regulate veterinary xylazine under the Federal Food, Drug, and Cosmetic Act, the drug is not listed as a controlled substance under federal law. As a result, the Drug Enforcement Administration (DEA) has no authority to regulate xylazine, and its sales are not as strictly monitored as those for scheduled pharmaceuticals. Similarly, Michigan law does not currently list xylazine as a controlled substance on its drug schedules.

Since 2000, xylazine has increasingly been detected in samples of other illicit drugs, especially as a cutting agent for fentanyl, and implicated in drug overdoses. Xylazine is also known colloquially as “tranq,” “tranq dope” (when mixed with opioids), or “zombie drug,” and its effects are reported to be broadly similar to those of heroin or fentanyl, but they start faster and last longer. Mixing opioids and xylazine amplifies the effects of each and increases the chance of an overdose, a problem compounded by the fact that while some users intentionally seek out these xylazine-opioid mixtures, many are completely unaware that the drug has been included as an adulterant.³ Symptoms of xylazine overdose are also similar to those for heroin or fentanyl, but because xylazine is not an opioid, its effects are not reversed by opioid antidotes

² The proposed change would distinguish between fraudulently obtaining xylazine and other controlled substances.

³ <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-023-00879-7>

such as naloxone (e.g., Narcan). Relatedly, because xylazine is not detected in traditional toxicology screens, it is often not readily identifiable as the cause of overdose symptoms, the reason naloxone is not working properly, or as a cause of death.

Not unlike many scheduled controlled substances, xylazine is reportedly highly addictive. Xylazine withdrawal is often characterized by intense and painful symptoms ranging from soft-tissue injuries near injection sites (which can turn necrotic and require amputation if left untreated) to acute respiratory difficulties and seizures.⁴ Due to limited data and clinical research on xylazine withdrawal, however, symptoms typically cannot be alleviated or managed as straightforwardly as opioid withdrawal symptoms, and there currently exists no standard treatment approach among practitioners despite increases in xylazine use across the country.⁵

Other states have added xylazine to their controlled substances schedules, either through legislation or via temporary or permanent order or rule, including Florida (Schedule 1), Delaware (Schedule 3), Ohio (Schedule 3), Pennsylvania (Schedule 3), and West Virginia (Schedule 4).⁶ A bill has also been introduced in Congress that would add xylazine to Schedule 3 under the federal CSA, except for veterinary uses. The attorneys general of 39 states have urged its passage.⁷

FISCAL IMPACT:

House Bill 5834 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations would be felonies, and new felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$49,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

⁴ <https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf>

⁵ <https://www.nejm.org/doi/full/10.1056/NEJMp2303120>

⁶ Controlled substances are classified in the code under one of five schedules that are modeled after those in the federal Controlled Substances Act. While Michigan law generally requires the state's classifications to parallel those outlined in federal law, the Michigan Board of Pharmacy has the authority to add, delete, or reschedule controlled substances under state law, and can also decide not to schedule a substance the same way as federal law if certain conditions are met. Marijuana, for example, is listed on Schedule 2 in Michigan, but only if it is actively being used to treat a debilitating medical condition under the Michigan Medical Marijuana Act; it is otherwise listed as a Schedule 1 drug, in line with federal drug classifications.

⁷ <https://www.naag.org/wp-content/uploads/2023/05/AGs-Combating-Illicit-Xylazine.NAAG-ltrhead-FINAL-5-18-2023.pdf>

House Bill 5835 is a companion bill to HB 5834 and amends sentencing guidelines to include xylazine-related felonies as described above. The bill would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

The following entities indicated support for the bills (11-13-24):

- Michigan Veterinary Medical Association
- State Public Affairs Committee of the Junior Leagues of Michigan

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.