

HOUSE BILL NO. 5834

June 25, 2024, Introduced by Reps. Breen and Hope and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7103, 7105, 7106, 7401, 7403, 7403a, 7451,
7453, and 7455 (MCL 333.7103, 333.7105, 333.7106, 333.7401,
333.7403, 333.7403a, 333.7451, 333.7453, and 333.7455), section
7103 as amended by 1988 PA 60, section 7105 as amended by 1993 PA
80, section 7106 as amended by 2021 PA 60, section 7401 as amended
by 2016 PA 548, section 7403 as amended by 2016 PA 307, section
7403a as added by 2010 PA 354, section 7451 as added by 1988 PA

139, section 7453 as amended by 2024 PA 18, and section 7455 as amended by 2024 PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7103. (1) "Administer" means the direct application of a
2 controlled substance **or xylzaine**, whether by injection, inhalation,
3 ingestion, or other means, to the body of a patient or research
4 subject by a practitioner, or in the practitioner's presence by ~~his~~
5 ~~or her~~ **the practitioner's** authorized agent, or the patient or
6 research subject at the direction and in the presence of the
7 practitioner.

8 (2) "Administrator" means the Michigan board of pharmacy or
9 its designated or established authority.

10 (3) "Agent" means an authorized person who acts on behalf of
11 or at the direction of a manufacturer, distributor, dispenser, or
12 prescriber. It does not include a common or contract carrier,
13 public warehouseman, or employee of the carrier or warehouseman.

14 Sec. 7105. (1) "Deliver" or "delivery" means the actual,
15 constructive, or attempted transfer from 1 person to another of a
16 controlled substance **or xylazine**, whether or not there is an agency
17 relationship.

18 (2) "Disciplinary subcommittee" means the disciplinary
19 subcommittee for the board of pharmacy appointed under section
20 16216.

21 (3) "Dispense" means to deliver or issue a controlled
22 substance **or xylazine** to an ultimate user or research subject by or
23 pursuant to the lawful order of a practitioner, including the
24 prescribing, administering, or compounding necessary to prepare the
25 substance for the delivery or issuance.

(4) "Dispenser" means a practitioner who dispenses.

(5) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(6) "Distributor" means a person who distributes.

(7) "Drug" means a substance recognized as a drug in the official United States ~~pharmacopoeia~~, **Pharmacopoeia**, official ~~homeopathic pharmacopoeia~~ **Homoeopathic Pharmacopoeia** of the United States, or official ~~national formulary~~, **National Formulary**, or any supplement to any of them; a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals; a substance other than food intended to affect the structure or any function of the body of human beings or animals; or, a substance intended for use as a component of any article specified in this subsection. It does not include a device or its components, parts, or accessories.

(8) "Human consumption" means application, injection, inhalation, or ingestion by a human being.

Sec. 7106. (1) **"Illicit use" means a use of xylazine that is not licit use of xylazine.**

(2) "Immediate precursor" means a substance that the administrator has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(3) ~~(2)~~—"Industrial hemp" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(4) **"Licit use of xylazine" means 1 or more of the following:**

1 (a) Buying, possessing, or administering xylazine
2 hydrochloride in compliance with section 7333.

3 (b) Dispensing, prescribing, or administering a drug
4 containing xylazine to an animal if the dispensing, prescribing, or
5 administering is approved by the Secretary of the United States
6 Department of Health and Human Services under 21 USC 360b, or is
7 authorized under 21 USC 360b(a)(4).

8 (c) Manufacturing, distributing, or using xylazine as an
9 active pharmaceutical ingredient to manufacture a drug approved for
10 animal use under 21 USC 360b, or a drug issued an investigational
11 use exemption for animals under 21 USC 360b(j).

12 (d) Manufacturing, distributing, or using xylazine as a bulk
13 chemical for pharmaceutical compounding by a pharmacist or
14 veterinarian.

15 (e) Any other use of xylazine approved or authorized under 21
16 USC 321 to 399i.

17 (5) ~~(3)~~—"Manufacture" means the production, preparation,
18 propagation, compounding, conversion, or processing of a controlled
19 substance **or xylazine**, directly or indirectly by extraction from
20 substances of natural origin, or independently by means of chemical
21 synthesis, or by a combination of extraction and chemical
22 synthesis. It includes the packaging or repackaging of the
23 substance or labeling or relabeling of its container, except that
24 it does not include either of the following:

25 (a) The preparation or compounding of a controlled substance
26 **or xylazine** by an individual for ~~his or her~~ **the individual's** own
27 use.

28 (b) The preparation, compounding packaging, or labeling of a
29 controlled substance **or xylazine** by either of the following:

1 (i) A practitioner as an incident to the practitioner's
2 administering or dispensing of ~~a~~**the** controlled substance **or**
3 **xylazine** in the course of ~~his or her~~**the practitioner's**
4 professional practice.

5 (ii) A practitioner, or by the practitioner's authorized agent
6 under ~~his or her~~**the practitioner's** supervision, for the purpose
7 of, or as an incident to, research, teaching, or chemical analysis,
8 and not for sale.

9 (6) ~~(4)~~"Marihuana" means that term as defined in section 3 of
10 the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1,
11 MCL 333.27953.

12 Sec. 7401. (1) Except as authorized by this article, a person
13 shall not manufacture, create, deliver, or possess with intent to
14 manufacture, create, or deliver a controlled substance, **xylazine**
15 **for illicit use**, a prescription form, or a counterfeit prescription
16 form. A practitioner licensed by the administrator under this
17 article shall not dispense, prescribe, or administer a controlled
18 substance for other than legitimate and professionally recognized
19 therapeutic or scientific purposes or outside the scope of practice
20 of the practitioner, licensee, or applicant. **A practitioner**
21 **licensed by the administrator under this article shall not**
22 **dispense, prescribe, or administer xylazine for a use other than a**
23 **licit use of xylazine or outside the scope of practice of the**
24 **practitioner, licensee, or applicant.**

25 (2) A person who violates this section as to:

26 (a) A controlled substance classified in schedule 1 or 2 that
27 is a narcotic drug or a drug described in section 7214(a) (iv) and:

28 (i) Which is in an amount of 1,000 grams or more of any mixture
29 containing that substance is guilty of a felony punishable by

1 imprisonment for life or any term of years or a fine of not more
2 than \$1,000,000.00, or both.

3 (ii) Which is in an amount of 450 grams or more, but less than
4 1,000 grams, of any mixture containing that substance is guilty of
5 a felony and punishable by imprisonment for not more than 30 years
6 or a fine of not more than \$500,000.00, or both.

7 (iii) Which is in an amount of 50 grams or more, but less than
8 450 grams, of any mixture containing that substance is guilty of a
9 felony punishable by imprisonment for not more than 20 years or a
10 fine of not more than \$250,000.00, or both.

11 (iv) Which is in an amount less than 50 grams, of any mixture
12 containing that substance is guilty of a felony punishable by
13 imprisonment for not more than 20 years or a fine of not more than
14 \$25,000.00, or both.

15 (b) Either of the following:

16 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)
17 is guilty of a felony punishable by imprisonment for not more than
18 20 years or a fine of not more than \$25,000.00, or both.

19 (ii) Any other controlled substance classified in schedule 1,
20 2, or 3, except marihuana or a substance listed in section
21 7212(1)(d), is guilty of a felony punishable by imprisonment for
22 not more than 7 years or a fine of not more than \$10,000.00, or
23 both.

24 (c) A substance classified in schedule 4 is guilty of a felony
25 punishable by imprisonment for not more than 4 years or a fine of
26 not more than \$2,000.00, or both.

27 (d) Marihuana, a mixture containing marihuana, or a substance
28 listed in section 7212(1)(d) is guilty of a felony punishable as
29 follows:

1 (i) If the amount is 45 kilograms or more, or 200 plants or
2 more, by imprisonment for not more than 15 years or a fine of not
3 more than \$10,000,000.00, or both.

4 (ii) If the amount is 5 kilograms or more but less than 45
5 kilograms, or 20 plants or more but fewer than 200 plants, by
6 imprisonment for not more than 7 years or a fine of not more than
7 \$500,000.00, or both.

8 (iii) If the amount is less than 5 kilograms or fewer than 20
9 plants, by imprisonment for not more than 4 years or a fine of not
10 more than \$20,000.00, or both.

11 (e) A substance classified in schedule 5 is guilty of a felony
12 punishable by imprisonment for not more than 2 years or a fine of
13 not more than \$2,000.00, or both.

14 (f) A prescription form or a counterfeit prescription form is
15 guilty of a felony punishable by imprisonment for not more than 7
16 years or a fine of not more than \$5,000.00, or both.

17 **(g) Xylazine is guilty of a felony punishable by imprisonment**
18 **for not more than 5 years or a fine of not more than \$15,000.00, or**
19 **both.**

20 (3) A term of imprisonment imposed under subsection (2)(a) may
21 be imposed to run consecutively with any term of imprisonment
22 imposed for the commission of another felony.

23 (4) If an individual was sentenced to lifetime probation under
24 subsection (2)(a)(iv) as it existed before March 1, 2003 and the
25 individual has served 5 or more years of that probationary period,
26 the probation officer for that individual may recommend to the
27 court that the court discharge the individual from probation. If an
28 individual's probation officer does not recommend discharge as
29 provided in this subsection, with notice to the prosecutor, the

1 individual may petition the court seeking resentencing under the
2 court rules. The court may discharge an individual from probation
3 as provided in this subsection. An individual may file more than 1
4 motion seeking resentencing under this subsection.

5 (5) As used in this section, "plant" means a marihuana plant
6 that has produced cotyledons or a cutting of a marihuana plant that
7 has produced cotyledons.

8 Sec. 7403. (1) A person shall not knowingly or intentionally
9 possess a controlled substance, a controlled substance analogue, or
10 a prescription form unless the controlled substance, controlled
11 substance analogue, or prescription form was obtained directly
12 from, or pursuant to, a valid prescription or order of a
13 practitioner while acting in the course of the practitioner's
14 professional practice, or except as otherwise authorized by this
15 article. **A person shall not knowingly or intentionally possess**
16 **xylazine for illicit use.**

17 (2) A person who violates this section as to:

18 (a) A controlled substance classified in schedule 1 or 2 that
19 is a narcotic drug or a drug described in section 7214(a)(iv), and:

20 (i) That is in an amount of 1,000 grams or more of any mixture
21 containing that substance is guilty of a felony punishable by
22 imprisonment for life or any term of years or a fine of not more
23 than \$1,000,000.00, or both.

24 (ii) That is in an amount of 450 grams or more, but less than
25 1,000 grams, of any mixture containing that substance is guilty of
26 a felony punishable by imprisonment for not more than 30 years or a
27 fine of not more than \$500,000.00, or both.

28 (iii) That is in an amount of 50 grams or more, but less than
29 450 grams, of any mixture containing that substance is guilty of a

1 felony punishable by imprisonment for not more than 20 years or a
2 fine of not more than \$250,000.00, or both.

3 (iv) That is in an amount of 25 grams or more, but less than 50
4 grams of any mixture containing that substance is guilty of a
5 felony punishable by imprisonment for not more than 4 years or a
6 fine of not more than \$25,000.00, or both.

7 (v) That is in an amount less than 25 grams of any mixture
8 containing that substance is guilty of a felony punishable by
9 imprisonment for not more than 4 years or a fine of not more than
10 \$25,000.00, or both.

11 (b) Either of the following:

12 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)
13 is guilty of a felony punishable by imprisonment for not more than
14 10 years or a fine of not more than \$15,000.00, or both.

15 (ii) A controlled substance classified in schedule 1, 2, 3, or
16 4, except a controlled substance for which a penalty is prescribed
17 in subparagraph (i) or subdivision (a), (c), or (d), or a controlled
18 substance analogue is guilty of a felony punishable by imprisonment
19 for not more than 2 years or a fine of not more than \$2,000.00, or
20 both.

21 (c) Lysergic acid diethylamide, peyote, mescaline,
22 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
23 classified in schedule 5 is guilty of a misdemeanor punishable by
24 imprisonment for not more than 1 year or a fine of not more than
25 \$2,000.00, or both.

26 (d) Marihuana or a substance listed in section 7212(1)(d) is
27 guilty of a misdemeanor punishable by imprisonment for not more
28 than 1 year or a fine of not more than \$2,000.00, or both.

29 (e) A prescription form is guilty of a misdemeanor punishable

1 by imprisonment for not more than 1 year or a fine of not more than
2 \$1,000.00, or both.

3 (f) **Xylazine is guilty of a felony punishable by imprisonment**
4 **for not more than 5 years or a fine of not more than \$15,000.00, or**
5 **both.**

6 (3) The following individuals are not in violation of this
7 section:

8 (a) An individual who seeks medical assistance for ~~himself or~~
9 ~~herself~~ **the individual's self** or who requires medical assistance
10 and is presented for assistance by another individual if ~~he or she~~
11 **the individual** is incapacitated because of a drug overdose or other
12 perceived medical emergency arising from the use of a controlled
13 substance, **xylazine**, or a controlled substance analogue that ~~he or~~
14 ~~she~~ **the individual** possesses or possessed in an amount sufficient
15 only for personal use and the evidence of ~~his or her~~ **the**
16 **individual's** violation of this section is obtained as a result of
17 the individual's seeking or being presented for medical assistance.

18 (b) An individual who in good faith attempts to procure
19 medical assistance for another individual or who accompanies
20 another individual who requires medical assistance for a drug
21 overdose or other perceived medical emergency arising from the use
22 of a controlled substance, **xylazine**, or a controlled substance
23 analogue that ~~he or she~~ **the individual** possesses or possessed in an
24 amount sufficient only for personal use and the evidence of ~~his or~~
25 ~~her~~ **the individual's** violation of this section is obtained as a
26 result of the individual's attempting to procure medical assistance
27 for another individual or as a result of the individual's
28 accompanying another individual who requires medical assistance to
29 a health facility or agency.

1 (4) A health facility or agency shall develop a process for
2 notification of the parent or parents, guardian, or custodian of a
3 minor under the age of 18 who is not emancipated under 1968 PA 293,
4 MCL 722.1 to 722.6, and who voluntarily presents ~~himself or~~
5 ~~herself,~~ **the individual's self**, or is presented by another
6 individual if ~~he or she~~ **the individual** is incapacitated, to a
7 health facility or agency for emergency medical treatment as
8 provided in subsection (3). A health facility or agency shall not
9 provide notification to a parent or parents, guardian, or custodian
10 under this subsection for nonemergency treatment without obtaining
11 the minor's consent.

12 (5) The exemption from prosecution under this section provided
13 in subsection (3) does not prevent the investigation, arrest,
14 charging, or prosecution of an individual for any other violation
15 of the laws of this state or be grounds for suppression of evidence
16 in the prosecution of any other criminal charges.

17 (6) If an individual was sentenced to lifetime probation under
18 subsection (2) (a) (iv) as it existed before March 1, 2003 and the
19 individual has served 5 or more years of that probationary period,
20 the probation officer for that individual may recommend to the
21 court that the court discharge the individual from probation. If an
22 individual's probation officer does not recommend discharge as
23 provided in this subsection, with notice to the prosecutor, the
24 individual may petition the court seeking resentencing under the
25 court rules. The court may discharge an individual from probation
26 as provided in this subsection. An individual may file more than 1
27 motion seeking resentencing under this subsection.

28 (7) As used in this section:

29 (a) "Drug overdose" means a condition including, but not

1 limited to, extreme physical illness, decreased level of
2 consciousness, respiratory depression, coma, mania, or death, that
3 is the result of consumption or use of a controlled substance,
4 **xylazine**, or a controlled substance analogue or a substance with
5 which the controlled substance or controlled substance analogue was
6 combined, or that a layperson would reasonably believe to be a drug
7 overdose that requires medical assistance.

8 (b) "Seeks medical assistance" means reporting a drug overdose
9 or other medical emergency to law enforcement, the 9-1-1 system, a
10 poison control center, or a medical provider, or assisting someone
11 in reporting a drug overdose or other medical emergency.

12 Sec. 7403a. (1) A person shall not fraudulently obtain or
13 attempt to obtain a controlled substance, **xylazine for illicit use**,
14 or a prescription for a controlled substance from a health care
15 provider.

16 (2) The following privileges do not apply to medical records
17 or information released or made available under subsection (1):

18 (a) The physician-patient privilege created in section 2157 of
19 the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

20 (b) The dentist-patient privilege created in section 16648.

21 (c) Any other health professional-patient privilege created or
22 recognized by law.

23 (3) To the extent not protected by the immunity conferred by
24 1964 PA 170, MCL 691.1401 to 691.1419, an individual who in good
25 faith provides access to medical records or information under this
26 section is immune from civil or administrative liability arising
27 from that conduct, unless the conduct was gross negligence or
28 willful and wanton misconduct.

29 (4) A person who violates this section is guilty of a crime as

1 follows:

2 (a) Except as provided in subsection (5) **and subdivision (b)**,
3 the person is guilty of a felony punishable by imprisonment for not
4 more than 4 years or a fine of not more than \$5,000.00, or both.

5 (b) **Except as provided in subsection (5), if the violation**
6 **involves xylazine, the person is guilty of a felony punishable by**
7 **imprisonment for not more than 5 years or a fine of not more than**
8 **\$15,000.00, or both.**

9 (5) The court may place a person who has not previously been
10 convicted of violating this section on probation subject to the
11 terms and conditions set forth in section 7411.

12 (6) The court may order any person convicted of violating this
13 section to undergo screening and assessment by a person or agency
14 designated by the bureau of substance ~~abuse and addiction services,~~
15 **use, gambling, and epidemiology** to determine whether the person is
16 likely to benefit from rehabilitative services, including alcohol
17 or drug education and alcohol or drug treatment programs. As part
18 of the sentence imposed under this section, the court may order the
19 person to participate in and successfully complete 1 or more
20 appropriate rehabilitative programs. The person shall pay for the
21 costs of the screening, assessment, and rehabilitative services.
22 Failure to complete a program ~~shall be considered is~~ a violation of
23 the terms of the probation.

24 (7) This section does not prohibit the person from being
25 charged with, convicted of, or sentenced for any other violation of
26 law arising out of the violation of this section.

27 (8) As used in this section, "health care provider" means that
28 term as defined in section 9206.

29 Sec. 7451. As used in sections 7453 to 7461 and section 7521,

1 "drug paraphernalia" means any equipment, product, material, or
2 combination of equipment, products, or materials, which is
3 specifically designed for use in planting; propagating;
4 cultivating; growing; harvesting; manufacturing; compounding;
5 converting; producing; processing; preparing; testing; analyzing;
6 packaging; repackaging; storing; containing; concealing; injecting,
7 ingesting, inhaling, or otherwise introducing into the human body a
8 controlled substance **or xylazine for illicit use**; including, but
9 not limited to, all of the following:

10 (a) An isomerization device specifically designed for use in
11 increasing the potency of any species of plant ~~which plant~~ **that** is
12 a controlled substance.

13 (b) Testing equipment specifically designed for use in
14 identifying or in analyzing the strength, effectiveness, or purity
15 of a controlled substance **or xylazine**.

16 (c) A weight scale or balance specifically designed for use in
17 weighing or measuring a controlled substance **or xylazine**.

18 (d) A diluent or adulterant, including, but not limited to,
19 quinine hydrochloride, mannitol, mannite, dextrose, and lactose,
20 specifically designed for use with a controlled substance **or**
21 **xylazine**.

22 (e) A separation gin or sifter specifically designed for use
23 in removing twigs and seeds from, or in otherwise cleaning or
24 refining, marihuana.

25 (f) An object specifically designed for use in ingesting,
26 inhaling, or otherwise introducing marihuana, cocaine, hashish, or
27 hashish oil into the human body.

28 (g) A kit specifically designed for use in planting,
29 propagating, cultivating, growing, or harvesting any species of

1 plant ~~which~~**that** is a controlled substance or from which a
2 controlled substance can be derived.

3 (h) A kit specifically designed for use in manufacturing,
4 compounding, converting, producing, processing, or preparing
5 controlled substances **or xylazine**.

6 (i) A device, commonly known as a cocaine kit, that is
7 specifically designed for use in ingesting, inhaling, or otherwise
8 introducing controlled substances into the human body, and which
9 consists of at least a razor blade and a mirror.

10 (j) A device, commonly known as a bullet, that is specifically
11 designed to deliver a measured amount of controlled substances to
12 the user.

13 (k) A device, commonly known as a snorter, that is
14 specifically designed to carry a small amount of controlled
15 substances **or xylazine** to the user's nose.

16 (l) A device, commonly known as an automotive safe, that is
17 specifically designed to carry and conceal a controlled substance
18 in an automobile, including, but not limited to, a can used for
19 brake fluid, oil, or carburetor cleaner which contains a
20 compartment for carrying and concealing controlled substances **or**
21 **xylazine**.

22 (m) A spoon, with or without a chain attached, that has a
23 small diameter bowl and that is specifically designed for use in
24 ingesting, inhaling, or otherwise introducing controlled substances
25 **or xylazine** into the human body.

26 Sec. 7453. (1) Subject to subsection (2), a person shall not
27 sell or offer for sale an object specifically designed for inhaling
28 nitrous oxide for recreational purposes or drug paraphernalia,
29 knowing that the object specifically designed for inhaling nitrous

1 oxide for recreational purposes will be used to inhale nitrous
2 oxide for recreational purposes or that the drug paraphernalia will
3 be used to plant, propagate, cultivate, grow, harvest, manufacture,
4 compound, convert, produce, process, prepare, test, analyze, pack,
5 repack, store, contain, conceal, inject, ingest, inhale, or
6 otherwise introduce into the human body a controlled substance **or**
7 **xylazine.**

8 (2) Before a person is arrested for a violation of subsection
9 (1), the attorney general or a prosecuting attorney shall notify
10 the person in writing, not less than 2 business days before the
11 person is to be arrested, that the person is in possession of
12 specific, defined material that has been determined by the attorney
13 general or prosecuting attorney to be an object specifically
14 designed for inhaling nitrous oxide for recreational purposes or
15 drug paraphernalia. The notice also must request that the person
16 refrain from selling or offering for sale the material and must
17 state that if the person complies with the notice, no arrest will
18 be made for a violation of subsection (1).

19 (3) If a person complies with a notice sent under subsection
20 (2), the compliance is a complete defense in a prosecution under
21 this section, as long as the compliance continues.

22 Sec. 7455. (1) ~~Except as provided in subsection (2), a~~ **A**
23 person who violates section 7453 is guilty of a **crime as follows:**

24 **(a) If the violation involves xylazine, a felony, punishable**
25 **by imprisonment for not more than 5 years or a fine of not more**
26 **than \$15,000.00, or both.**

27 **(b) Except as provided under subsection (2) and subdivision**
28 **(a), a** misdemeanor, punishable by imprisonment for not more than 90
29 days, or a fine of not more than \$5,000.00, or both.

1 (2) A person 18 years of age or older who violates section
2 7453 by selling or offering to sell an object specifically designed
3 for inhaling nitrous oxide for recreational purposes or drug
4 paraphernalia to a person less than 18 years of age is guilty of a
5 misdemeanor, punishable by imprisonment for not more than 1 year,
6 or a fine of not more than \$7,500.00, or both.