

Legislative Analysis



MAKE XYLAZINE A SCHEDULE 2 CONTROLLED SUBSTANCE

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<http://www.house.mi.gov/hfa>

House Bill 4913 as introduced

Sponsor: Rep. Kelly Breen

Committee: Judiciary

Complete to 10-10-23

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

SUMMARY:

House Bill 4913 would amend the Public Health Code to designate xylazine as a Schedule 2 controlled substance. As described below, xylazine is a nonopioid drug used by veterinarians as a tranquilizer and anesthetic for larger animals such as horses, cattle, and deer.

Veterinarians could still use xylazine under the bill, but it would be newly subject to sale, distribution, storage, documentation, and related requirements for Schedule 2 controlled substances.

In addition, among other existing provisions of state law, the following offenses and penalties would newly apply to xylazine under the bill:

- A person who knowingly or intentionally possesses xylazine without a prescription or other authorization would be guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$2,000, or both.
- A person who, without authorization, manufactures or delivers xylazine, or possesses xylazine with intent to manufacture or deliver it, would be guilty of a felony punishable by imprisonment for up to seven years or a fine of up to \$10,000, or both.
- A person who, without authorization, delivers xylazine to a person who consumes it and dies as a result would be guilty of a felony punishable by life or any term of years.
- A person who operates a motor vehicle,¹ watercraft, off-road vehicle (ORV), or snowmobile while under the influence of xylazine or while visibly impaired due to the consumption of xylazine and who causes the death or *serious impairment of a body function*² of another person would be guilty of a felony punishable as follows:
 - For causing death, imprisonment for up to 15 years or a fine of \$2,500 to \$10,000, or both.³
 - For causing serious impairment of a body function, imprisonment for up to five years or a fine of \$1,000 to \$5,000, or both.

The bill would take effect 90 days after being enacted.

MCL 333.7214

¹ The inclusion of *motor vehicles* here may be misleading. The bill would make xylazine subject to penalties in the Michigan Vehicle Code related to operating a motor vehicle while intoxicated due to a *controlled substance*. However, it appears that xylazine is already subject to those penalties as they relate to operating a motor vehicle while intoxicated due to an *other intoxicating substance*. See <http://legislature.mi.gov/doc.aspx?mcl-257-625>. The sections of law that prohibit operating a watercraft, ORV, or snowmobile while intoxicated do not have comparable provisions addressing *other intoxicating substances*.

² As defined here: <http://legislature.mi.gov/doc.aspx?mcl-257-58c>

³ For motor vehicles only, the term of imprisonment can be extended to 20 years if the person causes the death of a police officer, firefighter, or other emergency response personnel while violating provisions related to passing an emergency vehicle that is stopped with its flashing lights on. See <http://legislature.mi.gov/doc.aspx?mcl-257-653a>

BACKGROUND:

Controlled substances are classified in the code under one of five schedules that are modeled after those in the federal Controlled Substances Act. That law, enacted in 1970, regulates drugs and other substances that are determined to pose a risk of abuse and dependence, regardless of whether they are medical or recreational or are distributed legally or illegally.⁴ Schedule 1 controlled substances have a high potential for abuse and no safe or acceptable use for medical treatment. Schedule 2 controlled substances have a high potential for abuse that may lead to severe psychic or physical dependence, but they also have currently accepted medical uses. Controlled substances on Schedules 3 to 5 also have accepted medical uses, and increasingly less potential for abuse relative to drugs in the prior (lower-numbered) schedules.

Drugs now listed on Schedule 2 in Michigan include opium and its derivatives (e.g., codeine, morphine, and oxycodone, which is the active ingredient of Oxycontin); other opioids (e.g., fentanyl and methadone); cocaine; stimulants such as amphetamine, methamphetamine, and methylphenidate (the active ingredient of Ritalin); and depressant drugs such as methaqualone (known by its trade name Quaalude) and barbiturates (e.g., amobarbital, pentobarbital, and secobarbital). Marijuana is also listed on Schedule 2, but only to the extent it is being used to treat a debilitating medical condition under the Michigan Medical Marijuana Act. It is otherwise listed as a Schedule 1 drug.

The code generally requires the state's controlled substance schedules to parallel the schedules in the federal act. However, the Michigan Board of Pharmacy is given the authority to add, delete, or reschedule controlled substances under Michigan law and also can decide not to schedule a substance similarly to federal law if certain conditions are met.

Xylazine is a nonopioid drug approved by the U.S. Food and Drug Administration (FDA) in 1972 for use by veterinarians as a sedative, muscle relaxant, and pain reliever for animals. It is commonly used as a tranquilizer and anesthetic on larger animals such as cows and horses. It is not approved or intended for human use. Clinical trials for potential human benefits were conducted in the 1960s but suspended because of the severity of the drug's effects on vital bodily functions. The FDA regulates veterinary xylazine under the Federal Food, Drug, and Cosmetic Act. It is not listed as a controlled substance under federal law, which means that the Drug Enforcement Administration (DEA) has no authority to regulate it and its sales are not as strictly monitored as for listed pharmaceuticals.

In recent years, xylazine has increasingly been found in samples of illicit drugs, especially as a cutting agent for fentanyl, and implicated in drug overdoses. Xylazine is also known as "tranq," "tranq dope" (when mixed with an opioid such as heroin or fentanyl), or "zombie drug." Xylazine's effects are reported to be broadly similar to those of heroin and fentanyl, but they start faster and last longer. Mixing opioids and xylazine amplifies the effects of each and increases the chance of an overdose. Symptoms of a xylazine overdose are also similar to those for heroin or fentanyl, but because xylazine is not an opioid, its effects are not reversed by an opioid antidote such as naloxone (e.g., Narcan).⁵ Xylazine is not detected in traditional toxicology screens. It is often not readily identifiable as the cause of overdose symptoms, as the reason naloxone isn't working, or as a cause of death. Xylazine is reportedly highly

⁴ See <https://crsreports.congress.gov/product/pdf/R/R45948>

⁵ <https://www.fda.gov/media/162981/download>

addictive, with intense and painful withdrawal symptoms that cannot be alleviated or managed as opioid withdrawal symptoms can. The use of xylazine often results in skin wounds characterized by dead and rotting flesh, sometimes exposing bone, which can lead to infection, amputation, or death.⁶ Because it was never intended for human use, little research has been done on the effects of xylazine on the human body, let alone how it reacts with other drugs or how to treat withdrawal or overdose.⁷

Other states that have added xylazine to their controlled substances schedules, either through legislation or by temporary or permanent order or rule, include Florida (Schedule 1), Delaware (Schedule 3), Ohio (Schedule 3), Pennsylvania (Schedule 3), and West Virginia (Schedule 4).

A bill has been introduced in Congress that would add xylazine to Schedule 3 of the federal act, except for veterinary uses. The attorneys general of 39 states have urged its passage.⁸

FISCAL IMPACT:

House Bill 4913 would have an indeterminate fiscal impact on the state and on local units of government. Possession of a Schedule 2 controlled substance is a felony. Other activities involving Schedule 2 controlled substances are felonies as well (e.g., manufacturing; distributing; operating a motor vehicle, watercraft, or off-road vehicle while under the influence of a Schedule 2 controlled substance and causing death or serious impairment of a body function; etc.). New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on the extent to which court caseloads increased and the 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.

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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.

⁶ <https://www.nytimes.com/2023/01/07/health/fentanyl-xylazine-drug.html>

⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10370501/pdf/cureus-0015-00000040983.pdf>

⁸ <https://www.naag.org/wp-content/uploads/2023/05/AGs-Combating-Illicit-Xylazine.NAAG-ltrhead-FINAL-5-18-2023.pdf>