



## HOUSE COMMITTEE ON APPROPRIATIONS

# FISCAL NOTE

HOUSE BILL NO. 1661

PRINTER'S NO. 2091

PRIME SPONSOR: Metzgar

### COST / (SAVINGS)

FUND	FY 2023/24	FY 2024/25
General Fund	See Fiscal Impact	See Fiscal Impact

#### SUMMARY:

Defines xylazine and the licit uses thereof and prohibits acts and imposes penalties related to the use of xylazine and provides for the safe storage of xylazine.

#### ANALYSIS:

House Bill 1664 amends Act 64 of 1972 (the Controlled Substance, Drug, Device and Cosmetic Act) to define xylazine and the licit and prohibited acts related to xylazine.

Licit uses of xylazine include any of the following:

- Dispensing or prescribing for, or administering to a nonhuman species of a drug containing xylazine that:
  - has been approved by the Secretary and Human Services under 21 U.S.C. § 360b (relating to new animal drugs) or
  - is authorized under 21 U.S.C. § 360b(a)(4))
- The manufacturing, distribution, or use of xylazine as an active pharmaceutical ingredient for manufacturing an animal drug approved under 21 U.S.C. 360b or an animal drug that has been issued an investigation use exemption under 21 U.S.C. § 360b(j)
- The manufacturing, distribution, or use of a xylazine bulk chemical for pharmaceutical compounding by a licensed pharmacist or veterinarians
- Any other use approved or authorized under 21 U.S.C. Ch. 9 (relating to Federal Food, Drug, and Cosmetic Act)

The bill amends Sections 13(a)(12), (14), (16), (30), (32), and (33) to prohibit the following uses of xylazine:

- Section 13(a)(12): The acquisition or obtaining of possession of xylazine by misrepresentation, fraud, forgery, deception, or subterfuge
- Section 13(a)(14): The administration, dispensing, delivery, gift, or prescription of xylazine by any practitioner or professional assistant under the practitioner's direction and supervision unless done (i) in good faith in the course of his or her professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession

- Section 13(a)(16): Knowingly or intentionally possessing xylazine by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act
- Section 13(a)(30): Except as authorized by this act, the manufacture, delivery, or possession with intent to deliver xylazine by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance
- Section 13(a)(32): The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body xylazine
- Section 13(a)(33): The delivery of, possession with intent to deliver, or manufacturing with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produced, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body xylazine

The bill amends Section 13(f)(2) to stipulate that any person who violates clauses (12), (14), or (30) is guilty of a felony which is punishable by imprisonment up to five years or a fine of up to \$15,000, or both.

Finally, the bill inserts Section 13.9, which stipulates that a practitioner who is a veterinarian shall comply with the provisions of section 4(5) of the Pharmacy Act, for the storage and protection of xylazine.

This legislation would take effect in 60 days upon enactment.

#### **FISCAL IMPACT:**

On June 3, 2023, the Department of Health issued an order, effective for one year, adding xylazine to the list of Schedule III drugs with similar exemptions for licit veterinary use. This legislation is narrower in scope, affecting only Sections 13(a)(12), (14), (16), (30), (32), and (33), although the penalties are the same.

The penalties are as follows:

- Sections 13(a)(12), (14), and (30): a felony conviction punishable by imprisonment of up to five years or a fine of up to \$15,000, or both
- Sections 13(a)(32) and (33): a misdemeanor punishable by imprisonment of up to one year or a fine of up to \$2,500, or both
- Section 13(a)(16): a misdemeanor punishable by imprisonment of up to one year or a fine of up to \$5,000, or both for a first offense. Subsequent offenses are punishable by imprisonment of up to 3 years or a fine of up to \$25,000, or both.

However, according to the Pennsylvania Sentencing Commission, data are not available to reliably estimate how many individuals may be convicted and sentenced. Therefore, their potential fiscal impact on the Commonwealth is indeterminable.

It should be noted that the 2021/2022 marginal cost per day to incarcerate an individual in a State Correctional Institution was \$41.68. Offenders with a maximum sentence of less than two years are typically sent to a county jail. Marginal costs are not available for county facilities, but the average annual cost to incarcerate someone in a county jail in 2022 was \$43,701.

Any revenue generated by fines in this section would be distributed to counties depending on the location of the penalty pursuant to 42 Pa.C.S. § 3572.

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**DATE:** October 3, 2023

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*