
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 1502 **Hearing Date:** April 9, 2024
Author: Ashby
Version: March 20, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Controlled substances: xylazine*

HISTORY

Source: Author

Prior Legislation: AB 1598 (Davies), Ch. 201, Stats. 2022

Support: Unknown

Opposition: Drug Policy Alliance

PURPOSE

The purpose of this bill is to add xylazine to the list of Schedule III controlled substances, except as specified.

Existing law establishes the California Uniform Controlled Substances Act, which regulates controlled substances. (Health & Saf. Code, § 11000 et seq.)

Existing law classifies controlled substances into five schedules according to their danger and potential for abuse. Provides that Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054-11058.)

Existing law makes the possession of a Schedule III controlled substance that is not a narcotic drug a misdemeanor, unless upon the prescription physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, and punishable by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to Penal Code section 1170 (h) if that person has one or more prior convictions for specified offenses. (Health & Saf. Code § 11377, subd. (a).)

Existing law defines “drug paraphernalia” as all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human a body a controlled substance. (Health & Saf. Code, §§ 11014.5, subd. (a), 11364.5, subd. (a).)

Existing law provides that drug paraphernalia includes testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances. (Health & Saf. Code, §§ 11014.5, subd. (a)(4), 11364.5, subd. (d)(4).)

Existing law provides that “drug paraphernalia” does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl. (Health & Saf. Code, §§ 11014.5, subd. (d), 11364.5, subd. (g).)

This bill adds xylazine, and its salts, isomers, and salts of its isomers to Schedule III. Also adds any substance that contains xylazine.

This bill exempts a substance that is intended to be used to compound an animal drug pursuant to the federal Food and Drug Administration’s (FDA) industry guidance on compounding animal drugs from bulk drug substances, or an animal drug compound containing xylazine that is compounded pursuant to this guidance, if an animal drug containing xylazine has been approved under the federal Food, Drug and Cosmetic Act and is not available for sale in California. *This bill* provides that notwithstanding any other law, compounding an animal drug as described in the provisions of this bill is not unprofessional conduct under Section 4301 of the Business and Professions Code.

COMMENTS

1. Need For This Bill

According to the author:

California is in the midst of an opioid crisis, with over seven thousand deaths attributed to opioid overdose in our state in 2021. According to a DEA report, Xylazine-related deaths have drastically increased nationwide, more than tripling from 2020 to 2021. This surge is compounded by a growing trend of mixing fentanyl with Xylazine, rendering it the deadliest drug threat in the United States. Commonly referred to as “tranq” or the “zombie drug,” Xylazine is a potent veterinary sedative, increasingly being trafficked in our country. Notoriously unsafe for human use, Xylazine can cause severe wounds and necrosis, occasionally leading to amputation.

SB 1502 classifies Xylazine as a Schedule III substance, which enables the DEA to restrict access to the medication. It is crucial that we protect Californians from the negative impacts of Xylazine, and SB 1502 ensures the health and safety of our communities by regulating its availability and preventing misuse.

2. Controlled Substance Schedules

Through the Controlled Substances Act of 1970, the federal government regulates the manufacture, distribution, and dispensing of controlled substances. The Act groups drugs into five schedules with decreasing potential for physical or psychological harm, based on three considerations: accepted medical use; potential for abuse; and, safety or dependency liability. California’s controlled substances schedules largely follow the federal schedules.

- Schedule I controlled substances, such as heroin, ecstasy, and LSD, have a high potential for abuse and no generally accepted medical use.
- Schedule II controlled substances have a currently accepted medical use, with significant risk to patient safety, and have a high potential for abuse and dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, oxycodone, codeine, and amphetamine.
- Schedule III controlled substances have a currently accepted medical use, potential for abuse leading to moderate physical dependence. Examples of Schedule III controlled substances include ketamine and anabolic steroids.
- Schedule IV controlled substances have a currently accepted medical use, low potential for abuse which may lead to limited physical dependence. Examples of Schedule IV controlled substances include drugs include benzodiazepines.
- Schedule V controlled substances have a low potential for abuse or dependence. Examples of Schedule V controlled substances include buprenorphine and narcotic drugs containing non-narcotic active medicinal ingredients.

3. Xylazine

Xylazine, also known as tranq, is a non-opiate sedative, analgesic, and muscle relaxant only authorized in the U.S. for veterinary use by the FDA. (U.S. Department of Justice and Drug Enforcement Administration, *DEA Joint Intelligence Report: The Growing Threat of Xylazine and its Mixture with Illicit Drugs* (Oct. 2022), p. 1 available at <<https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf>> [hereinafter DEA Joint Report].) It is not included in the federal controlled substances schedules, and it is not approved for consumption by humans. (*Ibid.*) In legal sales for veterinary use, xylazine is available in liquid form and sold in vials or preloaded syringes, with solutions prepared at a concentration appropriate for administration by injection based on the general size and weight of the species. (*Ibid.*) Xylazine is legitimately sold directly through pharmaceutical distributors and websites catering to veterinarians. (*Ibid.*)

Xylazine can be injected, sniffed, or consumed orally. (Centers for Disease Control and Prevention, *What You Should Know About Xylazine* available at <<https://www.cdc.gov/drugoverdose/deaths/other-drugs/xylazine/faq.html#:~:text=References-,What%20is%20xylazine%3F,approved%20for%20use%20in%20in%20people.>>.) People are most frequently exposed to xylazine while using illegal drugs, such as cocaine, heroin, and fentanyl, which are sometimes mixed with xylazine to enhance the effects of the drug it is being mixed with or to increase the price of the drug by increasing its weight. (*Id.*) The DEA reports that it has seized xylazine and fentanyl mixtures in almost all 50 states. (*Id.*) Between 2020 and 2021, DEA lab results found a 112% increase in the presence of xylazine in drug seizures in the Western region of the country. (DEA Joint Report, *supra* at p. 2.) Xylazine can cause respiratory depression similar to that of an opioid overdose which may increase the potential for a fatal outcome at a time when opioid overdose deaths remain high. (*Id.* at p. 4.) Due to the impact of xylazine on the opioid crisis, the White House designated fentanyl combined with xylazine as an emerging threat to the United States last year. (The White House, Office of the Press Secretary (Apr. 12, 2023) *Biden-Harris Administration designates fentanyl combined with xylazine as an emerging threat to the United States*, available at <<https://www.whitehouse.gov/ondcp/briefing-room/2023/04/12/biden-harris-administration--designates-fentanyl-combined-with-xylazine-as-an-emerging-threat-to-the-united-states/>>.)

This bill adds xylazine to the list of Schedule III controlled substances. It contains an exception for a substance that is intended to be used to compound an animal drug pursuant to the federal FDA's industry guidance on compounding animal drugs from bulk drug substances, or an animal drug compound containing xylazine that is compounded pursuant to this guidance, when the animal drug containing xylazine has been approved under the federal Food, Drug and Cosmetic Act and is not available for sale this state.

4. Amendments

The author plans to take the following amendments in committee to exclude testing equipment designed to detect xylazine, such as test strips, from the definition of drug paraphernalia:

Health and Safety Code section 11014.5, subdivision (d)

(d) Notwithstanding paragraph (4) of subdivision (a), "drug paraphernalia" does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, xylazine, or any analog of fentanyl.

Health and Safety Code section 11364.5, subdivision (g)

(g) Notwithstanding paragraph (4) of subdivision (d), "drug paraphernalia" does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, xylazine, or any analog of fentanyl.

5. Argument in Opposition

Drug Policy Alliance writes:

By placing [xylazine] on Schedule III of the Controlled Substances Act (CSA), SB 1502 will criminalize xylazine, including simple possession. We are concerned that by placing xylazine on the CSA, the state is setting a dangerous precedent.

...

We are concerned that ... California will preemptively be placing xylazine on the CSA before scientific studies have been completed. Experts agree that there is a need for *further* research to better understand overdose risk and response, pathophysiology, patterns of xylazine use, clinical treatment and withdrawal management, wound treatment and management, harm reduction response, regulation, and potential racial disparities in drug enforcement, among other research topics.

...

There are a number of potential criminal justice implications of scheduling that do not account for the realities of when and why people use xylazine.

...

We know that supply-side strategies fail to keep our communities safe. ...

To prevent overdose deaths and mitigate the harms of the illicit drug supply, the state must prioritize science-based decision-making and research, as well as harm reduction strategies and comprehensive public health approaches to the overdose epidemic. Instead of hastily criminalizing xylazine as a controlled substance, lawmakers should focus on allowing the implementation of overdose prevention services, Good Samaritan Laws, access to methadone, buprenorphine, and naloxone, and evidence-based drug education and treatment.

-- END --