

# Legislative Analysis



## ALLOW A SUBSTANCE TO BE TEMPORARILY SCHEDULED AS A CONTROLLED SUBSTANCE

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5338**

**Sponsor: Rep. Edward McBroom**

**Senate Bill 789**

**Sponsor: Sen. Rick Jones**

**House Committee: Judiciary**

**Senate Committee: Judiciary (SB 789)**

**Complete to 3-14-12**

## A SUMMARY OF HOUSE BILL 5338 AS INTRODUCED 2-1-12 AND SENATE BILL 789 AS PASSED BY THE SENATE 12-1-11

The bills, which are identical, would create a mechanism by which a drug could be temporarily designated as a scheduled controlled substance. The bills would also require the schedules for controlled substances to reflect the addition or deletion of a substance in the federal schedules unless determined by the administrator not to control that substance.

House Bill 5338 and Senate Bill 789 would amend the Public Health Code. The code currently authorizes the director of the Department of Community Health (DCH) to issue orders intended to avoid, correct, or remove an imminent danger. The term "imminent danger" is defined to mean an existing condition or practice reasonably expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures provided. The director also is authorized to take full charge of the administration of state and local health laws, rules, regulations, and ordinances upon determining that conditions anywhere in the state constitute a menace to the public health.

### ***Role of the director of DCH***

The bills would also require the director, upon determining that an imminent danger to health or lives of individuals in the state could be prevented or controlled by temporarily scheduling a substance as a controlled substance, to notify the "administrator" of the determination in writing. The "administrator" is the Michigan Board of Pharmacy or its designated or established authority. Under the health code, the administrator administers Article 7 (Controlled Substances) and has the authority to add substances to, or delete or reschedule all substances enumerated in Schedules 1-5.)

The notification would have to include a description of the substance and the grounds for the determination. Copies of police, hospital, and laboratory reports, as well as other information, could be provided by the director to the pharmacy board. (Substances are designated as a controlled substance according to five schedules based on whether they

have an accepted medical use, risk to public health, and potential risks for psychological or physiological dependency.)

### ***Role of the administrator***

Under the bills, if the Board of Pharmacy is notified in writing by the director of the DCH that a substance constitutes an imminent danger, it may proceed under provisions of the code to determine whether the substance should be temporarily scheduled or rescheduled as a controlled substance. If the administrator decides to proceed, at least one public hearing on the matter would have to be held. At least 10 days' notice of the hearing would have to be provided. The notice, at a minimum, would have to specify the purpose of the hearing, the time and place of the hearing, and that the hearing is open to the public. The administrator would have to transmit the notice to the Department of Licensing and Regulatory Affairs (LARA) for placement in the Michigan Register. The notice would be effective when the text of the notice becomes available to the public on the Internet.

For purposes of determining whether to schedule or reschedule a substance in response to a DCH notification, a quorum for the meeting and business conducted would consist of a majority of the professional members of the Board of Pharmacy. Any member of the board could attend the hearing by two-way teleconferencing. The Administrative Procedures Act and the Open Meetings Act would not apply to procedures under this provision, except as otherwise provided in the bills.

The administrator could temporarily schedule or reschedule the substance as a controlled substance for no more than 180 days and could extend the time period for up to an additional 180 days. The public notification requirements, the Administrative Procedures Act, and the Open Meetings Act would not apply to an extension.

A substance would be ordered to be scheduled or rescheduled on a temporary basis by written order of the administrator. The order would have to be transmitted to LARA for placement in the Michigan Register. The order would become effective when the text becomes available to the public on the Internet.

An order to temporarily schedule or reschedule a drug would expire on the date specified in the order; upon the expiration of 180 days after the order is signed by the administrator; or when the substance is otherwise scheduled or rescheduled under Article 7 or designated as a drug, including a controlled substance, as otherwise provided by law. An extension of an order would become effective in the same manner and would be subject to the same conditions as an original order except that the public hearing would not be required.

### ***Complying with federal changes***

Currently, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that action is given to the administrator, the administrator must hold a board meeting within 91 days to determine whether the substance should be similarly controlled under state law. Under the bills, the substance would be scheduled as

a controlled substance similarly to the federal law unless the administrator held a board meeting within 91 days to determine if the substance should be similarly controlled. The current requirement that the administrator publish the reasons for not similarly controlling the substance would remain intact.

MCL 333.2251 et al.

#### **FISCAL IMPACT:**

The bills would have a minor fiscal impact on the Department of Licensing and Regulatory Affairs to the extent that the Board of Pharmacy temporarily schedules and reschedules substances as requested by the Director of the Department of Community Health. LARA estimates that the cost of publicizing a public hearing in newspapers and hiring a court reporter to transcribe testimony is approximately \$2,000.

To the extent that the bills result in an increase in criminal convictions related to controlled substances, they could increase costs on state and local correctional systems. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The local costs of incarceration in a county jail and misdemeanor probation supervision vary by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Paul Holland  
Bob Schneider

---

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