

PROMULGATION OF EMERGENCY RULES FOR CONTROLLED SUBSTANCES

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

House Bill 5714 (reported from committee without amendment)

Sponsor: Rep. Pat Somerville

Committee: Judiciary

Complete to 6-6-12

A SUMMARY OF HOUSE BILL 5714 AS REPORTED FROM COMMITTEE ON 6-5-12

The bill would amend Section 48 of the Administrative Procedures Act to allow for the promulgation of emergency rules to schedule or reschedule a substance as a controlled substance under certain conditions.

Specifically, the bill would allow the Department of Licensing and Regulatory Affairs (LARA) to dispense with all or part of the rule making procedures required in Sections 41 and 42 and file the copies required under Section 46, endorsed as an emergency rule, with the Secretary of State (see *Background Information* for an explanation of the mentioned sections). Three of those copies would have to be attached to the certificate of approval and to the notification to the Department of Community Health.

The bill would require the Office of Regulatory Reinvention (ORR) to submit the emergency rule draft language to the Legislative Service Bureau (LSB) for formal certification within seven business days of receiving it from LARA. LSB must issue a certificate of approval that indicates whether the proposed rule is proper as to all matters of form, classification, and arrangement within seven business days after receiving it and then return it to the ORR.

If the LSB does not issue the certificate of approval within seven days, the ORR would be authorized to issue it. If the LSB returns the proposed rule to the ORR before the seven-business-day time period expires, the clock would toll until the proposed rule is returned to the LSB. The LSB would then have the remainder of the seven-business-day time period to consider the formal certification of the rule. Upon receiving the proposed rule from the LSB, the ORR would be required to approve it within seven business days, provided the ORR considers it to be legal and appropriate.

The rule would then take immediate effect upon its filing and remain in effect until (1) an identical or similar rule is promulgated, (2) an identical or similar bill is enacted, or (3) the administrator determines the emergency rule is no longer needed.

The bill is tie-barred to Senate Bill 789, which would create a mechanism by which a drug could be temporarily designated as a scheduled controlled substance.

MCL 24.248

FISCAL IMPACT:

A fiscal analysis is in process.

BACKGROUND INFORMATION AND DISCUSSION:

Section 41 of the Administrative Procedures Act requires a public hearing before a rule is adopted in order to allow for the opportunity to present questions and arguments. The notice has to conform to certain time requirements and contain specific information regarding the statutory authority of the proposed rule, time and place of the meeting, and a description of the proposed rule.

Section 42 requires the notice for public hearing to be posted not less than 10 days and not more than 60 days before the date the hearing is scheduled occur. It also requires electronic transmission of the notice to certain parties.

Section 46 requires three copies of the rule bearing the required certificates of approval and adoption, true copies of the rule without the certificates, and one electronic copy to be filed with the Secretary of State (SOS). The SOS must then endorse the date and hour of the filing of rules on the three copies bearing the certificates and must maintain a file with one copy available for public inspection.

According to testimony, recent legislative efforts to ban synthetic drugs (commonly known as K2 or Spice) have been unsuccessful because manufacturers have begun to change elements in the chemical make-up of the substance in order to stay in compliance with the law. This bill would allow for a quicker response in addressing new substances because it would be done through the emergency rules process instead of having to go through the normal legislative process, which could take considerably more time.

POSITIONS:

Michigan Attorney General's office supports the bill. (6-5-12)

Michigan Department of Community Health supports the bill. (6-5-12)

Michigan State Police supports the bill. (6-5-12)

Associated Food and Petroleum Dealers supports the bill. (6-5-12)

Prosecuting Attorneys Association of Michigan supports the bill. (6-5-12)

Michigan Department of Licensing and Regulatory Affairs is neutral on the bill. (6-5-12)

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: Robin Risko

■ 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.