

Legislative Analysis



K2 AND BZP: DESIGNATE AS SCHEDULE 1 CONTROLLED SUBSTANCES

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House Bill 6038 (Substitute H-2)
Sponsor: Rep. Rick Jones

House Bill 6226 as introduced
Sponsor: Rep. Lisa Brown
Committee: Judiciary

First Analysis (6-23-10)

BRIEF SUMMARY: Together, House Bills 6038 and 6226 would classify as a Schedule 1 drug any substance that mimics the effects of marijuana, such as an herbal substance known as K2. The bills would also prohibit the use or possession of such synthetic cannabinoids and make a violation a misdemeanor. House Bill 6038 would also classify BZP (also known as Frenzy or Nemesis) as a Schedule 1 drug.

FISCAL IMPACT: The bills would have a fiscal impact on state and local governments as described later in the analysis.

THE APPARENT PROBLEM:

Following federal law, the Michigan Public Health Code classifies controlled substances under one of five "schedules." Schedule 1 drugs, which are considered to have a high risk of abuse and to have no legitimate medical purpose, include heroin, LSD, marijuana, MDMA (ecstasy), and methamphetamines. In March 2004, the federal Drug Enforcement Administration (DEA) designated BZP as a Schedule 1 drug under the Controlled Substances Act.

According to information from the National Drug Intelligence Center, an agency within the U.S. Department of Justice, BZP (also known as Frenzy or Nemesis) is a stimulant that produces effects similar to methamphetamine (MDMA or ecstasy) but that is 10 to 20 percent less potent than ecstasy, though a hallucinogen is sometimes added to BZP.

BZP tablets are often sold as ecstasy or promoted as an alternative to ecstasy. Used primarily by teens and young adults at raves, nightclubs, and private parties, the risks are similar to amphetamine use: increased blood pressure and heart and respiration rates, anxiety, blurred vision, dizziness, and insomnia. Chronic abuse of any stimulant can cause irregular heartbeat and can lead to delusions, hallucinations, and paranoia.

According to testimony presented by an attorney in the Oakland County Prosecutor's Office, there were two cases involving BZP in the county in 2007. In the last six months, however, 149 suspected cases have been reported. Apparently, the increase is due in part because BZP – as a powder – is often pressed into shapes resembling cartoon characters

and so looks much like children's vitamins or candy. Thus, the ability of BZP or "frenzy" to be marketed to young teens and even pre-teens is particularly alarming.

In a related matter, a relatively new substance that mimics the effects of marijuana is being marketed as a legal alternative to pot. Marketed as herbal incense or ingestible pot pourri, it is sold online and in various tobacco and head shops to children as young as 10. Known as K2 or Spice, the product is primarily manufactured in China and Korea. It consists of a synthetic chemical that is sprayed on the leaves and petals of plants.

Though some users claim a high similar to marijuana, and so see it as a legal alternative to that drug, hospitals are reporting an increasing number of cases in which the drug causes an increase in heart rate (basically, hearts racing out of control) and symptoms similar to those presented by individuals having a schizophrenic episode. For the most part, these chemicals have not yet been tested or researched to ensure they are safe for human use. However, some of the chemicals known to be used in the manufacture of K2 have been found in lab tests to cause paralysis while others are suspected of being carcinogenic.

Because of the risk to health and safety posed by these drugs, legislation is being offered to add them to the list of drugs classified as Schedule 1 controlled substances and provide penalties for unlawful activity involving BZP or K2.

THE CONTENT OF THE BILLS:

BZP and K2 as Schedule 1 drugs

House Bill 6038 would amend the Public Health Code (MCL 333.7212) to add several compounds representing synthetic cannabinoids to the list of drugs that are considered Schedule 1 drugs.

The bill would also include N-benzylpiperazine, also known as BZP, 1-benzylpiperazine, and 1-(phenylmethyl)-piperazine, as a Schedule 1 controlled substance. In addition, the bill would delete references to an obsolete marijuana therapeutic research program.

[If included as a Schedule 1 controlled substance, the penalties for violations pertaining to BZP would be the same as for violations involving methamphetamines (such as ecstasy). The penalty for possession of BZP under the Public Health Code would be a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000, or both. Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver BZP would be a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000, or both. The penalty for use of BZP would be a misdemeanor punishable by up to one year imprisonment and/or a maximum fine of \$2,000.]

Penalties for conduct involving BZP or K2

House Bill 6038 and House Bill 6226 would amend the code (MCL 333.7403 and 333.7404) to prohibit the use or possession of a synthetic cannabinoid listed as a Schedule 1 drug. Knowingly or intentionally possessing the prohibited compounds would be a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$2,000. Using the prohibited substances would be a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100, or both.

The bill is tie-barred to House Bill 6038.

[Because the legislation does not specify a felony penalty, manufacturing, delivering, or possessing with intent to deliver K2 or other synthetic cannabinoid would fall under a catch-all penalty provision. Under Section 7401(2)(b)(ii), manufacturing, delivering, or possessing with intent to deliver a controlled substance classified as a Schedule 1, 2, or 3 drug, other than marijuana or substances for which a specific penalty apply, is a felony punishable by imprisonment for not more than seven years and/or a fine of not more than \$10,000. By comparison, the felony penalties for the manufacture or delivery of, or the possession with the intent to deliver, marijuana are based on the weight of the drug or number of plants involved in the crime and range from imprisonment for not more than four years and/or a fine of not more than \$20,000 up to 15 years and/or a fine of not more than \$10 million.]

BACKGROUND INFORMATION:

Following federal law, the Michigan Public Health Code classifies controlled substances under one of five "schedules." Schedule 1 drugs, which are considered to have a high risk of abuse and to have no legitimate medical purpose, include heroin, LSD, marijuana, MDMA (ecstasy), and methamphetamines. To date, only Kansas and Missouri have prohibited the use, possession, and/or sale of K2.

Under federal law, drug trafficking any amount of BZP is punishable by not more than 20 years for a first offense (not less than 20 years or more than life if death or serious injury occurs) and a \$1 million fine if an individual and \$5 million if not an individual. A second or subsequent offense is punishable by imprisonment for not more than 30 years (not less than life if death or serious injury occurs) and a \$2 million fine if an individual and \$10 million fine if not an individual.

Earlier this year, the House passed a two-bill package (House Bills 5813 and 5920) that classified BZP as a Schedule 1 drug and that placed the felony provisions within the sentencing guidelines, respectively. The bills have been referred to the Senate Health Policy Committee where they remain pending Senate committee action.

FISCAL INFORMATION:

To the extent that the bills increased the numbers of felony sentences, the state could incur increased costs of incarceration or felony probation supervision. The average appropriated cost of prison incarceration is roughly \$33,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. To the extent that misdemeanor convictions increased under the bill, local units of government could incur increased costs of jail incarceration or misdemeanor probation supervision, both of which vary with jurisdiction.

Any increase in penal fine revenues would benefit local libraries, which are the constitutionally-designated recipients of those revenues.

The bills have no fiscal implications for the regulatory division of the Department of Community Health which oversees controlled substances and Article 7 of the Public Health Code.

ARGUMENTS:

For:

In recent years, synthetic cannabinoids, in particular products known as K2 and Spice, have been marketed to teens, preteens, and others as a legal alternative to marijuana. Hospitals report an increase in the number of individuals coming to the emergency room with adverse effects from smoking or ingesting these products. In some cases, the patients have presented with hallucinations, delusions, increased agitation, respiratory and digestive upsets, seizures, or with symptoms similar to those experiencing episodes of schizophrenia, raising the concern that health care workers could mistake a person under the influence of K2 with a person experiencing epilepsy, a schizophrenic episode, or other illnesses and administer the wrong treatment, such as psychotropic drugs meant for severe mental illnesses. Of greatest concern is that these products are being marketed to children as young as 10 years of age when the toxicity of the chemicals used in their production are unknown.

The state simply cannot wait for federal agencies such as the DEA or FDA to conduct tests on any known chemicals or compounds used in the production of K2 or Spice or other synthetic cannabinoids. Swift action to stem the spread of these products and protect residents needs to happen quickly. The bills would make the penalty for simple use or possession of K2 the same as it is for marijuana. However, the felony penalties for the manufacture, delivery, or possession with the intent to deliver would mirror the penalties for other synthetic drugs.

Against:

In the case of banning synthetic cannabinoids, not enough research on whether they pose a danger has been conducted. Meanwhile, they provide probationers, athletes, and others a legal alternative to marijuana. Banning them, especially before testing them to see if

they are harmful, may only serve to encourage the creation of newer chemicals having similar properties. So, rather than an outright ban at this time, K2 and Spice and other cannabinoids should be studied and banned only if proven to have toxic, lethal, or dangerous side effects.

For:

Michigan should follow the lead of the FDA and classify BZP as a Schedule 1 drug. If included as a Schedule 1 controlled substance, the penalty for possession of BZP under the Public Health Code, or manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver BZP, would be a felony punishable in the same manner as for prohibited conduct involving methamphetamines, though simple use of the drug would be a misdemeanor offense.

Even though not as dangerous as ecstasy, the risk associated with using any illegal drug is increased in that the amount of the prohibited substance can vary in dosage from tablet to tablet, and is often mixed with other substances such as hallucinogens, cocaine, and dextromethorphan (DXM), a cough suppressant found in many over-the-counter cold medications that can cause "a high" or psychoactive effects. What makes BZP or "frenzy" especially dangerous is that it is often pressed into tablets bearing the resemblance of popular cartoon or comic book characters, such as characters from the Simpsons, and comes in bright or pastel colors, thus making the drug look like candy or children's vitamins and so is easily marketed to pre-teens and young teens.

The penalties created by House Bill 6038 should act as a strong deterrent to those curious about taking BZP or considering marketing the drug within Michigan. Since BZP is unregulated in Canada, the penalties will be an important enforcement tool to empower state law enforcement officers in border areas. Without enactment of the bills, state law enforcement officers will remain powerless to stem the use of this dangerous drug.

Against:

Admittedly, BZP or "frenzy" is not as dangerous as ecstasy. Therefore, the penalties for possession, manufacture, or delivery should not be as harsh. If true that BZP is mainly marketed to a young crowd, then incurring a felony charge and conviction, even for a first possession, would significantly and detrimentally affect a young person's life. Even use of cocaine is just a one-year misdemeanor. Prosecutors and judges need more charging and sentencing discretion than to slap anyone involved with BZP with a felony.

Response:

It is necessary to punish possession and the manufacture or delivery of, or possession with intent to deliver, BZP in the same manner as meth (ecstasy) because BZP is often marketed as that drug. However, there seems to be some confusion. The use of meth (ecstasy) is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$2,000; this would also be true for use of BZP by an individual (cocaine use is also a one-year misdemeanor, though the maximum fine is \$1,000). Thus, judges and prosecutors would have some discretion as to charging and plea agreements.

POSITIONS:

A representative of the Michigan Association of Chiefs of Police testified in support of the bills. (6-16-10)

A representative of the Oakland County Association of Police Chiefs testified in support of the bills. (6-16-10)

The Prosecuting Attorneys Association of Michigan supports the bills. (6-16-10)

The founder, and president, of the Michigan State University Chapter of Students for Sensible Drug Policy opposes the bills. (6-16-10)

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■ 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.