

# Legislative Analysis

---



## **BZP AS SCHEDULE 1 DRUG**

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

**House Bill 5813 (Substitute H-1)**  
**Sponsor: Rep. Lisa Brown**

**House Bill 5920 (Substitute H-1)**  
**Sponsor: Rep. Jon Switalski**  
**Committee: Health Policy**

### **First Analysis (3-17-10)**

**BRIEF SUMMARY:** House Bill 5813 would classify BZP as a Schedule 1 drug, and House Bill 5920 would include the maximum term of imprisonment for a violation involving BZP in the sentencing guidelines.

**FISCAL IMPACT:** The bills would have fiscal implications for state and local governments. A detailed discussion follows 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 2 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.

## ***THE CONTENT OF THE BILLS:***

House Bill 5813 would amend the Public Health Code (MCL 333.7212) to include N-benzylpiperazine, also known as BZP, 1-benzylpiperazine, and 1-(phenylmethyl)-piperazine, as a Schedule 1 controlled substance. The bill would also 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.]

House Bill 5920 is tie-barred to House Bill 5813 and would amend the Code of Criminal Procedure (MCL 777.13m) to include the violations in the corresponding sentencing guidelines. Thus, a violation of MCL 333.7401(2)(b)(i) – delivery or manufacture of methamphetamine or 3,4-methylenedioxymethamphetamine or N-benzylpiperazine would be punishable by a maximum term of imprisonment of 20 years. Possession of BZP, like ecstasy, would be a Class D felony with a maximum term of imprisonment of 10 years.)

The bill also makes numerous revisions of a technical or editorial nature. In addition, the bill would add a sentencing guidelines provision for a violation of MCL 333.7405(1)(e). Section 7405(1)(e) was added many years ago and more recently amended by Public Act 150 of 2009. The amendment reflects the changes made by PA 150 and specifies that unlawfully dispensing an out-of-state prescription is a Class G felony regarding controlled substances with a two-year maximum term of imprisonment.

## ***BACKGROUND INFORMATION:***

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.

## ***FISCAL INFORMATION:***

The bills would have an indeterminate fiscal impact on state and local correctional systems. There are no data to indicate how many offenders would be convicted under the affected provisions of current law. 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. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

The bill has modest 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:***

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 the bills 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 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 Oakland County Prosecutor's Office testified in support of HB 5813. (2-23-10)

Michigan Citizen Action indicated support for HB 5813. (2-23-10)

Michigan Association of Health Plans indicated support for the bills. (3-9-10)

Michigan Pharmacists Association indicated support for HB 5813. (3-9-10)

Department of Community Health indicated support for HB 5813. (3-09-10)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Bob Schneider  
Susan Frey

---

■ 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.