

Legislative Analysis



PENALTIES FOR MANUFACTURING, CREATING, DELIVERING, POSSESSING, OR USING ETIZOLAM

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

House Bill 5394 as introduced
Sponsor: Rep. Sue Allor

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5395 as introduced
Sponsor: Rep. Ranjeev Puri

Committee: Judiciary
Complete to 11-8-21

SUMMARY:

House Bill 5395 would amend the Public Health Code to provide misdemeanor penalties for possessing or using etizolam and felony penalties for manufacturing, creating, or delivering etizolam or possessing etizolam with the intent to manufacture, create, or deliver it. House Bill 5394 would amend the Code of Criminal Procedure to include the felony penalties proposed by HB 5395 in the sentencing guidelines.

House Bill 5395 would amend Part 74 (Offenses and Penalties) of Article 7 (Controlled Substances) of the Public Health Code to provide that a person who manufactures, creates, delivers, or possesses with intent to manufacture, create, or deliver etizolam, a mixture containing etizolam, or a substance listed in section 7212(1)(y) of the code (as proposed by House Bill 4089;¹ see **Background**, below) is guilty of a felony punishable as follows:

- For 1,000 grams or more, imprisonment for up to 15 years or a fine of up to \$1.0 million, or both.
- For at least 450 grams but less than 1,000 grams, imprisonment for up to seven years or a fine of up to \$500,000, or both.
- For at least 50 grams but less than 450 grams, imprisonment for up to four years or a fine of up to \$20,000, or both.

The knowing and intentional possession of etizolam or a substance listed in section 7212(1)(y) (as proposed by House Bill 4089) would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$2,000, or both.

The use of etizolam or a substance listed in section 7212(1)(y) (as proposed by House Bill 4089) would be a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$100, or both.

The bill is tie-barred to HB 4089, which means that it could not take effect unless HB 4089 were also enacted.

MCL 333.7401, 333.7403, and 333.7404

¹ HB 4089 as passed by the House: <http://legislature.mi.gov/doc.aspx?2021-HB-4089>

House Bill 5394 would add the felony penalties proposed by HB 5395 to the sentencing guidelines portion of the Code of Criminal Procedure as follows:

Offense	Crime Group	Felony Class	Maximum Term of Imprisonment
Delivery or manufacture of 1,000 or more grams of etizolam	Controlled Substance	C	15 years
Delivery or manufacture of at least 450 but less than 1,000 grams of etizolam	Controlled Substance	D	7 years
Delivery or manufacture of at least 50 but less than 450 grams of etizolam	Controlled Substance	F	4 years

The bill also would remove from the sentencing guidelines references to the offense of disclosing or obtaining prescription information under section 7407 of the Public Health Code. (This prohibition was removed by 2001 PA 236.²)

The bill is tie-barred to HB 5395, which means that it could not take effect unless HB 5395 were also enacted.

MCL 777.13m

BACKGROUND:

House Bill 4089 would add etizolam to the list of schedule 1 controlled substances in Part 72 (Standards and Schedules) of Article 7 (Controlled Substances) of the Public Health Code. The bill includes the chemical composition of etizolam: 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine. It also includes the following trade or other names for the drug: Etilaam, Etizest, Depas, Etizola, Sedekopan, Pasaden.

House Bill 4089 was passed by the House of Representatives and referred to the Senate Committee on Judiciary and Public Safety.

² <http://legislature.mi.gov/doc.aspx?2001-SB-0827>.

Etizolam

The U.S. Food and Drug Administration has not approved any drugs containing etizolam, which means that it cannot be legally imported, distributed, or prescribed in the United States for use as a drug. It is not currently controlled under the federal Controlled Substances Act.³ However, it is sold commercially as a medicine in Japan, Italy, and India.⁴

Drug schedules

Section 7204 of the Public Health Code requires a substance to be scheduled similarly to how it is scheduled under federal law. However, as the code authorizes the “administrator,” defined as the Michigan Board of Pharmacy, to add, delete, or reschedule drugs and substances listed as scheduled substances, a substance may be listed, deleted, or rescheduled differently than under federal law. Designation as a schedule 1 to 5 controlled substance is generally based on whether the substance has a currently accepted medical use in treatment in the United States and also on the substance’s relative potential for abuse and likelihood of causing dependence. Under the code, substances are placed on the list of Michigan controlled substances as follows:

Schedule 1 substances have a high potential for abuse, have no accepted medical use in treatment in the United States, or lack accepted safety for use in treatment under medical supervision. Heroin, LSD, marijuana, and “ecstasy” are examples of schedule 1 drugs.

Schedule 2 substances have a high potential for abuse, have currently accepted medical use in treatment in the U.S. (or accepted medical use with severe restrictions), and may lead to severe psychic or physical dependence. Examples include morphine, cocaine, fentanyl, and drugs such as OxyContin, Demerol, Adderall, and Ritalin.

Schedule 3 substances have a potential for abuse that is less than substances listed as schedule 1 or 2 substances, they have currently accepted medical use in treatment in the U.S., and their abuse may lead to moderate or low physical dependence or high psychological dependence. Schedule 3 substances include certain products containing hydrocodone (e.g., Vicodin) or codeine and products used to treat opioid addictions.

Schedule 4 substances have a low potential for abuse relative to substances in schedule 3, they have a currently accepted medical use in treatment in the U.S., and their abuse may lead to limited physical dependence or psychological dependence relative to substances in schedule 3.

Schedule 5 controlled substances generally have a low potential for abuse relative to those on the other schedules and include substances containing lower amounts of codeine and other narcotics than substances listed on other schedules or higher amounts of ephedrine than over-the-counter allergy and cold medications.

³ https://deadiversion.usdoj.gov/drug_chem_info/etizolam.pdf

⁴ https://www.who.int/medicines/access/controlled-substances/Final_Etizolam.pdf?ua=1

FISCAL IMPACT:

House Bill 5395 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations could be either felonies or misdemeanors, depending on the circumstances.

New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue.

New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction.

The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5394 is a companion bill to HB 5395 and would amend sentencing guidelines to include delivery or manufacture of etizolam. The bill would not have a direct fiscal impact on the state or on local units of government.

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