

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 897 Controlled Substances
SPONSOR(S): Ingram
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

In recent years, synthetic drugs have become a problem in Florida. Synthetic drugs, such as cannabinoids and cathinones, are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana or methamphetamine.

Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids, cathinones, and phenethylamines to Schedule I of Florida’s controlled substances schedules. Since the 2014 Legislative Session, new formulas of synthetic cannabinoids have been developed that are made up of chemicals not covered by current law.

The bill adds five new synthetic cannabinoids to Schedule I of Florida’s controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department’s prison bed population by less than 10 inmates annually. This bill may increase the number of offenders sentenced to local jail beds because the bill provides possession of three grams or less of the new Schedule I substances is a first degree misdemeanor.

While this bill may also impact the Florida Department of Law Enforcement Crime Laboratory workload because the lab may see a rise in evidence submissions associated with the newly added substances, the department states the workload can be absorbed within existing resources.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Scheduling Synthetic Drugs

Background

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”¹ of the substances listed therein and whether there is a currently accepted medical use for the substance.² Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.³ Cannabis and heroin are examples of Schedule I substances.⁴

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.⁵ Other factors, such as the quantity of controlled substances involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years, synthetic drugs have emerged in Florida. Synthetic drugs, such as cannabinoids and cathinones, are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana or methamphetamine.⁶ According to the United States Drug Enforcement Administration (DEA), these substances have not been approved for human consumption by the United States Food and Drug Administration (FDA).⁷

Synthetic Cannabinoids

Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances that have a similar structure to tetrahydrocannabinol (THC) and produce a high similar to marijuana when ingested.⁸ The chemicals are often applied to a plant material to mimic marijuana.⁹ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.¹⁰ No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the FDA for human consumption.¹¹

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” to mean that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user's health or the safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user's own initiative rather than on the basis of professional medical advice.

² See s. 893.03, F.S.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., s. 893.13(1)(a) and (c), F.S.

⁶ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

⁷ UNITED STATES DRUG ENFORCEMENT ADMINISTRATION, *Chemicals Used in “Spice” and K2” Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited March 7, 2015).

⁸ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

⁹ *Id.*

¹⁰ Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 75 Fed. Reg. 71,635-38 (Nov. 24, 2010) (supplementary information), also available at <https://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule#h-6>.

¹¹ *Id.*

Despite being labeled “not for human consumption,” synthetic cannabinoids are used as recreational drugs and have been marketed as a legal alternative to illegal methods of getting “high.”¹² They can be purchased on the internet, in smoke shops, and convenience stores.¹³ The effects of ingesting synthetic cannabinoids can be very serious, and may include seizures, hallucinations, paranoia, anxiety, and tachycardia (racing heartbeat), among others.¹⁴

Synthetic Drugs Legislation

Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids, cathinones, and phenethylamines to Schedule I of Florida’s controlled substances schedules.¹⁵ As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances now apply to these synthetic substances. For example:

- It is a first degree misdemeanor¹⁶ to possess three grams or less of listed synthetic cannabinoids;¹⁷ and
- It is a third degree felony¹⁸ to knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids.¹⁹

Since the 2014 Legislative Session, new formulas of synthetic cannabinoids have been developed that are made of chemicals not covered by current law. In December, 2014, the DEA federally scheduled two new synthetic cannabinoids that are not scheduled as controlled substances in Florida.²⁰

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., to add five synthetic cannabinoids to Schedule I of Florida’s controlled substances schedules:

- AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide;
- Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate; and
- THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone.

As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill reenacts ss. 39.01(30)(a) and (g); 316.193(5); 322.2616(2)(c); 327.35(5); 440.102(11)(b); 458.3265(1)(e); 459.0137(1)(e); 782.04(1)(a) and (4); 893.0356(2)(a) and (5); 893.05(1); 893.12(2)(b)-(d); 893.13(1)(a), (c), (d)-(f), (h), (2)(a), (4)(b), (5)(b), and (7)(a); 893.135(1)(k) and (l); 921.0022(3)(b), (c), (e), F.S.; to incorporate the changes to s. 893.03, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Reenacts s. 39.01, F.S., relating to definitions.

Section 3. Reenacts s. 316.193, F.S., relating to driving under the influence; penalties.

¹² United States Drug Enforcement Administration, *Chemicals Used in “Spice” and K2” Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited March 7, 2015).

¹³ Synthetic Substances Ban, Brief # 12-150, Florida Fusion Center (March 23, 2012) *available at* www.tspd.us/Substances_Ban.pdf

¹⁴ Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 76 Fed. Reg. 11,075-78 (March 1, 2011) (supplementary information) *also available at* http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0301.htm.

¹⁵ Chs. 14-159, 13-29, 12-23, 11-73, 11-90, Laws of Fla.

¹⁶ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁷ s. 893.13(6)(b), F.S.

¹⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss 775.082 and 775.083, F.S.

¹⁹ s. 893.13(1)(a), F.S.

²⁰ Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids Into Schedule I, 79 Fed. Reg. 75,767-771 (Dec. 2014) *also available at* http://www.deadiversion.usdoj.gov/fed_regs/rules/2014/fr1219.htm.

Section 4. Reenacts s. 322.2616, F.S., relating to suspension of license; persons under 21 years of age; right to review.

Section 5. Reenacts s. 327.35, F.S., relating to boating under the influence; penalties; “designated drivers.”

Section 6. Reenacts s. 440.102, F.S., relating to drug-free workplace program requirements.

Section 7. Reenacts s. 458.3265, F.S., relating to pain-management clinics.

Section 8. Reenacts s. 459.0137, F.S., relating to pain-management clinics.

Section 9. Reenacts s. 782.04, F.S., relating to murder.

Section 10. Reenacts s. 893.0356, F.S., relating to control of new substances; findings of fact; “controlled substance analog” defined.

Section 11. Reenacts s. 893.05, F.S., relating to practitioners and persons administering controlled substances in their absence.

Section 12. Reenacts s. 893.12, F.S., relating to contraband; seizure, forfeiture, sale.

Section 13. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 14. Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 15. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 16. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually.

While this bill may also impact the Florida Department of Law Enforcement Crime Laboratory workload because the lab may see a rise in evidence submissions associated with the newly added substances, the department states the workload can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

This bill may increase the number of offenders sentenced to local jail beds because the bill provides possession of three grams or less of the new Schedule I substances is a first degree misdemeanor.

The bill may also impact local agencies that fund or maintain their own crime lab because these labs may see a rise in evidence submissions associated with the newly added substances.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorable as a committee substitute. Amendment 1 made technical corrections to the names of two chemical substances included in the bill, and Amendment 2 changed the effective date to be effective upon becoming a law.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.