

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 39 Controlled Substances
SPONSOR(S): Criminal Justice Subcommittee, Adkins and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 204

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 4 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Synthetic cannabinoids are chemically engineered substances containing one or more synthetic compounds that behave similarly to the primary psychoactive constituent of marijuana. The compound most commonly found in these products is the chemical JWH-018. In recent years, synthetic cannabinoids often referred to as "K2" or "Spice," have begun to be used as recreational drugs. Florida does not currently regulate the sale, purchase, possession, or manufacture of synthetic cannabinoids.

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 are used to regulate the manufacture, distribution, preparation and dispensing of the substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.

CS/HB 39 adds the following synthetic cannabinoids and synthetic cannabinoid-mimicking compounds to Schedule I:

- 2-[(1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.
- 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl) indole, also known as JWH-200.

This will make possession of synthetic cannabinoids a third degree felony in conformity with other Schedule I hallucinogens. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The offense of purchase of synthetic cannabinoids will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

The United States Drug Enforcement Administration recently indicated its intent to temporarily place several synthetic cannabinoids into Schedule I of the federal controlled substance schedules. If a final order is issued, the manufacture, distribution, possession, importation, and exportation of synthetic cannabinoids would be a federal crime. Likewise, the effect of Florida scheduling is that arrests and prosecutions under Florida law may be made for possession, sale, manufacture, delivery, and purchase of these substances.

The Criminal Justice Impact Conference met March 2, 2011 and determined this bill will have an insignificant fiscal impact on state prison beds.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Synthetic cannabinoids: Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances, similar to tetrahydrocannabinol (THC)—the active ingredient in marijuana—that, when smoked or ingested, can produce a high similar to marijuana.¹ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system. No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.²

The active compounds found in Spice and K2 include the synthetic cannabinoids JWH-018 (developed in a Clemson University lab by researcher John W. Huffman, PhD.), JWH-073, HU-210 and/or CP 47,497.³ It is believed that manufacturers used Huffman’s research in order to reproduce chemicals to produce these synthetic cannabinoids and market them for commercial distribution.

Substance Abuse: In recent years, synthetic cannabinoids have begun to be used as recreational drugs. The most common route of administration of synthetic cannabinoids is by smoking, using a pipe, water pipe, or rolling the drug-spiked plant material in cigarette papers. The primary abusers of synthetic cannabinoids are youth, who purchase these substances from internet websites, gas stations, convenient stores, tobacco shops and head shops.⁴

The United States Drug Enforcement Administration (DEA) stated that “products containing these THC-like synthetic cannabinoids are marketed as ‘legal’ alternatives to marijuana and are being sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores.”⁵ Further, “a number of the products and synthetic cannabinoids appear to originate from foreign sources and are manufactured in the absence of quality controls and devoid of regulatory oversight.”⁶ “The marketing of products that contain one or more of these synthetic cannabinoids is geared towards teens and young adults. Despite disclaimers that the products are not intended for human consumption, retailers promote that routine urinalysis tests will not typically detect the presence of these synthetic cannabinoids.”⁷

The DEA stated abuse of synthetic cannabinoids or products containing these substances “has been characterized by both acute and long term public health and safety problems.”⁸

- Synthetic cannabinoids alone or spiked on plant material have the potential to be extremely harmful due to their method of manufacture and high pharmacological potency. The DEA has been made aware that smoking synthetic cannabinoids for the purpose of achieving intoxication

¹ “Synthetic Cannabinoids (K2),” National Conference of State Legislatures, updated November 23, 2010 (<http://www.ncsl.org/?tabid=21398>) (last accessed on January 18, 2011).

² “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I,” Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last accessed on January 25, 2011).

³ “Comprehensive Drug Information on Spice and K2 (Synthetic Cannabinoids),” Hunterdon Drug Awareness Program, (<http://www.hdap.org/spice.html>) (last accessed on January 18, 2011).

⁴ “Drugs and Chemicals of Concern,” U.S. Dept. of Justice Drug Enforcement Administration, Office of Diversion Control, November 2010. (http://www.dea diversion.usdoj.gov/drugs_concern/spice/spice_jwh018.htm) (last accessed on January 18, 2011).

⁵ “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I,” Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last accessed on January 25, 2011).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

and experiencing the psychoactive effects is identified as a reason for emergency room visits and calls to poison control centers.⁹

- Health warnings have been issued by numerous state public health departments and poison control centers describing the adverse health effects associated with synthetic cannabinoids and their related products including agitation, anxiety, vomiting, tachycardia, elevated blood pressure, seizures, hallucinations and non-responsiveness. Case reports describe psychotic episodes, withdrawal, and dependence associated with use of synthetic cannabinoids, similar to syndromes observed in cannabis abuse. Emergency room physicians have reported admissions connected to the abuse of synthetic cannabinoids. Additionally, when responding to incidents involving individuals who have reportedly smoked synthetic cannabinoids, first responders report that these individuals suffer from intense hallucinations. Detailed chemical analysis by the DEA and other investigators has found synthetic cannabinoids spiked on plant material in products marketed to the general public. The risk of adverse health effects is further increased by the fact that similar products vary in the composition and concentration of synthetic cannabinoid(s) spiked on the plant material.¹⁰

Marilyn Huestis, Chief of Chemistry and Drug Metabolism at the National Institute on Drug Abuse, stated during an interview conducted by The Washington Post, that "these different, synthetic compounds are up to 100 times more potent than THC and have not been tested on humans. When people take it, they don't know how much they're taking or what it is they're taking." ¹¹

Drug schedules: 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 are used to regulate the manufacture, distribution, preparation and dispensing of the substances.

The distinguishing factors between the different drug schedules are the "potential for abuse"¹² of the substance contained therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.¹³ Cannabis and heroin are examples of Schedule I drugs.

Florida law: Currently, synthetic cannabinoids are not listed in any of the controlled substances schedules in ch.893, F.S. As such, Florida does not currently regulate the sale, purchase, or possession of synthetic cannabinoids.¹⁴

Other State Actions: According to the National Conference of State Legislatures, as of January 11, 2011, the following 11 state legislatures passed laws banning synthetic cannabinoids:

- In 2010, Alabama passed HB 697, which prohibits persons from possessing synthetic cannabinoids. The offense is punishable as a misdemeanor if the possession was for personal use, and a felony if the possession was for non-personal use.¹⁵
- In 2010, Georgia passed HB 1309, which prohibits the purchase, possession, manufacture, distribution, or sale of synthetic cannabinoids. These offenses are all punishable as felonies.¹⁶

⁹ *Id.*

¹⁰ *Id.*

¹¹ "The growing buzz on 'spice' -- the marijuana alternative," *The Washington Post*, July 10, 2010. (last accessed on January 18, 2011). (<http://www.washingtonpost.com/wp-dyn/content/article/2010/07/09/AR2010070903554.html?sid=ST2010071000029>)

¹² See s. 893.02(19), F.S.

¹³ See s. 893.03, F.S.

¹⁴ The Polk County Sheriff's Office recently arrested several retailers who sold synthetic cannabinoids for violating Florida's imitation controlled substance statute, s. 817.564, F.S. Curtis, Henry Pierson, "Imitation marijuana: More than dozen arrested in Polk County for selling 'legal weed'," *Orlando Sentinel*, November 18, 2010 (http://articles.orlandosentinel.com/2010-11-18/news/os-fake-pot-arrests-polk-county-20101118_1_synthetic-marijuana-small-gasoline-stations-legal-weed) (last accessed on January 18, 2011).

¹⁵ Ala. Code ss. 13A-12-212, 13A-12-213, 13A-5-6, 13A-5-7.

¹⁶ Ga. Code. Ann. ss. 16-13-25, 16-13-30.

- In 2010, Illinois passed HB 6459, which makes it a felony for a person to buy, sell, or possess synthetic cannabinoids.¹⁷
- In 2010, Kansas passed HB 2411, which prohibits the manufacture, distribution, cultivation, or possession of synthetic cannabinoids. Manufacture, distribution and cultivation offenses are all punishable as felonies and possession is punishable as a misdemeanor.¹⁸
- In 2010, Kentucky passed HB 265, which prohibits the trafficking, manufacture, and possession of synthetic cannabinoids. These offenses are punishable as misdemeanors.¹⁹
- In 2010, Louisiana passed HB 121, HB 173 and SB 37, which prohibits the manufacture, distribution, and possession of synthetic cannabinoids. These offenses are all punishable as felonies.²⁰
- In 2010, Michigan passed HB 6038, which prohibits the possession and use of synthetic cannabinoids. These offenses are punishable as misdemeanors. The bill also prohibited a person from manufacturing, delivering, or possessing with intent to deliver synthetic cannabinoids. These offenses are all punishable as felonies.²¹
- In 2010, Mississippi passed SB 2004, which prohibits a person from selling, bartering, transferring, manufacturing, distributing dispensing, and trafficking of synthetic cannabinoids. These offenses are punishable as felonies. The bill also prohibits a person from possessing synthetic cannabinoids. This offense is generally punishable as a felony.²²
- In 2010, Missouri passed HB 1472, which prohibits a person from distributing, delivering, manufacturing, or producing synthetic cannabinoids. These offenses are punishable as felonies. The bill also prohibits persons from possessing synthetic cannabinoids. The offense is punishable as a misdemeanor for possession of 35 grams or less, and a felony for possession of 35 grams or more.²³
- In 2010, Oklahoma passed HB 3241, which makes it a felony for a person to possess, purchase, distribute, dispense, transport with intent to distribute or dispense, possess with intent to manufacture, distribute, or dispense synthetic cannabinoids.²⁴
- In 2010, Tennessee passed SB 2982, which prohibits the manufacture, distribution, or possession of synthetic cannabinoids. These offenses are punishable as misdemeanors.²⁵

Federal Actions: On November 24, 2010, the DEA announced a Notice of Intent to Temporarily Control synthetic cannabinoids. The temporary control, which adds these substances to the list of Schedule I substances in the Federal Controlled Substances Act, will go into effect upon the issuance of a final order.²⁶ If the final order is issued, the manufacture, distribution, possession, importation, and exportation of synthetic cannabinoids will be punishable as felonies.²⁷

Effect of bill: CS/HB 39 amends s. 893.02, F.S., the definitions section of ch. 893, F.S., to define the term “homologue” as “a chemical compound in a series in which each compound differs by one or more alkyl functional groups on an alkyl side chain.” The term “homologue” appears in the scheduling nomenclature of one of the substances scheduled by the bill.

¹⁷ “Synthetic Marijuana, Illegal in Illinois.” <http://www.24-7pressrelease.com/press-release/synthetic-marijuana-illegal-in-illinois-191395.php> (last accessed on January 25, 2011). *See also*, 720 ILCS 570-204.

¹⁸ K.S.A. ss. 65-4105, 21-36a03, 21-36a05, 21-36a06.

¹⁹ KRS 218A.1426, 218A.1427, and 218A.1428.

²⁰ La. Rev. Stat. Ann. 40:964, 40:966, 40:989.2.

²¹ Michigan House of Representatives Legislative Analysis of HB 6038. <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/hm/2009-HLA-6038-3.htm> (last accessed January 25, 2011). *Also see*, MCL ss. 333.7212, 333.7403, 333.7404, and 333.7401.

²² Miss. Code Ann. ss. 41-29-113, 41-29-139.

²³ Mo. Ann. Stat. ss. 195.017, 195.202, 195.211

²⁴ Okla. State. Ann. tit. 63, s. 2-401, s. 2-402.

²⁵ Tenn. Code Ann. s.39-17-438.

²⁶ “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I,” Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last accessed on January 25, 2011).

²⁷ 21 USC Sec. 841

The bill amends s. 893.03, F.S., to add the following synthetic cannabinoids or synthetic cannabinoid-mimicking compounds to Schedule I of Florida's controlled substance schedules:

- 2-[(1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.
- 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl) indole, also known as JWH-200

This will make possession of synthetic cannabinoids a third degree felony in conformity with other Schedule I hallucinogens such as LSD and peyote.²⁸ This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart.²⁹ The purchase of synthetic cannabinoids will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.³⁰

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate changes made by the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 893.02, F.S., relating to definitions.

Section 2: Amends s. 893.03, F.S., relating to standards and schedules.

Section 3: Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 4: Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 5: Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

²⁸ s. 893.13(6)(a), F.S. Possession of less than 20 grams of cannabis is a first degree misdemeanor. s. 893.13(6)(b), F.S.

²⁹ s. 893.13(1)(a)2., F.S and s. 921.0022, F.S. Section 893.13, F.S. provides for enhanced penalties if the sale occurs within close proximity to certain locations such as a church or school.

³⁰ s. 893.13(2)(a)2., F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would make it illegal to sell synthetic cannabinoids, which are currently sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores. Therefore, the bill could have a negative fiscal impact on such entities.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met March 2, 2011 and determined this bill will have an insignificant fiscal impact on state prison beds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2011, the Criminal Justice Subcommittee adopted one amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment added the following synthetic cannabinoid to Schedule I of Florida's controlled substance schedules.

- 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole (JWH-200)