

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Controlled Substances

SPONSOR(S): Criminal Justice Subcommittee; Ingram and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 780

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|-----------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N, As CS | Jones | Cunningham |
| 2) Justice Appropriations Subcommittee | 13 Y, 0 N | McAuliffe | Lloyd |
| 3) Judiciary Committee | | Jones | Havlicak |

SUMMARY ANALYSIS

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

In 2011, 2012, and 2013 numerous synthetic cannabinoids, cathinones, and phenethylamines were added to Schedule I of Florida’s controlled substances schedules. Since the 2013 Legislative Session, new formulas of synthetic cannabinoids and phenethylamines have been developed that are made up of chemicals not covered by current law.

On October 9, 2013, Attorney General Pam Bondi filed an emergency rule that temporarily scheduled four synthetic cannabinoids in Schedule I. Since the Attorney General filed the emergency rule, the U.S. Department of Justice, Drug Enforcement Administration has federally scheduled two new synthetic phenethylamines that are currently not scheduled as controlled substances in Florida.

The bill adds four new synthetic cannabinoids and two new phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc., of controlled substances now apply to these synthetic substances.

The bill also adds three new phenethylamines to the list of substances included in the “trafficking in phenethylamines” statute.

On March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 697 will have an insignificant negative prison bed impact on the Department of Corrections. According to the Florida Department of Law Enforcement (FDLE), state and local law enforcement crime labs may see an increase in evidence submissions. However, FDLE states the impact should be minimal and absorbed within their current budget.

The bill is effective upon becoming 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 are used to 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 substance listed 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.² Cannabis and heroin are examples of Schedule I drugs.³

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 what schedule the substance is listed in. Other factors, such as the quantity of controlled substance involved, 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 are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.⁴ According to the Florida Department of Law Enforcement (FDLE), synthetic drugs “have no legitimate medical use and have a high potential for abuse.”⁵

Synthetic Cannabinoids

Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances that, when smoked or ingested, can produce a high similar to marijuana, without the delta-tetrahydrocannabinol (THC).⁶ The chemicals are a white powder that is often applied to a plant material to mimic marijuana.⁷ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.⁸ 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.⁹

Synthetic Phenethylamines

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or 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 *Synthetic Narcotics*, FDLE Powerpoint Presentation before the House Criminal Justice Subcommittee, David Gross, January, 16, 2013 (on file with the Criminal Justice Subcommittee).

⁵ FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

⁶ *Supra* note 4.

⁷ *Id.*

⁸ *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 visited on February 7, 2014).

⁹ *Supra* note 4.

Phenethylamines are synthetic substances invented by Dr. Alexander Shulgin.¹⁰ Phenethylamines are known for their intense hallucinogenic effects.¹¹ The use of synthetic phenethylamines is highly dose sensitive and directly affects the human body's nervous system.¹² There has been a recent increase of synthetic phenethylamines production and use because of the recent regulation of cannabinoids and cathinones.¹³

Synthetic Drug Abuse

Despite being labeled "not for human consumption," synthetic cannabinoids, and phenethylamines are used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting "high."¹⁴ They can be found on the Internet, specialty smoke shops, and convenience stores.¹⁵ These substances are predominately being used by individuals between the ages of 16 and 30. There have been cases in Florida where these substances have caused individuals to behave inappropriately, and in some instances die.¹⁶

Recent Legislation

In 2011, 2012, and 2013, numerous synthetic cannabinoids, cathinones, and phenethylamines were added to Schedule I of Florida's controlled substances schedules.¹⁷ As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances. For example:

- Possessing three grams or less of listed synthetic cannabinoids, is a first degree misdemeanor^{18, 19}; and
- It is a third degree felony²⁰ for a person knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids or phenethylamines.²¹

Recent Issues

Since the 2013 Legislative Session, new formulas of synthetic cannabinoids and phenethylamines have been developed that are made up of chemicals not covered by current law.²²

On October 9, 2013, Attorney General Pam Bondi filed an emergency rule²³ that temporarily scheduled four synthetic cannabinoids, in s. 893.03(1)(c), F.S.²⁴ The emergency rule expires on June 30, 2014, unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S. Since the Attorney General filed the emergency rule, the U.S. Department of Justice, Drug Enforcement Administration has federally scheduled two new synthetic phenethylamines that are currently not scheduled as controlled substances in Florida.²⁵

Effect of the Bill

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Bath Salts' Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, January 26, 2011, http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf (last visited on February 7, 2014); FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

¹⁵ *Id.*

¹⁶ *Supra* note 4.

¹⁷ Chapters 2013-29, 2012-23, 2011-73, and 2011-90, L.O.F.

¹⁸ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

¹⁹ Section 893.13(6)(b), F.S.

²⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²¹ Section 893.13(1)(a)2., F.S.

²² *Supra* note 5.

²³ 2ER 13-1, Office of the Attorney General, https://www.flrules.org/gateway/notice_Files.asp?ID=13661885 (last visited on February 7, 2014).

²⁴ Pursuant to s. 893.035, F.S., if the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03, F.S., on a temporary basis is necessary to avoid an imminent hazard to the public safety, she or he may by rule, and without regard to requirements in s. 893.035(5), F.S., regarding medical and scientific evaluation, schedule the substance in Schedule I if it is not listed in any other schedule in s. 893.03, F.S.

²⁵ FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

The bill amends s. 893.03(1)(c), F.S., to add the four synthetic cannabinoids temporarily scheduled by the Attorney General's emergency rule and the two phenethylamines now scheduled in federal law to Schedule I of Florida controlled substance schedules. The synthetic substances added are:

- AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide);
- ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)-1H-indole-3-carboxamide);
- 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl) methyl]-benzeneethanamine); and
- 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

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

The bill reenacts ss. 893.13(1)-(6) and 921.0022(3)(b), (c), (e), and (g)-(i), F.S., to incorporate the amendments of s. 893.03, F.S.

Trafficking in Phenethylamines

A person trafficks in phenethylamines if they knowingly sell, purchase, manufacture, deliver, or bring into this state, or who is knowingly in actual or constructive possession of, 10 grams or more individually or in any combination of or any mixture containing any substance in s. 893.135(1)(k), F.S.

Trafficking in phenethylamines is a first degree felony,²⁶ and if the amount trafficked is:

- 10 grams or more but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and ordered to pay a fine of \$50,000;
- Is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000;
- Is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$250,000.

Trafficking in phenethylamines is a capital felony²⁷ if a person knowingly manufactures or brings into this state *30 kilograms or more* of any of the substances in s. 893.135(1)(k)3., F.S., or in any combination of or any mixture containing any substance listed above and knows that the probable result of such manufacture or importation would be the death of any person.

"Molly" (short for "molecule") is often illicitly marketed as a pure form of "Ecstasy," which is a type of phenethylamines.²⁸ In Florida, "Molly" is most often composed of:

- Methylone (3,4-methylenedioxymethcathinone);
- 3,4-Methylenedioxypyrovalerone (MDPV); and
- Methylmethcathinone.

Molly is often sold as "bath salts" compounds and are similar in chemical structure to "Ecstasy."²⁹ These substances pose significant health risks to users and are commonly imported from overseas via the Internet. The substances are then purchased for use in the U.S., particularly with intent to be distributed at clubs, parties and other social gatherings.³⁰

Currently, the three substances most often found in "Molly" are not listed in s. 893.135(1)(k), F.S.

²⁶ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²⁷ A capital felony is punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S., results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and a \$15,000 fine. Sections 775.082 and 775.083, F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Effect of the Bill

The bill adds the following substances, and analogs or isomers thereto, to s. 893.135(1)(k), F.S.:

- 3,4-Methylenedioxymethcathinone;
- 3,4-Methylenedioxypyrovalerone (MDPV); and
- Methylnmethcathinone.

As a result, the criminal penalties provided in s. 893.135(1)(k), F.S., will apply to these substances.

B. SECTION DIRECTORY:

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

Section 2. Reenacts and amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 4. Reenacts s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

Section 5. The bill is effective upon becoming 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:

On March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 697 will have an insignificant negative prison bed impact on the Department of Corrections.

The bill adds additional chemical substances to Schedule I of Florida's controlled substance schedules. According to FDLE, this could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System.³¹ The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.³² However, FDLE's fiscal analysis states that the bill will have a minimal fiscal impact on FDLE and absorbed within their current budget.³³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Because the bill adds certain synthetic substances to s. 893.03, F.S., local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a rise in evidence

³¹ FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

³² *Id.*

³³ *Id.*

submissions associated with the additions of the proposed chemical substances.³⁴ This may also have a negative jail bed impact because possession of three grams or less of the newly added substances is a first degree misdemeanor.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to FDLE, the bill should have little impact on the private sector and would only affect those retailers who are currently profiting on the sale of chemical substances known to be abused by those seeking an altered mental state or 'high.'³⁵

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 February 12, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected the reference to s. 893.03(1)(c) 166.-173., F.S., to only list the substances that are synthetic cannabinoids.

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

³⁴ *Id.*

³⁵ *Id.*