

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843 Cannabis
SPONSOR(S): Gaetz; Edwards and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, s. 893.02, F.S., defines "cannabis" as "all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin." Cannabis is a Schedule I controlled substance. As such, persons who sell, manufacture, deliver, possess, traffic, etc., cannabis, are subject to criminal penalties.

In recent months, a particular strain of cannabis has gained national attention as a way to treat certain seizure disorders in children. This strain of marijuana is high in cannabidiol (CBD), a non-psychoactive ingredient known for treating seizures, and low in of tetrahydrocannabinol (THC), which causes cannabis smokers to feel "high."

The bill amends the definition of "cannabis" to exclude "any plant of the genus Cannabis that contains .5 percent or less of tetrahydrocannabinol and more than 15 percent of cannabidiol; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin." As a result, such plants will no longer be illegal to sell, manufacture, deliver, possess, traffic, etc.

The bill will have a positive prison and jail bed impact.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Drug Control Act - Cannabis

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V. Cannabis is currently a Schedule I¹ controlled substance, and is defined as:

All parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.²

The Drug Control Act contains a variety of provisions criminalizing behavior related to cannabis. The majority of these penalties are found in s. 893.13, F.S., which provides the following:

- It is a third degree felony³ for a person to sell; manufacture; deliver; or possess with intent to sell, manufacture, or deliver, cannabis;⁴
- It is a third degree felony for a person to purchase, or possess with intent to purchase, cannabis;⁵
- It is a first degree misdemeanor⁶ for a person to deliver, without consideration, not more than 20 grams of cannabis;⁷
- It is a second degree felony⁸ for a person 18 years of age or older to deliver cannabis to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of cannabis, or to use such person to assist in avoiding detection or apprehension for a violation of ch. 893, F.S.;⁹
- It is a third degree felony for a person to bring cannabis into this state unless the possession of cannabis is authorized by ch. 893, F.S., or unless such person is licensed to do so by the appropriate federal agency;¹⁰ and
- It is a third degree felony for a person to be in actual or constructive possession of more than 20 grams of cannabis unless otherwise authorized by ch. 893, F.S., or unless the cannabis was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.¹¹ It is a first degree misdemeanor for a person to possess less than 20 grams of cannabis.¹²

In addition to the above-described offenses, s. 893.135, F.S., makes it a first degree felony¹³ for a person to knowingly sell, purchase, manufacture, deliver, bring into this state, or possess more than 25 pounds of cannabis or 300 or more cannabis plants (known as "trafficking in cannabis").¹⁴ A person

¹ Schedule I substances have a high potential for abuse and have no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards.

² Section 893.02(3), F.S.

³ 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.

⁴ Section 893.13(1), F.S. It is a second degree felony if the offense occurred within 1,000 feet of specified locations (e.g., schools, churches, etc.).

⁵ Section 893.13(2), F.S.

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 893.13(3), F.S. For purposes of this offense, the term "cannabis" does not include the resin extracted from the plants of the genus Cannabis or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁹ Section 893.13(4), F.S.

¹⁰ Section 893.13(5), F.S.

¹¹ Section 893.13(6), F.S. For purposes of this offense, the term "cannabis" does not include the resin extracted from the plants of the genus Cannabis, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

¹² *Id.*

¹³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ Section 893.135(1), F.S.

convicted of trafficking in cannabis must be sentenced to minimum mandatory terms of imprisonment that vary from 3-15 years depending on the amount of cannabis involved in the offense.¹⁵

Charlotte's Web

In recent months, a particular strain of cannabis has gained national attention as a way to treat certain seizure disorders in children.¹⁶ This strain of marijuana is high in cannabidiol (CBD), a non-psychoactive ingredient known for treating seizures, and low in of tetrahydrocannabinol (THC), which causes cannabis smokers to feel "high."

Currently, more than 180 Colorado children are being treated with a special strain of medical cannabis that's helping to combat their extreme seizures and other debilitating conditions.¹⁷ The strain, known as "Charlotte's Web," was developed by a group of brothers who run the Realm of Caring Foundation in Colorado Springs, and is named for 7 year-old Charlotte Figi, who was successfully treated with the strain.¹⁸

Charlotte's Web and similar strains are administered in liquid or capsule form and are reported to produce little to no side effects. Because of the low THC count, users don't experience a traditional marijuana high.¹⁹

Effect of the Bill

The bill amends the definition of "cannabis" to exclude "any plant of the genus Cannabis that contains .5 percent or less of tetrahydrocannabinol and more than 15 percent of cannabidiol; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin." As a result, none of the above-described criminal penalties will apply to people who to sell, manufacture, deliver, possess, traffic, etc., such plants.

B. SECTION DIRECTORY:

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

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

¹⁵ *Id.*

¹⁶ See, e.g., *Meet The Children Who Rely On Marijuana To Survive*, published 1/31/14, http://www.huffingtonpost.com/2014/01/31/cannabis-for-children_n_4697135.html (last visited on February 21, 2104); *Moving for marijuana: Families with seizure-stricken kids relocating to Colorado for strain of pot*, published 2/18/14, <http://www.nydailynews.com/life-style/health/kids-seizure-charlotte-web-pot-treatment-article-1.1619066> (last visited on February 21, 2014); *Marijuana stops child's severe seizures*, published 8/7/13, <http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/> (last visited on February 21, 2014).

¹⁷ *Meet The Children Who Rely On Marijuana To Survive*, published 1/31/14, http://www.huffingtonpost.com/2014/01/31/cannabis-for-children_n_4697135.html (last visited on February 21, 2104).

¹⁸ *Id.*

¹⁹ *Id.*

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, by excluding certain plants from the definition of “cannabis,” the bill limits the application of the felony offenses contained in ch. 893, F.S. This will have a positive prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill excludes certain plants from the definition of “cannabis,” which limits the application of the misdemeanor offenses contained in ch. 893, F.S. This will have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows persons to lawfully engage in the business of manufacturing and selling cannabis that meets the THC and CBD percentage thresholds.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill excludes certain plants from the definition of “cannabis” for purposes of Florida law. However, under the federal Controlled Substances Act of 1970,²⁰ cannabis is classified as a Schedule I drug.²¹ Just like Florida’s Drug Control Act, the federal Controlled Substances Act imposes penalties on those who possess, sell, distribute, etc. cannabis.²² A first misdemeanor offense for possession of cannabis in any amount can result in a \$1,000 fine and up to year in prison, climbing for subsequent offenses to as much as \$5,000 and three years.²³ Selling and cultivating cannabis are subject to even greater penalties.²⁴

Despite the federal law, some states have legalized cannabis (for both recreational and medical use). However, in 2005, the United States Supreme Court decided *Gonzales vs. Raich*²⁵ and held that the federal government has the right to use the Commerce Clause of the United States Constitution²⁶ to regulate homegrown marijuana, even when it’s for approved, via state law, medicinal use. This ruling means that the federal government cannot force states to criminalize something (cannabis, in this case), but can enforce its own laws.²⁷ However, in recent years, the federal government has softened its stance on cannabis.

²⁰ 21 U.S.C. ss. 801-971.

²¹ 21 U.S.C. s. 812.

²² 21 U.S.C. ss. 841-865.

²³ 21 U.S.C. s. 844.

²⁴ 21 U.S.C. ss. 841-865.

²⁵ 545 U.S. 1 (U.S. 2005).

²⁶ ART. I, SEC. 8, CL. 3, U.S. CONST.

²⁷ Pam Bondi says medical marijuana is illegal under federal law, with or without amendment

On Aug. 29, 2013, United States Deputy Attorney General James Cole issued a memorandum to federal attorneys that appeared to relax the federal government's cannabis-related offense enforcement policies. The memo stated that the United States Department of Justice was committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational ways, and outlined eight areas of enforcement priorities. These enforcement priorities focused on offenses that would result in cannabis being distributed to minors, cannabis sale revenues going to criminal gangs or other similar organizations, and cannabis being grown on public lands.²⁸ The memo indicated that outside of the listed enforcement priorities, the federal government would not enforce federal cannabis-related laws in states that have legalized the drug and that have a robust regulatory scheme in place.²⁹

The bill excludes certain plants from the definition of "cannabis" for purposes of Florida law. Given the above, it is unclear whether the federal government would enforce federal laws prohibiting the possession, sale, distribution, etc. of such plants.

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

²⁸ *Memorandum for all united States Attorneys*, "Guidance Regarding Marijuana Enforcement," August 29, 2013 (on file with the Criminal Justice Subcommittee).

²⁹ *Id.*