

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 294

INTRODUCER: Senator Bradley

SUBJECT: Controlled Substances

DATE: March 7, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | Favorable |
| 2. | <u>Shankle</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | <u>Cantral</u> | <u>Sadberry</u> | <u>ACJ</u> | Favorable |
| 4. | _____ | _____ | <u>AP</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

SB 294 codifies the Schedule I scheduling of the substances listed in the Attorney General’s emergency rule issued on December 11, 2012, that scheduled several new synthetic cannabinoids, cathinones, and phenethylamines as Schedule I controlled substances.¹ The Attorney General filed this emergency rule to address the public safety risk of new synthetic substances being sold and abused in Florida. This rule is temporary and scheduling will lapse when the rule expires on June 30, 2012, unless the scheduling is codified in statute by the Legislature.

Under the bill, persons who engage in certain unlawful acts involving these substances will be subject to arrest and prosecution.

The bill will have an insignificant fiscal impact due to the small number of expected additional, new prison commitments.

This bill is effective upon becoming a law.

This bill substantially amends sections 893.03, 893.13, and 893.135, Florida Statutes.

The bill reenacts sections 893.13(1)-(6) and 921.0022(3)(b)-(e), Florida Statutes.

¹ Office of the Attorney General, *2ER 12-1*, (December 11, 2012) available at [http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/\\$file/ER+RuleOAGRuleCertification12-11-2012.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/$file/ER+RuleOAGRuleCertification12-11-2012.pdf). (further cited in this analysis as “2ER 12-1”).

II. Present Situation:

Schedule I Controlled Substances

A substance is a “controlled substance” if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties that may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. A substance in Schedule I is considered to have a high potential for abuse and no currently accepted medical use in treatment in the United States and, in its use under medical supervision, does not meet accepted safety standards.²

As a result of legislation that became law in 2011 and 2012, there are several synthetic cannabinoids, cathinones, and phenethylamines included as Schedule I controlled substances at s. 893.03(1)(c), F.S.³

Synthetic Cannabinoids, Cathinones, and Phenethylamines

“Synthetic Cannabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but the term “Synthetic Cannabinoids” or “Cannabinomimetics” is widely used to refer to them as they are cannabinoid-like in their activity.”⁴ In findings relevant to the synthetic cannabinoids scheduled by emergency rule (2ER 12-1), the Attorney General states that the substances are known to produce side effects that include: headaches; agitation; vomiting; dangerous hallucinations; loss of consciousness; elevated blood pressure; seizures; increased heart rate; increased anxiety; convulsions; unresponsiveness; and suicidal thoughts.⁵

Cathinone is a Schedule I controlled substance.⁶ Cathinone is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances.⁷ The “molecular architecture” of cathinone “can be altered to produce a series of different compounds which are closely structurally related to cathinone.”⁸ In findings in 2ER 12-1 relevant to the synthetic cathinones scheduled by the emergency rule, the Attorney General describes the cathinones as

stimulants that affect neurotransmitters in the brain and cause a sensation to the user similar to cocaine and amphetamines. They have been known to cause intense cravings for the substances and users have been reported to go on multiday binges that cause medical problems necessitating medical intervention.

² Section 893.03(1), F.S.

³ Chapters 2011-73, 2011-90, and 2012-23, L.O.F.

⁴ Redwood Toxicology Laboratory, *Synthetic Cannabinoid Drug Information*, http://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids.html (last visited Feb. 27, 2013).

⁵ All information under this subtitle is from 2ER 12-1 unless otherwise indicated.

⁶ Section 893.03(1)(c)8., F.S.

⁷ Advisory Council on the Misuse of Drugs, United Kingdom, *Consideration of the cathinones* (March 2010), available at <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary>.

⁸ *Id.*

The Attorney General states that some of the short-term side effects of the cathinones include: increased heart rate; agitation; diminished requirement for sleep; lack of appetite; increased alertness and awareness; anxiety fits and delusions; and nosebleeds. More serious side effects include: muscle spasms; blood circulation problems (including increased blood pressure); kidney failure; seizures; muscle damage; loss of bowel control; hallucinations; aggression; severe paranoia; panic attacks; sharp increase in body temperature; risk of renal failure; and cardiac arrest.

“Phenethylamines” is a ‘broad’ category “of psychoactive substances[.]”⁹ In findings in 2ER 12-1 relevant to the synthetic phenethylamines scheduled by the emergency rule, the Attorney General states: “Users ingest phenethylamines for their stimulant and hallucinogenic effects.” The Attorney General states that some of the dangers or side effects of these substances include: overdosing;¹⁰ hallucinations; breathing difficulties; uncontrollable muscle spasms; cardiac arrest; and Hallucinogen Persisting Perception Disorder (HPPD).¹¹

According to the Florida Department of Law Enforcement (FDLE), the synthetic substances scheduled by the bill “have no legitimate medical use and have a high potential for abuse.”¹²

Penalties for Unlawful Acts Involving Controlled Substances

The Attorney General’s emergency rule (2ER 12-1) schedules the new synthetic substances (listed in the “Effect of Proposed Changes” section of this analysis) in Schedule I at s. 893.03(1)(c), F.S. Persons who engage in certain unlawful acts under chapter 893, F.S., involving substances listed in s. 893.03(1)(c), F.S., are subject to arrest and prosecution.¹³

Selling, manufacturing, or delivering, or possessing with intent to sell, manufacture or deliver, a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.¹⁴ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and

⁹ Sanders B., Lankenau S.E., Bloom J.J., Hathazi D. “*Research chemicals*”: *Tryptamine and Phenethylamine Use Among High Risk Youth*, Substance Use & Misuse 2008, Vol. 43, No. 3-4, Pages 389-402, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/>.

¹⁰ Because there is a delay in the drug taking effect, some users of the drug, believing the dosage they have taken is insufficient, may increase the dosage. 2ER 12-1.

¹¹ According to the Attorney General, one category of phenethylamines, the “2C derivatives,” “bind to certain serotonin receptors as a psychedelic compound...” 2ER 12-1. HPPD is the “reexperiencing, following cessation of use of a hallucinogen, of one or more of the perceptual symptoms that were experienced while intoxicated with the hallucinogen...” These symptoms “cause clinically significant distress or impairment in social, occupational, or other important areas of functioning” and “are not due to a general medical condition.... and are not better accounted for by another mental disorder...” Psychiatry Online, *Diagnostic criteria for 292.89 Hallucinogen Persisting Perception Disorder (Flashbacks)*, <http://dsm.psychiatryonline.org/content.aspx?bookid=22§ionid=1889808> (last visited Feb 27, 2013).

¹² Revised Analysis of SB 294, Florida Department of Law Enforcement, dated January 29, 2013 (on file with the Senate Committee on Judiciary). The analysis is cited further in this analysis as “Revised FDLE Analysis.”

¹³ Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.

¹⁴ Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

penalties are greater.¹⁵ For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a K-12 public or private school is a second degree felony.¹⁶

Purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.¹⁷

Possessing 3 grams or less of a substance described in s. 893.03(1)(c)46.-50. and 114.-442., F.S., (synthetic cannabinoids) is a first degree misdemeanor.¹⁸ Possessing more than 3 grams of any of these synthetic cannabinoids or any amount of any other substance listed in s. 893.03(1)(c), F.S., is a third degree felony.¹⁹

The synthetic cannabinoids, cathinones, and phenethylamines scheduled as controlled substances are not listed in any provision of s. 893.135, F.S., the drug trafficking statute. Consequently, drug trafficking offenses do not apply.

The Attorney General's Emergency Rule Regarding Specific Synthetic Substances

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.²⁰ The Attorney General may use emergency rulemaking provisions under s. 120.54(4), F.S., in making this scheduling.²¹

The Attorney General must consider, with respect to her or his finding of imminent hazard to the public safety, the following: potential for abuse²² of the substance; history and current pattern of abuse of the substance; scope, duration, and significance of abuse of the substance; and what, if any, risk there is to the public health.²³ These findings include consideration of actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.²⁴

The Attorney General must report to the Legislature by March 1 of each year concerning rules adopted under s. 893.035, F.S., during the previous year. Each rule so reported expires the

¹⁵ Section 893.13(1)(c)-(f) and (h), F.S.

¹⁶ Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹⁷ Section 893.13(2)(a)2., F.S.

¹⁸ Section 893.13(6)(b), F.S. 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)(a), F.S.

²⁰ Section 893.035(7)(a), F.S.

²¹ Section 893.035(7)(b), F.S.

²² "Potential for abuse" is defined in s. 893.035(3)(a) 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.

²³ Section 893.035(3)(a), (4)(d)-(f), and (7)(a), F.S.

²⁴ Section 893.035(7)(a), F.S.

following June 30 unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S.²⁵

On December 11, 2012, Attorney General Pam Bondi filed an emergency rule (2ER 12-1)²⁶ that temporarily schedules several synthetic cannabinoids, cathinones, and phenethylamines in Schedule I at s. 893.03(1)(c), F.S.

Findings in 2ER 12-1 regarding the new synthetic substances state, in part:

Attorney General Pam Bondi finds that there are currently dangerous psychoactive substances that are not scheduled as controlled substances and are being marketed in Florida. Subsequent to the most recent revisions to Section 893.03(1)(c), Florida Statutes, which became effective in March 2012, Florida law enforcement has noted the emergence of new chemical variants of several recently scheduled substances. Although technically different from currently scheduled substances, these substances are generally classifiable as Synthetic Cannabinoids, Cathinones, and Synthetic Phenethylamines. These substances are being abused because they are ostensibly legal and often times perceived as a safer alternative to illegal drugs such as marijuana, MDMA (“ecstasy”), cocaine, and amphetamines. But, in many cases, they are more dangerous. Due to their chemical design, they are commonly available for purchase in specialty smoke shops, over the internet, in convenience stores and from other retailers, making them easily obtained for abuse by Florida’s children and young adults. Such abuse present severe health risks, and an immediate danger and imminent hazard to the health, safety, and welfare of Floridians

Findings in 2ER 12-1 regarding the potential for and significance of abuse and risk to public health of the new synthetic substances state:

The Attorney General and the Florida Department of Law Enforcement has [sic] received intelligence from the Florida Department of Business and Professional regulation indicating that ... [the substances referenced in the rule] are being labeled inaccurately and marketed as a variety of legitimate household products in a thinly veiled effort to mask their true use as abused psychoactive substances. All of ... [the substances referenced in the rule] are marketed under a variety of pseudo brand names. They usually contain the disclaimer “not for human consumption,” but are sold in specialty smoke shops, over the internet,²⁷ and in

²⁵ Section 893.035(9), F.S. Section 120.54(4)(c), F.S., which addresses the expiration of an emergency rule under s. 120.54(4), F.S., does not apply. Section 893.03(7)(b), F.S.

²⁶ All information under this subheading is from this emergency rule unless otherwise indicated.

²⁷ The Attorney General states that the new synthetic phenethylamines “are widely available online” but less prevalent in “local smoke shops since they are obscure research substances; however, with the popularity of synthetic cannabinoids and cathinones on the rise and their respective availability being diminished due to legislation and enforcement actions, these drugs and their presence in Florida are a concern.” 2ER 12-1.

convenience stores for prices that are disproportionately high for the household product they purport to be, such as up to \$30.00 for 500 mg packets. Furthermore, a pattern has emerged in which the distributors of these substances respond to scheduling of additional controlled substances by the Florida Legislature by introducing new variants with labels on the packaging claiming to conform to the new laws. These actions further emphasize the true purpose of these substances as chemicals of abuse.

According to the FDLE, 2ER 12-1 “expires on June 30 (or sooner if supplanted by a superseding statutory amendment).”²⁸

III. Effect of Proposed Changes:

The bill codifies the Schedule I scheduling of the substances listed in the Attorney General’s emergency rule, which are the same substances listed in the bill. Persons who engage in certain unlawful acts involving these substances will be subject to arrest and prosecution.

Specifically, the bill does the following:

- Removes the current listing of 3, 4-Methylenedioxymethamphetamine (MDMA) in Schedule I at s. 893.03(1)(a), F.S., and lists this substance in Schedule I at s. 893.03(1)(c), F.S.
- Specifies that isomers of substances listed in Schedule I at s. 893.03(1)(c), F.S., include optical, positional, or geometric isomers.²⁹
- Lists the following synthetic cannabinoids in Schedule I at s. 893.03(1)(c), F.S.:
 - UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone).
 - XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone).
 - (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone.
 - AKB48 (1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-333 indazole-3-carboxamide).
 - AM-2233((2-iodophenyl)[1-[(1-methyl-2-335 piperidiny) methyl]-1H-indol-3-yl]-methanone).
 - STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-337 1-yl-1H-indole-3-carboxamide).
 - URB-597 ((3’-(aminocarbonyl)[1,1’-biphenyl]-3-yl)- 339 cyclohexylcarbamate).
 - URB-602 ([1,1’-biphenyl]-3-yl-carbamic acid, 341 cyclohexyl ester).
 - URB-754 (6-methyl-2-[(4-methylphenyl) amino]-1-343 benzoxazin-4-one).
- Lists the following synthetic cathinones in Schedule I at s. 893.03(1)(c), F.S.:
 - Pentadron (2-(methylamino)-1-phenyl-1-pentanone).
 - Fluoroamphetamine.
 - Methoxetamine.
 - Methiopropamine.
 - 4-Methylbuphedrone (2-Methylamino-1-(4-323 methylphenyl) butan-1-one).
 - APB ((2-aminopropyl) benzofuran).

²⁸ Revised FDLE Analysis.

²⁹ The FDLE states that “the current language in F.S 893.03(1)(c) does not specifically include optical, positional, or geometric isomers of the listed chemical substances.” *Id.*

- APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
- Lists the following synthetic phenethylamines in Schedule I at s. 893.03(1)(c), F.S.:
 - 2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine).
 - 2C-H (2-(2,5-Dimethoxyphenyl) ethanamine).
 - 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl) ethanamine)
 - 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine).
 - 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-349 methoxyphenyl) methyl]-benzeneethanamine).
- Amends s. 893.13(6)(b), F.S., to correct a statutory reference to incorporate the synthetic cannabinoids listed in Schedule I at s. 893.03(1)(c), F.S., which makes the simple possession of 3 grams or less of any of these referenced substances a first degree misdemeanor.
- Consistent with the listing of MDMA in Schedule I at s. 893.03(1)(c), F.S., amends s. 893.135(1)(k)1. and 3., F.S., to correct a statutory reference so that those paragraphs accurately reflect that substances listed in those paragraphs are substances listed in Schedule I at s. 893.03(1)(c), F.S.³⁰
- Reenacts ss. 893.13(1)-(6), F.S., and 921.0022(3)(b)-(e), F.S., relating to prohibited acts involving controlled substances and the offense severity ranking chart of the Criminal Punishment Code, respectively, to incorporate the amendments made to s. 893.03, F.S., by the bill.
- Provides that the effective date of the bill is upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b), of the Florida Constitution.

C. Trust Funds Restrictions:

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f), of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁰ The FDLE states that “[t]his re-designation is in keeping with the nature of MDMA’s effects on the abuser and consistent with the Drug Enforcement Administration’s scheduling of MDMA as a hallucinogenic substance in 21 C.F.R. §1308.11.” *Id.*

B. Private Sector Impact:

According to the 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.’”³¹

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact of legislation, found that the bill will have an insignificant prison bed impact due to the small number of additional new commitments expected.³²

The bill is expected to have a minimal fiscal impact on the FDLE. The FDLE states:

The passage of SB 294 would add additional chemical substances to Florida’s controlled substances list. These additions could potentially increase the number of evidence submissions into FDLE’s Crime Laboratory System as well as local law enforcement crime laboratories. The laboratory system will be required to purchase all of the required standards necessary to test the proposed chemical substances.

The bill will have minimal fiscal impact to FDLE. Any resulting increase in volume of evidence submissions to FDLE’s Crime Laboratory system, as well as costs to acquire and maintain additional required chemical standards, will be assimilated as part of the laboratories’ cost of doing business. Florida Department of Law Enforcement will monitor submissions to the crime laboratories and if necessary, request an appropriation through a future Legislative Budget Request.³³

The bill may have an impact on some local law enforcement agencies. The FDLE states:

Local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a similar rise in submissions associated with the additions of the proposed chemical substances.³⁴

VI. Technical Deficiencies:

None.

³¹ *Id.*

³² Criminal Justice Impact Conference, *2013 Session Bills and Links to Backup Materials*, http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC_13.xls (last visited Feb 27, 2013).

³³ Revised FDLE Analysis.

³⁴ *Id.*

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
