

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: CS/SB 1098

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Controlled Substances

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1098 places several synthetic cannabinoids in Schedule I of the controlled substance schedules. As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

This bill has an insignificant fiscal impact.

This bill takes effect upon becoming law.

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, which penalties may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high

potential for abuse¹ 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

Non-Trafficking Controlled Substance Offenses

The bill does not amend s. 893.135, F.S., the drug trafficking statute, to list the synthetic cannabinoids the bill schedules. Therefore, possession, sale, etc., of these substances is subject to criminal penalties under s. 893.13, F.S.³

Under the bill, these substances are listed in s. 893.03(1)(c), F.S. (Schedule I(c) of the controlled substance schedules). Delivering, selling, manufacturing, bringing into this state, 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.⁴ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.⁵ 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 child care facility or secondary school is a second degree felony.⁶

Possessing, purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.⁷

Synthetic Cannabinoids

“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.”⁸

The Florida Department of Law Enforcement (department) has provided the following information relevant to the synthetic cannabinoids that the bill schedules:

¹ “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. Section 893.02(20), F.S.

² Section 893.03(1), F.S.

³ 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.

⁴ Section 893.13(1)(a)2., (4)(b), and (5)(b), F.S. A third degree felony is punishable by up to five 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.

⁵ Section 893.13(1)(c)-(f) and (h), F.S.

⁶ 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.

⁷ Section 893.13(2)(a)2. and (6)(a), F.S.

⁸ “Synthetic Cannabinoid Drug Information,” Redwood Toxicology Laboratory, available at https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last viewed on March 9, 2015).

Florida law enforcement has noted the emergence of new chemical variants of several substances included in the most recent revisions to Section 893.03(1)(c), Florida Statutes, which became effective in June 2014. Although technically different from currently scheduled substances, these substances are generally classifiable as synthetic cannabinoids. These substances are being abused because they are ostensibly legal and oftentimes perceived as a safer alternative to illegal drugs such as marijuana. In many cases they are more dangerous and are commonly available over the Internet. These substances are often purchased in wholesale quantities to be redistributed in specialty smoke shops and convenience stores, making them easily available to Florida's children and young adults. Abuse of these substances presents severe health risks and an immediate danger to the health, safety, and welfare of Florida residents and visitors.

The department has received information through recent crime laboratory submissions indicating that the referenced compounds are being inaccurately labeled and marketed as legitimate household products under a variety of pseudo brand names. The products usually contain the disclaimer "not for human consumption," but are sold in specialty smoke shops, over the Internet and in convenience stores for prices that are disproportionately high for the household product they purport to be (up to \$110.00 for 10 gram packets). Furthermore, a pattern has emerged in which the distributors of these substances respond to the scheduling of additional controlled substances by introducing new variants with labels on the packaging that claim to conform to the new laws. In response to these trends, the Florida Department of Health issued a press release on July 16, 2013 warning the public about the health risks associated with illicit synthetic substances such as those referenced here. The State Surgeon General and Secretary of Health, Dr. John Armstrong stated, "Illicit synthetic drugs are dangerous to Florida's children, adults and families. These drugs destroy lives, and are threats to public health and safety."⁹

III. Effect of Proposed Changes:

The bill places the following substances in Schedule I of the controlled substance 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.

This scheduling will also apply to optical, positional, or geometric isomers, and salts of isomers of any of these substances, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.¹⁰

⁹ Analysis of SB 1098 (February 23, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as "FDLE Analysis."

¹⁰ Section 893.03(1)(c), F.S.

As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1098 may impact private businesses if they sell a product containing any of the synthetic cannabinoids scheduled by the bill. These businesses would be prohibited from selling products containing any of these substances.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a positive insignificant prison bed impact in that the bill may increase the Department of Corrections' prison bed population by 10 or fewer beds annually.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes to incorporate the amendment made to s. 893.03, F.S., in references to that statute: 39.01, 316.193, 322.2616, 327.35, 440.102, 458.3265, 459.0137, 782.04, 893.0356, 893.05, 893.12, 893.13, 893.135, and 921.0022.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Criminal Justice on March 23, 2015:

The committee substitute:

- Corrects chemical nomenclature used to describe two scheduled synthetic cannabinoids; and
- Changes the effective date.

B. Amendments:

None.