# HOUSE OF REPRESENTATIVES
# FINAL BILL ANALYSIS

| | | | |
|---|---|---|---|
| **BILL #:** | CS/CS/HB 1347 | **FINAL HOUSE FLOOR ACTION:** | |
| **SPONSOR(S):** | Appropriations Committee; Criminal Justice Subcommittee; Ingram and others | 116 **Y's** | 0 **N's** |
| **COMPANION BILLS:** | CS/CS/SB 1528 | **GOVERNOR'S ACTION:** | Approved |

## SUMMARY ANALYSIS

CS/CS/HB 1347 passed the House on February 24, 2016, and subsequently passed the Senate on March 4, 2016.

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 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" of the substances and whether there is a currently accepted medical use for the substances.

The bill amends s. 893.03, F.S., to add 12 new substances and six general substance classes to the list of substances that are classified under Schedule I. The general classes are as follows:

- Synthetic Cannabinoids
- Substituted Cathinones
- Substituted Phenethylamines
- N-Benzyl Phenethylamines Compounds
- Substituted Tryptamines
- Substituted Phenylcyclohexylamines

The bill makes technical corrections to the names of 113 substances, adds definitions, and makes conforming changes. The bill also revises various criminal penalties that apply to violations of ch. 893, F.S.

The Criminal Justice Impact Conference met on January 29, 2016, and determined that this bill would have a positive indeterminate impact on the Department of Corrections (i.e., an unquantifiable increase in prison beds). The bill may have a positive jail bed impact, i.e., may increase the need for jail beds, because it creates new misdemeanor penalties for violations of ch. 893, F.S.

The bill was approved by the Governor on March 24, 2016, ch. 2016-105, L.O.F., and will become effective on July 1, 2016.

# I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

**Regulating Controlled Substances**

The Florida Comprehensive Drug Abuse Prevention and Control Act

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 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 substances listed therein and whether there is a currently accepted medical use for the substance.[2]

The Controlled Substance Schedules are as follows:

- Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States, including substances such as cannabis and heroin.[3]
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States, including substances such as raw opium and codeine.[4]
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States, including substances such as stimulants and anabolic steroids.[5]
- Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States, including substances such as benzodiazepines and barbiturates.[6]
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States, including substances such as mixtures that contain small quantities of opiates, narcotics, or stimulants.[7]

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 the schedule in which the substance is listed.[8] Other factors, such as the quantity of controlled substances involved in a crime or the location where the violation occurs, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

[1] Section 893.035(3)(a), F.S., defines "potential for abuse" to mean that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user's health or the safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user's own initiative rather than on the basis of professional medical advice.
[2] *See* s. 893.03, F.S.
[3] s. 893.03(1), F.S.
[4] s. 893.03(2), F.S.
[5] s. 893.03(3), F.S.
[6] s. 893.03(4), F.S.
[7] s. 893.03(5), F.S.
[8] *See, e.g.*, s. 893.13(1)(a) and (c), F.S.

Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids, cathinones, and phenethylamines to Schedule I of Florida's controlled substances schedules.[9] As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances now apply to these synthetic substances. For example:

- it is a first degree misdemeanor[10] to possess three grams or less of listed synthetic cannabinoids;[11] and
- it is a third degree felony[12] to knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids.[13]

Since the 2015 Legislative Session, new formulas of synthetic substances have been developed that are made of chemicals not covered by current law.

The Florida Drug and Cosmetic Act

Chapter 499, F.S., the Florida Drug and Cosmetic Act (Act), protects consumers from fraud, misbranding, false advertising, and other violations in relation to drugs, devices and cosmetics.[14] There are a wide variety of civil, administrative, and criminal penalties applied to violations of the Act. Criminal penalties are applied to violations such as forgery of prescription drug labels, trafficking in contraband prescription drugs, refusing to allow a lawful inspection, and false advertisement, among others.[15] The criminal violations in the Act are primarily punishable as first,[16] second,[17] or third degree felonies.

The Florida Analogue Statute

In an effort to regulate new substances not included in the schedules, the Legislature created s. 893.0356, F.S., commonly referred to as the Analogue Statute, to prohibit drugs that are similar to drugs specifically prohibited in statute.[18] The Analogue Statute requires a controlled substance analogue to be treated as a controlled substance in Schedule I for purposes of the drug schedules.[19] This means that the criminal penalties for possessing, selling, manufacturing, etc., a controlled substance analogue are the same as those for possessing, selling, manufacturing, etc., a controlled substance listed in Schedule I. The Analogue Statute defines "controlled substance analog" to mean a substance which, due to its chemical structure and potential for abuse, is:

- substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03; and
- has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03.[20]

The Analogue Statute clarifies that a "controlled substance analog" does not include:

- a controlled substance;
- any substance for which there is an approved new drug application;
- any compound, mixture, or preparation which contains any controlled substance which is not for administration to a human being or animal, and which is packaged in such form or

[9] chs. 15-34, 14-159, 13-29, 12-23, 11-73, 11-90, Laws of Fla.
[10] A first degree misdemeanor is punishable by up to one year in jail and a $1,000 fine. ss. 775.082 and 775.083, F.S.
[11] s. 893.13(6)(b), F.S.
[12] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. ss 775.082 and 775.083, F.S.
[13] s. 893.13(1)(a), F.S.
[14] s. 499.002, F.S.
[15] s. 499.0051, F.S.
[16] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. ss. 775.082 and 775.083, F.S.
[17] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. ss. 775.082 and 775.083, F.S.
[18] The Analogue Statute, created in 1987, is largely mirrored after the federal Controlled Substance Analogue Enforcement Act under 21 USC § 802(32)(A).
[19] s. 893.0356(5), F.S.
[20] s. 893.0356(2)(a), F.S.

concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or

- any substance to which an investigational exemption applies under s. 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.[21]

The General Class Approach to Substance Regulation

Adding a specific chemical compound to a drug schedule is a common way to prohibit a substance. However, this approach usually requires the addition of new substances to the drug schedule every year to include substances containing new or slightly modified compounds. The general class approach bans synthetic substances based on the chemical grouping or class of the substances.[22] This allows a law to prohibit a number of substances within the same class without listing the individual substances in statute.[23]

Practical and constitutional concerns are raised by the general class approach. The complexity of the chemical compounds of designer drugs can make it difficult to impose a broad ban on such substances without unintentionally including compounds that have legitimate uses. Additionally, criminal laws may violate the constitutional requirement of due process if the laws do not clearly define the behavior that is prohibited or if they are so broad as to encompass lawful behavior.[24]

**Designer Substances**

Synthetic Cannabinoids

Synthetic cannabinoids (also known as "K2" or "Spice") are chemically engineered substances that have a similar structure to tetrahydrocannabinol (THC) and produce a high similar to marijuana when ingested.[25] The chemicals are often applied to a plant material to mimic marijuana.[26] Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.[27] No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the FDA for human consumption.[28]

Despite being labeled "not for human consumption," synthetic cannabinoids are used as recreational drugs and have been marketed as a legal alternative to illegal methods of getting "high."[29] They can be purchased on the Internet, in smoke shops, and convenience stores.[30] The effects of ingesting synthetic cannabinoids can be very serious, and may include seizures, hallucinations, paranoia, anxiety, and tachycardia (racing heartbeat), among others.[31]

Substituted Phenethylamines

---

[21] s. 893.0356(2)(b), F.S.

[22] NAT'L CONFERENCE OF STATE LEGISLATURES, *Synthetic Drug Threats*, http://www.ncsl.org/research/civil-and-criminal-justice/synthetic-drug-threats.aspx (last visited Jan. 29, 2016).

[23] *Id.*

[24] *See* Constitutional Issues section, herein.

[25] OFFICE OF NAT'L DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, https://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts (last visited Jan. 31, 2016).

[26] *Id.*

[27] Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 75 Fed. Reg. 71,635-38 (Nov. 24, 2010) (supplementary information) (*also available at* https://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule#h-6).

[28] *Id.*

[29] U.S. DRUG ENFORCEMENT ADMINISTRATION, *Chemicals Used in "Spice" and K2" Type Products Now under Federal Control and Regulation*, http://www.dea.gov/pubs/pressrel/pr030111.html (last visited Jan. 29, 2016).

[30] Fla. Fusion Ctr., *Synthetic Substances Ban, Brief # 12-150*, FLA. DEPT. OF LAW ENFORCEMENT (March 23, 2012), www.tspd.us/Substances_Ban.pdf (last visited Jan. 27, 2016).

[31] Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 76 Fed. Reg. 11,075-78 (March 1, 2011) (supplementary information) (*also available at* http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0301.htm).

Phenethylamines are compounds with a chemical structure of a benzene ring substituted with a 2-aminoethyl chain.[32] Phenethylamine itself is not a controlled substance, but many substituted variations[33] of phenethylamine are.[34] Substituted phenethylamines may have an effect on the user similar to hallucinogens, stimulants, or both.[35] A common type of substituted phenethylamine, often referred to as 2C,[36] is created by a substitution that increases hallucinogenic effects of the compound.[37] 2C has a similar structure to 3,4-methylenedioxy-*N*-methylamphetamine (MDMA, "ecstasy"), and it is very popular as a designer drug.[38]

Substituted Cathinones

Synthetic cathinones are related to the parent compound cathinone, one of the psychoactive properties in khat (*Catha edulis* Forsk).[39] Khat is a shrub grown in East Africa and southern Arabia, and people sometimes chew its leaves for their mild stimulant effects.[40] Substituted cathinones are synthetic analogs of cathinone within the phenethylamine compound class.[41] Substituted cathinones are different from other phenethylamines described above by the addition of a beta-keto substitute to the core ring along with a substitution of either the alpha carbon atom or the nitrogen atom.[42] Substituted cathinones are often called "bath salts," Flakka, Cloud Nine, and White Lightning[43] and are claimed to have effects similar to those of cocaine, amphetamine, or MDMA (ecstasy).[44]

*N*-Benzyl Phenethylamines

*N*-Benzyl phenethylamines are derivatives of the 2C phenethylamine compounds[45] that activate serotonin neuroreceptors in a similar way to other phenethylamines.[46] These compounds are referred to as "NBOMe compounds," and while sufficient studies have not been conducted on the potency of these compounds, studies have indicated that they have a strong effect on serotonin neuroreceptors that are associated with hallucinogenic brain activity.[47]

Substituted Tryptamines

---

[32] Solicitation of Information on the Use of Phenethylamine-Related Compounds, 71 Fed. Reg. 62,017-18 (Oct. 20, 2006) (supplementary information) (*also available at* http://www.deadiversion.usdoj.gov/fed_regs/notices/2006/fr10206.htm).

[33] Phenethylamine may be substituted on the benzene ring and/or the 2-aminoethyl chain to create various substitutes, some of which are currently controlled substances. Solicitation of Information (Oct. 20, 2006), *supra* note 32.

[34] Solicitation of Information (Oct. 20, 2006), *supra* note 32.

[35] Drug Enforcement Admin., *National Forensic Laboratory Information System: 2014 Annual Report*, U.S. DEPARTMENT OF JUSTICE (2015), at 17 (*also available at* http://www.deadiversion.usdoj.gov/nflis/).

[36] "2C" is a term coined by Alexander Shulgin to identify the structure of the 2-aminoethyl chain in the phenethylamine compound. Be Vang Dean, et al., *2C or Not 2c: Phenethylamine Designer Drug Review* 9(2) J. MED. TOXICOLOGY 172, 172 (Jun. 2013).

[37] *Id.*

[38] *Id.*

[39] EUROPEAN MONITORING CTR. FOR DRUGS & DRUG ADDICTION, *Synthetic Cathinones Drug Profile*, http://www.emcdda.europa.eu/publications/drug-profiles/synthetic-cathinones (last visited Jan. 30, 2016).

[40] NAT'L INST. ON DRUG ABUSE, *Drug Facts: Synthetic Cathinones ("Bath Salts")*, http://www.drugabuse.gov/publications/drugfacts/synthetic-cathinones-bath-salts (last visited on Jan. 30, 2016).

[41] U.S. NATIONAL LIBRARY OF MEDICINE, *Emerging Drugs of Abuse: Current Perspectives on Substituted Cathinones*, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4043811/ (last viewed Jan. 30, 2016).

[42] *Hearing on Dangerous Synthetic Drugs Before the Senate Caucus on International Narcotics Control*, 118th Cong. (Sept. 25, 2013) (statement of Joseph T. Rannazzisi, Drug Enforcement Administration) (also available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi2pbuP2NLKAhXHqx4KHYZfAaUQFggcMAA&url=http%3A%2F%2Fwww.dea.gov%2Fpr%2Fspeeches-testimony%2F2013t%2F092513t.pdf&usg=AFQjCNFWzTblfSNcqt0b7GcCzG5Oje3eGQ).

[43] *Synthetic Cathinones ("Bath Salts")*, *supra* note 40.

[44] *Synthetic Cathinones Drug Profile*, *supra* note 39.

[45] John F. Casale & Patrick A. Hays, *Characterization of Eleven 2,5-Dimethoxy-N-(2-methoxybenzyl) phenethylamine (NBOMe) Derivatives and Differentiation from their 3- and 4-Methoxybenzyl Analogues – Part I*, 9(2) MICROGRAM J. 84 (2012) (*also available at* http://www.dea.gov/pr/microgram_journals.shtml).

[46] Phenethylamines are generally 5-$HT_{2A}$ antagonists. Like other phenethylamines, *N*-substituted phenethylamines act on the 5-$HT_{2A}$ neuroreceptors, but in a potentially more effective way. Martin Hansen, et al., *Synthesis and Structure—Activity Relationships of N-Benzyl Phenethylamines as 5-$HT_{2A/2C}$ Antagonists*, 5 ACS CHEM. NEUROSCIENCE 243, 243-44 (2014).

[47] John F. Casale & Patrick A. Hays, *supra* note 45.

Tryptamines occur naturally in plants and can be created synthetically.[48] Some tryptamine compounds have documented hallucinogenic effects and can be taken orally, or by injection, smoking, or snorting.[49] Substituted tryptamines are created by substituting the indole ring or the 2-aminoethyl chain or both with various substituents.[50] N,N-dimethyltryptamine (DMT) and 5-methoxyN,N-diisopropyltryptamine (5-MeO-DIPT) are substituted tryptamines that are commonly abused when 3,4-methylenedioxymethamphetamine (MDMA) is unavailable.[51]

Substituted Phencyclidines

Phencyclidine (PCP) was developed in the 1950s for medical use as an anesthetic, but such use was discontinued due to serious side effects that caused delirium and confusion, among others.[52] At some point after its discontinued medical use, PCP-type substances surfaced in the recreational drug market.[53] Recreational PCP derivatives include 4-methoxyphencyclidine, commonly referred to as methoxydine,[54] eticyclidine (PCE), rolicyclidine (PHP, PCPY), and tenocyclidine (TCP), among others.[55] The side effects of these substances can range from stupor to a deep coma.[56]

**Effect of the Bill**

The bill amends s. 893.03, F.S., to add 12 new substances and six general substance classes to the list of substances that are classified under Schedule I. The additions are as follows:

- Acetylfentanyl (opioid analgesic)
- Butyrylfentanyl (synthetic fentanyl opioid)
- Beta-Hydroxythiofentanyl (opioid analgesic)
- AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol) (synthetic cannabinoid)
- AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol) (synthetic cannabinoid)
- AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol) (synthetic cannabinoid)
- AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol) (synthetic cannabinoid)
- HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol) (synthetic cannabinoid)
- HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione) (synthetic cannabinoid)
- MAPB ((2-Methylaminopropyl)benzofuran) (synthetic stimulant)
- 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine) (synthetic stimulant)
- 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine) (synthetic stimulant)

---

[48] Drug Enforcement Admin., *Nat'l Forensic Laboratory Info. System: Special Report: Emerging 2C-Phenethylamines, Piperazines, and Tryptamines in NFLIS, 2006-2011*, U.S. DEPARTMENT OF JUSTICE (2015), at 2 (*also available at* http://search.deadiversion.usdoj.gov/texis/search/?dropXSL=&pr=Prod-static-walk&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&sufs=2&order=r&rdepth=0&query=tryptamines&submit=Search/).

[49] *Id.*

[50] Solicitation of Information on the Use of Tryptamine-Related Compounds, 71 Fed. Reg. 44,314-15 (Aug. 4, 2006) (supplementary information) (*also available at* http://www.deadiversion.usdoj.gov/fed_regs/notices/2006/fr0804.htm).

[51] *Nat'l Forensic Laboratory Info. System: Special Report*, *supra* note 48.

[52] DRUGS.COM, *What is Phencyclidine?*, http://www.drugs.com/phencyclidine.html (last visited Jan. 31, 2016).

[53] EMEDICINEHEALTH, *Phencyclidine* (PCP), http://www.emedicinehealth.com/club_drugs/page5_em.htm (last visited Jan. 31, 2016).

[54] John F. Casale, *4-Methoxyphencyclidine: An Analytical Profile*, 8(2) MICROGRAM J. 39 (2011) (*also available at* http://www.dea.gov/pr/microgram_journals.shtml).

[55] Lab. & Sci. Section of the U.N. Office on Drugs & Crime, *The Challenge of New Psychoactive Substances*, UNITED NATIONS (2013), at 16-17.

[56] *Id.*

- The *Synthetic Cannabinoids* class includes any[57] material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the 15 enumerated chemical class descriptions, or specified variants, whenever the existence of such specified variants is possible within the specific chemical class or designation. These structures or the compounds of these structures shall be included, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:
    - Tetrahydrocannabinols
    - Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles. Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure, with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the naphthyl ring to any extent
    - Naphthoylpyrroles
    - Naphthylmethylenindenes
    - Phenylacetylindoles and Phenylacetylindazoles
    - Cyclohexylphenols
    - Benzoylindoles and Benzoylindazoles
    - Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles
    - Adamantoylindoles, Adamantoylindazoles, Adamantylindole carboxamides, and Adamantylindazole carboxamides
    - Quinolinylindolecarboxylates, Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides, and Quinolinylindazolecarboxamides
    - Naphthylindolecarboxylates and Naphthylindazolecarboxylates
    - Naphthylindole carboxamides and Naphthylindazole carboxamides
    - Alkylcarbonyl indole carboxamides, Alkylcarbonyl indazole carboxamides, Alkylcarbonyl indole carboxylates, and Alkylcarbonyl indazole carboxylates.—Any compound containing an alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an indole carboxamide, indazole carboxamide, indole carboxylate, or indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent
    - Cumylindolecarboxamides and Cumylindazolecarboxamides.—Any compound containing a N-(2-phenylpropan-2-yl) indole carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring of the cumyl group to any extent
    - Other Synthetic Cannabinoids
- The *Substituted Cathinones* class includes any material, compound, mixture, or preparation, including specified variants, whenever the existence of such variants is possible within any of the following three enumerated chemical designations regardless of whether the compound is further modified:
    - Any compound containing a 2-amino-1-phenyl-1-propanone structure.
    - Any compound containing a 2-amino-1-naphthyl-1-propanone structure.
    - Any compound containing a 2-amino-1-thiophenyl-1-propanone structure,
- The *Substituted Phenethylamines* class includes any material, compound, mixture, or preparation, including specified variants, whenever the existence of such variants is possible within any of the 45 enumerated chemical designations, any compound containing a phenethylamine structure, without a beta-keto group, and without a benzyl group attached to the

[57] Each of the six general classes specifies that the classes do not include compounds that are specifically excepted, are listed in another schedule, or are contained within a pharmaceutical product approved by the U.S. Food and Drug Administration.

amine group, whether or not the compound is further modified with or without substitution on the phenyl ring to any extent with alkyl, alkylthio, nitro, alkoxy, thio, halide, fused alkylenedioxy, fused furan, fused benzofuran, fused dihydrofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha or beta position by any alkyl substituent, with or without substitution at the nitrogen atom, and with or without inclusion of the 2-amino nitrogen atom in a cyclic structure

- The *N-Benzyl Phenethylamine Compounds* class includes any material, compound, mixture, or preparation, including specified variants, whenever the existence of such variants is possible within any of the 19 specified chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including but not limited to:
    - 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine);
    - 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine);
    - 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine);
    - 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine);
    - 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine);
    - 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine);
    - 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine);
    - 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine);
    - 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine);
    - 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine);
    - 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine);
    - 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine);
    - 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine);
    - 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine);
    - 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine);
    - 25H-NBOMe (2,5-Dimethoxy-[N-(2-methoxybenzyl)]phenethylamine);
    - 25H-NBOH (2,5-Dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine);
    - 25H-NBF (2,5-Dimethoxy-[N-(2-fluorobenzyl)]phenethylamine); or
    - 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine),

which does not include substituted cathinones as described in subparagraph (1)(c)191.

- The *Substituted Tryptamines* class includes any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to the 27 following chemical designations:
    - Alpha-Ethyltryptamine;
    - Bufotenine;
    - DET (Diethyltryptamine);
    - DMT (Dimethyltryptamine);
    - MET (N-Methyl-N-ethyltryptamine);
    - DALT (N,N-Diallyltryptamine);
    - EiPT (N-Ethyl-N-isopropyltryptamine);
    - MiPT (N-Methyl-N-isopropyltryptamine);
    - 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine);
    - 5-Hydroxy-N-methyltryptamine;
    - 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine);
    - 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine);
    - Methyltryptamine;

- 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine);
- 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine);
- 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine);
- DiPT (N,N-Diisopropyltryptamine);
- DPT (N,N-Dipropyltryptamine);
- 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine);
- 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine);
- 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine);
- 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine);
- 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine);
- 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine);
- 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-isopropyltryptamine);
- Methyl-alpha-ethyltryptamine; or
- Bromo-DALT (Bromo-N,N-diallyltryptamine),

which does not include tryptamine, psilocyn as described in subparagraph (1)(c)34., or psilocybin as described in subparagraph (1)(c)33.

- The *Substituted Phenylcyclohexylamines* includes any material, compound, mixture, or preparation containing a phenylcyclohexylamine structure, with or without any substitution on the phenyl ring, any substitution on the cyclohexyl ring, any replacement of the phenyl ring with a thiophenyl or benzothiophenyl ring, with or without substitution on the amine with alkyl, dialkyl, or alkoxy substituents, inclusion of the nitrogen in a cyclic structure, or any combination of the above, including, but not limited to the 18 following chemical designations:
  - BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine);
  - PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine);
  - PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine)(Pyrrolidine analog of phencyclidine);
  - PCPr (Phenylcyclohexylpropylamine);
  - TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)(Thiophene analog of phencyclidine);
  - PCEEA (Phenylcyclohexyl(ethoxyethylamine));
  - PCMPA (Phenylcyclohexyl(methoxypropylamine));
  - Methoxetamine;
  - 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine);
  - Bromo-PCP ((Bromophenyl)cyclohexylpiperidine);
  - Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine);
  - Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine);
  - Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine);
  - Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine);
  - Methyl-PCP ((Methylphenyl)cyclohexylpiperidine);
  - Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine);
  - Oxo-PCP ((Oxophenyl)cyclohexylpiperidine); or
  - Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

The criminal penalties applied to violations of ch. 893, F.S., involving substances listed in Schedule I will apply to the specific substances listed above, as well as substances that fall within the six general classifications.

The bill makes technical corrections and additions to the names of 113 substances currently included in Schedule I, five substances currently included in Schedule III, and 17 “precursor” chemicals that may be used in the manufacture of a controlled substance, to conform to modern scientific conventions.

The bill adds the following definitions to ch. 893, F.S.:

- "Cannabinoid receptor agonist" means a chemical compound or substance that, according to scientific or medical research, study, testing, or analysis demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body;

- "Homologue" means a chemical compound in a series in which each compound differs by one or more repeating hydrocarbon functional group units at any single point within the compound
- "Mixture" means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal;
- "Nitrogen-heterocyclic analog" means an analog of a controlled substance which has a single carbon atom in a cyclic structure of a compound replaced by a nitrogen atom;
- "Positional isomer" means any substance that possesses the same molecular formula and core structure and that has the same functional group or substituent as those found in the respective controlled substance, attached at any positions on the core structure, but in such manner that no new chemical functionalities are created and no existing chemical functionalities are destroyed relative to the respective controlled substance. Rearrangements of alkyl moieties within or between functional groups or substituents, or divisions or combinations of alkyl moieties, which do not create new chemical functionalities or destroy existing chemical functionalities, are allowed and include resulting compounds that are positional isomers. As used in this definition, the term "core structure" means the parent molecule that is the common basis for the class that includes, but is not limited to, tryptamine, phenethylamine, or ergoline. Examples of rearrangements resulting in creation or destruction of chemical functionalities, and therefore resulting in compounds that are not positional isomers, include, but are not limited to, ethoxy to alpha-hydroxyethyl, hydroxy and methyl to methoxy, or the repositioning of a phenolic or alcoholic hydroxy group to create a hydroxyamine. Examples of rearrangements resulting in compounds that would be positional isomers, include, but are not limited to, tert-butyl to sec-butyl, methoxy and ethyl to isopropoxy, N,N-diethyl to N-methyl-N-propyl, or alpha-methylamino to N-methylamino;
- “Substantially similar," as the term applies to the chemical structure of a substance, means that the chemical structure of the substance compared to the structure of a controlled substance has a single difference in the structural formula that substitutes one atom or functional group for another, including, but not limited to, one halogen for another halogen, one hydrogen for a halogen or vice versa, an alkyl group added or deleted as a side chain to or from a molecule, or an alkyl group added or deleted from a side chain of a molecule; and
- The definition of “drug paraphernalia” is revised to include:
    - diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in diluting controlled substances; or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances; and
    - objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances, as described in s. 893.03, or substances described in s. 877.111(1).

The bill specifies that a controlled substance analog shall be treated as the highest scheduled controlled substance to which it is a controlled substance analog in s. 893.03, F.S., and expands the list of relevant factors in determining the existence of a controlled substance analog to include comparisons to the accepted methods of marketing, distribution, and sales of the substance and that which the substance is purported to be, including, but not limited to:

- the difference in price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;
- the difference in how the substance is imported, manufactured, or distributed compared to how the substance it is purported to be or advertised as is normally imported, manufactured, or distributed;
- the difference in the appearance of the substance in overall finished dosage form compared to the substance it is purported to be or advertised as normally appears in overall finished dosage form; and

- the difference in how the substance is labeled for sale, packaged for sale, or the method of sale, including, but not limited to, the placement of the substance in an area commonly viewable to the public for purchase consideration compared to how the substance it is purported to be or advertised as is normally labeled for sale, packaged for sale, or sold to the public.

The bill creates the following criminal offenses:

- Possession of a substance in Schedule V[58] is a second degree misdemeanor[59]
- Delivering any controlled substance to a person younger than 18 years of age, using or hiring a person younger than 18 years of age as an agent or employee in the sale or delivery of such a substance, or using such person to assist in avoiding detection or apprehension for a violation of ch. 893, F.S., when the controlled substance is not otherwise specified, is a third degree felony[60]

The bill revises criminal and civil penalties related to controlled substances, as follows:

- Removes the provision in s. 893.13(6)(b), F.S., criminalizing the possession of three grams or less of a variety of cannabinoids as a first degree misdemeanor.[61] This change increases the penalty for possession of any cannabinoid other than cannabis, as defined in s. 893.02(3), F.S., regardless of the amount, from a first degree misdemeanor to a third degree felony.
- Makes possession of a substance in Schedule V[62] a second degree misdemeanor.
- Permits property that is the site of two or more violations of ch. 499, F.S.,[63] within a six-month period, to be designated a public nuisance under s. 893.138, F.S.
- Requires that a violation involving a controlled substance not otherwise specified, be punished by sentencing the offender to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law, if a person to sells, manufactures, or delivers, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in ch. 429, F.S.
- Amends the Offense Severity Ranking Chart to include the offense of use or hire of a minor or delivering to a minor other controlled substances, under s. 893.13(4)(c), F.S., as a Level 3 offense.

The bill adds crimes involving misbranded drugs under s. 499.0051, F.S., to the crimes included in the definition of "racketeering activity" in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act.[64]

## 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:

   The Criminal Justice Impact Conference met on January 29, 2016, and determined that this bill would have a positive indeterminate impact on the Department of Corrections (i.e., an

[58] s. 893.03(5), F.S.
[59] A second degree misdemeanor is punishable by up to 60 days in jail and a $500 fine. ss. 775.082 and 775.083, F.S.
[60] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. ss. 775.082 and 775.083, F.S.
[61] A first degree misdemeanor is punishable by up to one year in jail and a $1,000 fine. ss. 775.082 and 775.083, F.S.
[62] s. 893.03(5), F.S.
[63] Chapter 499 is "Florida's Drug and Cosmetic Act."
[64] Sections 895.01-895.06, F.S., establish the Florida RICO Act.

unquantifiable increase in prison beds). The number of future synthetic drug variations, and the resulting offenses connected to them, is unknown. It is also unknown how many will be incarcerated for the use or hire of a minor or delivering to a minor controlled substances.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill creates new misdemeanor penalties for violations of ch. 893, F.S.; thus, the bill may have a positive impact on jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.