

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 Committee on Criminal Justice

BILL: SB 1662

INTRODUCER: Senator Clemens

SUBJECT: Cannabis

DATE: April 14, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Jones | Hrdlicka | CJ | Pre-meeting |
| 2. | | | JU | |
| 3. | | | RC | |

I. Summary:

SB 1662 creates s. 893.131, F.S., related to personal use quantity of cannabis. The bill creates a civil violation if a person knowingly and unlawfully possesses a personal use quantity of cannabis or a cannabis accessory. The bill provides different civil penalties for adults and juveniles.

The bill defines “personal use quantity of cannabis” to mean 1 ounce or less of cannabis, except that:

- No more than 5 grams of the cannabis may be resin extracted from or concentrates derived from cannabis;
- The term does not include cannabis that is growing; and
- The term does not include the estimated weight of any noncannabis ingredients combined with cannabis, such as ingredients added to prepare food or drink.

The bill also defines a “cannabis accessory” to mean paraphernalia for the ingestion, use, inhalation, preparation for personal use, or storage of a personal use quantity of cannabis.

The bill amends s. 893.13(6)(b), F.S., to make it a first degree misdemeanor to possess ***1 ounce or less of cannabis*** and the ***possession is not a personal use quantity of cannabis***.

The bill also amends s. 893.13(3), F.S., to make it a first degree misdemeanor for a person to deliver, without consideration, ***a personal use quantity of cannabis***. The bill also repeals the language specifying that 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.

The bill amends s. 893.145, F.S., to specify that the term “drug paraphernalia” does not include a cannabis accessory.

The courts and the clerk of courts may see an indeterminate increase in their caseloads with the creation of these new civil violations. The clerks, law enforcement agencies and the FDLE may incur significant costs to create suitable databases if they cannot maintain records of a civil violation in an existing criminal offender database.

The bill is effective July 1, 2017.

II. Present Situation:

Florida law 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,”¹ and places it, along with other sources of THC, on the list of Schedule I controlled substances.²

Schedule I controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States.³ As a Schedule I controlled substance, possession and trafficking of cannabis carry varying criminal penalties.⁴

Specifically, a person commits a first degree misdemeanor if a person possesses or delivers, without consideration, 20 grams or less of cannabis.⁵ Subsections (3) and paragraph (6)(b) of s. 893.13, F.S., specify that 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.

Section 893.145, F.S., defines drug paraphernalia as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.⁶ Section 893.145, F.S., provides an extensive list of items that are included in the term “drug paraphernalia.”⁷

¹ Section 893.02(3), F.S.

² Section 893.03(1)(c)7., and 190., F.S. The definition excludes “low-THC cannabis” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with that section.

³ Section 893.03(1), F.S.

⁴ See ss. 893.13 and 893.135, F.S.

⁵ Section 893.13(3), and (6)(b), F.S.

⁶ Section 893.145, F.S.

⁷ See s. 893.145(1)-(12), F.S.

III. Effect of Proposed Changes:

Personal use of Cannabis

The bill creates s. 893.131, F.S., related to personal use quantity of cannabis. The bill defines “personal use quantity of cannabis” to mean 1 ounce or less of cannabis, except that:

- No more than 5 grams of the cannabis may be resin extracted from or concentrates derived from cannabis;
- The term does not include cannabis that is growing; and
- The term does not include the estimated weight of any noncannabis ingredients combined with cannabis, such as ingredients added to prepare food or drink.

The bill does not provide a way for a law enforcement officer to determine if the cannabis is 1 ounce or less. Current law provides that it is unlawful to possess any amount of cannabis and officers do not have to make this determination.

The bill also defines a “cannabis accessory” to mean paraphernalia for the ingestion, use, inhalation, preparation for personal use, or storage of a personal use quantity of cannabis. The bill does not define what paraphernalia is.

The bill provides that a person, 18 years of age or older, who knowingly and unlawfully possesses a personal use quantity of cannabis or a cannabis accessory commits a civil violation and must be assessed a civil penalty of not more than \$100. The person may request a penalty of 15 hours of community service in lieu of the up to \$100 civil penalty. It is unclear what a civil violation is and who assesses or determines the civil penalty. The bill does not specify:

- Whether a unit of government collects the civil penalty and where it is deposited;
- If proof of completion of the community service hours is required;
- If the civil penalty must be paid or the community service hours completed within a certain time period; and
- What happens if a person does not pay the civil penalty or complete the community service hours.

A juvenile, under 18 years of age, who knowingly and unlawfully possesses a personal use quantity of cannabis or a cannabis accessory commits a civil violation and must be ordered to complete up to 15 hours of community service, a drug awareness program, or both.

The bill specifies that a person cited for one of the above stated civil violations is not subject to arrest and must be issued a notice to appear. The bill does not define the notice to appear or set forth procedures to comply with such notice.

Within 1 year after the court orders the juvenile to complete his or her civil penalties, the juvenile or his or her parent or legal guardian must file evidence with the clerk of court that the civil penalties are completed. If the juvenile or his or her parent or legal guardian fails to provide such evidence of completion, the clerk must notify the juvenile, or his or her parent or legal guardian, and the *person* who issued the *citation* of a hearing to impose a civil penalty of up to

\$150 or up to 40 hours of community service on the juvenile. During the hearing, the court is limited to considering the:

- Juvenile's financial capacity to pay the penalty;
- Juvenile's ability to participate in a drug awareness program;
- Availability of a suitable drug awareness program; and
- Juvenile's willingness to complete such program within a timeframe to be determined by the court.

The bill attempts to place responsibility to submit documentation on the juvenile's parent or legal guardian. However, it is unclear how such responsibility can be placed upon a party that did not commit a civil violation; the juvenile is the one who has committed a civil violation and is the responsible party.

The bill says that the clerk should notify the *person* who issued the *citation*. It is unclear if someone other than a law enforcement officer can issue a notice to appear for a civil violation of possessing a personal use quantity of cannabis or cannabis accessory. The bill also uses the term *citation* when the bill only provides an issuance of a notice to appear for a civil violation of possessing a personal use quantity of cannabis or cannabis accessory.

The bill does not specify what type of evidence must be filed, how the clerk is to assess the evidence, or how the clerk would be aware that the evidence was filed within the 1-year requirement. The bill also says the hearing is to "impose a civil penalty of up to \$150 or up to 40 hours of community service." This makes it seem that the court does not have an option to determine that no penalties are necessary.

The bill also provides that receiving a civil violation, as stated above, is not considered a drug offense under state law or as defined in 23 C.F.R. s. 192.3 and may not affect a person's driving privileges. Florida law cannot dictate what is considered a drug offense under federal law. The current wording of the bill may create this problem.

The bill attempts to allow a person to be arrested if he or she fails or refuses to:

- Produce his or her identification card or driver license or other form of identification on the request of a law enforcement officer who informs the person that he or she has been found in possession of what appears to be a personal use quantity of cannabis or a cannabis accessory; and
- Truthfully provide his or her name, address, and date of birth to a law enforcement officer.

However, the bill does not provide what a person can be arrested for and the wording seems to allow a person to:

- Fail or refuse to produce his or her identification but truthfully provide the officer with his or her name, address, and date of birth; or
- Produce his or her identification and then lie about his or her name, address, or date of birth.

Additionally, some of the forms of identification allowed, like a school district id, would not likely contain the information needed by the law enforcement officer.

The bill prohibits the state or any of its political subdivisions from imposing any other penalty than those stated above for:

- Possessing a personal use quantity of cannabis or a cannabis accessory; and
- A person who solely has cannabinoids or cannabinoid metabolites in his or her urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the human body.

The bill seems to prohibit the state from requiring a drug free work place, which would allow state workers, law enforcement officers, childcare professionals, etc., to test positive for having cannabis in his or her system.

The bill also specifies that receiving a civil violation for possession of a personal use quantity of cannabis or a cannabis accessory may not be considered a violation of parole or probation. This may create a problem because many parolees or probationers currently have a condition of parole or probation that prohibits the possession and use of drugs. The parole and probation statutes may need to be amended to reflect this change made by the bill.

The bill provides that possession of a personal use quantity of cannabis or a cannabis accessory or the presence of cannabinoids or cannabinoid metabolites in the urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the human body, or conviction, citation, admission or plea bargain does not constitute grounds for denying a person:

- Student financial aid;
- Public housing; or
- Any other form of public assistance including:
 - Unemployment benefits;
 - Denying a person the right to operate a motor vehicle; or
 - Disqualifying a person from serving as a foster parent or an adoptive parent.

The state cannot regulate the federal government or federal government programs. To the extent that any of the above programs are run or funded by the federal government and the bill conflicts with any federal government requirements, the conflicting provisions could be found unconstitutional or the state could lose federal funding.

The bill specifies that it does not repeal or modify any law concerning the:

- Medical use of cannabis or tetrahydrocannabinol (THC) in any form, such as dronabinol;
- Possession of more than a personal use quantity of cannabis; or
- Sale, manufacture, or trafficking of cannabis.

The bill allows political subdivisions of the state to enact ordinances regulating or prohibiting the public consumption of cannabis or THC. The bill also allows political subdivisions of the state to provide additional penalties for the public consumption of cannabis or THC as long as the penalties are not greater than those relating to the public consumption of alcohol.

Notice of Violations

The bill requires state, county, and municipal law enforcement agencies to issue *noncriminal citation* forms to their officers. The bill provides that it is a civil violation for the possession of a

personal use quantity of cannabis or a cannabis accessory and a notice to appear must be issued, not a noncriminal citation.

A juvenile's parent or legal guardian must be notified of a civil violation. The notice must be mailed to the parent or legal guardian's last known address or hand delivered. The bill does not specify who notifies the juvenile's parent or legal guardian or who pays for such a notification.

Drug Awareness Programs

The bill provides that a juvenile, under the age of 18, may be ordered to complete a drug awareness program. The program may charge a fee of up to \$75 dollars to offset costs, which must be paid when the juvenile enters the program. The fees must be waived based on a juvenile's financial hardship. The parent or legal guardian of the juvenile must also be provided with information about available drug awareness programs.

Lines 168-169 state that the juvenile has "to complete a drug awareness program *within 1 year after his or her parent or legal guardian is notified of the violation.*" This would allow a juvenile to not have to complete the program if his or her parent or legal guardian is not notified. This also conflicts with lines 94-97 that requires a juvenile or his or parent or legal guardian to submit evidence of completion of the program within 1 year of the court ordering it.

The bill does not specify any requirements of what the program must consist of, the length of the program, or what happens if a juvenile does not complete the program. The bill does not provide what constitutes a financial hardship or who would make such a determination. The bill also does not provide what occurs if a juvenile is ordered to complete a drug awareness program and there is not such a program in his or her area. The bill also does not state who provides the information about the drug awareness programs to law enforcement agencies and what the information must consist of.

Recordkeeping

A record of a civil violation for the possession of a personal use quantity of cannabis or a cannabis accessory cannot be recorded in any database of criminal offenders. It is unclear what a database of criminal offenders is. If the clerks keeping a record of the civil violation or law enforcement keeping a copy of the civil violation is considered a database of criminal offenders, it is unclear where the information concerning the civil violation would be maintained.

If the clerk or law enforcement cannot maintain a record of the civil violation, then it would be difficult for them to enforce the civil violation. On the other hand, if they can maintain the records, but cannot use an existing criminal offender database they may incur significant costs to create suitable databases. The clerks would also not be able to verify that a juvenile had completed his or her civil penalties within the required 1-year time period.

The bill requires any state, county, or municipal law enforcement agency that collects and reports data for the Federal Bureau of Investigation's Uniform Crime Reporting Program to collect data on the number of civil violations issued and report the data to the Florida Department of Law Enforcement (FDLE). The FDLE must compile the data and make it available free of cost to the

public. The law enforcement agencies must update the data annually and make the data available on their public Internet websites.

The bill does not specify how often the FDLE must update the data that is made available to the public or a specific date for law enforcement agencies to annually update their data. It is unclear why the bill requires only state, county, or municipal law enforcement agencies that collect and report data for the Federal Bureau of Investigation's Uniform Crime Program to have to collect data and not all law enforcement agencies in Florida. It is unclear if just making the data available online would meet the requirement to make the data free of cost to the public.

Distribution of Revenue

The bill requires that any civil penalties levied must be distributed as follows:

- Fifty percent distributed to or retained by the municipality where the violation occurred, or the county where it occurred, if the violation occurred in an unincorporated area; and
- Fifty percent distributed as provided in s. 938.23(2), F.S.⁸

Possession and Delivery of Cannabis

Section 893.13(6)(b), F.S., is amended to make it a first degree misdemeanor to possess ***1 ounce or less of cannabis*** and the ***possession is not a personal use quantity of cannabis***, as defined in s. 893.131, F.S.

The bill also amends s. 893.13(3), F.S., to make it a first degree misdemeanor for a person to deliver, without consideration, ***a personal use quantity of cannabis***, as defined in s. 893.131, F.S. The bill also repeals the language specifying that 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.

Section 893.13(6)(e), F.S., provides that a law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of ch. 893, F.S., relating to the possession of cannabis. The bill excludes s. 893.131, F.S., personal use quantity of cannabis, from this provision.

Drug Paraphernalia

The bill amends s. 893.145, F.S., to specify that the term "drug paraphernalia" does not include a cannabis accessory, as defined in s. 893.131, F.S.

⁸ Section 938.23(2), F.S., provides that the clerk of court must collect and remit the monies to the jurisdictional county for deposit into the County Alcohol and Other Drug Abuse Trust Fund or remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund of the Department of Children and Families pursuant to guidelines and priorities developed by the department. If a County Alcohol and Other Drug Abuse Trust Fund has not been established for any jurisdictional county, assessments collected by the clerk of court shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund of the Department of Children and Families.

Section 938.23, F.S., Assistance Grants for Alcohol and Other Drug Abuse Programs

The bill amends s. 938.23(2), F.S., to include proceeds of civil penalties under s. 893.131, F.S., which the clerk can collect and then remit as the statute provides.

Other

The bill reenacts ss. 112.0455, 397.451, 435.07, 772.12, 775.084, 810.02, 812.014, 831.311, 893.1351, 893.138, 893.15, 903.133, 921.187, 893.12, and 893.147 to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

The bill is effective July 1, 2017. This effective date may not provide enough time for the affected agencies to properly implement the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The application of several of the provisions of this bill are unclear. To the extent that the cities or counties have to expend funds, create programs, databases, or citation forms to comply with the provisions of the bill, the mandates provision of the Florida Constitution may apply. Subsection (a) of section 18, Article VII of the Florida Constitution, provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless ... the legislature has determined that such law fulfills an important state interest ... and unless the law requiring such expenditure is approved except by a two-thirds vote of the membership of each chamber of the Legislature or the law applies to all persons similarly situated, including state and local governments.” However, the mandates requirements do not apply to criminal laws or to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{9,10,11}

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ FLA. CONST. art. VII, s. 18(d).

¹⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 14, 2017).

¹¹ Based on the Demographic Estimating Conference’s population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 14, 2017).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a civil violation for the possession of a personal use quantity of cannabis. The courts and the clerk of courts may see an indeterminate increase in their caseloads with the creation of these new civil violations.

The bill is unclear on how the clerk and law enforcement are supposed to maintain a record of a civil violation. If the clerks, law enforcement agencies, and the FDLE cannot maintain records of a civil violation in an existing criminal offender database, they may incur significant costs to create suitable databases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.13, 893.145, and 938.23.

This bill creates section 893.131 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 112.0455, 397.451, 435.07, 772.12, 775.084, 810.02, 812.014, 831.311, 893.1351, 893.138, 893.15, 903.133, 921.187, 893.12, and 893.147.

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