

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 Criminal Justice Committee

BILL: CS/SB 390

INTRODUCER: Criminal Justice Committee and Senators Oelrich and Gaetz

SUBJECT: Controlled Substances

DATE: April 1, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The primary purpose of the bill appears to be to address the illegal growing of marijuana through indoor grow operations. The bill provides that:

- It is a third degree felony to own, lease, or rent any place, structure, trailer, or conveyance with the knowledge that it will be used for the purpose of manufacture of a controlled substance intended for sale or distribution to another.
- It is a second degree felony to knowingly be in actual or constructive possession of any place, structure, or part thereof, trailer or any conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose of trafficking in a controlled substance, the sale of a controlled substance, or the manufacture of a controlled substance intended for sale or distribution to another.
- It is a first degree felony to be in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge that the place, structure, trailer, or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another if the person knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance.

- Proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.
- Offenses are ranked within the offense severity ranking chart of the Criminal Punishment Code.
- In the prosecution of an offense involving the manufacture of a controlled substance, a photograph or video recording of the manufacturing equipment used in committing the offense may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.
- After a law enforcement agency documents the manufacturing equipment by photography or video recording, the manufacturing equipment may be destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must be recorded by the supervising law enforcement officer and records must be maintained for 24 months.

This bill creates section 893.1352, F.S., and amends sections 893.02, 893.10, 893.1351, and 921.0022, F.S.

II. Present Situation:

The Florida Department of Law Enforcement (FDLE) reported:

The indoor cultivation of domestic marijuana continues to be prevalent throughout the state. In 2006, the reported seizures of marijuana from Indoor Grow Operations outpaced the seizures from Outdoor Grow Operations. However, the reported number of plants seized this year was less than 2005.

Investigative intelligence indicates that marijuana cultivators continue to move indoors to avoid detection and to increase the quality of the marijuana being produced. The sterile and clemently controlled environments available to Indoor Grow Operations enable cultivators to utilize sophisticated techniques to increase .-9 Tetrahydrocannabinol (THC), the primary psychoactive ingredient of marijuana. Indoor Grow Operations also allow the cultivators to artificially induce as many as four growing seasons per year as opposed to one season limited by nature in Outdoor Grow Operations.¹

The FDLE also reported:

During the year, 57 samples of seized marijuana plants were submitted by local, state, and federal law enforcement agencies in Florida to the Research Institute of Pharmaceutical Sciences at the University of Mississippi at the request of DEA. The average THC level for the Florida samples was 7.73. DEA - Miami submitted samples with the highest level (21.26) and DEA - Ft. Lauderdale the lowest (1.63). In total, 1,607

¹ *Florida's Domestic Marijuana Eradication Program - 2006 Annual Report - Indoor Grow Investigations*. (March 2007). Florida Department of Law Enforcement. (http://www.fdle.state.fl.us/publications/mjEradication/2006_Marijuana_Annual_Report.pdf)

samples were submitted from across the United States. The average THC level of the nationwide samples submitted was 7.54. New York submitted samples with the highest (32.26) and Missouri submitted samples with the lowest (.05). Over the years, samples submitted from Florida's marijuana plants have had high levels of THC content.

Local law enforcement agencies in 41 of Florida's 67 counties reported the detection and dismantling of 511 Indoor Grow Operation sites which resulted in the eradication of 37,311 marijuana plants. Some of the reported Indoor Grow Operations are small and simple while others are more complex and highly organized. Indoor Grow cultivators continue to develop innovative techniques and schemes to avoid detection by law enforcement. In addition, local law enforcement reported the arrest of 492 cultivators and the seizure of 126 firearms. The prosecution of the arrested cultivators was shared by both federal and state prosecutors.²

Section 90.91, F.S., provides that in any prosecution for a crime involving the wrongful taking of property, a photograph of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property were introduced as evidence. The photograph must bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. The writing must be made under oath by the investigating law enforcement officer, and the photograph must be identified by the signature of the photographer. Upon the filing of the photograph and writing with the law enforcement authority or court holding the property as evidence, the property may be returned to the owner from whom the property was taken.

Section 893.12, F.S., provides that a controlled substance which is possessed in violation of ch. 893, F.S., is contraband and is subject to seizure and confiscation. The court having jurisdiction must order the substance forfeited and destroyed. A record must be kept of the place where the controlled substance was seized, the kind and quantity of the controlled substance destroyed, and the time, place, and manner of destruction and a return under oath reporting the destruction must be made to the court by the officer who destroys the controlled substance.

Section 893.1351, F.S., provides that it is a third degree felony for a person to lease or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that such place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance or the sale of a controlled substance.

Section 893.13(6)(a), F.S., generally provides that it is a third degree felony to possess a controlled substance in a quantity less than the threshold required for trafficking.³ This is possession without intent to sell, manufacture, etc., a controlled substance (sometimes referred to as "simple possession"). However, possession of not more than 20 grams of cannabis is a first

² *Id.*

³ The trafficking statute, s. 893.135, F.S., is only applicable to certain controlled substances, as specified in that statute.

degree misdemeanor, and possession in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S. (such as Ecstasy or heroin), is a first degree felony.⁴

III. Effect of Proposed Changes:

The primary purpose of the bill appears to be to address the illegal growing of marijuana through indoor grow operations.

Section 1 of the bill amends s. 893.02, F.S., the definitions section of ch. 893, F.S. (controlled substances), to define “cultivating” as “the preparation of any soil or hydroponic medium for the planting of a controlled substance or the tending and care or harvesting of a controlled substance.”

Section 2 of the bill amends s. 893.1351, F.S., to provide that it is a third degree felony to own, lease, or rent any place, structure, trailer, or conveyance with the knowledge that it will be used for the purpose of manufacture of a controlled substance intended for sale or distribution to another.

The bill also provides that it is a second degree felony to knowingly be in actual or constructive possession of any place, structure, or part thereof, trailer or any conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose of trafficking in a controlled substance, the sale of a controlled substance, or the manufacture of a controlled substance intended for sale or distribution to another.

The bill also provides that it is a first degree felony to be in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge that the place, structure, trailer or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another if the person knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance.

Section 3 of the bill amends s. 893.10, F.S., to provide that proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

The bill also provides that in the prosecution of an offense involving the manufacture of a controlled substance, a photograph or video recording of the manufacturing equipment used in committing the offense, including, but not limited to, grow lights, growing trays, and chemical fertilizers, may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

The bill also provides that after a law enforcement agency documents the manufacturing equipment by photography or video recording, the manufacturing equipment may be destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must

⁴ This provision also applies to combinations and mixtures.

be recorded in the manner described in s. 893.12(1)(a), F.S., and records must be maintained for 24 months.

Section 4 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank the new third degree felony in Level 5, the new second degree felony in Level 7, and the new first degree felony in Level 8.

Sections 5, 6, and 7 amend, respectively, ss. 465.016, 465.023, and 893.135, F.S., to correct statutory references applicable to s. 893.02, F.S.

Section 8 provides that the bill takes effect on July 1, 2008.

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:

To the extent the bill, if enacted, reduces the number of marijuana growhouse operations, the bill could benefit utility companies adversely impacted by unpaid bills for power usage by the growhouse operations, homeowners who may incur the cost of clean-up, and neighborhoods in which property values are adversely affected by grow houses.

C. Government Sector Impact:

The Criminal Justice Impact Conference determined that CS/HB 173, which is identical to the Senate bill, should have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

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.)

CS by Criminal Justice on April 1, 2008:

- Defines the term “cultivating.”
- Removes a penalty provision relating to possession of any amount of a controlled substance in close proximity to an infant or toddler.
- Increases from a third degree felony to a second degree felony the new offense of knowingly being in actual or constructive possession of any place, structure, or part thereof, trailer or any conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose of trafficking in a controlled substance, the sale of a controlled substance, or the manufacture of a controlled substance intended for sale or distribution to another.
- Provides that the records of the destruction of equipment used in the manufacture of a controlled substance must be maintained for 24 months.
- Deletes directory language ranking newly created offenses and ranks those offenses in the offense severity ranking chart of the Criminal Punishment Code.

B. Amendments:

None.