

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 619 Controlled Substances
SPONSOR(S): Judiciary Committee; Ingram; Ford and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 294

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	18 Y, 0 N, As CS	Jones	Havlicak

SUMMARY ANALYSIS

In recent years, synthetic drugs have become a problem in Florida. Synthetic drugs, such as cannabinoids, cathinones, and phenethylamines, are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.

In 2011 and 2012, several synthetic cannabinoids and cathinones were added to Schedule I of Florida’s controlled substances schedules. Since the 2012 Legislative Session, new formulas of synthetic cannabinoids, cathinones, and phenethylamines have been developed that are made up of chemicals not covered by current law.

Sections 893.035 and 893.0355, F.S., grant the Attorney General the authority to adopt rules, pursuant to the requirements of ch. 120, F.S., for the purposes of adding, rescheduling, or deleting a controlled substance from s. 893.03, F.S. On December 11, 2012, Attorney General Pam Bondi filed an emergency rule that temporarily scheduled several synthetic cannabinoids, cathinones, and phenethylamines in s. 893.03(1)(c), F.S. The emergency rule expires on June 30, 2013, unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S.

The bill amends s. 893.03(1)(c), F.S., to add numerous synthetic cannabinoids, cathinones and phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances.

The bill also amends s. 893.0355(4), F.S., to exclude s. 120.54(7), F.S., from the procedural requirements of ch. 120, F.S., which must be followed when making a rule concerning controlled substances. The bill deletes language from s. 893.0355(4), F.S., which allowed the Attorney General to initiate proceedings for adoption, amendment, or repeal of any rule on his or her own motion or upon the petition of any interested party.

According to the Florida Department of Law Enforcement (FDLE), state and local law enforcement crime labs may see an increase in evidence submissions. However FDLE states the impact should be minimal and absorbed within their current budget.

The Criminal Justice Impact Conference met February 27, 2013, and determined the bill may have an insignificant negative impact on state prison beds.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 are used to 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 substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.² Cannabis and heroin are examples of Schedule I drugs.³

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 what schedule the substance is listed in. Other factors, such as the quantity of controlled substance involved, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years synthetic drugs have emerged in Florida. Synthetic drugs, such as cannabinoids, cathinones, and phenethylamines, are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.⁴ According to the Florida Department of Law Enforcement (FDLE), synthetic drugs “have no legitimate medical use and have a high potential for abuse.”⁵

Synthetic Cannabinoids

Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances that, when smoked or ingested, can produce a high similar to marijuana, without the delta-tetrahydrocannabinol (THC).⁶ The chemicals are a white powder that is often applied to a plant material to mimic marijuana.⁷ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.⁸ No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.⁹

Synthetic Cathinones

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” 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.

² See s. 893.03, F.S.

³ *Id.*

⁴ *Synthetic Narcotics*, FDLE Powerpoint Presentation before the House Criminal Justice Subcommittee, David Gross, January, 16, 2013 (on file with the Criminal Justice Subcommittee).

⁵ FDLE Memo Relating to Controlled Substances, February 13, 2013 (on file with the Criminal Justice Subcommittee).

⁶ *Supra* note 4.

⁷ *Id.*

⁸ *Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I*, Federal Register, The Daily Journal of the United States Government, November 24, 2010 <http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule> (last visited on March 22, 2013).

⁹ *Id.*

Synthetic cathinones (also known as “bath salts”) are substances that are chemically similar to amphetamines and other substances.¹⁰ Synthetic cathinones gained popularity in late 2010 and early 2011 due to being widely available online and in smoke shops.¹¹

Synthetic Phenethylamines

Phenethylamines are synthetic substances invented by Dr. Alexander Shulgin.¹² Phenethylamines are known for their intense hallucinogenic effects.¹³ The use of synthetic phenethylamines is highly dose sensitive and directly affects the human body’s nervous system.¹⁴ There has been a recent increase of synthetic phenethylamines production and use because of the recent regulation of cannabinoids and cathinones.¹⁵

Synthetic Drug Abuse

Despite being labeled “not for human consumption,” synthetic cannabinoids, cathinones and phenethylamines are used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting “high.”¹⁶ They can be found on the Internet, specialty smoke shops, and convenience stores.¹⁷ These substances are predominately being used by individuals between the ages of 16 and 30. There have been cases in Florida where these substances have caused individuals to behave inappropriately, and in some instances die.¹⁸

Recent Legislation

In 2011 and 2012, several synthetic cannabinoids and cathinones were added to Schedule I of Florida’s controlled substances schedules.¹⁹ As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances. For example:

- Possessing three grams or less of listed synthetic cannabinoids and cathinones (not in powdered form) is a first degree misdemeanor^{20,21}
- It is a third degree felony²² for a person to knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids and cathinones;²³ and
- It is a third degree felony for a person to purchase, or possess with intent to purchase listed synthetic cannabinoids and cathinones.²⁴

Recent Issues

Since the 2012 Legislative Session, new formulas of synthetic cannabinoids, cathinones, and phenethylamines have been developed that are made up of chemicals not covered by current law.²⁵ According to FDLE, state and local law enforcement agencies are currently limited in their ability to intercede in cases involving any of the these chemical substances, thus creating an environment where

¹⁰ *Consideration of the Cathinones*, Advisory Council on the Misuse of Drugs, United Kingdom, March 2010, <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary> (last visited on March 22, 2013).

¹¹ *Supra* note 4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Bath Salts” Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, January 26, 2011, http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf (last visited on March 22, 2013). *See also*, *Supra* note 10.

¹⁷ *Bath Salts” Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, January 26, 2011, http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf (last visited on March 22, 2013).

¹⁸ *Supra* note 4.

¹⁹ Chapters 2012-23, 2011-73, and 2011-90, L.O.F.

²⁰ 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.

²¹ Section 893.13(6)(b), F.S.

²² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²³ Section 893.13(1)(a)2., F.S.

²⁴ Section 893.13(2)(a)2., F.S.

²⁵ *Supra* note 5.

individuals are able to possess, distribute, and/or use these harmful substances without fear of prosecution by state and local law enforcement.²⁶

Rule-Making for Controlled Substances

Sections 893.035 and 893.0355, F.S., grant the Attorney General the authority to adopt rules for the purposes of adding, rescheduling, or deleting a controlled substance from s. 893.03, F.S. This rule-making authority, as well as emergency rule-making must comply with the requirements in ch. 120, F.S. The Attorney General may also initiate proceedings for adoption, amendment, or repeal of any rule on his or her own motion or upon the petition of any interested party.²⁷

On December 11, 2012, Attorney General Pam Bondi filed an emergency rule²⁸ that temporarily scheduled several synthetic cannabinoids, cathinones, and phenethylamines in s. 893.03(1)(c), F.S. The emergency rule expires on June 30, 2013, unless the Legislature adopts the provisions of the rule as an amendment to ch. 893, F.S.

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., to add numerous synthetic cannabinoids, cathinones and phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances.

The bill moves the current listing of 3, 4-Methylenedioxyamphetamine (MDMA) from s. 893.03(1)(a), F.S., to s. 893.03(1)(c), F.S. 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.”²⁹ The bill also specifies that isomers of substances listed in s. 893.03(1)(c), F.S., include optical, positional, or geometric isomers.³⁰

The bill amends s. 893.0355(4), F.S., to exclude s. 120.54(7), F.S., from the procedural requirements of ch. 120, F.S., which must be followed when making a rule concerning controlled substances. The bill also deletes language from s. 893.0355(4), F.S., which allowed the Attorney General to initiate proceedings for adoption, amendment, or repeal of any rule on his or her own motion or upon the petition of any interested party.

The bill reenacts ss. 893.13(1)-(6) and 921.0022(3)(b)-(e), F.S., to incorporate the amendments of s. 893.03, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Amends s. 893.0355, F.S., relating to control of scheduled substances; delegation of authority to Attorney General to reschedule substance, or delete substance, by rule.

Section 3. Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 4. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

²⁶ *Id.*

²⁷ Section 893.0355(4), F.S.

²⁸ 2ER 12-1, Office of the Attorney General,

[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) (last visited on March 22, 2013).

²⁹ *Supra* note 5.

³⁰ 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.*

Section 5. Reenacts s.893.13, F.S., relating to prohibited acts; penalties.

Section 6. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 7. The bill is effective upon becoming law.

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 bill adds additional chemical substances to Schedule I of Florida's controlled substance schedules. According to FDLE, this could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System.³¹ The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.³² However, FDLE's fiscal analysis states that the bill will have a minimal fiscal impact and can be absorbed within their current budget.³³

The Criminal Justice Impact Conference met February 27, 2013, and determined the bill may have an insignificant negative impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Because the bill adds certain synthetic substances to s. 893.03, F.S., local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a rise in evidence submissions associated with the additions of the proposed chemical substances.³⁴ This may also have a negative jail bed impact because possession of three grams or less of the newly added substances is a first degree misdemeanor.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to 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.'" ³⁵

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill amends the Attorney General's rule-making authority to initiate proceedings for adoption, amendment, or repeal of any rule on his or her own motion or upon the petition of any interested party. The bill does not create any new rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment adds additional controlled substances to s. 893.03(c), F.S. The second amendment excludes s. 120.54(7), F.S., from the procedural requirements that must be followed under s. 893.0355, F.S., and deletes language from s. 893.0355(4), F.S., which allowed the Attorney General to initiate proceedings for adoption, amendment, or repeal of any rule on his or her own motion or upon the petition of any interested party.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.