

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: SB 1886

INTRODUCER: Senator Wise

SUBJECT: Controlled Substances

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill schedules several psychoactive substances in Schedule I of Florida's controlled substance schedules. Currently, these substances are temporarily scheduled in Schedule I by emergency rule of the Florida Attorney General.

This bill substantially amends s. 893.03, F.S., and reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendments to s. 893.03 in reference thereto.

II. Present Situation:

On January 26, 2011, the Florida Attorney General, by emergency rule, temporarily scheduled the following psychoactive substances:

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypyrovalerone (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.
- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).¹

¹ Notice of Emergency Rule, 2ER11-1 (effective January 26, 2011), Florida Administrative Weekly, vol. 37/06 (published February 11, 2011), <https://www.flrules.org/gateway/ruleNo.asp?id=2ER11-1> (last accessed on March 24, 2011).

The effect of this emergency rule is that retailers and those in possession of these substances who do not comply with the rule may be subject to arrest and prosecution for offenses under ch. 893, F.S., relevant to Schedule I controlled substances. A Schedule I controlled substance is a substance that has a high potential for abuse and no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards.²

Some of these psychoactive substances have been identified as cathinones or cathinone derivatives of synthetic origin.³ Most, if not all, of these substances have been sold over the Internet and at some head shops, convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, truck stops, and other locations.⁴ They are typically sold as “bath salts,” “plant food/plant growth regulators,” and “research chemicals.”⁵ None of these substances has a currently accepted medical use in treatment in the United States.

In recent years, the abuse of these psychoactive substances has increased. Law enforcement and medical professionals indicated that the popularity of these substances increased due to the perception that they posed a seemingly safer alternative to illegal methods of getting “high” and could be easily obtained.⁶

The Office of Statewide Intelligence in the Florida Department of Law Enforcement (FDLE) has noted:

[T]he Florida Department of Health has reported numerous health-related calls to both the Florida Poison Control Center (FPCC) and emergency rooms concerning the use of “bath salts.” The FPCC has received several calls regarding exposure to this product with the majority of these calls being placed by individuals 16 to 30 years of age. As an example, during the weekend of January 21-22, 2011, a north Florida emergency room physician reported to FDLE an excess of six emergency related patients admitted due to both the ingestion and injection of “bath salts.”⁷

² s. 893.03(1), F.S.

³ Cathinone is a Schedule I controlled substance under s. 893.03(1)(c)8., F.S. Cathinone is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances. “Consideration of the cathinones” (March 2010), Advisory Council on the Misuse of Drugs, United Kingdom, <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary> (last accessed on March 24, 2010). The “molecular architecture” of cathinone “can be altered to produce a series of different compounds which are closely structurally related to cathinone. Together these are known as ‘cathinones’ or ‘cathinone derivatives.’” *Id.* For example, the Advisory Council describes methylone as “the cathinone analogue of MDMA (ecstasy)” and mephedrone as a “cathinone derivative.” *Id.* “Advisory Council report” is cited in further reference to this source.

⁴ Advisory Council report and “Drug Alert Watch: Increasing abuse of bath salts” (December 17, 2010), National Drug Intelligence Center, United States Department of Justice, <http://www.justice.gov/ndic/pubs43/43474/sw0007p.pdf> (last accessed on March 24, 2011).

⁵ Advisory Council report. According to the Advisory Council, “none of the cathinones has any recognized efficacy as a plant fertilizer nor would they suitably function as bath salts.” *Id.*

⁶ “‘Bath Salts’ Receive Emergency Drug Scheduling” (January 26, 2011), Florida Fusion Center, Florida Department of Law Enforcement, <http://www.myfloridalicense.com/dbpr/abt/documents/FDLEBriefBathSaltsPublic.pdf> (last accessed on March 24, 2011).

⁷ *Id.* “Throughout the US, Poison Centers have been tracking calls about users hospitalized. In 2010, there were 291 calls. In January 2011 alone, there were 373 cases.” “Synthetic chemicals known as Bath Salts or Plant Food” (footnote omitted),

The Office of Statewide Intelligence has also identified reported toxicity and side effects of these psychoactive substances:

“Bath salt” products are known to produce certain side effects, some of which are quite severe. The following is the list of milder, short-term side effects associated with consumption of this drug as reported by medical personnel:

- Increased heart rate
- Increased alertness and awareness
- Agitation
- Anxiety
- Diminished requirement for sleep
- Fits and delusions
- Lack of appetite
- Nosebleeds

More serious side effects associated with these drugs reportedly include:

- Muscle spasms
- Hallucinations
- Blood circulation problems, including increased blood pressure
- Aggression
- Kidney failure
- Severe paranoia
- Seizures
- Panic attacks
- Risk of renal failure
- Sharp increase in body temperature

In most extreme cases, powdered “bath salt” products have been linked to self-mutilation and drug induced deaths to include an increased risk of suicide.⁸

These psychoactive substances do not appear to be specifically scheduled at this time under federal law, but mephedrone and MDPV are listed by the United States Drug Enforcement Administration (DEA) as “Drugs and Chemicals of Concern.”⁹ The DEA has indicated that mephedrone, one of these substances, “can be considered an analogue of methcathinone (schedule I substance) under the analogue provision of the CSA (Title 21 United States Code 813). Therefore, law enforcement cases involving mephedrone can be prosecuted under the

Florida Poison Control Center, Tampa, Florida, <http://poisoncentertampa.org/resources/1/substances/Bath-salts-FPICT-flyer.pdf> (last accessed on March 25, 2011).

⁸ “‘Bath Salts’ Receive Emergency Drug Scheduling” (January 26, 2011), Florida Fusion Center, Florida Department of Law Enforcement, <http://www.myfloridalicense.com/dbpr/abt/documents/FDLEBriefBathSaltsPublic.pdf> (last accessed on March 24, 2011).

⁹ Drugs and Chemicals of Concern, Office of Diversion Control, U.S. Drug Enforcement Administration, http://www.deadiversion.usdoj.gov/drugs_concern/index.html (last accessed on March 24, 2010).

Federal Analog Act of the CSA.”¹⁰ Scheduling information and other information provided by the DEA at its website do not indicate whether the other psychoactive substances may be covered by the Federal Analog Act.

III. Effect of Proposed Changes:

The bill amends s. 893.13(1)(c), F.S., to schedule several psychoactive substances in Schedule I of Florida’s controlled substance schedule. Currently, these substances are temporarily scheduled in Schedule I by emergency rule of the Florida Attorney General. The substances scheduled are:

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypropylamphetamine (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.
- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).

The description of the substances duplicates the description of the substances in the emergency rule.

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendments to s. 893.03, F.S., in reference thereto.

The effective date of the bill is July 1, 2011.

Other Potential Implications:

The psychoactive substances listed in the bill are currently scheduled by emergency rule of the Florida Attorney General pursuant to her emergency authority under s. 893.035(7), F.S. The effective date of the rule is January 26, 2011. Attorney General staff informed Senate professional staff that the rule will elapse on June 30, 2011. If the rule elapses and these substances are not scheduled by statute, possession, sale, distribution, etc., of these substances will not be a criminal offense under Florida law.

The FDLE provided the following suggestions to modify proposed scheduling language and the rationale for those changes:

Based on recommendations received from FDLE’s drug chemists, FDLE suggests amending the current proposed substance list to match the following:

- 3,4-methylenedioxymethcathinone
- Methylmethcathinone
- Methylethcathinone

¹⁰ “4-methylmethcathinone [Mephedrone, 4-MMC, meow meow, m-CAT, bounce, bubbles, mad cow]” (July 2010), Office of Diversion Control, U.S. Drug Enforcement Administration, http://www.deadiversion.usdoj.gov/drugs_concern/mephedrone.htm (last accessed on March 25, 2011).

- Methoxymethcathinone
- Fluoromethcathinone
- 3,4-methylenedioxypropylamphetamine (MDPV)

The key differences between the substances identified in the emergency scheduling and the new recommendation for final legislation is centered around dropping the listing of the specific isomers and recommending only controlling the parent drug compounds. This approach should allow for all isomers and salts of isomers of the parent drug compounds, as well as any new analogs that we come across, to be controlled based on the current language in 893.03, F.S., Schedule I. We also recommend dropping the abbreviated names in parentheses except for MDPV. The decision to leave MDPV listed as an acronym is due to MDMA being handled identically in the statutes, as this is a very common acronym used in the criminal justice community.

Additionally, the FDLE Crime Laboratories did share these suggestions to other law enforcement laboratories throughout Florida and did not receive any differing suggestions on how to best capture the broadest range of synthetic substances used in psychoactive “bath salts” products.¹¹

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:

The FDLE states that the bill “should have little or no impact of the private sector. All of the proposed substances have been emergency scheduled as a Schedule I drug by Florida Attorney General Bondi as of January 26, 2011, with little-to-no reported impact to the private sector.”¹²

¹¹ Analysis of SB 1886, Florida Department of Law Enforcement (March 18, 2011) (on file with the Senate Criminal Justice Committee). “FDLE analysis” is cited in further reference to this source.

¹² FDLE analysis.

C. Government Sector Impact:

The FDLE states that passage of the bill “would add additional chemical substances to Florida’s controlled substances list. However, since the emergency scheduling of these proposed chemicals were enacted on January 26, 2011, FDLE’s Crime Laboratory System is currently able to identify and has obtained standards of the proposed substances (with the exception of one) in one or more of the crime laboratories. Thus, the fiscal impact would be minimal.”¹³

The FDLE also states that “[l]ocal agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a similar rise in submissions associated with the additions of the proposed chemical substances.”¹⁴

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet met to provide an impact estimate for the bill.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Several states, including Hawaii, Michigan, Louisiana, Kentucky, and North Dakota, have introduced legislation to ban the so-called “bath salts” products.¹⁶

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial 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.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Senate Criminal Justice Committee staff has requested that the bill be placed on a future CJIC agenda.

¹⁶ “Message from the Director on ‘Bath Salts’ - Emerging and Dangerous Products,” National Institute on Drug Abuse, <http://www.nida.nih.gov/about/welcome/MessageBathSalts211.html> (last accessed on March 24, 2011).