

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 780

INTRODUCER: Senator Bradley

SUBJECT: Controlled Substances

DATE: February 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			AP	

I. Summary:

SB 780 adds 4 new synthetic cannabinoids and two new synthetic phenethylamines (hallucinogenic substances) to the list of Schedule I controlled substances.

The bill also adds 3 chemical substances to the provision of the trafficking statute that punishes trafficking in phenethylamines. These chemical substances are currently Schedule I controlled substances that are most commonly found in the street drug “Molly.”

The bill also amends the trafficking in phenethylamines provision to specify that it applies to analogs or isomers of any listed phenethylamine.

II. Present Situation:

Schedule I Controlled Substances

A substance is a “controlled substance” if it is listed in any of 5 schedules in s. 893.03, F.S. The particular scheduling determines penalties that may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high potential for abuse¹ 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

¹ “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. Section 893.02(20), F.S.

² Section 893.03(1), F.S.

As a result of legislation that became law in 2011, 2012, and 2013, there are several synthetic cannabinoids,³ cathinones,⁴ and phenethylamines⁵ listed as Schedule I controlled substances in s. 893.03(1)(c), F.S.⁶

Non-Trafficking Controlled Substance Offenses

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances),⁷ and s. 893.135, F.S. (drug trafficking). Only certain controlled substances sold, etc., in a trafficking quantity are subject to s. 893.13, F.S.

Several synthetic cannabinoids, cathinones, and phenethylamines are listed as Schedule I controlled substances under s. 893.03(1)(c), F.S. Selling, manufacturing, or delivering, or possessing with intent to sell, manufacture or deliver, a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.⁸ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.⁹ For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.¹⁰

Purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.¹¹

³ “Synthetic Cannabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but the term ‘Synthetic Cannabinoids’ or ‘Cannabinomimetics’ is widely used to refer to them as they are cannabinoid-like in their activity.” “Synthetic Cannabinoid Drug Information,” Redwood Toxicology Laboratory, https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last viewed on Feb. 25, 2014).

⁴ Cathinone is a Schedule I controlled substance. Section 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, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/119173/acmd-cathinodes-report-2010.pdf (last viewed on Feb. 25, 2014). The “molecular architecture” of cathinone “can be altered to produce a series of different compounds which are closely structurally related to cathinone.” *Id.* at p. 6.

⁵ “Phenethylamines” is a broad category of “psychoactive substances” Sanders B., Lankenau S.E., Bloom J.J., Hathazi D. “Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth,” *Substance Use & Misuse* (2008), Vol. 43, No. 3-4, Pages 389-402, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last viewed on Feb. 25, 2014). Probably the most well-known phenethylamine is 3,4-Methylenedioxymethamphetamine (MDMA), which is often referred to by the street name “Ecstasy.”

⁶ Chapters 2011-73, 2011-90, 2012-23, and 2013-29, L.O.F.

⁷ Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.

⁸ Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

⁹ Section 893.13(1)(c)-(f) and (h), F.S.

¹⁰ Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹¹ Section 893.13(2)(a)2., F.S.

Possessing 3 grams or less of a synthetic cannabinoid listed in s. 893.03(1)(c)46.-50., 114.-142., 151.-159, or 166.-169., F.S., is a first degree misdemeanor.¹² Possessing more than 3 grams of any of these synthetic cannabinoids or any amount of any other substance listed in s. 893.03(1)(c), F.S., is a third degree felony.¹³

Drug Trafficking

“Drug trafficking” consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession of, certain controlled substances in a statutorily-specified quantity.

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are covered under s. 893.135, F.S. Relevant to the bill, s. 893.135(1)(k), F.S., currently punishes trafficking in phenethylamines.

The quantity of a covered controlled substance must also meet a minimum weight threshold prescribed in s. 893.135, F.S. Most drug trafficking offenses are first degree felonies and are subject to mandatory minimum terms. Section 893.135, F.S., establishes escalating weight ranges. The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc.

Section 893.135(1)(k), F.S., provides that it is a first degree felony¹⁴ to traffic in a listed phenethylamine or combination or mixture containing a listed phenethylamine. If the quantity involved is:

- 10 grams or more, but less than 200 grams, the violator is sentenced to a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000;
- 200 grams or more, but less than 400 grams, the violator is sentenced to a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000; or
- 400 grams or more, the violator is sentenced to a 15-year mandatory minimum term of imprisonment and a mandatory fine of \$250,000.

It is a capital felony¹⁵ to knowingly manufacture or bring into this state 30 kilograms or more of a listed phenethylamine or combination or mixture containing a listed phenethylamine if the violator knows that the probable result of the manufacture or importation would be the death of any person. In addition to life imprisonment or a death sentence, there is a mandatory fine of \$250,000.

¹² Section 893.13(6)(b), F.S. 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.

¹³ Section 893.13(6)(a), F.S.

¹⁴ A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S. Repeat offender sanctions may be available under ss. 775.082 and 775.084, F.S.

¹⁵ A capital felony is punishable by life imprisonment or death. Section 775.082, F.S. See s. 921.142, F.S. (further proceedings to determine sentence for capital trafficking felonies).

Florida Department of Law Enforcement Analysis of Chemical Substances Added or Scheduled by the Bill

The Florida Department of Law Enforcement (FDLE) has provided the following information relevant to the chemical substances added or scheduled by the bill:

The proposed chemical substances to be added to Section 893.03 are currently being seen and abused throughout the State of Florida as an alternative to traditional illicit substances used to alter users' mental faculties or to obtain a "high." The proposed list of Schedule I additions are substances that have no legitimate medical use and have a high potential for abuse. Under the current statute, state and local law enforcement agencies were unable to intercede in cases involving any of the proposed chemical substances, thus creating an environment where individuals are able to possess, distribute, and/or use harmful substances without fear of intervention by state and local law enforcement. On October 9, 2013, four of the six substances in the bill were scheduled by Attorney General Pam Bondi in an emergency rule, temporarily making them controlled substances for criminal purposes. The emergency rule expires on June 30 (or sooner if supplanted by a superseding statutory amendment).

In addition, on November 15, 2013, the U.S. Department of Justice, Drug Enforcement Administration (DEA) federally scheduled two new synthetic phenethylamines in 21 CFR Part 1308 that are currently not scheduled as controlled substances in Florida. These new hallucinogenic compounds are 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine) and 2C-C-NBOMe(4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine). DEA reports that the abuse of these substances can cause severe toxic reactions, including death. According to DEA, reports from medical examiners and toxicology laboratories link some combination of 25I-NBOMe (currently scheduled in Florida), 25C-NBOMe, and 25B-NBOMe to the death of at least nineteen individuals in the U.S., between the ages of 15 and 29 years old, during the period of March 2012 to August 2013. Adding these two new synthetic phenethylamines substances as schedule I drugs will align Florida law with the current DEA scheduling of said substances.

Generally, "Molly" (short for "molecule") is illicitly marketed as a pure form of "Ecstasy" (MDMA or 3,4-Methylenedioxymethamphetamine). Intelligence suggests the true chemical makeup of "Molly" varies depending on manufacturer, dealer, and location. In Florida, "Molly" is most often composed of Methyldone (3,4-methylenedioxymethcathinone), 3,4-Methylenedioxypyrovalerone (MDPV), and Methyldmethcathinone, which are sold as "bath salts" compounds and are similar in chemical structure to "Ecstasy." These substances pose significant health risks to users. These substances are commonly imported from overseas via the Internet and are purchased for use in the U.S., particularly with intent to be distributed at clubs, parties and other social gatherings.¹⁶

¹⁶ Analysis of SB 780 (Feb. 7, 2014), Florida Department of Law Enforcement (on file the Senate Committee on Criminal Justice). This analysis is further referenced as "FDLE Analysis (SB 780)."

III. Effect of Proposed Changes:

The bill amends s. 893.03, F.S. (controlled substance schedules), to add 4 new synthetic cannabinoids and two new synthetic phenethylamines (hallucinogenic substances) to the list of Schedule I controlled substances:

- AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide);
- ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)-1H-indole-3-carboxamide);
- 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl) methyl]-benzeneethanamine); and
- 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

The bill amends s. 893.13, F.S. (unlawful acts involving controlled substances), to change the references to synthetic cannabinoids in s. 893.13(6)(b), F.S. (unlawful possession), due to the scheduling of new synthetic cannabinoids by the bill. However, the references provided in the bill are incorrect (see “Technical Deficiencies” section of this analysis).

The bill amends s. 893.135, F.S. (drug trafficking), to add 3 currently scheduled phenethylamines to s. 893.135(1)(k), F.S., which punishes trafficking in phenethylamines:

- 3,4-Methylenedioxymethcathinone;
- 3,4-Methylenedioxypyrovalerone (MDPV); and
- Methylenedioxymethcathinone.¹⁷

The bill also amends s. 893.135(1)(k), F.S., to provide that s. 893.135(1)(k), F.S., covers analogs or isomers of a phenethylamine listed in this paragraph.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ These chemical substances are currently scheduled at s. 893.03(1)(c)40.-42., F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE states the bill:

... could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System as well as local law enforcement crime laboratories. The laboratory system will be required to purchase all of the required standards necessary to test the proposed chemical substances.

The bill will have minimal fiscal impact to FDLE. Any resulting increase in volume of evidence submissions to FDLE's Crime Laboratory system, as well as costs to acquire and maintain additional required chemical standards, will be assimilated as part of the laboratories' cost of doing business. FDLE will monitor submissions to the crime laboratories and if necessary, request an appropriation through a future Legislative Budget Request.¹⁸

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 rise in submissions associated with the additions of the proposed chemical substances.”¹⁹

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not met to review the bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have an insignificant impact. In FY 2012-13, the offense coded as “Other drug—S/M/D,” which would include the new substances in the bill, resulted in about 29 new commitments, most of which were third degree felonies.²⁰

¹⁸ FDLE Analysis (SB 780).

¹⁹ *Id.*

²⁰ E-mail from EDR staff to Senate Committee on Criminal Justice staff, dated Feb. 25, 2014 (on file with the Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

The bill amends s. 893.13(6)(b), F.S., which, in part, provides that it is a first degree misdemeanor to possess 3 grams or less of a synthetic cannabinoid listed in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-169. Because the bill adds additional synthetic cannabinoids, the reference to “166.-169.” should be changed to “166.-173.” However, the bill incorrectly changes the reference to “166.-175.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, and 893.135.

The bill reenacts paragraphs (b), (c), (e), and (g) through (i) of section 921.0022, Florida Statutes, for the purpose incorporating the amendments made by the bill to sections 893.03 and 893.135, Florida Statutes, in references to those statutes.

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.