

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 Fiscal Policy

BILL: CS/SB 1098

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Controlled Substances

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Favorable</u>
3.	<u>Goedert</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1098 adds several synthetic cannabinoids to the controlled substances list in Schedule I of s. 893.03, F.S. As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

This bill creates a fiscal impact to the General Revenue Fund of not more than \$180,000 annually.

II. Present Situation:

Schedule I Controlled Substances

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

for abuse,¹ has no currently accepted medical use in treatment in the United States, and does not meet accepted safety standards in its use under medical supervision.²

The sale, manufacture, and delivery of a controlled substance listed in s. 893.03(1)(c), F.S., (Schedule I(c)), as well as the possession with intent to sell, manufacture, or deliver such substance is considered a third degree felony.³ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.⁴ For example, selling a controlled substance listed in Schedule I(c) within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.⁵ Other prohibited activity includes bringing the controlled substances listed in Schedule I(c) into the state and the purchase or possession with intent to purchase such a controlled substance, which are all third degree felonies.⁶

Synthetic Cannabinoids

“Synthetic cannabinoids are substances that are designed to affect the body in a manner similar to marijuana but that are not derived from the marijuana plant.”⁷ “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.”⁸

The Florida Department of Law Enforcement (FDLE) has provided the following information regarding synthetic cannabinoids:

These substances are being abused because they are ostensibly legal and oftentimes perceived as a safer alternative to illegal drugs such as marijuana. In many cases they are more dangerous and are commonly available over the Internet. These substances are often purchased in wholesale quantities to be redistributed in specialty smoke shops and convenience stores, making them easily available to Florida’s children and young adults. Abuse of these substances presents severe health risks and

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. s. 893.02(20), F.S.

² Section 893.03(1), F.S.

³ Section 893.13(9), F.S., provides that the provisions of s. 893.13(1)-(8), F.S., are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in certain 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. *See also* s. 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. ss. 775.082 and 775.083, F.S.

⁴ Section 893.13(1)(c)-(f) and (h), F.S.

⁵ 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. ss. 775.082 and 775.083, F.S.

⁶ Section 893.13(2)(a)2. and (5)(b), F.S.

⁷ Substance Abuse and Mental Health Services Administration, The DAWN Report, “Drug-Related Emergency Department Visits Involving Synthetic Cannabinoids”, December 4, 2012, *available at* <http://archive.samhsa.gov/data/2k12/DAWN105/SR105-synthetic-marijuana.pdf> (last visited on April 10, 2015).

⁸ Redwood Toxicology Laboratory, “Synthetic Cannabinoid Drug Information,” *available at* https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last visited on April 10, 2015).

an immediate danger to the health, safety, and welfare of Florida residents and visitors.

FDLE has received information through recent crime laboratory submissions indicating that the referenced compounds are being inaccurately labeled and marketed as legitimate household products under a variety of pseudo brand names. The products usually contain the disclaimer “not for human consumption,” but are sold in specialty smoke shops, over the Internet and in convenience stores... Furthermore, a pattern has emerged in which the distributors of these substances respond to the scheduling of additional controlled substances by introducing new variants with labels on the packaging that claim to conform to the new laws... The State Surgeon General and Secretary of Health, Dr. John Armstrong stated, “Illicit synthetic drugs are dangerous to Florida’s children, adults and families. These drugs destroy lives, and are threats to public health and safety.”⁹

The effects of synthetic cannabinoids can include agitation, anxiety, nausea, vomiting, tachycardia, elevated blood pressure, tremor, seizures, hallucinations, paranoid behavior, and nonresponsiveness.¹⁰ An estimated 11,406 emergency department visits nationwide in 2010 involved synthetic cannabinoids.¹¹ Approximately 75 percent of the patients were between 12 and 29 years of age, most of whom were between 12 and 17 years of age.¹²

III. Effect of Proposed Changes:

The bill places the following substances in Schedule I(c) of the controlled substance schedules:

- AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide;
- Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate; and
- THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl) methanone.

This scheduling will also apply to any material, compound, mixture, or preparation that contains any of the substances’ salts, isomers, including optical, positional, or geometric isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.¹³

As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

⁹ Florida Department of Law Enforcement, *Senate Bill 1098 Policy Analysis* (Feb. 23, 2015) (on file with the Senate Committee on Criminal Justice).

¹⁰ The DAWN Report.

¹¹ *Id.*

¹² *Id.*

¹³ Section 893.03(1)(c), F.S. In addition to applying to any material, compound, mixture, or preparation that contains the listed controlled substances in Schedule I.

The bill takes effect upon becoming a law.

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:

CS/SB 1098 may impact private businesses if they sell a product containing any of the synthetic cannabinoids scheduled by the bill. These businesses would be prohibited from selling products containing any of these substances.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a positive insignificant prison bed impact because the bill is expected to increase the Department of Corrections' prison population by 10 or fewer beds annually. Accordingly, the projected prison bed impact would create a fiscal impact to the General Revenue Fund of not more than \$180,000 annually as to operating costs. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 39.01, 316.193, 322.2616, 327.35, 440.102, 458.3265, 459.0137, 782.04, 893.0356, 893.05, 893.12, 893.13, 893.135, and 921.0022.

IX. 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 March 23, 2015:

The committee substitute:

- Corrects chemical nomenclature used to describe two scheduled synthetic cannabinoids; and
- Changes the effective date.

- B. **Amendments:**

None.