

STORAGE NAME: h1009.jud

DATE: March 13, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1009 (PCB LECP 00-02)

RELATING TO: Imitation Controlled Substances/Sale

SPONSOR(S): Committee on Law Enforcement & Crime Prevention and Representative Futch

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0
 - (2) JUDICIARY
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1009 provides that law enforcement officers who are participating in an active criminal investigation are not subject to criminal and civil liability arising from the possession and distribution of imitation controlled substances. The bill responds to a request made by the Fourth District Court of Appeal with regard to the sale of imitation drugs by law enforcement officers in reverse-sting operations.

The bill appears not to have any fiscal impact on state or local government.

The bill shall be effective on becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Section 817.564, F.S., defines *imitation* controlled substances, and generally prohibits the possession and distribution of such substances. The term "imitation controlled substance" means "a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance enumerated in chapter 893, which is subject to abuse" and either has the appearance of a controlled substance or is represented to act like a controlled substance as a stimulant or depressant of the central nervous system.

Currently, subsection (6) of section 817.564, F.S., provides that no civil or criminal liability shall be imposed on any person operating in accordance with the Florida Comprehensive Drug Abuse Prevention and Control Act, who distributes an imitation controlled substance for use as a placebo, by a licensed practitioner in the course of professional practice or research. There is, however, no specific exemption from liability mentioned in this subsection for law enforcement officers to use imitation controlled substances in reverse-sting operations. Law enforcement officers do have immunity from civil or criminal liability in such operations when using the *actual* controlled substance, under the provisions of Chapter 893, F.S.

In the case of Hamon v. State, 744 So.2d 1065 (Fla. 4th DCA 1999), the Fourth District Court of Appeal held that the sale of counterfeit cocaine by police was illegal under section 817.564, F.S. Accordingly, the issue before the court became whether this "police violation of criminal statute results in deprivation of a defendant's due process rights." The court decided to employ a balancing test on a case-by-case approach to determine whether the police conduct involved is "so outrageous as to shock the Court's sense of fairness." Although in this particular case the court found no due process violation, a dissenting judge held that "such violations as occurred here are violations of due process which warrant reversal of [the defendant's] conviction." 744 So.2d at 1068.

The District Court went on to state as follows:

The state presents the argument that either section 893.09(5), which provides law enforcement officials with immunity from civil or criminal liability for lawfully enforcing controlled substance laws, or section 893.13(8)(h), as a matter of policy should exempt police from the sale of imitation cocaine. These statutes, however, deal with controlled substances only, and neither makes any reference to section 817.564.

Still, because we believe that appellate courts all over the state will continue to face issues related to the sale of imitation substances by police during reverse-sting operations, the better alternative would have the legislature establishing a specific exemption in section 817.564 that would allow for such sales...

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744 So.2d at 1067.

C. EFFECT OF PROPOSED CHANGES:

HB 1009 specifically adds law enforcement officers who are participating in an active criminal investigation related to controlled substance to the "protected class" of people who are not subject to criminal and civil liability with regard to the possession and distribution of imitation controlled substances.

The bill should clarify the existence of an exemption for law enforcement officers, who may be using imitation drugs in reverse-sting operations in the enforcement of controlled substances law. The bill should curb further litigation in this area and prevent drug convictions from being overturned, based on the absence of a specific exemption for law enforcement officers engaged in a criminal investigation relating to imitation controlled substances.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON JUDICIARY:

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