

STORAGE NAME: h1747z.cpcs.doc
DATE: June 28, 2001

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2001-55, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
FINAL ANALYSIS**

BILL #: HB 1747 (PCB CPCS 01-05)(Passed as CS/SB 232)

RELATING TO: Controlled Substances/Hydrocodone

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative Bilirakis

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill addresses the concerns of the medical community created by CS/HB 2085, which was passed during the 2000 legislative session, by reinstating hydrocodone as a Schedule III controlled substance in s. 893.03, F.S. This will reinstate the ability of a doctor to authorize the refill of a prescription for a medication containing hydrocodone up to five times within a six month period. The bill further inserts reference to Schedule III hydrocodone in the drug trafficking statute to indicate that a person can be prosecuted for trafficking in hydrocodone.

The bill has an effective date of July 1, 2001.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Hydrocodone is a widely prescribed pain reliever and cough suppressant that when mixed with other medication is sold under such registered trademark names as Tussionex, Vicodin, Lortab, Hycodan and Lorcet. Florida and federal drug statutes lists controlled substances in "schedules" ranging from Schedule I to Schedule V. A Schedule I drug has a "high potential for abuse and has no currently accepted medical use in treatment in the United States".¹

Until the 2000 legislative session, hydrocodone was listed as a schedule II controlled substance. s. 893.03(2). It was also listed as a Schedule III controlled substance in s. 893.03(3)(c) as follows:

1. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

Trafficking

Hydrocodone is also illegally possessed and sold. Rather than manufacturing hydrocodone for this specific purpose, traffickers sell tablets containing hydrocodone that they have stolen from a doctor's office or pharmacist or purchased from someone possessing a legitimate prescription.

Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 4 grams or more of hydrocodone as described

¹ A schedule II substance has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. s. 893.03(2), F.S. A schedule III substance has a potential for abuse less than the substances contained in schedule I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. s. 893.03(3), F.S. A schedule IV substance has a low potential for abuse relative to the substances in Schedule II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. A Schedule V drug has a low potential for abuse relative to other scheduled drugs and has a currently accepted medical use in treatment in the United States

in s. 893.03(2)(a) or 4 grams or more of any **mixture** containing such substance commits the first degree felony of **trafficking** in illegal drugs. Sentences are based on the quantity involved as follows:

- If the quantity involved is between 4 and 14 grams, the person shall be sentenced to a minimum mandatory term of three years imprisonment and a fine of \$50,000. s. 893.135(1)(c)1.a., F.S.
- If the quantity involved is between 14 and 28 grams, the person shall be sentenced to a minimum mandatory term of imprisonment of 15 years and a fine of \$100,000. s. 893.135(1)(c)1.a., F.S.
- If the quantity involved is between 28 grams and 30 kilograms, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and a \$500,000 fine. s. 893.135(1)(c)1.c., F.S..
- If the quantity involved is more than 30 kilograms, the person shall be sentenced to life imprisonment. s. 893.135(1)(c)2, F.S.

Hayes Decision

In Hayes v. State, 760 So.2d 1 (Fla. 1999), the Florida Supreme Court reviewed the issue of whether Hayes could be charged with trafficking in hydrocodone for possessing 40 Lorcet tablets, without a prescription. Each of the pills contained less than 15 milligrams of hydrocodone. The court noted that the trafficking statute only applied to Schedule I and Schedule II drugs. The question then arose as to whether the hydrocodone tablets could be aggregated in order to establish a Schedule II possession for trafficking purposes or whether Hayes possession amounted to a Schedule III possession, thereby precluding a trafficking charge. The court found that only hydrocodone in amounts in excess of fifteen milligrams per dosage unit or 300 milligrams per 100 milliliters are a Schedule II substance. Thus, the tablets that Hayes possessed were a Schedule III substance. The court refused to determine the hydrocodone trafficking weight based upon the aggregate weight of the tablets possessed because according to the court, each tablet was a Schedule III substance and therefore could not be counted as part of the “**mixture**” specified in the statute to establish a Schedule II possession.

When hydrocodone is sold illegally, it is almost always sold in the form of prescription medication that has been stolen or purchased from a legitimate prescription. Since these pills contain less than 15 milligrams of hydrocodone per dosage unit, the practical effect of the Hayes decision is to prevent a person from being prosecuted for trafficking in hydrocodone - regardless of how large the quantity of pills involved.

2000 Legislative Session

In response to the Hayes decision, during the 2000 legislative session, the legislature removed hydrocodone from Schedule III. Thereafter, hydrocodone was to be exclusively a Schedule II drug. Ch. 2000-320, Laws of Fla., CS/HB 2085. The effective date of this bill was October 1, 2001.

The bill also amended s. 893.02, F.S. to definite the term “mixture” as “any physical combination of two or more substances.”

Attorney General Rule Making

Unintended medical consequences of this legislative action became apparent after the bill passed and was signed into law. A Schedule III substance may be filled by a pharmacist upon the telephone authorization of a practitioner and may be refilled up to five times within a six month period. s. 893.04(1)(g), F.S. A prescription for a Schedule II drug cannot be refilled. s. 893.04(1)(f), F.S. Thus, a patient would have to visit the doctor's office each time the patient required more medication. Also, there are more restrictions on the storage and disposal of Schedule II drugs. After receiving requests from numerous medical groups², on August 29, 2000, the Attorney General used his emergency rule power to reschedule hydrocodone in Schedule III. s. 893.0355, F.S. The Attorney General found that the rescheduling of hydrocodone as a Schedule II drug would "create a undue and unintended disruption upon the legitimate medical uses of numerous medicinal drugs, as well as significant additional expenses to patients." In re Proposed Rule 2-40.005 An Attorney General rule "shall remain in effect until the effective date of legislation that provides for a different scheduling of a substance than that set forth in such rule." s. 893.0355(6), F.S.

C. EFFECT OF PROPOSED CHANGES:

The bill reinstates hydrocodone as a Schedule III controlled substance. This will address the concerns of the medical community regarding the prescribing, refilling, storing and disposal of controlled substances containing hydrocodone.

The bill also amends s. 893.135(1)(c), F.S., which prohibits trafficking in hydrocodone, to reference the Schedule III scheduling references for hydrocodone. This amendment is to indicate that this trafficking provision applies to hydrocodone, regardless of whether it is a Schedule II or a Schedule III substance. A factor in the court's holding in Hayes was the fact that there was no Schedule III reference in this trafficking provision. This change, combined with the new definition of "mixture" in s. 893.02(14), F.S., should indicate to the Court the Legislature's intent to treat hydrocodone, for trafficking purposes, the same as other trafficking drugs. In other words, for determining whether the trafficking threshold for hydrocodone or mixtures containing hydrocodone is met, the weight of the hydrocodone should be the aggregate weight of the hydrocodone or prescription medication containing hydrocodone that is possessed, not the amount of hydrocodone per dosage unit. The new definition of "mixture" indicates that a prescription medication containing hydrocodone is indistinguishable from any other mixture containing a controlled substance, e.g., cut cocaine. Further, the bill specifically states that the opinion in Hayes v. State, 760 So.2d 1 (Fla. 1999) does not correctly construe legislative intent and refers to several opinions that correctly construe legislative intent.

The bill also reenacts s. 921.0022(3)(b), (c) and (e), F.S., relating to the offense severity ranking chart in the Criminal Punishment Code, to incorporate the amendment to s. 893.03, F.S.

The bill amends s. 948.01 which provides that a court may place a defendant on drug offender probation if the defendant is a chronic substance abuser whose criminal conduct is a violation of chapter 893. The bill limits the drug offenses which qualify a defendant to be considered for drug offender probation. The bill clarifies that a person who has been convicted of trafficking in a

² Groups "expressing concerns regarding the negative impact on patient care as well as the increased costs to patients and the administrative expenses to practitioners associated with products under Schedule II" included the Florida Board of Medicine, the Florida Board of Pharmacy, the Director of the State Office of Drug Control, the Florida Medical Association, the Florida Pharmacy Association, the Florida Dental Association, the Florida Health Care Association, the Florida Nursing Association and the Florida Hospice Association.

controlled substance cannot be placed on drug offender probation. Instead, only defendants who have been convicted of purchase or possession of drugs will be considered for drug offender probation.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 893.03, F.S.; amending Schedule III of the drug schedule.

Section 2: Amends s. 893.135; amending hydrocodone to trafficking statute.

Section 3: Reenacting s. 893.02, F.S.

Section 4: Reenacting s. 921.0022, F.S.

Section 5: Providing effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will not have an adverse impact on the private sector. Rather, the bill reinstates hydrocodone to Schedule III which will allow prescriptions to be refilled without a doctor's visit.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has determined that this bill will have no prison bed impact on the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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David De La Paz

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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