

By the Committee on Criminal Justice; and Senator Crist

307-2067A-02

1 A bill to be entitled
2 An act relating to controlled substances;
3 creating s. 893.101, F.S.; providing
4 legislative findings and intent; providing for
5 affirmative defense and permissive presumption;
6 requiring jury to be instructed on permissive
7 presumption, if affirmative defense is raised;
8 providing an effective date.

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10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Section 893.101, Florida Statutes, is
13 created to read:

14 893.101 Legislative findings and intent.--

15 (1) The Legislature finds that the cases of Scott v.
16 State, Slip Opinion No. SC94701 (Fla. 2002) and Chicone v.
17 State, 684 So. 2d 736 (Fla. 1996), holding that the state must
18 prove that the defendant knew of the illicit nature of a
19 controlled substance found in his or her actual or
20 constructive possession, were contrary to legislative intent.

21 (2) The Legislature finds that knowledge of the
22 illicit nature of a controlled substance is not an element of
23 any offense under this chapter. Lack of knowledge of the
24 illicit nature of a controlled substance is an affirmative
25 defense to the offenses of this chapter.

26 (3) In those instances in which a defendant asserts
27 the affirmative defense described in this section, the
28 possession of a controlled substance, whether actual or
29 constructive, shall give rise to a permissive presumption that
30 the possessor knew of the illicit nature of the substance. It
31 is the intent of the Legislature that, in those cases where

1 such an affirmative defense is raised, the jury shall be
2 instructed on the permissive presumption provided in this
3 subsection.

4 Section 2. This act shall take effect upon becoming a
5 law.

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 Senate Bill 2300

- 10 - Creates s. 893.101, F.S., of Chapter 893, F.S., the
11 chapter addressing controlled substance scheduling and
12 unlawful acts involving controlled substances, to
13 provide findings that, for any offense under Chapter
14 893, F.S., the State is not required to prove that a
15 person knew of the illicit nature of the controlled
16 substance, and such knowledge is not an element. (The
17 Florida Supreme Court in Scott v. State, 27 Fla. L.
18 Weekly 31 (Fla. January 3, 2002) interpreted legislative
19 intent was to require the State to prove knowledge of
20 the illicit nature of a controlled substance.)
- 16 - Provides that lack of knowledge of the illicit nature of
17 a controlled substance is an affirmative defense to the
18 offenses of Chapter 893, F.S.
- 18 - Provides that if the defendant asserts this affirmative
19 defense, the possession of the controlled substance,
20 whether actual or constructive, gives rise to a
21 permissive presumption that the defendant knew of the
22 illicit nature of the substance.
- 21 - Provides that where the affirmative defense is raised,
22 the jury must be instructed on the permissive
23 presumption.