

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 2352

SPONSOR: Senator Peaden

SUBJECT: Controlled Substances

DATE: April 2, 2005

REVISED: 04/06/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	Fav/1 amendment
2.			CJ	
3.			JA	
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill amends the Florida Comprehensive Drug Abuse Prevention and Control Act to revise the listed precursor chemicals and the listed essential chemicals that may be used to manufacture controlled substances in violation of ch. 893, F.S., to conform to federal requirements for precursor or essential chemicals used to manufacture controlled substances.

The bill makes it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical with intent to manufacture methamphetamine or phencyclidine. The bill increases penalties for the manufacture of methamphetamine or phencyclidine or the possession of any listed chemical with intent to manufacture methamphetamine or phencyclidine if the crime occurs in a structure or conveyance where any child under 16 years of age is present.

The bill makes it unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of an assisted living facility.

The bill makes it unlawful for any person to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

The bill makes it unlawful to possess 14 grams or more of pseudoephedrine such as Sudafed® in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine and the offense is subject to the enhanced felony penalties of the drug trafficking provisions under ch. 893, F.S.

The bill makes it unlawful for a person to deliver in any single over-the-counter sale any number of packages of any drug containing a sole active ingredient that he or she knows to contain a combined total of more than 9 base grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or more than three packages in any single over-the-counter sale. Packages of any drug having a sole active ingredient of ephedrine, pseudoephedrine, or phenylpropanolamine must be displayed and offered for sale only behind a checkout counter where the public is not permitted. Such offenses supersede any municipal ordinance or regulation passed on or after July 1, 2005, to the extent that ordinance or regulation is more restrictive than the provisions of this section. The Department of Health (DOH) by rule may exempt ephedrine-containing products that have been formulated to effectively prevent the conversion of the active ingredient into methamphetamine.

This bill amends sections 893.033, 893.13, 893.135, and 893.149, Florida Statutes.

This bill creates s. 893.1495, F.S.

The bill reenacts ss. 311.12, 397.451, 414.095, 435.07, 772.12, 775.087, 782.04, 893.02, 893.1351, 903.133, 907.041, 921.0022, 921.0024, 921.142, 921.187, 938.25, 943.0585, 943.059, and 948.034, F.S.

II. Present Situation:

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use. Substances in Schedule IV include phenobarbital, librium, and valium. Substances in Schedule V include certain stimulants and narcotic compounds.

Methamphetamine is a Schedule II controlled substance under Florida law, s. 893.03(2)(c)4., F.S., and federal law, s. 21 U.S.C. § 812. Methamphetamine is a highly addictive nerve stimulant found in virtually every metropolitan area of the country, according to the U.S. Drug Enforcement Agency (DEA). Commonly called “speed,” “crank,” “crystal,” or “zip,” methamphetamine can be smoked, injected, snorted, or taken orally. It produces an initial “high,”

lasting between 15 and 30 minutes, which are difficult if not impossible for the user to repeat, leading the user to ingest more and more of the drug and go on longer binges. Methamphetamine's psychological side-effects include paranoia, hallucinations and delusions of insects or parasites crawling under the skin. Long-time use results in a decline in physical health, as well. In the United States, methamphetamines are either imported by drug traffickers or manufactured in small "clandestine" laboratories (usually household kitchens) using recipes involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches.

According to a December 15, 2003, news release posted on the Florida Department of Law Enforcement (FDLE) website, Florida ranked sixth nationwide last year for methamphetamine seizures. In 2002, law enforcement officers seized 127 clandestine methamphetamine labs, compared to 229 seizures in 2003. The rapidity of the spread of clandestine labs in Florida is reflected in the DEA statistics that prior to 1999, only seven labs had been seized in Florida.

Anhydrous ammonia and ephedrine are listed as precursor chemicals under Florida law. It is unlawful under federal law to steal anhydrous ammonia or transport stolen anhydrous ammonia across state lines, if the person committing the theft or transport knows, intends, or has reasonable cause to believe that the anhydrous ammonia will be used to manufacture a controlled substance. (21 U.S.C. § 864)

Section 893.033(1), F.S., defines "listed precursor chemical" as a chemical that may be used in manufacturing a controlled substance in violation of ch. 893, F.S., and is critical to the creation of the controlled substance. Section 893.033(2), F.S., defines "listed essential chemical" as a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of ch. 893, F.S.

Anhydrous ammonia is a necessary component to the "reactant metal" method or "Nazi" method of methamphetamine production. Currently, there are 26 chemicals or substances listed or designated in s. 893.033(1), F.S., as listed precursor chemicals, some of which are used or found in the manufacture of methamphetamines, such as ephedrine, pseudoephedrine, benzyl chloride, benzyl cyanide, chloroephedrine, chloropseudoephedrine, methylamine, and phenylacetic acid. There are scores of chemicals used in the production of methamphetamine; their appearance depends upon the production method used. Some listed precursor chemicals have legitimate uses. For example, methylamine is used in tanning and the manufacture of dyestuffs; benzyl chloride is used in the manufacture of perfumes, pharmaceuticals, dyes, tannins, and artificial resins; ephedrine is used as an anti-asthmatic drug; pseudoephedrine is used as a decongestant.

The listing or designation of a chemical or substance as a listed precursor chemical in s. 893.033, F.S., does not bar, prohibit or punish legitimate use of the chemical or substance. However, s. 893.149, F.S., provides that it is a second-degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

Some states punish unlawful transportation of anhydrous ammonia.¹ Some states punish tampering with equipment or a facility used to contain, store, or transport anhydrous ammonia.² The federal government regulates the transportation of compressed gases.³

Section 893.13, F.S., specifies prohibited acts and provides penalties for violation of the Florida Comprehensive Drug Abuse Prevention and Control Act. Section 893.13, F.S., contains offenses relating to the sale, manufacture or delivery of a controlled substance or possession with intent to sell, manufacture or deliver a controlled substance and the applicable penalty for the offense is enhanced if the offense occurs within 1,000 feet of the following locations:

- A child care facility or school;
- A park, community center or recreational facility;
- A public or private college, university or other postsecondary educational institution;
- A place of worship;
- A convenience business; or
- A public housing facility.

Section 893.135, F.S., provides enhanced criminal penalties for drug trafficking. A person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, phenylacetone, phenylacetic acid, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine is liable for a first degree felony which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. The section provides enhanced penalties for larger amounts of unlawful drugs specified in the section and declares it to be drug trafficking. If the amount of the unlawful drug specified in the section is 14 grams or more but less than 28 grams the person must be sentenced to a mandatory minimum prison term of 3 years and be ordered to pay a fine of \$50,000. If the amount of the unlawful drug specified in the section is 28 grams or more, but less than 200 grams, the person must be sentenced to a mandatory minimum prison term of 7 years and ordered to pay a fine of \$100,000. If the amount of the unlawful drug specified in the section is 200 grams or more, the person must be sentenced to a mandatory minimum prison term of 15 years and ordered to pay a fine of \$250,000. A defendant is liable for a capital felony if he knowingly manufactures or brings into Florida 400 grams or more of an unlawful drug specified in the section and knows that the probable result of such manufacture or importation would be death of any person. Any person sentenced for a capital felony must pay \$250,000.

¹ See e.g., Hawaii Rev. Stat. § 329-65; Ind. Code § 22-11-20-6; Iowa Code § 124.410F; Minn. Stat. § 18C.201; Neb. Rev. Stat. § 28-1240; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.001; Wash. Rev. Code § 69.55.020; Wis. Stat. § 101.10.

² See e.g., Iowa Code § 124.401F; Ky. Rev. Stat. § 250.4892; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.002; Wis. Stat. § 101.10. Some states punish unlawful sale, delivery (or transfer) of anhydrous ammonia. See e.g., Hawaii Rev. Stat. § 329-65; Iowa Code § 124.401F; Kan. Stat. Ann. § 65-7006; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tenn. Code Ann. § 39-17-433; Tex. Code Ann. § 504.002; Wash. Rev. Code § 69-55.020; Wis. Stat. § 101.10.

³ See The Transportation of Explosives Act. The Interstate Commerce Commission for railway and highway transport administers the Act.

Regulation of Over-the-Counter Ephedrine in Florida

During the 1994 Session, the Legislature adopted legislation, which made ephedrine, the active ingredient of ephedra, a prescription drug.⁴ This means that any product, which contains ephedrine, can only be dispensed by prescription. This legislation was enacted in reaction to the marketing of, and the growing popularity of, products that were advertised to help the user of the products to stay awake, lose weight, or enhance athletic performance. The federal Food and Drug Administration (FDA) have not approved the use of ephedrine for these purposes. There was growing concern that the marketing of these products was misleading consumers and was encouraging abuse of ephedrine among teenaged youth. In 1995, the law was amended to authorize certain drug products such as Primatene tablets to control asthma and combinations of products containing ephedrine in specified dosage forms to be sold over the counter. Such drug products were thought to have little potential for abuse. The 1995 revisions also made it a violation of the Florida Drug and Cosmetic Act, ch. 499, F.S., for any person to advertise or label any product containing ephedrine for the indication of stimulation, mental alertness, weight loss, appetite control, energy, or any other indication not approved by the FDA.⁵ Pseudoephedrine (Sudafed®) does not require a prescription. Pseudoephedrine decongests by causing blood vessels to narrow thereby preventing fluid from leaving the vessels and causing the tissues to swell.

Florida Drug and Cosmetic Act

The Department of Health is responsible for regulating and enforcing the Florida Drug and Cosmetic Act, ch. 499, F.S. Chapter 499, F.S., provides regulatory oversight of the manufacture and distribution of drugs, devices, cosmetics and ether within Florida. The Department of Health does not regulate dietary supplements, but has authority to take regulatory action if drugs are misbranded or adulterated.

Section 499.003, F.S., defines “contraband legend drug” to mean any adulterated drug, any counterfeit drug, and means any legend drug for which a pedigree paper does not exist, or for which the pedigree paper in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter. Under s. 499.006(10), F.S., a drug is an adulterated drug if it is a legend drug that has been purchased, held, sold or distributed at any time by a person not authorized under federal or state law to do so.

Chapter 499, F.S., provides criminal penalties for violations of the act relating to illegal activities to sell, purchase, receive, possess, or deliver prescription or contraband drugs. Any person who purchases or sells prescription drugs for wholesale distribution in exchange for currency commits a third degree felony punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.⁶ A person who knowingly purchases or receives from a person not authorized to distribute legend drugs under ch. 499, F.S., a legend drug in a wholesale transaction commits a second-degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.⁷ A person who knowingly sells or transfers to a person not authorized to

⁴ See chapter 94-309, Laws of Florida, which created s. 499.033, F.S.

⁵ See s. 2, chapter 95-415, L.O.F., which added s. 499.0054(6), F.S.

⁶ See s. 499.0691(2)(i), F.S.

⁷ See s. 499.0051(4), F.S.

purchase or possess legend drugs, under the law of the jurisdiction in which the person receives the drug, a legend drug in a wholesale distribution transaction commits a second degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.⁸ A person who is knowingly in actual possession of any amount of contraband legend drugs, who knowingly sells or delivers, or who possesses with intent to sell or deliver any amount of contraband legend drugs, commits a second degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

III. Effect of Proposed Changes:

Section 1. Amends s. 893.033, F.S., relating to listed chemicals, to delete anhydrous ammonia and benzyl chloride from the “listed precursor chemicals” and to add benzaldehyde, hydriodic acid, and nitroethane to that list, as chemicals that may be used in manufacturing a controlled substance in violation of ch. 893, F.S.

The section adds anhydrous ammonia, benzyl chloride, hydrochloric gas, and iodine to the “listed essential chemicals” that may be used as a solvent, reagent, or catalyst to manufacture controlled substances in violation of ch. 893, F.S. According to FDLE, these changes conform to federal requirements for precursor or essential chemicals, as applicable, which are used to manufacture controlled substances.⁹

Section 2. Amends s. 893.13, F.S., relating to prohibited acts under the Florida Comprehensive Drug Abuse Prevention and Control Act, to provide that except as authorized under ch. 893, F.S., it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033, F.S., in violation of s. 893.149, F.S., and with intent to manufacture methamphetamine or phencyclidine. Section 893.149, F.S., provides that it is a second-degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

If any person manufactures methamphetamine or phencyclidine or possess any listed chemical with an intent to manufacture methamphetamine or phencyclidine and the commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, the person who does so is liable for a first degree felony which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. A minimum term of imprisonment of 5 calendar years is mandatory. If, during the commission of the crime, the defendant causes a child under the age of 16 years to suffer great bodily harm, the defendant commits a first-degree felony and must be sentenced to a minimum prison term of 10 calendar years.

⁸ See s. 499.051(5), F.S.

⁹ See the federal “List I Chemicals” cited at 21 U.S.C. 802(34) which generally correspond to “precursor chemicals” under Florida law cited at s. 893.033(1), F.S. List I chemical means a chemical specified by regulation of the U.S. Attorney General as a chemical that is used in manufacturing a controlled substance in violation of federal drug abuse prevention and control laws and is important to the manufacture of the controlled substances. Also see federal “List II Chemicals” cited at 21 U.S.C. 802(35) which generally correspond to “essential chemicals” under Florida law cited at s. 893.033(2), F.S.

Except as authorized under ch. 893, F.S., it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of an assisted living facility, the person who does so is liable for a first degree felony if it involves certain controlled substances listed in Schedules I and II and the offense is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. If the offense involves certain controlled substances listed in Schedules I, II, III, and IV, the person who commits the offense is liable for a second-degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

The section makes it unlawful for any person to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices. Any person who violates this provision is liable for a third degree felony, which is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

If a person violates any provision of ch. 893, F.S., and such violation results in a serious injury to a state, local, or federal law enforcement officer, the person commits a third degree felony which is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000. If the injury sustained by the law enforcement officer results in death or great bodily harm, the person is liable for second-degree felony, which is punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

Section 3. Amends s. 893.135, F.S., relating to drug trafficking, to make a person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of pseudoephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine liable for a first degree felony which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. The section provides enhanced penalties for larger amounts of unlawful drugs involved in drug trafficking. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment in the manufacture of amphetamine or methamphetamine is 14 grams or more but less than 28 grams the person must be sentenced to a mandatory minimum prison term of 3 years and be ordered to pay a fine of \$50,000. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment in the manufacture of amphetamine or methamphetamine is 28 grams or more, but less than 200 grams, the person must be sentenced to a mandatory minimum prison term of 7 years and ordered to pay a fine of \$100,000. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment in the manufacture of amphetamine or methamphetamine is 200 grams or more, the person must be sentenced to a mandatory minimum prison term of 15 years and ordered to pay a fine of \$250,000.

A defendant is liable for a capital felony if he knowingly manufactures or brings into Florida 400 grams or more of pseudoephedrine which is used in conjunction with other chemicals and equipment in the manufacture of amphetamine or methamphetamine and who knows that the probable result of such manufacture or importation would be the death of any person. Any person sentenced for a capital felony must pay \$250,000.

Section 4. Amends s. 893.149, F.S., relating to the unlawful possession of a listed chemical, to provide that this section does not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances resulting from the prohibited activities of ch. 893, F.S. Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, F.S., must be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

Section 5. Creates s. 893.1495, F.S., relating to the sale of ephedrine and related compounds, to prohibit a person from delivering in any single over-the-counter sale any number of packages of any drug containing a sole active ingredient that he or she knows to contain a combined total of more than 9 base grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages in any single over-the-counter sale, regardless of weight, containing any such sole active ingredient. Packages of any drug having a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine or any of their salts or optical isomers must be displayed and offered for sale only behind a checkout counter where the public is not permitted.

The general owner or operator of the outlet where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who violates the prohibition regarding the delivery of such products in any single over-the-counter sale shall not be penalized if the owner or operator documents that an employee training program was in place to provide the employee with information on the state and federal regulations regarding such products. This section supersedes any municipal ordinance or regulation passed on or after July 1, 2005, to the extent that ordinance or regulation is more restrictive than the provisions of this section.

This section does not apply to any products that DOH, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

Any person who violates any provision of this section commits a first-degree misdemeanor punishable by up to 1 year of imprisonment and a fine of up to \$1,000 for the first offense, and for a second or subsequent offense commits a third-degree felony punishable by up to 5 years of imprisonment and a fine of up to \$5,000.

Section 6. Reenacts s. 311.12(3)(c), F.S., relating to seaport security standards, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 7. Reenacts s. 397.451(4)(b) and (6), F.S., relating to the background checks of substance abuse service provider personnel, for purposes of incorporating the amendments to s. 893.13, F.S., and s. 893.135, F.S., in this bill.

Section 8. Reenacts s. 414.095(1), F.S., relating to the requirements for determining eligibility for temporary cash assistance, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 9. Reenacts s. 435.07(2), F.S., relating to the exemptions from disqualification from employment for persons who are employed by certain treatment providers, for purposes of incorporating the amendments to s. 893.13, F.S., in this bill.

Section 10. Reenacts s. 772.12(2)(a), F.S., relating to drug dealer liability, for purposes of incorporating the amendments to s. 893.13, F.S., and s. 893.135, F.S., in this bill.

Section 11. Reenacts s. 775.087(2)(a) and (3)(a), F.S., relating to the possession or use of a weapon and aggravated battery, felony reclassification, and minimum sentencing requirements, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 12. Reenacts s. 782.04(1)(a), (3)(a), and (4)(a), F.S., relating to murder, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 13. Reenacts s. 893.02(12), F.S., relating to listed chemicals, for purposes of incorporating the amendments to s. 893.033, F.S., in this bill.

Section 14. Reenacts s. 893.1351(1), F.S., relating to the lease or rent for the purpose of trafficking in a controlled substance, for purposes of incorporating the amendments to s. 893.13, F.S., and s. 893.135, F.S., in this bill.

Section 15. Reenacts s. 903.133, F.S., relating to bail, for purposes of incorporating the amendments to s. 893.13, F.S. and s. 893.135, F.S., in this bill.

Section 16. Reenacts s. 907.041(4)(c), F.S., relating to pretrial detention and release, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 17. Reenacts s. 921.0022(3)(g), (h), and (i), F.S., relating to the offense severity ranking chart, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 18. Reenacts s. 921.0024(1), F.S., relating to the Criminal Punishment Code, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 19. Reenacts s. 921.142(2), F.S., relating to sentence of death or life imprisonment for capital drug trafficking felonies, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 20. Reenacts s. 921.187(1), F.S., relating to disposition and sentencing, alternatives, and restitution, for purposes of incorporating the amendments to s. 893.13, F.S., in this bill.

Section 21. Reenacts s. 938.25, F.S., relating to the Operating Trust Fund of the Florida Department of Law Enforcement, for purposes of incorporating the amendments to s. 893.13, F.S., in this bill.

Section 22. Reenacts s. 943.0585, F.S., relating to court-ordered expunction of criminal history records, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 23. Reenacts s. 943.059, F.S., relating to court-ordered sealing of criminal history records, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 24. Reenacts s. 948.034(1) and (2), F.S., relating to terms and conditions of probation and community residential drug punishment centers, for purposes of incorporating the amendments to s. 893.13, F.S., in this bill.

Section 25. Provides an effective date of July 1, 2005, and applies to offenses committed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill prohibits a person from delivering in any single over-the-counter sale any number of packages of any drug containing a sole active ingredient that he or she knows to contain a combined total of more than 9 base grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages in any single over-the-counter sale, regardless of weight, containing any such sole active ingredient. Packages of any drug having a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine or any of their salts or optical isomers must be displayed and offered for sale only behind a checkout counter where the public is not permitted. Any person who violates any provision regarding

prohibited acts for the over-the-counter sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine commits a first degree misdemeanor punishable by up to 1 year of imprisonment and a fine of up to \$1,000 for the first offense, and for a second or subsequent offense commits a third-degree felony punishable by up to 5 years and a fine of up to \$5,000. This proscribed conduct, which limits the quantity of medication containing a single active ingredient that can be sold during a single transaction, may reduce the sale of such medications by businesses that sell this medication. Such businesses will incur costs to provide employee training regarding the proscribed conduct relating to over-the-counter sales of medications containing ephedrine, pseudoephedrine, or phenylpropanolamine.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. However, during the 2004 session, the conference estimated that the prison bed impact of HB 1815, which contained a number of provisions similar to this bill, would be indeterminate with minimal impact expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill prohibits a person from delivering in any single over-the-counter sale any number of packages of any drug containing a sole active ingredient that he or she knows to contain a combined total of more than 9 base grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages in any single over-the-counter sale, regardless of weight, containing any such sole active ingredient. This prohibition may be easily circumvented by multiple sales of the same over-the-counter drug at the same or nearby locations.

VIII. Summary of Amendments:

Barcode 091430 by Health Care:

The amendment specifies that the proscribed conduct for the over-the-counter sale of ephedrine products apply only to retail sales. The Department of Health is no longer required to exempt by rule products that have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine. A person who is considered the general owner or operator of the outlet where ephedrine products are available for retail sale is now liable for criminal penalties relating to the proscribed conduct. The general owner or owner of such outlet must provide an employee training program on applicable federal and state regulation of certain ephedrine products. Any owner, operator or employee of an individual retail outlet who violates the provisions relating to the sale of these products must not be penalized for a first violation. The penalty specified for violation of the proscribed conduct is unclear and may make the violation created in the amendment susceptible to a challenge for vagueness under the due-process clauses of the State Constitution and the United States Constitution.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
