

**The Florida Senate**  
**PROFESSIONAL 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: Commerce Committee

---

BILL: CS/SB 928

INTRODUCER: Commerce Committee and Senator Wise

SUBJECT: Drug Paraphernalia

DATE: April 18, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ray</u>	<u>Jameson</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Earlywine/Hinely</u>	<u>Cooper</u>	<u>CM</u>	<b>Fav/CS</b>
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>JA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

---

**I. Summary:**

The committee substitute creates the Drug Paraphernalia Abatement Task Force to recommend strategies for reducing the availability and use of drug paraphernalia and the Task Force for the Remediation of Illicit Drug Labs to recommend strategies to reduce the health risks from structures or buildings that previously contained drug labs. Both task forces are created within the Executive Office of the Governor.

The CS provides membership requirements for each task force, and provides for member appointment, the selection of the chairs for each task force, the minimum number and location of meetings, public access to meetings and records, and reimbursement for per diem and travel expenses.

The CS provides that the Drug Paraphernalia Abatement Task Force must hold its first meeting by July 15, 2007. The Task force for the Remediation of Illicit Drug Labs must hold its first meeting by August 1, 2007. The Office of Drug Control is to provide staff support within existing resources to both task forces.

The CS specifies the subject matter for public testimony and for study.

The CS provides deadlines for submitting reports of findings and recommendations. The Drug Paraphernalia Abatement Task Force is abolished on July 1, 2008.

The CS would take effect upon becoming law.

The CS creates undesignated sections of law.

## II. Present Situation:

### Drug Paraphernalia

With the rise of the drug culture in the U.S. in the 1960s and 1970s, the country began to see the appearance of “head shops,” which were stores that sold a wide range of drug paraphernalia. These items were also sold openly in the street until anti-paraphernalia laws in the 1980s eventually ended such sales.<sup>1</sup>

Today law enforcement faces another challenge. With the advent of the Internet, criminals have greatly expanded their illicit sales to a worldwide market for drug paraphernalia.<sup>2</sup>

Section 893.145, F.S., defines “drug paraphernalia” as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893 or s. 877.111, F.S.

These items include, but are not limited to, the following:<sup>3</sup>

- A kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;
- A scale and balance used, intended for use, or designed for use in weighing or measuring a controlled substance;
- A bong;
- A pipe;
- A blender, bowl, container, spoon, and mixing device used, intended for use, or designed for use in compounding a controlled substance;
- A water pipe;
- A balloon; and
- Duct tape.

Drug paraphernalia may be ordinary items or items disguised to resemble ordinary items. This can make the identification of drug paraphernalia a challenge. Section 893.146, F.S., provides that, in determining whether an object is drug paraphernalia, a court or other authority or jury must consider, in addition to all other logically relevant factors, the following factors:

- Statements by an owner or by anyone in control of the object concerning its use;
- The proximity of the object, in time and space, to a direct violation of this act;
- The proximity of the object to controlled substances;
- The existence of any residue of controlled substances on the object;

---

<sup>1</sup> U.S. Drug Enforcement Administration, Drug Paraphernalia, Tools of the Illegal Drug Trade. <http://www.usdoj.gov/dea/concern/paraphernaliafact.html> (Last visited March 22, 2007).

<sup>2</sup> Id.

<sup>3</sup> Section 893.145(12), F.S.

- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;
- Instructions, oral or written, provided with the object concerning its use;
- Descriptive materials accompanying the object which explain or depict its use;
- Any advertising concerning its use;
- The manner in which the object is displayed for sale;
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of, or dealer in, tobacco products;
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- The existence and scope of legitimate uses for the object in the community; and
- Expert testimony concerning its use.

Drug paraphernalia related offenses include:

- Use or possession of drug paraphernalia – First degree misdemeanor.<sup>4</sup>
- Manufacture or delivery of drug paraphernalia – Third degree felony.<sup>5</sup>
- Delivery of drug paraphernalia to a minor – Second degree felony.<sup>6</sup>
- Delivery of hypodermic syringes and needles to a minor unless dispensed lawfully by a licensed practitioner, parent, legal guardian, or pharmacist – First degree misdemeanor.<sup>7</sup>
- Transportation of drug paraphernalia – Third degree felony.<sup>8</sup>
- Advertisement of drug paraphernalia – First degree misdemeanor.<sup>9</sup>

### **Illicit Drug Labs**

Methamphetamine is classified as a Schedule II<sup>10</sup> controlled substance under both Florida and federal law and selling, manufacturing, delivering, or possessing with intent to sell, manufacture or deliver methamphetamine constitutes a first degree felony punishable by a minimum of 3 years in prison in Florida.<sup>11</sup>

According to the U.S. Drug Enforcement Agency, methamphetamine is found in virtually every metropolitan area in the country. Methamphetamines are either imported into the U.S. or

<sup>4</sup> Section 893.147(1), F.S.

<sup>5</sup> Section 893.147(2), F.S.

<sup>6</sup> Section 893.147(3)(a), F.S.

<sup>7</sup> Section 893.147(3)(b), F.S.

<sup>8</sup> Section 893.147(4), F.S.

<sup>9</sup> Section 893.147(5), F.S.

<sup>10</sup> Section 893.03(2), F.S., states that Schedule II controlled substances have “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.”

<sup>11</sup> Sections 893.03(2)(c)4 and 893.13(1)(c)(1) F.S., and § 21 U.S.C. 812.

manufactured in “laboratories” using formulas involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches.

All of the process that produce methamphetamine use a variety of chemicals, including explosives, solvents, metals, salts, and corrosives which lead to various by-products during the manufacturing process. When law enforcement officials discover a lab they remove the bulk of the lab related materials but small amounts of contaminants may remain on floors, walls, counters, carpets, furniture, sinks, drains and ventilation systems. Exposure to even small amounts of these chemicals can pose serious health risks. In addition to concerns for peace officer safety and health, there is also concern about the potential impacts on the public and on inhabitants, including children and the elderly, unaware of the potential dangers of inhabiting a dwelling previously occupied by a drug lab.

### III. Effect of Proposed Changes:

#### **Creation and Organization of the Task Force for the Remediation of Illicit Drug Labs**

The CS creates a thirteen member Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor. The task force is to recommend strategies and actions for reducing the health risks from buildings in Florida where methamphetamines or other controlled substances have been illegally manufactured. These members must be representatives of the geographic regions and ethnic and gender diversity of this state and must include:

- A member of the Senate, appointed by the President of the Senate;
- A member of the House of Representatives, appointed by the Speaker of the House;
- A state attorney or his or her designee;
- A representative of the Florida League of Cities;
- A representative of the Florida Association of Counties;
- A sheriff or his or her designee;
- A police chief or his or her designee; and
- A representative of the Florida Association of Realtors.

Other members include the Secretary of Environmental Protection or his or her designee, the Secretary of the Department of Health or his or her designee, the Secretary of Community Affairs, the executive director of the Department of Law Enforcement or his or her designee, and the director of the Office of Drug Control within the Executive Office of the Governor.

Members of the task force will serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control, the Department of Law Enforcement, the Department of Health, and the Department of Environmental Protection within existing appropriations.

#### **Task Force for the Remediation of Illicit Drug Labs Meetings**

The CS provides that the first meeting of the task force must be held by August 1, 2007, at which the director of the Office of Drug Control shall serve as chairperson. All recommendations of the task force are by majority vote. The task force meets at the call of the chairperson as approved by the Governor and must conduct at least three public meetings.

Meetings of the task force are open to the public.

**Task Force for the Remediation of Illicit Drug Labs Inquiry**

The task force is required to study and take testimony regarding the remediation of health risks from structures and locations anywhere a lab is found which produced methamphetamine or other contraband, including, but not limited to:

- The nature and extent of such remediation including the standards, training and funding that are relevant to such remediation and the responsibility for such remediation;
- Current state or local laws governing remediation, including consideration of revisions of such laws;
- Current federal laws or laws of other states which are relevant to remediation, including the effectiveness of such laws in remediating health risks from drug labs; and
- Any other subject that is relevant to reducing or eliminating the health risks from structures or locations of drug labs.

**Task Force for the Remediation of Illicit Drug Labs Report**

The task force must submit a preliminary draft report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before the first day of the 2008 Regular Session of the Legislature and must submit its final report at least 30 days before the first day of the 2008 Regular Session. In addition to findings and recommendations, the report must include any proposed legislation or rules necessary to implement recommendations.

**Creation and Organization of the Drug Paraphernalia Abatement Task Force**

The CS creates a nine member Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor. The task force is to recommend strategies and actions for lessening access to and the use of drug paraphernalia. The task force includes six members appointed by the Governor. These members must be representatives of the geographic regions and ethnic and gender diversity of this state and must include:

- A representative of a corporation that is licensed to do business in this state and that sells any of the items described in s. 893.145, F.S.;
- A local law enforcement official or officer;
- A member of a faith-based community;
- A superintendent of a school district or a principal of a secondary school;
- A member of a community organization concerned about issues relating to illicit activities involving controlled substances; and
- A former or recovering drug addict.

Other members include the Secretary of Business and Professional Regulation or his or her designee, the Secretary of the Department of Health or his or her designee and the director of the Office of Drug Control within the Executive Office of the Governor.

Members of the task force will serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control within existing appropriations.

The task force is abolished July 1, 2008.

#### **Drug Paraphernalia Abatement Task Force Meetings**

The CS provides that the first meeting of the task force must be held by July 15, 2007, at which time the members must select by majority vote a chairperson from among the task force members. All recommendations of the task force are by majority vote. The task force meets at the call of the chairperson as approved by the Governor and must conduct at least three public meetings in locations throughout the state which have a significant urban business districts or which have experienced problems with illicit controlled substance activity resulting, in part, from access to and the use of drug paraphernalia.

Meetings of the task force are open to the public and are subject to the requirements of ch. 286, F.S. Records of the task force are public records and subject to the requirements of ch. 119, F.S., except to the extent that public access to any of those records may be restricted pursuant to that chapter.

#### **Drug Paraphernalia Abatement Task Force Inquiry**

The task force is required to study and take testimony regarding:

- The problem of access to and the use of drug paraphernalia in Florida;
- Businesses that sell items that may be used as drug paraphernalia;
- Current laws and rules and current efforts by regulatory agencies and law enforcement agencies to limit access to and the use of drug paraphernalia, including whether new or amended laws and rules are needed; and
- Approaches to limit access to and the use of drug paraphernalia.

#### **Drug Paraphernalia Abatement Task Force Report**

The task force must submit a preliminary draft report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 45 days before the first day of the 2008 Regular Session of the Legislature and must submit its final report 15 days later. In addition to findings and recommendations, the report must include any proposed legislation or rules necessary to implement recommendations.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This CS provides that task force members serve without salary but are entitled to reimbursement for travel and per diem expenses in accordance with s. 112.061, F.S. Members will be required to conduct at least three public meetings in different locations throughout the state and thus will incur travel and per diem costs.

The CS does not specify which entity is responsible for reimbursement of travel and per diem expenses. Such expenses generally are the responsibility of the agency that employs the appointed member.

**Drug Paraphernalia Abatement Task Force**

All other costs, including staff support and publication expenses, will be absorbed by the Office of Drug Control within the Executive Office of the Governor. The Executive Office of the Governor estimates that this CS will result in a nonrecurring fiscal impact of \$24,500, including:

- Travel (Nine members/three meetings/\$500 per trip) - \$13,500.
- Meeting Noticing - \$1,000.
- Conduct Study - \$10,000.

**Task Force for the Remediation of Illicit Drug Labs**

All other costs, including staff support and publication expenses, will be absorbed by the Office of Drug Control within the Executive Office of the Governor, the Department of Law Enforcement, and the Department of Environmental Protection. Legislative staff estimates that this CS will result in a nonrecurring fiscal impact of \$25,500, assuming \$650 per member per meeting.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

## **VIII. Summary of Amendments:**

None.

---

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---