

1 A bill to be entitled

2 An act relating to controlled substances; amending s.
3 893.02, F.S.; defining the term "cultivation" for
4 specified purposes; amending s. 893.1351, F.S.;
5 prohibiting a person from owning or actually or
6 constructively possessing a place, structure, trailer, or
7 other described place with knowledge that the place will
8 be used to manufacture, sell, or traffic in a controlled
9 substance; providing that possession of a specified number
10 or more of cannabis plants constitutes prima facie
11 evidence of intent to sell or distribute; providing
12 criminal penalties; creating s. 893.1352, F.S.; defining
13 terms; providing that a person with actual or constructive
14 possession of a place, structure, trailer, or conveyance
15 being used to manufacture a controlled substance for sale
16 and distribution commits a felony of the first degree if a
17 minor is present or resides in the place, structure,
18 trailer, or conveyance; providing that a person who allows
19 an infant or toddler to be in close proximity to a
20 controlled substance commits a felony of the first degree;
21 providing criminal penalties; amending s. 893.10, F.S.;
22 providing that equipment used in the cultivation or
23 manufacture of controlled substances may be photographed
24 or video recorded and the photograph or video recording
25 used as evidence for later use at trial; providing for the
26 destruction of the equipment; amending s. 921.0022, F.S.;
27 ranking specified offenses in the offense severity ranking
28 chart of the Criminal Punishment Code; amending ss.

29 465.016, , 465.023, and 893.135, F.S.; conforming cross-
 30 references; providing an effective date.

31

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

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34 Section 1. Subsections (5) through (21) of section 893.02,
 35 Florida Statutes, are renumbered as subsections (6) through
 36 (22), respectively, and a new subsection (5) is added to that
 37 section to read:

38 893.02 Definitions.--The following words and phrases as
 39 used in this chapter shall have the following meanings, unless
 40 the context otherwise requires:

41 (5) "Cultivation" means the preparation of any soil or
 42 hydroponic medium for the planting of cannabis plants, the
 43 tending and caring of cannabis plants, or the harvesting of
 44 mature cannabis plants.

45 Section 2. Section 893.1351, Florida Statutes, is amended
 46 to read:

47 893.1351 Ownership, lease, rental, or possession ~~or rent~~
 48 ~~for the purpose of~~ trafficking in or manufacturing a controlled
 49 substance.--

50 (1) A person may not own, lease, or rent any place,
 51 structure, or part thereof, trailer, or other conveyance, with
 52 the knowledge that the ~~such~~ place, structure, trailer, or
 53 conveyance will be used for the purpose of trafficking in a
 54 controlled substance, as provided in s. 893.135; for, ~~or~~ the
 55 sale of a controlled substance, as provided in s. 893.13; or for
 56 the manufacture of a controlled substance intended for sale or

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57 distribution to another.

58 (2) A person may not knowingly be in actual or
 59 constructive possession of any place, structure, or part
 60 thereof, trailer, or other conveyance with the knowledge that
 61 the place, structure, or part thereof, trailer, or conveyance
 62 will be used for the purpose of trafficking in a controlled
 63 substance, as provided in s. 893.135; for the sale of a
 64 controlled substance, as provided in s. 893.13; or for the
 65 manufacture of a controlled substance intended for sale or
 66 distribution to another.

67 (3) Proof of the possession of 25 or more cannabis plants
 68 constitutes prima facie evidence that the cannabis is intended
 69 for sale or distribution.

70 (4)(2) A person who violates any provision of this section
 71 commits subsection (1) is guilty of a felony of the third
 72 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 73 775.084.

74 Section 3. Section 893.1352, Florida Statutes, is created
 75 to read:

76 893.1352 Unlawful possession of a controlled substance in
 77 the presence of a minor.--

78 (1) As used in this section, the term:

79 (a) "Close proximity" means the item is so close to the
 80 infant or toddler as to be within his or her reach without
 81 regard to whether the infant or toddler is likely to attempt to
 82 reach for the item.

83 (b) "Infant or toddler" means any child from birth until
 84 the child's third birthday.

85 (2) A person who is found to be in actual or constructive
 86 possession of a place, structure, trailer, or conveyance with
 87 the knowledge that the place, structure, trailer, or conveyance
 88 is being used to manufacture a controlled substance intended for
 89 sale or distribution to another and who knew or should have
 90 known that a minor is present or resides in the place,
 91 structure, trailer, or conveyance commits a felony of the first
 92 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 93 775.084.

94 (3) A person may not possess any amount of a controlled
 95 substance in close proximity to an infant or toddler. A person
 96 who violates this subsection commits a felony of the first
 97 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 98 775.084.

99 Section 4. Section 893.10, Florida Statutes, is amended to
 100 read:

101 893.10 Burden of proof; photograph or video recording of
 102 evidence.--

103 (1) It is ~~shall~~ not be necessary for the state to negative
 104 any exemption or exception set forth in this chapter in any
 105 indictment, information, or other pleading or in any trial,
 106 hearing, or other proceeding under this chapter, and the burden
 107 of going forward with the evidence with respect to any ~~such~~
 108 exemption or exception is ~~shall be~~ upon the person claiming its
 109 benefit.

110 (2) In the case of a person charged under s. 893.14(1)
 111 with the possession of a controlled substance, the label
 112 required under s. 893.04(1) or s. 893.05(2) is ~~shall be~~

113 | admissible in evidence and ~~shall be~~ prima facie evidence that
 114 | such substance was obtained pursuant to a valid prescription
 115 | form or dispensed by a practitioner while acting in the course
 116 | of his or her professional practice.

117 | (3) In the prosecution of an offense involving the
 118 | cultivation or manufacture of a controlled substance, a
 119 | photograph or video recording of the manufacturing or
 120 | cultivation equipment used in committing the offense, including,
 121 | but not limited to, grow lights, growing trays, and chemical
 122 | fertilizers, may be introduced as competent evidence of the
 123 | existence and use of the equipment and is admissible in the
 124 | prosecution of the offense to the same extent as if the property
 125 | were introduced as evidence.

126 | (4) After a law enforcement agency documents the
 127 | manufacturing and cultivation equipment by photography or video
 128 | recording, the manufacturing and cultivation equipment may be
 129 | destroyed on site and left in disrepair. The law enforcement
 130 | agency destroying the equipment is immune from civil liability
 131 | for the destruction of the equipment. The destruction of the
 132 | equipment must be recorded by the supervising law enforcement
 133 | officer in the manner described in s. 893.12(1)(a) and records
 134 | must be maintained for 12 months.

135 | Section 5. Paragraphs (e) and (h) of subsection (3) of
 136 | section 921.0022, Florida Statutes, are amended to read:

137 | 921.0022 Criminal Punishment Code; offense severity
 138 | ranking chart.--

139 | (3) OFFENSE SEVERITY RANKING CHART

140 | (e) LEVEL 5

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141	Florida	Felony	Description
	Statute	Degree	
142	316.027 (1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
143	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
144	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
145	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
146	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
147	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
148	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
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150	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
151	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
152	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
153	790.01(2)	3rd	Carrying a concealed firearm.
154	790.162	2nd	Threat to throw or discharge destructive device.
155	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
156	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.

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157	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
158	800.04 (7) (c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
159	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
160	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
161	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
162	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
163	812.131 (2) (b)	3rd	Robbery by sudden snatching.
164	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
165	817.034 (4) (a) 2.	2nd	Communications fraud, value

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166			\$20,000 to \$50,000.
	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
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	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
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	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
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	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
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	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person

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			or disabled adult.
171	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
172	827.071 (5)	3rd	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child.
173	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
174	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
175	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
176	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.

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177 | 874.05 (2) | 2nd | Encouraging or recruiting another
to join a criminal street gang;
second or subsequent offense.

178 | 893.13 (1) (a) 1. | 2nd | Sell, manufacture, or deliver
cocaine (or other s.
893.03 (1) (a), (1) (b), (1) (d),
(2) (a), (2) (b), or (2) (c) 4.
drugs).

179 | 893.13 (1) (c) 2. | 2nd | Sell, manufacture, or deliver
cannabis (or other s.
893.03 (1) (c), (2) (c) 1., (2) (c) 2.,
(2) (c) 3., (2) (c) 5., (2) (c) 6.,
(2) (c) 7., (2) (c) 8., (2) (c) 9.,
(3), or (4) drugs) within 1,000
feet of a child care facility,
school, or state, county, or
municipal park or publicly owned
recreational facility or
community center.

180 | 893.13 (1) (d) 1. | 1st | Sell, manufacture, or deliver
cocaine (or other s.
893.03 (1) (a), (1) (b), (1) (d),
(2) (a), (2) (b), or (2) (c) 4.
drugs) within 1,000 feet of

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university.

181 893.13 (1) (e) 2. 2nd Sell, manufacture, or deliver
cannabis or other drug prohibited
under s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) within
1,000 feet of property used for
religious services or a specified
business site.

182 893.13 (1) (f) 1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d), or
(2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
public housing facility.

183 893.13 (4) (b) 2nd Deliver to minor cannabis (or
other s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs).

184 893.1351 3rd Ownership, lease, rental, or
possession for trafficking in or
manufacturing of controlled

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substance.

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(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
499.0051 (7)	1st	Forgery of prescription or legend drug labels.
499.0052	1st	Trafficking in contraband legend drugs.
560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or

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payment instruments totaling or exceeding \$20,000, but less than \$100,000.

655.50 (10) (b) 2.

2nd

Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.

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777.03 (2) (a)

1st

Accessory after the fact, capital felony.

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782.04 (4)

2nd

Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.

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782.051 (2)

1st

Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04 (3).

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782.071 (1) (b)

1st

Committing vehicular homicide and failing to render aid or give

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			information.
200	782.072 (2)	1st	Committing vessel homicide and failing to render aid or give information.
201	790.161 (3)	1st	Discharging a destructive device which results in bodily harm or property damage.
202	794.011 (5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
203	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
204	800.04 (4)	2nd	Lewd or lascivious battery.
205	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
206	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
207	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives

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			or dangerous weapon.
208	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
209	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
210	812.13 (2) (b)	1st	Robbery with a weapon.
211	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
212	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
213	825.102 (2)	2nd	Aggravated abuse of an elderly person or disabled adult.
214	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
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216	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
217	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
218	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
219	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
220	860.16	1st	Aircraft piracy.
221	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
222	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).

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223	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
224	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
225	893.135(1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
226	893.135(1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
227	893.135(1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
228	893.135(1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
229	893.135(1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
	893.135(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14

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			grams or more, less than 28 grams.
230	893.135 (1) (h) 1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
231	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
232	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
233	<u>893.1352 (2)</u>	<u>1st</u>	<u>Possession of a place used to manufacture or cultivate controlled substance when minor is present or resides there.</u>
234	<u>893.1352 (3)</u>	<u>1st</u>	<u>Possession of controlled substance in proximity to infant or toddler.</u>
235	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.

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895.03 (2) 1st Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.

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895.03 (3) 1st Conduct or participate in any enterprise through pattern of racketeering activity.

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896.101 (5) (b) 2nd Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

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896.104 (4) (a) 2. 2nd Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

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241 Section 6. Paragraph (s) of subsection (1) of section
242 465.016, Florida Statutes, is amended to read:

243 465.016 Disciplinary actions.--

244 (1) The following acts constitute grounds for denial of a
245 license or disciplinary action, as specified in s. 456.072(2):

246 (s) Dispensing any medicinal drug based upon a

247 communication that purports to be a prescription as defined by
 248 s. 465.003(14) or s. 893.02 ~~893.02(20)~~ when the pharmacist knows
 249 or has reason to believe that the purported prescription is not
 250 based upon a valid practitioner-patient relationship.

251 Section 7. Paragraph (e) of subsection (1) of section
 252 465.023, Florida Statutes, is amended to read:

253 465.023 Pharmacy permittee; disciplinary action.--

254 (1) The department or the board may revoke or suspend the
 255 permit of any pharmacy permittee, and may fine, place on
 256 probation, or otherwise discipline any pharmacy permittee who
 257 has:

258 (e) Dispensed any medicinal drug based upon a
 259 communication that purports to be a prescription as defined by
 260 s. 465.003(14) or s. 893.02 ~~893.02(20)~~ when the pharmacist knows
 261 or has reason to believe that the purported prescription is not
 262 based upon a valid practitioner-patient relationship that
 263 includes a documented patient evaluation, including history and
 264 a physical examination adequate to establish the diagnosis for
 265 which any drug is prescribed and any other requirement
 266 established by board rule under chapter 458, chapter 459,
 267 chapter 461, chapter 463, chapter 464, or chapter 466.

268 Section 8. Subsection (6) of section 893.135, Florida
 269 Statutes, is amended to read:

270 893.135 Trafficking; mandatory sentences; suspension or
 271 reduction of sentences; conspiracy to engage in trafficking.--

272 (6) A mixture, as defined in s. 893.02 ~~893.02(14)~~,
 273 containing any controlled substance described in this section
 274 includes, but is not limited to, a solution or a dosage unit,

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275 including but not limited to, a pill or tablet, containing a
276 controlled substance. For the purpose of clarifying legislative
277 intent regarding the weighing of a mixture containing a
278 controlled substance described in this section, the weight of
279 the controlled substance is the total weight of the mixture,
280 including the controlled substance and any other substance in
281 the mixture. If there is more than one mixture containing the
282 same controlled substance, the weight of the controlled
283 substance is calculated by aggregating the total weight of each
284 mixture.

285 Section 9. This act shall take effect July 1, 2008.