

By Senator Oelrich

14-00417-08

2008390__

1 A bill to be entitled

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

27
28 Be It Enacted by the Legislature of the State of Florida:
29

14-00417-08

2008390__

30 Section 1. Section 893.1351, Florida Statutes, is amended
31 to read:

32 893.1351 Own, lease, or rent for the purpose of trafficking
33 in a controlled substance.--

34 (1) A person may not own, lease, or rent any place,
35 structure, or part thereof, trailer, or other conveyance, with
36 the knowledge that the such place, structure, trailer, or
37 conveyance will be used for the purpose of trafficking in a
38 controlled substance, as provided in s. 893.135; for, or the sale
39 of a controlled substance, as provided in s. 893.13; or for the
40 manufacture of a controlled substance intended for sale or
41 distribution to another.

42 (2) A person may not knowingly be in actual or constructive
43 possession of any place, structure, or part thereof, trailer, or
44 other conveyance with the knowledge that the place, structure, or
45 part thereof, trailer, or conveyance will be used for the purpose
46 of trafficking in a controlled substance, as provided in s.
47 893.135; for the sale of a controlled substance, as provided in
48 s. 893.13; or for the manufacture of a controlled substance
49 intended for sale or distribution to another.

50 (3) Proof of the possession of 25 or more cannabis plants
51 constitutes prima facie evidence that the cannabis is intended
52 for sale or distribution.

53 (4) ~~(2)~~ A person who violates any provision of this section
54 commits subsection (1) ~~is guilty of~~ a felony of the third degree,
55 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

56 Section 2. Section 893.1352, Florida Statutes, is created
57 to read:

58 893.1352 Unlawful possession of a controlled substance in

14-00417-08

2008390__

59 the presence of a minor.--

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

61 (a) "Close proximity" means the item is so close to the
62 infant or toddler as to be within his or her reach without regard
63 to whether the infant or toddler is likely to attempt to reach
64 for the item.

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

67 (2) A person who is found to be in actual or constructive
68 possession of a place, structure, trailer, or conveyance with the
69 knowledge that the place, structure, trailer, or conveyance is
70 being used to manufacture a controlled substance intended for
71 sale or distribution to another and who knew or should have known
72 that a minor is present or resides in the place, structure,
73 trailer, or conveyance commits a felony of the first degree,
74 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

75 (3) A person may not possess any amount of a controlled
76 substance in close proximity to an infant or toddler. A person
77 who violates this subsection commits a felony of the first
78 degree, punishable as provided in s. 775.082, s. 775.083, or s.
79 775.084.

80 (4) Notwithstanding any provision of chapter 921 or any
81 other law, a conviction for a third-degree felony offense under
82 s. 893.1351 or this section shall be ranked within the offense
83 severity ranking chart at offense severity level 5, a conviction
84 for any second-degree felony offense under s. 893.1351 or this
85 section shall be ranked within the offense severity ranking chart
86 at offense severity level 7, and a conviction for any first-
87 degree felony offense under s. 893.1351 or this section shall be

14-00417-08

2008390__

88 ranked within the offense severity ranking chart at offense
89 severity level 8.

90 Section 3. Section 893.10, Florida Statutes, is amended to
91 read:

92 893.10 Burden of proof; photograph or video recording of
93 evidence.--

94 (1) It is ~~shall~~ not be necessary for the state to negative
95 any exemption or exception set forth in this chapter in any
96 indictment, information, or other pleading or in any trial,
97 hearing, or other proceeding under this chapter, and the burden
98 of going forward with the evidence with respect to any ~~such~~
99 exemption or exception is ~~shall be~~ upon the person claiming its
100 benefit.

101 (2) In the case of a person charged under s. 893.14(1) with
102 the possession of a controlled substance, the label required
103 under s. 893.04(1) or s. 893.05(2) is ~~shall be~~ admissible in
104 evidence and ~~shall be~~ prima facie evidence that such substance
105 was obtained pursuant to a valid prescription form or dispensed
106 by a practitioner while acting in the course of his or her
107 professional practice.

108 (3) In the prosecution of an offense involving the
109 cultivation or manufacture of a controlled substance, a
110 photograph or video recording of the manufacturing or cultivation
111 equipment used in committing the offense, including, but not
112 limited to, grow lights, growing trays, and chemical fertilizers,
113 may be introduced as competent evidence of the existence and use
114 of the equipment and is admissible in the prosecution of the
115 offense to the same extent as if the property were introduced as
116 evidence.

14-00417-08

2008390__

117 (4) After a law enforcement agency documents the
118 manufacturing and cultivation equipment by photography or video
119 recording, the manufacturing and cultivation equipment may be
120 destroyed on site and left in disrepair. The law enforcement
121 agency destroying the equipment is immune from civil liability
122 for the destruction of the equipment. The destruction of the
123 equipment must be recorded by the supervising law enforcement
124 officer in the manner described in s. 893.12(1)(a) and records
125 must be maintained for 12 months.

126 Section 4. This act shall take effect July 1, 2008.