

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 204

INTRODUCER: Health Regulation Committee, Criminal Justice Committee, and Senators Wise and Dockery

SUBJECT: Controlled Substances

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Fernandez/O'Callaghan</u>	<u>Stovall</u>	<u>HR</u>	<u>Fav/CS</u>
3.	<u>Munroe</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
4.	_____	_____	<u>BC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill schedules several synthetic cannabinoids or synthetic cannabinoid-mimicking compounds in Schedule I of Florida's controlled substance schedules. The U.S. Drug Enforcement Administration (DEA) temporarily placed these substances in Schedule I of the federal controlled substance schedules.¹ The effect of the federal scheduling prohibits the legal sale of these substances by retailers and the possession and sale of these substances is a federal crime. The placement of synthetic cannabinoids in the schedule of controlled substances under ch. 893, Florida Statutes, would authorize Florida law enforcement official and prosecutors to arrest and prosecute the possession and sale of these substances under Florida law. Possession of 3 grams or less of the scheduled substances, which is not in powdered form, is a misdemeanor of the first degree under Florida law.

¹ Drug Enforcement Administration (DEA), U.S. Department of Justice, Final Order, Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 76 Fed. Reg. 11075 (Mar. 1, 2011) (to be codified at 21 C.F.R. pt. 1308), <http://www.gpo.gov/fdsys/pkg/FR-2011-03-01/html/2011-4428.htm> (last visited on Mar. 1, 2011). Also see the DEA's Notice of Intent, 75 Fed. Reg. 71635 (Nov. 24, 2010). Unless otherwise indicated, all information for the Present Situation section of this bill analysis is from these sources.

This bill amends sections 893.02 and 893.03, Florida Statutes. This bill reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(1), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendment to s. 893.03, F.S., in references thereto.

II. Present Situation:

The Drug Enforcement Administration (DEA) has provided the following information regarding synthetic cannabinoids (often referred to by the slang terms “K2” or “Spice”):

Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system. No legitimate non-research uses have been identified for these synthetic cannabinoids. They have not been approved by the U.S. Food and Drug Administration for human consumption. These THC-like synthetic cannabinoids, 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue), are so termed for their THC-like pharmacological properties. Though they have similar properties to delta-9-tetrahydrocannabinol (THC) found in marijuana and have been found to be more potent than THC in animal studies. Numerous herbal products have been analyzed and JWH-073, JWH-018, JWH-200, CP-47,497, and cannabicyclohexanol have been identified in varying mixture profiles and amounts spiked on plant material.

The DEA found that these substances have a high potential for abuse, no currently accepted medical use in treatment in the United States, and are not safe for use under medical supervision.² Based on the DEA findings, these substances appear to meet the criteria for scheduling under Schedule I under both federal and Florida law.³ On March 1, 2011, the DEA issued a final order to temporarily place these substances in Schedule I of the federal controlled substance schedules.⁴

Currently, these substances are not controlled substances under Florida law, and possession and sale offenses are not generally applicable, though it has been reported that the Polk County Sheriff's Office recently arrested several retailers for violation of Florida's imitation controlled substance statute, s. 817.564, F.S.⁵ It remains to be seen whether convictions will occur under these statutes, and if they do occur, whether they will be upheld if subject to appellate challenge.

The DEA indicated that the emergence of these synthetic cannabinoids represents a recent phenomenon in the designer drug market.⁶ The popularity of these THC-like synthetic

² *Id.*

³ See s. 893.03(1), F.S.

⁴ Drug Enforcement Administration, *supra* note 1.

⁵ Curtis, Henry Pierson, “Imitation marijuana: More than dozen arrested in Polk County for selling ‘legal weed’,” *Orlando Sentinel*, Nov. 18, 2010, http://articles.orlandosentinel.com/2010-11-18/news/os-fake-pot-arrests-polk-county-20101118_1_synthetic-marijuana-small-gasoline-stations-legal-weed (last visited March 30, 2011).

⁶ Drug Enforcement Administration, *supra* note 1.

cannabinoids has greatly increased in the United States and they are being abused for their psychoactive properties. The substances are primarily found laced on plant material and are also being abused alone as self-reported on Internet discussion boards. The most common route of administration of these synthetic cannabinoids is by smoking, using a pipe, water pipe, or rolling the drug-spiked plant material in cigarette papers.

The DEA stated that “products containing these THC-like synthetic cannabinoids are marketed as ‘legal’ alternatives to marijuana and are being sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores.”⁷ Further, “a number of the products and synthetic cannabinoids appear to originate from foreign sources and are manufactured in the absence of quality controls and devoid of regulatory oversight.”⁸ “The marketing of products that contain one or more of these synthetic cannabinoids is geared towards teens and young adults.”⁹ Despite disclaimers that the products are not intended for human consumption,¹⁰ retailers promote that routine urinalysis tests will not typically detect the presence of these synthetic cannabinoids.”¹¹

The DEA further stated that abuse of these substances or products containing these substances “has been characterized by both acute and long term public health and safety problems”:

- These synthetic cannabinoids alone or spiked on plant material have the potential to be extremely harmful due to their method of manufacture and high pharmacological potency. The DEA has been made aware that smoking these synthetic cannabinoids for the purpose of achieving intoxication and experiencing the psychoactive effects is identified as a reason for emergency room visits and calls to poison control centers.¹²
- “The body appears to recognize the synthetic compounds as a foreign substance and often causes a physiological rejection.”¹³ Health warnings have been issued by numerous state public health departments and poison control centers describing the adverse health effects associated with these synthetic cannabinoids and their related products including agitation, anxiety, vomiting, tachycardia, elevated blood pressure, seizures, hallucinations and non-responsiveness. Case reports describe psychotic episodes, withdrawal, and dependence associated with use of these synthetic cannabinoids, similar to syndromes observed in

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* (Labeling these products as “not for human consumption” tends to keep the products out of purview of the Federal Food and Drug Administration (FDA). Additionally, not all the ingredients used in the production of the materials are listed.)

¹¹ *Id.*

¹² “[T]he American Association of Poison Control Centers (AAPCC) has reported receiving over 1,500 calls as of September 27, 2010, relating to products spiked with these synthetic cannabinoids from 48 states and the District of Columbia.” It is unknown how many of those calls were to Florida poison control centers. There have been several media reports of persons having to go to the hospital after use of synthetic cannabinoids. *See, e.g.,* Repecki, Tiffany, “Cape teen hospitalized after smoking ‘synthetic marijuana,’” *Cape Coral Daily Breeze*, Mar. 31, 2010, <http://www.cape-coral-daily-breeze.com/page/content.detail/id/520354.html> (last visited Mar. 30, 2011), and Wyazan, Sam, “Teenagers treated after smoking ‘K2 Spice’ substance,” *Tallahassee Democrat* (abstract), Jun. 30, 2010, <http://pqasb.pqarchiver.com/tallahassee/access/2074740741.html?FMT=ABS&date=Jun+30%2C+2010> (last visited Jan. 3, 2011).

¹³ Florida Fusion Center Brief: K2 or Spice, The Florida Department of Law Enforcement (Jun. 2010). A copy of this document is on file with the Senate Health Regulation Committee.

cannabis abuse. Emergency room physicians have reported admissions connected to the abuse of these synthetic cannabinoids. Additionally, when responding to incidents involving individuals who have reportedly smoked these synthetic cannabinoids, first responders report that these individuals suffer from intense hallucinations. Detailed chemical analysis by the DEA and other investigators have found these synthetic cannabinoids spiked on plant material in products marketed to the general public. The risk of adverse health effects is further increased by the fact that similar products vary in the composition and concentration of synthetic cannabinoids(s) spiked on the plant material.

According to the National Conference of State Legislatures, as of November 23, 2010, “at least 11 state legislatures and another six state agencies have taken action to outlaw the use of these drugs.”¹⁴

III. Effect of Proposed Changes:

The bill amends s. 893.02, F.S., the definitions section of ch. 893, F.S., to define the term “homologue” as “a chemical compound in a series in which each compound differs by one or more alkyl functional groups on an alkyl side chain.” The term “homologue” appears in the scheduling nomenclature of one of the substances scheduled by the bill.

The bill also amends s. 893.03, F.S., to place the following synthetic cannabinoids or synthetic cannabinoid-mimicking compounds in Schedule I of Florida’s controlled substance schedules:

- 2-[(1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.
- 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also known as JWH-200.

If a person is in actual or constructive possession of a controlled substance, unless it was lawfully obtained from a practitioner or pursuant to valid prescription, he or she is liable for a third-degree felony punishable by imprisonment up to five years and the imposition of a fine of up to \$5,000.

If a person possesses 3 grams or less of the synthetic cannabinoids and it is not of a powdered form, he or she commits a first-degree misdemeanor punishable by jail time of up to one year and the imposition of a fine of up to 1,000.

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendment to s. 893.03, F.S., in references thereto.

The effective date of the bill is July 1, 2011.

¹⁴ “Synthetic Cannabinoids (K2),” National Conference of State Legislatures, updated Mar. 21, 2011 <http://www.ncsl.org/?tabid=21398> (last visited Mar. 30, 2011).

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, Section 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. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The scheduling of synthetic cannabinoids as provided in the bill should not impact retailers because the DEA has already scheduled these substances, and the federal action would require the removal of these substances and prohibit their sale.

C. Government Sector Impact:

On March 2, 2011, the Criminal Justice Impact Conference (CJIC) estimated that the CS/SB 204 will have a potentially insignificant prison bed impact (small additional number of prison beds projected).¹⁵ Although, CS/CS/SB 204 has not been reviewed by the conference for its impact on the prison bed population, it is likely that it will have a similar impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁵ Criminal Justice Impact Conference, Office of Economic and Demographic Research (Mar. 2, 2011), *available at* <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm>.

VIII. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Regulation on March 14, 2011:

Provides that any violator found carrying 3 grams or less of the scheduled synthetic cannabinoids or synthetic cannabinoid-mimicking compounds is subject to a first-degree misdemeanor unless the violator is found carrying it in a powdered form.

CS by Criminal Justice on January 11, 2011:

Adds an additional synthetic cannabinoid (JWH 200) to Schedule I of Florida's controlled substance schedules. This addition is consistent with proposed federal scheduling.

- B. Amendments:**

None.