

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1081 Controlled Substances

SPONSOR(S): Health & Human Services Quality Subcommittee; McBurney

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 1 N, As CS	Mathieson	Calamas
2) Judiciary Committee	15 Y, 0 N	Thomas	Havlicak
3) Health & Human Services Committee			

The bill provides that knowingly using a Schedule II controlled substance that is intended to be taken orally by a prescriber, in any other manner, is a misdemeanor of the first degree.

The bill has no fiscal impact on the state.

The bill provides for an effective date of October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Controlled Substances

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act, and classifies controlled substances into five categories, known as schedules. The distinguishing factor between the schedules is the potential for abuse¹ of the substance and whether there is a currently accepted medical use. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.²

- A **Schedule I** substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.
- A **Schedule II** substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples: cocaine and morphine.
- A **Schedule III** substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.
- A **Schedule IV** substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples: alprazolam; diazepam; and phenobarbital.
- A **Schedule V** substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.

Many people who take prescription medications do so responsibly. However, the nonmedical use or abuse of prescription drugs remains a significant public health concern in the United States. Certain prescription drugs – opioid substances, central nervous system depressants and stimulants – when abused can lead to psychological and physiological dependence. According to research by the National Institute on Drug Abuse,³ the three most abused classes of prescription drugs are:

- Opioids, used to treat pain. Examples include codeine (Schedules II, III, V), oxycodone (OxyContin, Percocet – Schedule II), and morphine (Kadian, Avinza -Schedule II);
- Central nervous system depressants, used to treat anxiety and sleep disorders. Examples include barbiturates (Mebaral, Nembutal) and benzodiazepines (Valium, Xanax) (all in Schedule IV); and
- Stimulants, used to treat ADHD, narcolepsy, and obesity. Examples include dextroamphetamine (Dexedrine, Adderall) and methylphenidate (Ritalin, Concerta) (all in Schedule II).

In the 2011 Legislative Session, HB 7095 was enacted, which sought to deal with the prescription drug abuse issue in the state. The misuse of prescription drugs in the state is a serious public health emergency, and HB 7095 enacted a variety of measures to combat the problem, including for example, prohibiting practitioners dispensing controlled substances.

¹ Section 893.02(20), F.S.

² See, s. 893.03, F.S.

³ See <http://www.drugabuse.gov/drugs-abuse/prescription-medications> (last visited January 25, 2012).

Effect of Proposed Changes

The bill amends s. 893.13(7), F.S., to provide that a person who knowingly uses a Schedule II controlled substance, which was intended by their prescriber to be administered orally, in another manner, commits a misdemeanor of the first degree.⁴

The bill provides conforming changes to s. 893.055, F.S., s. 893.0551, F.S., and s. 921.0022, F.S.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 893.13, F.S., related to prohibited acts; penalties.
Section 2: Amends s. 893.055, F.S., related to prescription drug monitoring program.
Section 3: Amends s. 893.0551, F.S., related to public records exemption for the prescription drug monitoring program.
Section 4: Amends s. 921.0022, F.S., related to the criminal punishment code; offence severity ranking chart.
Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill creates a first degree misdemeanor offense, which may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

⁴ A first degree misdemeanor is punishable by a fine not exceeding \$1,000 or imprisonment not exceeding one year. Sections. 775.082, 775.083, F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Health & Human Services Quality Subcommittee adopted two amendments to HB 1081. The amendments:

- Provided that knowingly using a Schedule II controlled substance that is intended to be taken orally by a prescriber, in any other manner, is a misdemeanor of the first degree.
- Deleted lines 243-296, removing the provisions of the bill relating to Schedule II opioid drugs that incorporate tamper-resistant technologies.

This bill was reported favorably as a committee substitute. This analysis reflects the committee substitute.