

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1175 Controlled Substances

**SPONSOR(S):** Judiciary Committee; Criminal Justice Subcommittee; Ingram and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1502

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	14 Y, 0 N, As CS	Williams	Havlicak

### SUMMARY ANALYSIS

Synthetic cannabinoids (also known as “K2” or “Spice”), are chemically engineered substances containing one or more synthetic compounds that behave similarly to the primary psychoactive constituent of marijuana. Synthetic stimulants, routinely marketed as “bath salts,” are psychoactive substances that, when used improperly, offer alternatives to illegal drugs. In recent years, synthetic cannabinoids and bath salts have begun being used as recreational drugs, and marketed as legal and safer alternatives to illegal methods of getting “high.”

During the 2011 Legislative Session, s. 893.03, F.S., was amended to add specific synthetic cannabinoid and bath salt substances to Schedule I of Florida’s controlled substance schedules. As a result, current law prohibits the possession, sale, manufacture, delivery and purchase of the synthetic cannabinoid and bath salt substances listed in Schedule I.

Since the 2011 Legislative Session, new formulas of synthetic cannabinoids and bath salts have been developed that are made up of chemicals not covered by current law.

The bill amends s. 893.03, F.S., to add additional synthetic cannabinoid and bath salt substances to Schedule I of Florida’s controlled substance schedules. As a result, possession of these substances is a third degree felony ranked in Level 3 of the ranking chart. However, possession of 3 grams or less of synthetic cannabinoids will be a first degree misdemeanor, unless the synthetic cannabinoid is in powdered form. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoid and bath salt substances is a third degree felony ranked in Level 3 of the ranking chart. The purchase of these substances is a third degree felony ranked in Level 2 of the ranking chart.

According to FDLE, this bill could potentially increase the number of evidence submissions into FDLE’s Crime Laboratory System. The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances. However, FDLE’s fiscal analysis stated that no new expenditures would be required to implement the bill.

The Criminal Justice Impact Conference met on January 17, 2012, and determined the bill will have an insignificant impact on state prison beds.

The bill is effective October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Synthetic Cannabinoids

Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances, similar to tetrahydrocannabinol (THC)—the active ingredient in marijuana—that, when smoked or ingested, can produce a high similar to marijuana.<sup>1</sup> 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 synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.<sup>2</sup>

##### Bath Salts

3,4-Methylenedioxymethcathinone, 3,4-Methylenedioxypropylvalerone (MDPV), Methylmethcathinone, Methoxymethcathinone, Fluoromethcathinone, and Methylethcathinone, are psychoactive substances that, when used improperly, offer alternatives to illegal drugs.<sup>3</sup> Much like the marketing of synthetic cannabinoids as incense, these synthetic stimulant substances are commercially available and are being marketed as “bath salts.”<sup>4</sup> While these substances have become popular under the guise of being sold as bath salts, they are sometimes sold as other products such as insect repellent or plant food, with names like “Bonsai Grow,” among others.<sup>5</sup>

##### Substance Abuse

Despite being labeled “not for human consumption,” synthetic cannabinoids and bath salts have begun being used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting “high.”<sup>6</sup> They have been found accessible at convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, and truck stops, amongst other locations.<sup>7</sup> These substances are reportedly being used predominately by the youth population.<sup>8</sup>

Synthetic cannabinoids and bath salts are abused typically by smoking. However, bath salts have also been abused by injection, snorting and by the use of an atomizer.<sup>9</sup> Reports of side effects from synthetic cannabinoids and bath salts include: tachycardia, hypertension, anxiety, high blood pressure,

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<sup>1</sup> National Conference of State Legislatures, “Synthetic Drug Threats.” October 24, 2011 (<http://www.ncsl.org/?tabid=21398>) (last visited on January 12, 2012).

<sup>2</sup> “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I,” Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last visited on January 12, 2012).

<sup>3</sup> *Id.*

<sup>4</sup> “Bath salts” are known by a variety of names, including “Red Dove,” “Blue Silk,” “Zoom,” “Bloom,” “Cloud Nine,” “Ocean Snow,” “Lunar Wave,” “Vanilla Sky,” “Ivory Wave,” “White Lightning,” “Scarface,” “Purple Wave,” “Blizzard,” “Star Dust,” “Lovey, Dovey,” “Snow Leopard,” “Aura,” and “Hurricane Charlie.” Hunterdon Drug Awareness Program, Comprehensive Drug Information on MDPV, Mephedrone (“Bath Salts”). (<http://www.mdap.org/mdpv.html>) (last visited on January 12, 2012).

<sup>5</sup> Drug Enforcement Administration. Methylenedioxypropylvalerone (MDPV). October, 2011. ([http://www.deadiversion.usdoj.gov/drugs\\_concern/mdpv.pdf](http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf)) (last visited on January 12, 2012).

<sup>6</sup> See, Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence. “Bath Salts” Receive Emergency Drug Scheduling. Brief # 10-194 Public, January 26, 2011. ([http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10\\_194BathSaltsPublic.pdf](http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf)) (last visited on January 12, 2012). See also, *supra* note 2.

<sup>7</sup> National Drug Intelligence Center. U.S. Department of Justice. DRUG WATCH: Increasing abuse of bath salts. December 17, 2010. ([www.justice.gov/ndic/pubs43/43474/sw0007p.pdf](http://www.justice.gov/ndic/pubs43/43474/sw0007p.pdf)) (last visited on January 12, 2012).

<sup>8</sup> *Supra* note 6. See also, *supra* note 2.

<sup>9</sup> *Supra* note 8.

and hallucinations.<sup>10</sup> Additionally, there have been cases in which these substances have caused individuals to behave inappropriately, and in some instances cause public danger.<sup>11</sup>

### Drug Schedules

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. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein.

The distinguishing factors between the different drug schedules are the “potential for abuse”<sup>12</sup> of the substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.<sup>13</sup> Cannabis and heroin are examples of Schedule I drugs.<sup>14</sup>

### Florida law

#### *Synthetic Cannabinoids (Spice/K2)*

During the 2011 Legislative Session, the following synthetic cannabinoids and synthetic cannabinoid-mimicking compounds were added to 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.<sup>15</sup>

As a result, possession of these synthetic cannabinoids is a third degree felony<sup>16</sup> in conformity with other Schedule I hallucinogens.<sup>17</sup> This offense is ranked in Level 3 of the offense severity ranking chart (ranking chart). The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids is a third degree felony ranked in Level 3 of the ranking chart. The offense of purchase of synthetic cannabinoids is a third degree felony ranked in Level 2 of the ranking chart.

#### *Bath Salts*

During the 2011 Legislative Session, the following synthetic substances (bath salts) were added to Schedule I of Florida’s controlled substance schedules:

- 3,4-Methylenedioxymethcathinone.
- 3,4-Methylenedioxypyrovalerone (MDPV).
- Methylenmethcathinone.
- Methoxymethcathinone.
- Fluoromethcathinone.
- Methylethcathinone.<sup>18</sup>

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<sup>10</sup> *Supra* note 6. *See also, supra* note 2.

<sup>11</sup> According to Panama City Beach police, one of the most shocking cases of bath salts abuse involved a woman who burst into her 71-year-old mother’s room swinging a machete. Alexia Campbell and Aaron Deslatte, Sun Sentinel, *Florida bans 'bath salt' drugs after violent outbursts*. January 27, 2011. ([http://articles.sun-sentinel.com/2011-01-27/news/fl-bath-salts-florida-20110126\\_1\\_salts-fake-cocaine-bath](http://articles.sun-sentinel.com/2011-01-27/news/fl-bath-salts-florida-20110126_1_salts-fake-cocaine-bath)) (last visited on January 12, 2012).

<sup>12</sup> *See* s. 893.02(19), F.S.

<sup>13</sup> *See* s. 893.03, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Chapter 2011-73, L.O.F.

<sup>16</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>17</sup> Possession of 3 grams or less of synthetic cannabinoids will be a first degree misdemeanor, unless the synthetic cannabinoid is in powdered form. *See*, ch. 2011-73, L.O.F.

<sup>18</sup> Chapter 2011-90, L.O.F.

As a result, possession of these substances is a third degree felony ranked in Level 3 of the ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances is a third degree felony ranked in Level 3 of the ranking chart. The purchase of these substances is a third degree felony ranked in Level 2 of the ranking chart.

#### Recent Issues

Since the 2011 Legislative Session, new formulas of synthetic cannabinoids and bath salts have been developed that are made up of chemicals not covered by current law.<sup>19</sup> According to the Florida Department of Law Enforcement (FDLE), state and local law enforcement agencies are currently limited in their ability to intercede in cases involving any of these chemical substances, thus creating an environment where individuals feel free to possess, distribute, and/or use these harmful substances without fear of intervention by state and local law enforcement.<sup>20</sup>

#### **Effect of the Bill**

The bill amends s. 893.03, F.S., to add additional synthetic cannabinoid and bath salt substances to Schedule I of Florida's controlled substance schedules. As a result, possession of these substances is a third degree felony ranked in Level 3 of the ranking chart. However, possession of 3 grams or less of synthetic cannabinoids will be a first degree misdemeanor, unless the synthetic cannabinoid is in powdered form. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoid and bath salt substances is a third degree felony ranked in Level 3 of the ranking chart. The purchase of these substances is a third degree felony ranked in Level 2 of the ranking chart.

The bill also reenacts ss. 893.13(1) – (6) and 921.0022(3)(b) – (e), F.S., to incorporate changes made to s. 893.03, F.S.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2012.

## **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 revenues.

##### **2. Expenditures:**

The bill adds additional chemical substances to Schedule I of Florida's controlled substance schedules. According to FDLE, this could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System.<sup>21</sup> The lab system will need to acquire all of the required

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<sup>19</sup>According to the FDLE, over 90 chemicals related to synthetic cannabinoids and bath salts have been discovered that have no accepted medical use or a legitimate industrial or commercial purpose. Although similar in structural make up, these chemical compounds differ by rearrangement of the molecules, creating a different drug. *See*, Florida Department of Law Enforcement. Analysis to HB 1175 relating to Controlled Substances. January 12, 2012. (On file with House Criminal Justice Subcommittee).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

standards necessary to test the proposed chemical substances.<sup>22</sup> However, FDLE's fiscal analysis stated that no new expenditures would be required to implement the bill.<sup>23</sup>

The Criminal Justice Impact Conference met on January 17, 2012, and determined the bill will have an insignificant impact on state prison beds.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

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

2. Expenditures:

Because the bill adds certain chemical substances to Schedule I, local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a rise in evidence submissions associated with the additions of the proposed chemical substances.<sup>24</sup>

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill prohibits the possession, sale, manufacture, delivery and purchase of related synthetic cannabinoids and bath salts chemical substances. As a result, the bill could have a negative fiscal impact on retailers currently profiting on the sale of such chemical substances.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 17, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrects the spelling of chemical substances listed in the bill.

On February 8, 2012, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that possession of 3 grams or less of the new synthetic

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

cannabinoids scheduled by the bill is a first degree misdemeanor, unless the synthetic cannabinoid is in powdered form.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.