

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 49	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Rouson and others	112 Y's	3 N's
COMPANION BILLS:	(CS/CS/SB 1140)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 49 passed the House on April 24, 2013, and subsequently passed the Senate on April 26, 2013.

Section 893.145, F.S., defines "drug paraphernalia" and includes an extensive list of items that are included in the term. It is important to note the items included as drug paraphernalia in s. 893.145, F.S., are not illegal to possess unless they are used, intended for use, or designed for use in a specified manner (e.g., intended to be used for growing a controlled substance).

Section 893.147, F.S., establishes the following five drug paraphernalia crimes: use or possession of drug paraphernalia; manufacture or delivery of drug paraphernalia; delivery of drug paraphernalia to a minor; transportation of drug paraphernalia; and advertisement of drug paraphernalia.

The bill amends s. 893.147, F.S., to make it a first degree misdemeanor for a person to knowingly and willfully sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S., and a second or subsequent violation a third degree felony. The drug paraphernalia included are:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.

The bill provides an exception for pipes that are primarily made of briar, meerschaum, clay, or corn cob.

On March 21, 2013, the Criminal Justice Impact Conference determined that SB 1140, which is similar to CS/CS/HB 49, will increase the state prison bed population; however, the extent of the increase is indeterminate. The bill may also have a negative jail bed impact on local governments.

The bill was approved by the Governor on June 5, 2013, ch. 2013-111, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Drug Paraphernalia

Drug paraphernalia is defined in s. 893.145, F.S., as:

All equipment, products, and materials of any kind which are used, intended for use, or designed for use in the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893 or s. 877.111, F.S.¹

The term includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
- (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
- (10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
- (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
 - (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (b) Water pipes;
 - (c) Carburetion tubes and devices;
 - (d) Smoking and carburetion masks;
 - (e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand;
 - (f) Miniature cocaine spoons, and cocaine vials;
 - (g) Chamber pipes;
 - (h) Carburetor pipes;
 - (i) Electric pipes;
 - (j) Air-driven pipes;
 - (k) Chillums;

¹ Section 893.02(4), F.S., defines “controlled substance” as “any substance named or described in Schedules I-V of s. 893.03, F.S.”

- (l) Bongs;
- (m) Ice pipes or chillers;
- (n) A cartridge or canister, which means a small metal device used to contain nitrous oxide;
- (o) A charger, sometimes referred to as a “cracker,” which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container;
- (p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister;
- (q) A whip-it, which means a device that may be used to expel nitrous oxide;
- (r) A tank;
- (s) A balloon;
- (t) A hose or tube;
- (u) A 2-liter-type soda bottle; and
- (v) Duct tape.²

Section 893.147, F.S., establishes the following five drug paraphernalia crimes:

- Use or possession of drug paraphernalia;
- Manufacture or delivery of drug paraphernalia;
- Delivery of drug paraphernalia to a minor;
- Transportation of drug paraphernalia; and
- Advertisement of drug paraphernalia.

It is important to note that the items listed above are not illegal to possess, use, manufacture, deliver, transport or advertise unless used in the manner described in the above drug paraphernalia definition.³

Effect of the Bill

The bill amends s. 893.147, F.S., to make the retail sale of drug paraphernalia a crime. The bill makes it a first degree misdemeanor⁴ for a person to knowingly and willfully sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S., and any second or subsequent violation a third degree felony.⁵

The bill provides an exception for pipes that are primarily made of briar, meerschaum, clay, or corn cob.

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:

² Section 893.145(1)-(12), F.S.

³ Section 893.145, F.S.

⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁵ 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.

On March 21, 2013, the Criminal Justice Impact Conference determined that SB 1140, which is similar to CS/CS/HB 49, will increase the state prison bed population; however, the extent of the increase is indeterminate.

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 makes it a first degree misdemeanor to sell items listed in 893.145(12)(a)-(c) and (g)-(m), F.S. As such, it may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.