

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1188

INTRODUCER: Senator Simpson

SUBJECT: Controlled Substances

DATE: March 27, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1188 provides for a 3-year mandatory minimum term of imprisonment for violating s. 893.13(1)(a), F.S. (prohibiting sale, manufacturing, etc., of specified controlled substances), if the violation occurs in a dwelling.

The bill also punishes trafficking in described synthetic cannabinoids. The offense is a first degree felony. The gram-weight threshold for charging trafficking in these substances is “more than 250 grams.” Depending upon the gram weight involved in the offense, the offender is subject to:

- A 3-year mandatory minimum term of imprisonment and a \$25,000 fine;
- A 7-year mandatory minimum term of imprisonment and a \$55,000 fine; or
- A 15-year mandatory minimum term of imprisonment and a \$200,000 fine.

**II. Present Situation:**

**Controlled Substance**

A substance is a “controlled substance” if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines which penalties may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc.

## Controlled Substance Offenses in s 893.13(1)(a), F.S.

Section 893.13(1)(a), F.S., punishes selling, manufacturing, or delivering, or possessing with the intent to sell, manufacture, or deliver a controlled substance.<sup>1</sup> It is a second degree felony,<sup>2</sup> third degree felony,<sup>3</sup> or first degree misdemeanor<sup>4</sup> to sell, manufacture, etc., the controlled substance depending on how the substance is scheduled. For example, selling a synthetic cannabinoid<sup>5</sup> scheduled in s. 893.03(1)(c), F.S. (“Schedule I(c)”), is a second degree felony. In contrast, unlawfully selling buprenorphine, an opioid medication scheduled in s. 893.03(5)(b), F.S. (“Schedule V(b)”), is a first degree misdemeanor.

## Drug Trafficking

The drug trafficking statute, s. 893.135, F.S., prohibits and punishes knowingly selling, purchasing, manufacturing, delivering, bringing into this state, or possessing certain controlled substances in a specified quantity. The statute does not apply to all controlled substances. The quantities of the specific controlled substances sold, manufactured, etc., may be substantial, and the felony degree and penalties for a violation of this statute are greater than the felony degree and penalties for a violation of s. 893.13(1)(a), F.S. Most drug trafficking violations are first degree felonies.<sup>6</sup> There are also mandatory minimum terms and substantial mandatory fines (not a feature of s. 893.13(1)(a), F.S.).

Currently, there is no drug trafficking offense involving synthetic cannabinoids scheduled in Schedule I(c). An example of a drug trafficking offense that involves Schedule I(c) controlled substances is trafficking in phenethylamines.<sup>7</sup> A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any described phenethylamine commits a first degree felony. If the quantity involved:

- Is 10 grams or more, but less than 200 grams, the person is sentenced to a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000;

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<sup>1</sup> Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.

<sup>2</sup> Section 893.13(1)(a)1., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

<sup>4</sup> Section 893.13(1)(a)3., F.S. A first degree misdemeanor is punishable by up to one year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>5</sup> “Synthetic Cannabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but the term ‘Synthetic Cannabinoids’ or ‘Cannabinomimetics’ is widely used to refer to them as they are cannabinoid-like in their activity.” “Synthetic Cannabinoid Drug Information,” Redwood Toxicology Laboratory, available at [https://www.redwoodtoxicology.com/resources/drug\\_info/synthetic\\_cannabinoids](https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids) (last viewed on March 9, 2015).

<sup>6</sup> Generally, a first degree felony is punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 893.135(1)(k), F.S. “Phenethylamines” is a broad category of psychoactive substances.

- Is 200 grams or more, but less than 400 grams, the person is sentenced to a mandatory minimum term of imprisonment of 7 years and a fine of \$100,000; or
- Is 400 grams or more, the person is sentenced to a mandatory minimum term of imprisonment of 15 years and a fine of \$250,000.

A person who knowingly manufactures or brings into this state 30 kilograms or more of a described phenethylamine commits a capital felony<sup>8</sup> and is also subject to a fine of \$250,000.

### III. Effect of Proposed Changes:

The bill provides for a 3-year mandatory minimum term of imprisonment for violating s. 893.13(1)(a), F.S. (prohibiting sale, manufacturing, etc., of specified controlled substances), if the violation occurs in a dwelling, as that term is defined in s. 810.011, F.S.<sup>9</sup>

The bill also amends s. 893.135, F.S., the drug trafficking statute, to provide that it is a first degree felony for any person to knowingly sell, purchase, manufacture, deliver, or bring into this state, or to knowingly be in actual or constructive possession of, “more than 250 grams” of a described synthetic cannabinoid.<sup>10</sup> The offense also covers mixtures that contain those substances.

Mandatory minimum terms and substantial mandatory fines are also provided. If the quantity involved:

- Is more than 250 grams,<sup>11</sup> but less than 500 grams, the person is sentenced to a mandatory minimum term of imprisonment of 3 years and a fine of \$25,000;
- Is 500 grams or more, but less than 1,000 grams, the person is sentenced to a mandatory minimum term of imprisonment of 7 years and a fine of \$50,000; or
- Is 1,000 grams or more, but less than 30 kilograms,<sup>12</sup> the person is sentenced to a mandatory minimum term of imprisonment of 15 years and a fine of \$200,000.<sup>13</sup>

The bill amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make conforming changes to references to trafficking offenses in the chart due to the amendment of s. 893.135, F.S.

Typically, trafficking offenses are ranked in the chart based on the gram-weight quantity ranges provided. For example, trafficking in 10 grams or more, but less than 200 grams, of a

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<sup>8</sup> A capital felony is punishable by life imprisonment or a death sentence. Sections 775.082, 775.083, and 921.142, F.S.

<sup>9</sup> Section 810.011(2), F.S., defines a “dwelling” as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

<sup>10</sup> The bill references controlled substances in s. 893.03(1)(c)114.-142., 151.-159., and 166.-173., F.S. The Florida Department of Law Enforcement states that the substances referenced “appear to be exclusively the synthetic cannabinoids listed under Schedule I (F.S. 893.03).” Analysis of SB 1188 (February 24, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

<sup>11</sup> The description of the gram-weight threshold is atypical. Typically, the description begins with a specific number followed by “or more” (i.e., “250 grams or more”).

<sup>12</sup> It is unclear why there is a cap of “less than 30 kilograms.”

<sup>13</sup> Unlike several other drug trafficking offenses, there is no capital felony for trafficking in the described synthetic cannabinoids.

phenethylamine is a Level 7 offense; trafficking in 200 grams or more, but less than 400 grams, of a phenethylamine is a Level 8 offense; and trafficking in 400 grams or more of a phenethylamine is a Level 9 offense.<sup>14</sup> The higher the ranking, the greater the number of sentence points. The bill does not rank the new trafficking offense in the chart. While there is no requirement to rank a felony offense in the chart, the effect of not doing so is that the offense receives a “default” ranking based on its felony degree, as provided in s. 921.0023, F.S. The default ranking under that statute for a first degree felony is Level 7. This means that trafficking in a described synthetic cannabinoid is a Level 7 offense, regardless of the quantity involved.

The effective date of the bill is October 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The synthetic cannabinoids referenced in the new drug trafficking provision are already controlled substances. Therefore, current law (not this bill) makes products containing these substances unlawful and makes selling those products unlawful.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that SB 1188 will have a positive indeterminate (unquantifiable) prison bed impact.

#### **VI. Technical Deficiencies:**

The bill provides for a 3-year mandatory minimum term of imprisonment for violating s. 893.13(1)(a), F.S. (prohibiting sale, manufacturing, etc., of specified controlled substances), if

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<sup>14</sup> See s. 921.0022(3)(g), (h), and (i), F.S.

the violation occurs in a dwelling. However, under this paragraph, selling, manufacturing, etc. certain controlled substances is a first degree misdemeanor. Section 775.082, F.S., provides that the maximum period of incarceration for a first degree misdemeanor is one year in jail.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.13, 893.135, and 921.0022.

This bill reenacts the following sections of the Florida Statutes for the purpose of incorporating the amendment to s. 893.13, F.S., in references to that statute: 373.6055, 381.986, 397.451, 414.095, 772.12, 775.087, 782.04, 810.02, 893.03, 893.1351, 903.133, 907.041, 921.0024, 943.0585, and 943.059.

This bill reenacts section 812.014 of the Florida Statutes for the purpose of incorporating the amendments to ss. 893.13 and 893.135, F.S., in references to those statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.