

**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 Regulated Industries

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BILL: SB 1528

INTRODUCER: Senator Simpson

SUBJECT: Illicit Drugs

DATE: January 21, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1528 reduces the potential penalty for an alcoholic beverages licensee who is convicted of a violation of ch. 499, F.S., which involved the sale or the offer to sell, in the normal course of business, a misbranded, an adulterated, or a contraband drug in the licensed premises if the licensee knew or should have known of the offense occurring within the establishment. Under current law, a violation of ch. 499, F.S., which constitutes a felony for selling or offering to sell a misbranded, adulterated, or contraband drug, requires revocation of the alcoholic beverage license.

The bill amends the schedule of controlled substances in s. 893.03, F.S., to describe, by core structure, the following synthetic controlled substances: synthetic cannabinoids, substituted cathinones, substituted phenethylamines, N-benzyl Phenethylamine compounds, substituted tryptamines, and substituted phenylcyclohexylamines. According to the Office of the Attorney General, the class descriptions define these groups of substances by specific core structure to limit the effect that possible alterations to these substances may have in regards to remaining a controlled substance. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill revises the definition of the term “substantially similar” for the purpose of determining whether a substance is an analog to a controlled substance. The bill defines the term according to the chemical structure of the substance instead of according to its physiological effect. The bill also provides additional factors for determining whether a substance is an analog of a controlled substance to include comparisons to the accepted methods of marketing, distribution, and sales of the substance.

The bill also revises the chemical terms for existing controlled substances by correcting errors in existing substance listings and deleting double entries. According to the Office of the Attorney

General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

The bill creates a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver certain unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a \$500 fine and 100 hours of community service. The bill creates a felony of the third degree for a person 18 years of age or older who delivers to a person under the age of 18 certain illegal controlled substance, who uses or hires a person under the age of 18 in the sale or delivery of such substance, or who uses a person under the age of 18 to assist in avoiding detection for specified violations. The bill creates a felony of the second degree for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a medical practitioner or pursuant to a valid prescription or order of a medical practitioner while acting in the course of his or her professional practice.

The bill provides that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.

The bill includes misbranded drugs in the listing of paraphernalia that are deemed to be contraband and subject to civil forfeiture.

The bill provides an effective date of July 1, 2016.

## **II. Present Situation:**

### **Regulation of Alcoholic Beverages and Tobacco**

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates and licenses the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.<sup>3</sup>

The division is also responsible for the collection of excise taxes from the sale of cigarettes and other tobacco products.<sup>4</sup> The retail sale and delivery of tobacco is governed by the division under the provisions of ch. 569, F.S. A retail tobacco products dealer permit is required to engage in the retail sale of tobacco.<sup>5</sup>

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<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

<sup>4</sup> See part I, ch. 210, F.S., consisting of ss. 210.01-210.22, F.S., which provides for the taxation of cigarettes, and part II, ch.210, F.S., consisting of ss. 210.25-210.75, F.S., which provides for the taxation of tobacco products other than cigarettes and cigars.

<sup>5</sup> Section 569.005, F.S.

The division may suspend, revoke, or fine alcoholic beverages licensees for a variety of violations,<sup>6</sup> including a violation by the licensee or, if a corporation, a violation by any officers of the corporation, of any laws of this state or any state or territory of the United States.<sup>7</sup> The division may also impose a civil penalty against a licensee for any violation of the Beverage Law or rules of the division. The civil penalty may not exceed \$1,000 for violations arising out of a single transaction. If the licensee fails to pay the civil penalty, his or her license must be suspended.<sup>8</sup>

The penalty guidelines of the division are set forth in rule 61A-2.022, F.A.C. In relevant part, the penalty for a controlled substance violation under ch. 893, F.S., is license revocation. The penalty guidelines do not provide a penalty for violations of ch. 499, F.S., relating to drugs and devices, but the penalty for any felony not specifically listed in the guidelines is also revocation. Most of the criminal provisions in ch. 499, F.S., are felonies.<sup>9</sup> A misdemeanor of the second degree is provided for the adulteration and misbranding of drugs, false advertisement, and failure to maintain records relating to drugs.<sup>10</sup> The division's penalty guideline for a misdemeanor not specifically listed is a \$250 civil penalty for a first occurrence, \$500 for a second occurrence, \$1000 for a third occurrence, and revocation for a fourth occurrence. These same penalties are applicable for noncriminal violations.<sup>11</sup>

For retail tobacco products dealer permit holders, the division may suspend or revoke the permit for a violation of any of the provisions of ch. 569, F.S., by a dealer or by a dealer's agent or employee. The division may also assess a fine of up to \$1,000 against a dealer for each violation.

### **Chapter 499 - Florida Drug and Cosmetic Act**

The Florida Drug and Cosmetic Act in ch. 499, F.S., consists of three parts that cover drug, cosmetic, and household products, ether, and medical gas.

Section 499.003(18), F.S., defines the term drug to mean an article that is:

- (a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications;
  - (b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;
  - (c) Intended to affect the structure or any function of the body of humans or other animals; or
  - (d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories.
- For purposes of this paragraph, an "active pharmaceutical ingredient" includes

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<sup>6</sup> See s. 561.29, F.S.

<sup>7</sup> Section 561.29(1)(b), F.S.

<sup>8</sup> Section 561.29(3), F.S.

<sup>9</sup> See s. 499.0051, F.S.

<sup>10</sup> See s. 499.0051(12), F.S.

<sup>11</sup> Rule 61A-2.022, F.A.C.

any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

Section 499.005, F.S., specifies prohibited acts, including the manufacture, repackaging, sale, delivery, or holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded or has otherwise been rendered unfit for human or animal use.

Section 499.0051, F.S., specifies the following criminal acts and criminal penalties under ch. 499, F.S.:

- Failure to maintain or deliver pedigree papers (third degree felony);<sup>12</sup>
- Failure to authenticate pedigree papers (third degree felony);
- Knowing forgery of pedigree papers (second degree felony);<sup>13</sup>
- Knowing purchase or receipt of prescription drug from unauthorized person (second degree felony);
- Knowing sale or transfer of prescription drug to unauthorized person (second degree felony);
- Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs (second degree felony);
- Knowing trafficking in contraband prescription drugs (first degree felony);<sup>14</sup>
- Knowing forgery of prescription or prescription drug labels (first degree felony);
- Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm (first degree felony);
- Knowing sale or purchase of contraband prescription drugs resulting in death (first degree felony);
- Violations of s. 499.005, F.S., related to devices and cosmetics, and dissemination of false advertisement (third degree felony);
- Adulterated and misbranded drugs, false advertisement, and failure to maintain records relating to drugs (first degree misdemeanor);<sup>15</sup>
- Refusal to allow inspection; selling, purchasing, or trading drug samples; failure to maintain records relating to prescription drugs (third degree felony);
- Violations related to adulterated and counterfeit drugs (second degree felony);
- Making a false report to the Department of Health, as required by s. 499.0121(14), F.S., relating to the distribution of prescription drugs (third degree felony); and

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<sup>12</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>13</sup> Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding \$10,000.

<sup>14</sup> Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment for life. Section 775.083, F.S., provides that a felony of the first degree is punishable by a fine not exceeding \$15,000.

<sup>15</sup> Section 775.082, F.S., provides that the penalty for misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that the penalty for misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

- Knowing violations by persons who engage in the wholesale distribution of prescription drugs or the distribution of controlled substances in violation of s. 499.0121(14), F.S., (third degree felony).

### **Controlled Substances**

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The schedules are as follows:

- 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.<sup>16</sup>
- 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.<sup>17</sup>
- 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.<sup>18</sup>
- 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.<sup>19</sup>
- 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.<sup>20</sup>

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 penalties, i.e. which penalties may be imposed for unlawful possession, sale, manufacture, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. A substance in Schedule I is considered to have a high potential

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<sup>16</sup> Section 893.03(1), F.S.

<sup>17</sup> Section 893.03(2), F.S.

<sup>18</sup> Section 893.03(3), F.S.

<sup>19</sup> Section 893.03(4), F.S.

<sup>20</sup> Section 893.03(5), F.S.

for abuse,<sup>21</sup> have no currently accepted medical use in treatment in the United States, and does not meet accepted safety standards in its use under medical supervision.<sup>22</sup>

The sale, manufacture, and delivery of a controlled substance listed in s. 893.03(1)(c), F.S., (Schedule I(c)), as well as the possession with intent to sell, manufacture, or deliver such substance is considered a third degree felony.<sup>23</sup> However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.<sup>24</sup> For example, selling a controlled substance listed in Schedule I(c) within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.<sup>25</sup> Other prohibited activities include bringing a controlled substance listed in Schedule I(c) into the state and the purchase or possession with intent to purchase such a controlled substance, which are all third degree felonies.<sup>26</sup>

### **Synthetic Drugs**

Synthetic drugs mimic the effects of controlled substances. Synthetic drugs are also known as “new or novel psychoactive substances,” or “designer drugs.” Synthetic drugs are used to circumvent existing prohibitions on controlled substances. According to the Office of the Attorney General, the increasing number of synthetic drug variants available and the higher toxicity of the new variants poses an increasing public health threat.

Concerned about the use of synthetic drugs in Broward County, the State Attorney to the issue to the grand jury. On December 30, 2015, the Broward State Attorney’s Office released a grand jury report. The report examined the extent of the problem of synthetic drugs in Broward County and made several recommendation, including a recommendation for legislation to address the problem.

The grand jury report attributed more than 60 recent deaths to “Flakka.”<sup>27</sup> According to information provided by the Attorney General’s Office and the grand jury report, synthetic drugs are typically manufactured in pharmaceutical factories in China or Southeast Asia and are often sold through the internet.

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<sup>21</sup> “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. s. 893.02(20), F.S.

<sup>22</sup> Section 893.03(1), F.S.

<sup>23</sup> Section 893.13(9), F.S., provides that the provisions of s. 893.13(1)-(8), F.S., are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in certain 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. *See also* s. 893.13(1)(a)2., F.S. A third degree felony is punishable by up to five years in state prison, a fine of up to \$5,000, or both. ss. 775.082 and 775.083, F.S.

<sup>24</sup> Section 893.13(1)(c)-(f) and (h), F.S.

<sup>25</sup> Section 893.13(1)(c)2., 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. ss. 775.082 and 775.083, F.S.

<sup>26</sup> Section 893.13(2)(a)2. and (5)(b), F.S.

<sup>27</sup> *See Interim Report of the Broward County Grand Jury, July through December Term, 2015, Synthetic Drug Investigation*, December 30, 2015. A copy of the report is available at:

<http://www.bbhcfloida.org/sites/default/files/Signed%20Final%20Report-GJ%20Syn%20Drug%20Investigation.pdf> (last visited January 19, 2016).

Controlled substance “analogs” are new substances that are not controlled under ch. 893, F.S., but which have a “potential for abuse” and are manufactured, distributed, possessed, and used as substitutes for controlled substances.<sup>28</sup>

Controlled substance analogs are treated, for purposes of drug abuse prevention and control, as a controlled substance in Schedule I of s. 893.03, F.S. Section 893.0356(3), F.S., defines the term “potential for abuse” in relation to properties as a central nervous system stimulant, depressant, or hallucinogen. The definition also requires that the substance creates a substantial likelihood of being:

- (a) Used in amounts that create a hazard to the user’s health or the safety of the community;
- (b) Diverted from legal channels and distributed through illegal channels; or
- (c) Taken on the user’s own initiative rather than on the basis of professional medical advice.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

Section 893.0356(3), F.S., provides that the potential for abuse is proven by showing “that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.”

When a new synthetic drug is initially introduced, it may not necessarily be controlled or illegal under state or federal law. The Florida Attorney General may adopt emergency rules to add the new synthetic drug to the controlled substance schedule.<sup>29</sup> The Legislature then can amend the controlled substances schedule to incorporate the new synthetic drug. Since 2011, 136 chemical compounds commonly used to produce synthetic drugs have been added to the schedule of controlled substances, including alpha-PVP, which is the main ingredient in the synthetic form of cathinone drug popularly known as “Flakka.”<sup>30</sup>

According to the Office of the Attorney General, the core synthetic drugs of concern in Florida fall into the following categories or classifications:<sup>31</sup>

- Synthetic cannabinoids, such as “K2” or “Spice” that produce a high similar to cannabis;
- Substituted cathinones, which are commonly sold as “bath salts,” are central nervous system stimulants that have stimulant properties related to cathinone, the psychoactive substance found in the shrub *Catha edulis* (khat) and produce pharmacological effects similar to

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<sup>28</sup> Section 893.0356, F.S.

<sup>29</sup> See ss. 893.035 and 893.0356, F.S.

<sup>30</sup> See *Attorney General Pam Bondi News Release*, January 5, 2016, at copy is available at: <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/0C7B568A9CF4695385257F31005F4485> (last visited January 19, 2016).

<sup>31</sup> The following information is derived from the Summary Bill Analysis provided by the Florida Office of the Attorney General. A copy is on file with the Senate Regulated Industries Committee.

methamphetamine, amphetamines, cocaine, Khat, LSD, and MDMA (Substituted Cathinones are central nervous system stimulants with no medicinal application and a tendency for dependence);

- Substituted phenethylamines that mimic the effects of stimulants and/or hallucinogens, including amphetamine, methamphetamine, and MDMA;
- N-benzyl Phenethylamines are derivatives of the phenethylamine molecule by substitution that significantly increases the potency of the molecule and is a potent hallucinogen and alternative to LSD);
- Substituted tryptamines are hallucinogenic substances; and
- Substituted phenylcyclohexylamines, which are comparable to PCP intoxication and results in behavioral/psychological effects from neurologic and physiologic abnormalities, stupor, or light or deep coma.

There are other potential classifications of drugs,<sup>32</sup> but according to the Office of the Attorney General, these classifications describe the top designer drugs of concern in Florida.

### **Approaches to Synthetic Drug Enforcement<sup>33</sup>**

Three states, the District of Columbia, and the federal government schedule synthetic cannabinoids using the “neurochemical approach.” This approach schedules the substances according to the effect they have on the brain rather than through either the listing of specific substances or through the use of class definitions.<sup>34</sup> The advantage of scheduling cannabinoids using the neurochemical approach is that states may not need to continually update the schedules of substances each time a new drug is created or introduced. However, there is uncertainty in determining the proof required to obtain a conviction under this method.<sup>35</sup>

Some states use an “analogue approach” to identify synthetic drugs. Under an analogue approach, prosecutors must prove that a substance is both substantially similar structurally to a Schedule I or II controlled substance and that it has either substantially similar effect on the body or that the person represents or intends the substance to have a substantially similar effect on the body as the controlled substance.<sup>36</sup> The advantage of using the analogue approach is that it covers every substance so long as it is structurally similar to a Schedule I or II substance.

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<sup>32</sup> These include: adamantoylindoles, adamantoylindazoles, benzoylindoles, cyclohexylphenols, cyclopropanoylindoles, naphthoylindoles, naphthoynaphthalenes, naphthoylpyrroles, naphthylmethylenes, naphthylmethylindoles, phenylacetylindoles, quinolinylindolecarboxylates, tetramethylcyclopropanoylindoles, and tetramethylcyclopropane-thiazole carboxamides. See National Alliance for Model State Drug Laws, *Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States*, 2015. A copy is available at: <http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20/> (lasted visited January 19, 2016)

<sup>33</sup> For more information on how the federal government and other states and jurisdictions have addressed the issue of synthetic drug enforcement, see Gray, Heather, *Overview of Novel Psychoactive Substances and State Responses*, October 2014 at <http://www.wardwebsites.net/conference2014/presentations/gray.pdf> (last visited January 19, 2016).

<sup>34</sup> National Alliance for Model State Drug Laws, *Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States*, 2015. A copy is available at: <http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20/> (lasted visited January 19, 2016).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



However, the analogue approach does not provide clear guidance on what constitutes “substantially similar.”<sup>37</sup>

Many states use these class definitions to schedule synthetic drugs or specify each novel psychoactive substance individually in the controlled substance schedule by its specific chemical structure or trade/street name. The vast majority of states in the United States use one of these two scheduling approaches or both in combination. The advantage of scheduling substances by class definition is that a prosecutor only needs to prove that the substance falls within a particular class. A prosecutor does not necessary have to prove its structural similarity to another substance or its effect on the body. Most states also include specific substances as examples of the particular class in the definition. The principal disadvantage to scheduling synthetic drugs through a classification approach is that if a substance does not fall within a particular named class and is not otherwise specifically listed, the substance is “legal” until it is particularly scheduled, although the state or federal analogue statute could fill the void until the substance is scheduled.<sup>38</sup>

Among the recommendations in its report, the Broward County Grand Jury recommended that the Legislature adopt a classification system to include synthetic drugs within the existing provisions of s. 893.13, F.S.<sup>39</sup>

### **III. Effect of Proposed Changes:**

#### **Violations by Alcoholic Beverage and Tobacco Licensees**

The bill amends s. 561.29, F.S., relating to the grounds for suspension and revocation of alcoholic beverages licensees, to require the division to suspend an alcoholic beverage license for one year upon a finding a person has been convicted of a violation of ch. 499, F.S., which involved the sale or the offer to sell, in the normal course of business, a misbranded, an adulterated, or a contraband drug in the licensed premises if the licensee knew or should have known of the offense occurring within the establishment.

A violation of ch. 499, F.S., appears to constitute a felony if it involves the selling or offering to sell a misbranded, adulterated, or contraband drug.<sup>40</sup> To the extent that an alcoholic beverage licensee may violate any provision in ch. 499, F.S., the bill appears to reduce the applicable penalty, which under current law authorizes the division to revoke an alcoholic beverage for any violation by the licensee that constitutes a felony.

The bill requires actual conviction of the license for a violation of ch. 499, F.S. If adjudication of guilt is withheld for a criminal violation ch. 499, F.S., this provision does not appear to apply. Current law does not require that a license must be convicted of the criminal offense to subject to license suspension or revocation.

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *See* note 27.

<sup>40</sup> *See* s. 499.0051, F.S.

The bill requires that the division's finding must be made at a public hearing by a preponderance of the evidence. The current standard for disciplinary proceeding in administrative actions is clear and convincing evidence.<sup>41</sup> The bill further prohibits the division issuing another license for one year from the date of suspension to the licensee, or the licensee's direct or indirect owner, or an officer, director, manager, or partner of the licensee.

The bill also amends s. 569.003, F.S., which relates to retail tobacco products dealer permits, to also require that the division suspend for one year the alcoholic beverage license of a licensee for the same violation provided in s. 561.29, F.S.

### **Controlled Substances**

The bill amends s. 893.02, F.S., to define and revise definitions for chemical terms used in ch. 893, F.S., including "cannabinoid receptor agonist," "homologue," "nitrogen-heterocyclic analog," and "positional isomer."

The bill amends s. 893.03, F.S., to describe, by core structure, the following synthetic controlled substances:

- Synthetic cannabinoids;
- Substituted cathinones;
- Substituted phenethylamines;
- N-benzyl Phenethylamine compounds;
- Substituted tryptamines; and
- Substituted phenylcyclohexylamines.

The class descriptions define these groups of substances by specific core structure, according to the Office of the Attorney General, to limit the effect that possible alterations to these substances may have in regards to remaining subject to the prohibitions in ch. 893, F.S. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill amends s. 893.0356(3), F.S., to revise the definition of the term "substantially similar" to relate to the chemical structure of the substance. A substance is substantially similar to a controlled substance if it has a single difference in the structural formula that substitutes one atom or functional group for another, including, but not limited to, one halogen for another halogen, one hydrogen for a halogen or vice versa, an alkyl group added or deleted as a side chain to or from a molecule, or an alkyl group added or deleted from a side chain of a molecule.

The bill also amends s. 893.0356(4)(j), F.S., to provide additional factors for determining whether a substance is an analog of a controlled substance to include comparisons to the accepted methods of marketing, distribution, and sales of the substance.

The bill also amends ss. 893.03, 893.033, and 893.135, F.S., to revise the chemical terms for existing substances by correcting errors in existing substance listings and deleting double entries.

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<sup>41</sup> See s. 120.57(1)(j), F.S., and *Ferris v. Turlington*, 510 So.2d 292 (Fla.1987).

According to the Office of the Attorney General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

### **Prohibitions**

The bill amends s. 893.13(1)(h), F.S., to create a noncriminal penalty for selling, manufacturing, or delivering, possessing with intent to sell, manufacture, or deliver any unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a \$500 fine and 100 hours of community service. This noncriminal penalty refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in this paragraph.

The bill amends s. 893.13(4)(c), F.S., to create a felony of the third degree for a person 18 years of age or older who delivers to a person younger than 18 years of age any illegal controlled substance, who uses or hires a person younger than 18 years of age in the sale or delivery of such substance or who uses a person younger than 18 years of age to assist in avoiding detection for specified violations. This criminal violation refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in this subsection.

The bill amends s. 921.0022, F.S., to revise the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The bill revises the chart to include a violation of s. 893.13(4)(c), F.S., as “Level 3” violation.<sup>42</sup>

The bill amends s. 893.13(6)(d), F.S., to create a felony of the second degree for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a practitioner<sup>43</sup> or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

### **Nuisance Violations**

The bill amends s. 893.0138(2), F.S., to provide that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.

### **Drug Paraphernalia**

The bill amends s. 893.145, F.S., to include misbranded drugs in the listing of paraphernalia that is deemed to be contraband and subject to civil forfeiture.

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<sup>42</sup> The offense severity ranking chart in s. 921.0022, F.S., has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense.

<sup>43</sup> Section 893.02(21), F.S., defines the term “practitioner” to mean “a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed pursuant to chapter 463, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number.”

**Effective Date**

The bill provides an effective date of July 1, 2016.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Sections 561.29 and 569.003, F.S., may violate the due process rights under art. 1, sec. 9, Fla. Const., and the 5<sup>th</sup> and 14<sup>th</sup> amendments of the U.S. Constitution. The provision may be subject to a constitutional challenge because these provisions require a one-year alcoholic beverage license suspension for a person who has been found by the division by a preponderance of the evidence to have been convicted of a violation of ch. 499, F.S. Article 1, sec. 9, Fla. Constitution, provides that “[n]o person shall be denied deprived of life, liberty or property without due process of law.” The 5<sup>th</sup> and 14<sup>th</sup> amendments to the US Constitution guarantee the same.

Regarding the standard of proof in administrative hearings, the parties are held to varying standards of proof at the fact-finding stage in administrative proceedings depending on the nature of the proceedings and the matter at stake.<sup>44</sup> Although not decided on due process grounds, the Florida Supreme Court in *Ferris v. Turlington*,<sup>45</sup> concluded that “[i]n a case where the proceedings implicate the loss of livelihood, an elevated standard is necessary to protect the rights and interests of the accused.”<sup>46</sup> Consequently, the Florida Supreme Court held that the clear and convincing evidence standard applied in proceedings involving the revocation of a professional license.<sup>47</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

<sup>44</sup> *Bowling v. Department of Ins.*, 394 So.2d 165, 171 (Fla. 1st DCA 1981).

<sup>45</sup> *Ferris v. Turlington*, 510 So.2d 292 (Fla.1987).

<sup>46</sup> *Id.* at 295.

<sup>47</sup> *Id.*

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Office of the Attorney General and the Florida Department of Law Enforcement (FDLE) anticipate that the FDLE's Crime Laboratory workload may experience an initial increase in costs associated with the testing of confiscated substances. However, the agencies further anticipate that the increase will be short-lived as the market for the substances is disrupted.

The Criminal Justice Impact Conference has not met to determine the bill's fiscal impact.

**VI. Technical Deficiencies:**

The reenactment of s. 893.138, F.S., in section 46 of the bill incorrectly references s. 893.38, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 561.29, 569.003, 893.02, 893.03, 893.033, 893.0356, 893.13, 893.135, 893.138, 893.145, 895.02, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 39.01, 316.193, 322.2616, 327.35, 440.102, 456.44, 458.326, 458.3265, 459.0137, 463.0055, 465.0276, 499.0121, 499.029, 782.04, 787.06, 817.563, 831.31, 893.0301, 893.035, 893.05, 893.055, 893.07, 893.12, 893.138, 944.474, 893.149, 397.451, 435.07, 772.12, 775.084, 810.02, 812.014, 831.311, 893.1351, 893.15, 903.133, 921.187, 893.147, 16.56, 655.50, 896.101, and 905.34.

**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.