

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2160

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Peadar

SUBJECT: Controlled Substances

DATE: March 31, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Fav/CS
2.			CJ	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

The bill deletes anhydrous ammonia and benzyl chloride from the definition of “listed precursor chemical” and adds benzaldehyde, hydriodic acid, and nitroethane to that list as chemicals that may be used in manufacturing a controlled substance in violation of chapter 893, Florida Statutes. Anhydrous ammonia, benzyl chloride, hydrochloric gas, and iodine are added to the listed essential chemicals that may be used as a solvent, reagent, or catalyst to manufacture controlled substances in violation of chapter 893, F.S. Such changes to the listed chemicals under chapter 893, F.S., conform to federal requirements for precursor or essential chemicals used to manufacture controlled substances.

The bill specifies that, except as authorized under chapter 893, F.S., it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033, F.S., in violation of s. 893.149, F.S., and with intent to manufacture methamphetamine or phencyclidine. Section 893.149, F.S., provides that it is a second degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

If any person manufactures methamphetamine or phencyclidine or possess any listed chemical with an intent to manufacture methamphetamine or phencyclidine and the commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, the person who does so is liable for a first degree felony which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. A minimum term of imprisonment of 5 calendar years is mandatory. If, during the commission of the crime, the defendant causes a child under the age of 16 years to suffer great bodily harm, the

defendant commits a first degree felony and must be sentenced to a minimum prison term of 10 calendar years.

The bill makes it unlawful to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia; or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

The possession of 14 grams or more of pseudoephedrine such as Sudafed® in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine is a felony of the first degree and subject to the enhanced felony penalties of the drug trafficking provisions under chapter 893, F.S.

The bill provides that criminal violations relating to unlawful possession of listed chemicals under s. 893.149, F.S., do not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances pursuant to the provisions of chapter 893, F.S.

Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, F.S., must be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

This bill amends sections 893.033, 893.13, 893.135, and 893.149, Florida Statutes.

The bill reenacts s. 921.0022, F.S.

II. Present Situation:

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use. Substances in Schedule IV include phenobarbital, librium, and valium. Substances in Schedule V include certain stimulants and narcotic compounds.

Methamphetamine is a Schedule II controlled substance under Florida law, s. 893.03(2)(c)4., F.S., and federal law, s. 21 U.S.C. § 812. Methamphetamine is a highly addictive nerve stimulant found in virtually every metropolitan area of the country, according to the U.S. Drug Enforcement Agency (DEA). Commonly called “speed,” “crank,” “crystal,” or “zip,” methamphetamine can be smoked, injected, snorted, or taken orally. It produces an initial “high,” lasting between 15 and 30 minutes, that is difficult if not impossible for the user to repeat, leading the user to ingest more and more of the drug and go on longer binges. Methamphetamine’s psychological side-effects include paranoia, hallucinations and delusions of insects or parasites crawling under the skin. Long-time use results in a decline in physical health, as well. In the United States, methamphetamines are either imported by drug traffickers or manufactured in small “clandestine” laboratories (usually household kitchens) using recipes involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches.

According to a December 15, 2003, news release posted on the Florida Department of Law Enforcement website, Florida ranked sixth nationwide last year for methamphetamine seizures. In 2002, law enforcement officers seized 127 clandestine methamphetamine labs, compared to 229 seizures in 2003. The rapidity of the spread of clandestine labs in Florida is reflected in the DEA statistics that prior to 1999, only seven labs had been seized in Florida.

Anhydrous ammonia and ephedrine are listed as precursor chemicals under Florida law. It is unlawful under federal law to steal anhydrous ammonia or transport stolen anhydrous ammonia across state lines, if the person committing the theft or transport knows, intends, or has reasonable cause to believe that the anhydrous ammonia will be used to manufacture a controlled substance. 21 U.S.C. § 864.

Section 893.033(1), F.S., defines “listed precursor chemical” as a chemical that may be used in manufacturing a controlled substance in violation of chapter 893, F.S. (the “Florida Comprehensive Drug Abuse Prevention and Control Act”) and is critical to the creation of the controlled substance. Section 893.033(2), F.S., defines “listed essential chemical” as a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of chapter 893, F.S.

Anhydrous ammonia is a necessary component to the “reactant metal” method or “Nazi” method of methamphetamine production. Currently, there are 26 chemicals or substances listed or designated in s. 893.033(1), F.S., as listed precursor chemicals, some of which are used or found in the manufacture of methamphetamines, such as ephedrine, pseudoephedrine, benzyl chloride, benzyl cyanide, chloroephedrine, chloropseudoephedrine, methylamine, and phenylacetic acid. There are scores of chemicals used in the production of methamphetamine; their appearance depends upon the production method used. Some listed precursor chemicals have legitimate uses. For example, methylamine is used in tanning and the manufacture of dyestuffs; benzyl chloride is used in the manufacture of perfumes, pharmaceuticals, dyes, tannins, and artificial resins; ephedrine is used as an anti-asthmatic drug; pseudoephedrine is used as a decongestant.

The listing or designation of a chemical or substance as a listed precursor chemical in s. 893.033, F.S., does not bar, prohibit or punish legitimate use of the chemical or substance. However,

s. 893.149, F.S., provides that it is a second degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

Some states punish unlawful transportation of anhydrous ammonia.¹ Some states punish tampering with equipment or a facility used to contain, store, or transport anhydrous ammonia.² The transportation of compressed gases is regulated by the federal government.³

Section 893.135, F.S., provides enhanced criminal penalties for drug trafficking. A person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, phenylacetone, phenylacetic acid, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine is liable for a first degree felony which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. The section provides enhanced penalties for larger amounts of unlawful drugs specified in the section and is involved in drug trafficking. If the amount of the unlawful drug specified in the section is 14 grams or more but less than 28 grams the person must be sentenced to a mandatory minimum prison term of 3 years and be ordered to pay a fine of \$50,000. If the amount of the unlawful drug specified in the section is 28 grams or more, but less than 200 grams, the person must be sentenced to a mandatory minimum prison term of 7 years and ordered to pay a fine of \$100,000. If the amount of the unlawful drug specified in the section is 200 grams or more, the person must be sentenced to a mandatory minimum prison term of 15 years and ordered to pay a fine of \$250,000. A defendant is liable for a capital felony if he knowingly manufactures or brings into Florida 400 grams or more of an unlawful drug specified in the section and knows that the probable result of such manufacture or importation would be death of any person. Any person sentenced for a capital felony must pay \$250,000.

Regulation of Over-the-Counter Ephedrine in Florida

During the 1994 Session, the Legislature adopted legislation which made ephedrine, the active ingredient of ephedra, a prescription drug.⁴ This means that any product which contains ephedrine can only be dispensed by prescription. This legislation was enacted in reaction to the marketing of, and the growing popularity of, products that were advertised to help the user of the products to stay awake, lose weight, or enhance athletic performance. The use of ephedrine for these purposes has not been approved by the FDA. There was growing concern that the

¹ See e.g., Hawaii Rev. Stat. § 329-65; Ind. Code § 22-11-20-6; Iowa Code § 124.410F; Minn. Stat. § 18C.201; Neb. Rev. Stat. § 28-1240; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.001; Wash. Rev. Code § 69.55.020; Wis. Stat. § 101.10.

² See e.g., Iowa Code § 124.401F; Ky. Rev. Stat. § 250.4892; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.002; Wis. Stat. § 101.10. Some states punish unlawful sale, delivery (or transfer) of anhydrous ammonia. See e.g., Hawaii Rev. Stat. § 329-65; Iowa Code § 124.401F; Kan. Stat. Ann. § 65-7006; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tenn. Code Ann. § 39-17-433; Tex. Code Ann. § 504.002; Wash. Rev. Code § 69-55.020; Wis. Stat. § 101.10.

³ See The Transportation of Explosives Act. The Act is administered by the Interstate Commerce Commission for railway and highway transport.

⁴ See chapter 94-309, Laws of Florida, which created s. 499.033, F.S.

marketing of these products was misleading consumers and was encouraging abuse of ephedrine among teenaged youth. In 1995, the law was amended to authorize certain drug products such as Primatene tablets to control asthma and combinations of products containing ephedrine in specified dosage forms to be sold over the counter. Such drug products were thought to have little potential for abuse. The 1995 revisions also made it a violation of the Florida Drug and Cosmetic Act, chapter 499, F.S., for any person to advertise or label any product containing ephedrine for the indication of stimulation, mental alertness, weight loss, appetite control, energy, or any other indication not approved by the FDA.⁵ Pseudoephedrine (Sudafed®) does not require a prescription. Pseudoephedrine decongests by causing blood vessels to narrow thereby preventing fluid from leaving the vessels and causing the tissues to swell.

Florida Drug and Cosmetic Act

The Department of Health is responsible for regulating and enforcing the Florida Drug and Cosmetic Act, chapter 499, F.S. Chapter 499, F.S., provides regulatory oversight of the manufacture and distribution of drugs, devices, cosmetics and ether within Florida. The Department of Health does not regulate dietary supplements, but has authority to take regulatory action if drugs are misbranded or adulterated.

Section 499.003, F.S., defines “contraband legend drug” to mean any adulterated drug, any counterfeit drug, and also means any legend drug for which a pedigree paper does not exist, or for which the pedigree paper in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter. Under s. 499.006(10), F.S., a drug is an adulterated drug if it is a legend drug that has been purchased, held, sold or distributed at any time by a person not authorized under federal or state law to do so.

Chapter 499, F.S., provides criminal penalties for violations of the act relating to illegal activities to sell, purchase, receive, possess, or deliver prescription or contraband drugs. Any person who purchases or sells prescription drugs for wholesale distribution in exchange for currency commits a third degree felony punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.⁶ A person who knowingly purchases or receives from a person not authorized to distribute legend drugs under chapter 499, F.S., a legend drug in a wholesale transaction commits a second degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.⁷ A person who knowingly sells or transfers to a person not authorized to purchase or possess legend drugs, under the law of the jurisdiction in which the person receives the drug, a legend drug in a wholesale distribution transaction commits a second degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.⁸ A person who is knowingly in actual possession of any amount of contraband legend drugs, who knowingly sells or delivers, or who possesses with intent to sell or deliver any amount of contraband legend drugs, commits a second degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

⁵ See s. 2, chapter 95-415, L.O.F., which added s. 499.0054(6), F.S.

⁶ See s. 499.0691(2)(i), F.S.

⁷ See s. 499.0051(4), F.S.

⁸ See s. 499.051(5), F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 893.033, F.S., relating to listed chemicals, to delete anhydrous ammonia and benzyl chloride from the definition of “listed precursor chemical” and adds benzaldehyde, hydriodic acid, and nitroethane to that list as chemicals that may be used in manufacturing a controlled substance in violation of ch. 893, F.S.

The section adds anhydrous ammonia, benzyl chloride, hydrochloric gas, and iodine to the listed essential chemicals that may be used as a solvent, reagent, or catalyst to manufacture controlled substances in violation of chapter 893, F.S. According to the Florida Department of Law Enforcement (FDLE), these changes conform to federal requirements for precursor or essential chemicals, as applicable, which are used to manufacture controlled substances.⁹

Section 2. Amends s. 893.13, F.S., relating to prohibited acts under the Florida Comprehensive Drug Abuse Prevention and Control Act, to provide that except as authorized under chapter 893, F.S., it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033, F.S., in violation of s. 893.149, F.S., and with intent to manufacture, methamphetamine or phencyclidine. Section 893.149, F.S., provides that it is a second degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

If the any person manufactures methamphetamine or phencyclidine or possess any listed chemical with an intent to manufacture methamphetamine or phencyclidine and the commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, the person who does so is liable for a first degree felony which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. A minimum term of imprisonment of 5 calendar years is mandatory. If, during the commission of the crime, the defendant causes a child under the age of 16 years to suffer great bodily harm, the defendant commits a first degree felony and must be sentenced to a minimum prison term of 10 calendar years.

The section makes it unlawful to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia; or is not constructed in accordance with sound engineering, agricultural, or commercial practices. Any person who violates this provision by unlawfully storing anhydrous ammonia is liable for a third degree felony which punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

If a person violates any provision of chapter 893, F.S., and such violation results in a serious injury to a state, local, or federal law enforcement officer, the person commits a third degree

⁹ See the federal “List I Chemicals” cited at 21 U.S.C. 802(34) which generally correspond to “precursor chemicals” under Florida law cited at s. 893.033(1), F.S. List I chemical means a chemical specified by regulation of the U.S. Attorney General as a chemical that is used in manufacturing a controlled substance in violation of federal drug abuse prevention and control laws and is important to the manufacture of the controlled substances. Also see federal “List II Chemicals” cited at 21 U.S.C. 802(35) which generally correspond to “essential chemicals” under Florida law cited at s. 893.033(2), F.S.

felony. If the injury sustained by the law enforcement officer results in death or great bodily harm, the person is liable for second degree felony which is punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

Section 3. Amends s. 893.135, F.S., relating to drug trafficking, to make a person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of pseudoephedrine in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine is liable for a first degree felony which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. The section provides enhanced penalties for larger amounts of unlawful drugs involved in drug trafficking. If the amount of pseudoephedrine which used in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine is 14 grams or more but less than 28 grams the person must be sentenced to a mandatory minimum prison term of 3 years and be ordered to pay a fine of \$50,000. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine is 28 grams or more, but less than 200 grams, the person must be sentenced to a mandatory minimum prison term of 7 years and ordered to pay a fine of \$100,000. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine is 200 grams or more, the person must be sentenced to a mandatory minimum prison term of 15 years and ordered to pay a fine of \$250,000.

A defendant is liable for a capital felony if he knowingly manufactures or brings into Florida 400 grams or more of pseudoephedrine which is used in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine and knows that the probable result of such manufacture or importation would be the death of any person. Any person sentenced for a capital felony must pay \$250,000.

Section 4. Amends s. 893.149, F.S., relating to the unlawful possession of a listed chemical, to provide that this section does not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances pursuant to the provisions of chapter 893, F.S. Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, F.S., must be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

Section 5. Reenacts s. 921.0022, F.S., relating to the offense severity ranking chart, for purposes of incorporating the amendments to s. 893.135, F.S., in this bill.

Section 6. Provides an effective date of July 1, 2004.

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

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet met to review and determine if CS/SB 2160 has a prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.