

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Children, Families, and Elder Affairs Committee

BILL: SB 928

INTRODUCER: Senator Wise

SUBJECT: Drug Paraphernalia

DATE: March 27, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Favorable
2.			CM	
3.			CJ	
4.			JA	
5.				
6.				

I. Summary:

The bill creates the Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor to recommend strategies for reducing the availability and use of drug paraphernalia.

The bill provides for a nine member Task Force, and provides for their appointment, the selection of the chair, the minimum number and location of meetings, public access to meetings and records, and reimbursement for per diem and travel expenses.

The bill provides that the task force must hold its first meeting by July 15, 2007. The Office of Drug Control is to provide staff support within existing resources.

The bill specifies the subject matter for public testimony and for study.

The bill provides deadlines for submitting reports of findings and recommendations. The task force is abolished on July 1, 2008.

The bill would take effect upon becoming law.

The bill creates an undesignated section of law.

II. Present Situation:

With the rise of the drug culture in the U.S. in the 1960s and 1970s, the country began to see the appearance of "head shops," which were stores that sold a wide range of drug paraphernalia.

These items were also sold openly in the street until anti-paraphernalia laws in the 1980's eventually ended such sales.¹

Today law enforcement faces another challenge. With the advent of the Internet, criminals have greatly expanded their illicit sales to a worldwide market for drug paraphernalia.²

Section 893.145, F.S., defines "drug paraphernalia" as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in 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.

These items include but are not limited to the following:³

- A kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;
- A scale and balance used, intended for use, or designed for use in weighing or measuring a controlled substance;
- A bong;
- A pipe;
- A blender, bowl, container, spoon, and mixing device used, intended for use, or designed for use in compounding a controlled substance;
- A water pipe;
- A balloon; and
- Duct tape.

Drug paraphernalia may be ordinary items or items disguised to resemble ordinary items. This can make the identification of drug paraphernalia a challenge. Section 893.146, F.S., provides that, in determining whether an object is drug paraphernalia, a court or other authority or jury must consider, in addition to all other logically relevant factors, the following factors:

- Statements by an owner or by anyone in control of the object concerning its use;
- The proximity of the object, in time and space, to a direct violation of this act;
- The proximity of the object to controlled substances;
- The existence of any residue of controlled substances on the object;
- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;
- Instructions, oral or written, provided with the object concerning its use;

¹ U.S. Drug Enforcement Administration, [Drug Paraphernalia, Tools of the Illegal Drug Trade](http://www.usdoj.gov/dea/concern/paraphernaliafact.html). <http://www.usdoj.gov/dea/concern/paraphernaliafact.html> (Last visited March 22, 2007).

² Id.

³ s. 893.145(12), F.S.

- Descriptive materials accompanying the object which explain or depict its use;
- Any advertising concerning its use;
- The manner in which the object is displayed for sale;
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products;
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- The existence and scope of legitimate uses for the object in the community; and
- Expert testimony concerning its use.

Drug paraphernalia related offenses include:

- Use or possession of drug paraphernalia – First degree misdemeanor.⁴
- Manufacture or delivery of drug paraphernalia – Third degree felony.⁵
- Delivery of drug paraphernalia to a minor – Second degree felony.⁶
- Delivery of hypodermic syringes and needles to a minor unless dispensed lawfully by a licensed practitioner, parent, legal guardian, or pharmacist – First degree misdemeanor.⁷
- Transportation of drug paraphernalia – Third degree felony.⁸
- Advertisement of drug paraphernalia – First degree misdemeanor.⁹

III. Effect of Proposed Changes:

Creation and Organization of the Drug Paraphernalia Abatement Task Force

The bill creates a nine member Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor. The task force is to recommend strategies and actions for lessening access to and the use of drug paraphernalia. The task force includes six members appointed by the Governor. These members must be representative of the geographic regions and ethnic and gender diversity of this state and must include:

- A representative of a corporation that is licensed to do business in this state and that sells any of the items described in s. 893.145, F.S.;
- A local law enforcement official or officer;
- A member of a faith-based community;
- A superintendent of a school district or a principal of a secondary school;
- A member of a community organization concerned about issues relating to illicit activities involving controlled substances; and
- A former or recovering drug addict.

⁴ s. 893.147(1), F.S.

⁵ s. 893.147(2), F.S.

⁶ s. 893.147(3)(a), F.S.

⁷ s. 893.147(3)(b), F.S.

⁸ s. 893.147(4), F.S.

⁹ s. 893.147(5), F.S.

Other members include the Secretary of Business and Professional Regulation or his or her designee, the Secretary of the Department of Health or his or her designee and the director of the Office of Drug Control within the Executive Office of the Governor.

Members of the task force will serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control within existing appropriations.

The task force is abolished July 1, 2008.

Drug Paraphernalia Abatement Task Force Meetings

The bill provides that the first meeting of the task force must be held by July 15, 2007, at which time the members must select by majority vote a chairperson from among the task force members. All recommendations of the task force are by majority vote. The task force meets at the call of the chairperson as approved by the Governor and must conduct at least three public meetings in locations throughout the state which have a significant urban business districts or which have experienced problems with illicit controlled substance activity resulting, in part, from access to and the use of drug paraphernalia.

Meetings of the task force are open to the public and are subject to the requirements of ch. 286, F.S. Records of the task force are public records and subject to the requirements of ch. 119, F.S., except to the extent that public access to any of those records may be restricted pursuant to that chapter.

Drug Paraphernalia Abatement Task Force Inquiry

The task force is required to study and take testimony regarding:

- The problem of access to and the use of drug paraphernalia in Florida;
- Businesses that sell items that may be used as drug paraphernalia;
- Current laws and rules and current efforts by regulatory agencies and law enforcement agencies to limit access to and the use of drug paraphernalia, including whether new or amended laws and rules are needed; and
- Approaches to limit access to and the use of drug paraphernalia.

Drug Paraphernalia Abatement Task Force Report

The task force must submit a preliminary draft report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 45 days before the first day of the 2008 Regular Session of the Legislature and must submit its final report 15 days later. In addition to findings and recommendations, the report must include any proposed legislation or rules necessary to implement recommendations.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Illegal sales of drug paraphernalia will be reduced. This may reduce drug trafficking.

C. Government Sector Impact:

This bill provides that task force members serve without salary but are entitled to reimbursement for travel and per diem expenses in accordance with s. 112.061, F.S. Members will be required to conduct at least three public meetings in different locations throughout the state and thus will incur travel and per diem costs.

The bill does not specify which entity is responsible for reimbursement of travel and per diem expenses. Such expenses generally are the responsibility of the agency that employs the appointed member.

All other costs, including staff support and publication expenses, will be absorbed by the Office of Drug Control within the Executive Office of the Governor. The Executive Office of the Governor estimates that this bill will result in a nonrecurring fiscal impact of \$24,500, including:

- Travel (Nine members/three meetings/\$500 per trip) - \$13,500.
- Meeting Noticing - \$1,000.
- Conduct Study - \$10,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
