

CS/HB 21 wpa – Controlled Substances with Proposed Amendment

This bill amends several sections of s. 893.03, F.S., s. 893.13, F.S., and s 893.135, F.S. in order to align the state's Controlled Substance Act with current federal schedules of controlled substances, adding multiple substances across schedules II through V, making the unauthorized sale, manufacture, possession, delivery, or purchase of these substances, as well trafficking in some instances, now subject to criminal penalties.

Sentencing patterns generally vary across and within schedules, and demand for each drug type added to the schedules likely varies too, so it is not known how these additions to the schedules would impact prison beds.

This bill also amends s. 893.0551, F.S., expanding the list of persons and entities that confidential and exempt information can be disclosed. Currently, an unranked, 3rd degree felony exists for a willful and knowing violation of this section. Per DOC, in FY 16-17, nobody was sentenced for this offense.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

- **Language for the proposed amendment to CS/HB 21 includes additional felonies. It would amend s. 893.147, F.S., stating that “it is unlawful for any person to possess, purchase, deliver, sell, or possess with intent to sell or deliver a tableting machine, encapsulating machine, or controlled substance counterfeiting material knowing, intending, or having reasonable cause to believe that it will be used to manufacture a controlled substance or counterfeit controlled substance,” adding an unranked, 3rd degree felony for this offense and an unranked, 2nd degree felony for “knowing, intending, or having reasonable cause to believe that such action will result in the unlawful manufacture of a controlled substance or counterfeit controlled substance among a list of controlled substances and their analogs. Per DOC, in FY 16-17, 42 (adj.) offenders were sentenced for offenses under s. 893.147, F.S., with 9 (adj.) sentenced to prison (mean sentence length=56.0 m, incarceration rate: 21.4% adj.-21.1% unadj.).The prevalence and use of these machines is not known. In FY 16-17, the incarceration rate for a Level 1, 3rd degree felony was 9.5%. The incarceration rate for a Level 4, 2nd degree felony was 30.9%. However, the proposed impact for the bill, inclusive of the amendment, would stay the same as CS/HB 21.**

Requested by: House

893.147 Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia; tableting machines, encapsulating machines, and controlled substance counterfeiting materials.—

(7) TABLETING MACHINES, ENCAPSULATING MACHINES, AND CONTROLLED SUBSTANCE COUNTERFEITING MATERIALS.—

(a) It is unlawful for any person to possess, purchase, deliver, sell, or possess with intent to sell or deliver a tableting machine, encapsulating machine, or controlled substance counterfeiting material knowing, intending, or having reasonable cause to believe that it will be used to manufacture a controlled substance or counterfeit controlled substance.

(b) A regulated person may possess, purchase, deliver, sell, or possess with intent to deliver or sell a tableting machine or encapsulating machine as part of a regulated transaction with a regular customer or regular importer, in compliance with 21 U.S.C. s. 830. For purposes of this paragraph, the terms "regulated person", "regulated transaction", "regular customer", and "regular importer" have the same meaning as defined in 21 U.S.C. s. 802.

(c) A person registered under 21 U.S.C. s. 822 may possess, purchase, deliver, sell, or possess with intent to deliver or sell a tableting machine or encapsulating machine to manufacture a controlled substance pursuant to such registration.

(d) For the purpose of this subsection, the term:

1. "Controlled substance" has the same meaning as provided in s. 893.02(4).

2. "Controlled substance counterfeiting material" means a punch, die, plate, stone, or other item designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon a drug or container or labeling thereof so as to render such drug a counterfeit controlled substance.

3. "Counterfeit controlled substance" has the same meaning as provided in s. 831.31(2).

4. "Encapsulating machine" means manual, semiautomatic, or fully automatic equipment used to fill shells or capsules with any powdered or granular solids or semisolid material to produce coherent solid tablets.

5. "Tableting machine" means manual, semiautomatic, or fully automatic equipment use to compact or mold powdered or granular solids or semisolid material to produce coherent solid tablets.

(e)1. Any person who violates this subsection is guilty of a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, unless the violation is subject to subparagraph 2.

2. Any person who violates this subsection knowing, intending, or having reasonable cause to believe that such action will result in the unlawful manufacture of a controlled substance or counterfeit controlled substance that contains:

a. A controlled substance under s. 893.03(1);

b. Cocaine;

c. Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;

d. Methadone;

e. Alfentanil;

f. Carfentanil;

g. Fentanyl;

h. Sufentanil; or

i. A controlled substance analog, as defined in s. 893.0356, of any substance in subparagraphs a. through h.,

is guilty of a second degree felony, punishable as provided in s. 775.082, 775.083, or 775.084.