

## CHAPTER 893

## DRUG ABUSE PREVENTION AND CONTROL

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- 893.01 Short title.**—This chapter shall be cited and known as the "Florida Comprehensive Drug Abuse Prevention and Control Act."  
*History.*—s. 1, ch. 73-331.
- 893.02 Definitions.**—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:
- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.
- (2) "Analog" or "chemical analog" means a structural derivative of a parent compound that is a controlled substance.
- (3) "Cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.
- (4) "Controlled substance" means any substance named or described in Schedules I-V of s. 893.03. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws.
- (5) "Cultivating" means the preparation of any soil or hydroponic medium for the planting of a controlled substance or the tending and care or harvesting of a controlled substance.
- (6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (7) "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.
- (8) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance.
- (9) "Distributor" means a person who distributes.
- (10) "Department" means the Department of Health.
- (11) "Hospital" means an institution for the care and treatment of the sick and injured, licensed pursuant to the provisions of chapter 395 or owned or operated by the state or Federal Government.
- (12) "Laboratory" means a laboratory approved by the Drug Enforcement Administration as proper to be entrusted with the custody of controlled substances for scientific, medical, or instructional purposes or to aid law enforcement officers and prosecuting attorneys in the enforcement of this chapter.

(13) "Listed chemical" means any precursor chemical or essential chemical named or described in s. 893.033.

(14)(a) "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

(b) "Manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug as defined by the Florida Drug and Cosmetic Act. However, this definition does not apply to manufacturers of patent or proprietary preparations as defined in the Florida Pharmacy Act. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

(15) "Mixture" means any physical combination of two or more substances.

(16) "Patient" means an individual to whom a controlled substance is lawfully dispensed or administered pursuant to the provisions of this chapter.

(17) "Pharmacist" means a person who is licensed pursuant to chapter 465 to practice the profession of pharmacy in this state.

(18) "Possession" includes temporary possession for the purpose of verification or testing, irrespective of dominion or control.

(19) "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.

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.

(20) "Practitioner" means 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, or a podiatric physician licensed pursuant to

chapter 461, provided such practitioner holds a valid federal controlled substance registry number.

(21) "Prescription" means and includes an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies, issued in good faith and in the course of professional practice, intended to be filled, compounded, or dispensed by another person licensed by the laws of the state to do so, and meeting the requirements of s. 893.04. The term also includes an order for drugs or medicinal supplies so transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription. A prescription order for a controlled substance shall not be issued on the same prescription blank with another prescription order for a controlled substance which is named or described in a different schedule, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a prescription order for a medicinal drug, as defined in s. 465.003(8), which does not fall within the definition of a controlled substance as defined in this act.

(22) "Wholesaler" means any person who acts as a jobber, wholesale merchant, or broker, or an agent thereof, who sells or distributes for resale any drug as defined by the Florida Drug and Cosmetic Act. However, this definition does not apply to persons who sell only patent or proprietary preparations as defined in the Florida Pharmacy Act. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

**History.**—s. 2, ch. 73-331; s. 1, ch. 75-18; s. 470, ch. 77-147; s. 1, ch. 77-174; s. 184, ch. 79-164; s. 1, ch. 79-325; s. 37, ch. 82-225; s. 169, ch. 83-216; s. 1, ch. 85-242; s. 1, ch. 91-279; s. 1, ch. 92-19; s. 1434, ch. 97-102; s. 104, ch. 97-264; s. 234, ch. 98-166; s. 300, ch. 99-8; s. 10, ch. 99-186; s. 1, ch. 2000-320; s. 3, ch. 2001-55; s. 10, ch. 2002-78; s. 13, ch. 2005-128; s. 1, ch. 2008-184; s. 18, ch. 2010-117.

**893.03 Standards and schedules.**—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.
2. Acetylmethadol.
3. Allylprodine.
4. Alphacetylmethadol (except levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
5. Alphamethadol.
6. Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
7. Alpha-methylthiofentanyl.
8. Alphameprodine.
9. Benzethidine.
10. Benzylfentanyl.
11. Betacetylmethadol.
12. Beta-hydroxyfentanyl.
13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxy.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxidine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacymorphan.
36. 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. 3, 4-Methylenedioxymethamphetamine (MDMA).
40. Morpheridine.
41. Noracymethadol.
42. Norlevorphanol.
43. Normethadone.

44. Norpipanone.
45. Para-Fluorofentanyl.
46. Phenadoxone.
47. Phenampromide.
48. Phenomorphan.
49. Phenoperidine.
50. 1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
51. Piritramide.
52. Proheptazine.
53. Properidine.
54. Propiram.
55. Racemoramide.
56. Thenylfentanyl.
57. Thiofentanyl.
58. Tilidine.
59. Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyrenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Drotebanol.
10. Etorphine (except hydrochloride salt).
11. Heroin.
12. Hydromorphanol.
13. Methyl-desorphan.
14. Methyl-dihydromorphine.
15. Monoacetylmorphine.
16. Morphine methylbromide.
17. Morphine methylsulfonate.
18. Morphine-N-Oxide.
19. Myrophone.
20. Nicocodine.
21. Nicomorphine.
22. Normorphine.
23. Pholcodine.
24. Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances or which contains any of their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Alpha-ethyltryptamine.
2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex).
3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
4. 4-Bromo-2,5-dimethoxyamphetamine.
5. 4-Bromo-2, 5-dimethoxyphenethylamine.
6. Bufotenine.
7. Cannabis.
8. Cathinone.
9. Diethyltryptamine.

10. 2,5-Dimethoxyamphetamine.
11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
12. Dimethyltryptamine.
13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine analog of phencyclidine).
14. N-Ethyl-3-piperidyl benzilate.
15. N-ethylamphetamine.
16. Fenethylamine.
17. N-Hydroxy-3,4-methylenedioxyamphetamine.
18. Ibogaine.
19. Lysergic acid diethylamide (LSD).
20. Mescaline.
21. Methcathinone.
22. 5-Methoxy-3,4-methylenedioxyamphetamine.
23. 4-methoxyamphetamine.
24. 4-methoxymethamphetamine.
25. 4-Methyl-2,5-dimethoxyamphetamine.
26. 3,4-Methylenedioxy-N-ethylamphetamine.
27. 3,4-Methylenedioxyamphetamine.
28. N-Methyl-3-piperidyl benzilate.
29. N,N-dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

37. Tetrahydrocannabinols.
38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP) (Thiophene analog of phencyclidine).
39. 3,4,5-Trimethoxyamphetamine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including any of its salts, isomers, optical isomers, salts of their isomers, and salts of these optical isomers whenever the existence of such isomers and salts is possible within the specific chemical designation:

1. 1,4-Butanediol.
2. Gamma-butyrolactone (GBL).
3. Gamma-hydroxybutyric acid (GHB).
4. Methaqualone.
5. Mecloqualone.

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to

severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmeferone or isoquinoline alkaloids of opium, including, but not limited to the following:

- a. Raw opium.
- b. Opium extracts.
- c. Opium fluid extracts.
- d. Powdered opium.
- e. Granulated opium.
- f. Tincture of opium.
- g. Codeine.
- h. Ethylmorphine.
- i. Etorphine hydrochloride.
- j. Hydrocodone.
- k. Hydromorphone.
- l. Levo-alpha-acetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- m. Metopon (methyldihydromorphinone).
- n. Morphine.
- o. Oxycodone.
- p. Oxymorphone.
- q. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances shall not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species *Papaver somniferum*, L.

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alfentanil.
2. Alphaprodine.
3. Anileridine.
4. Bezitramide.
5. Bulk propoxyphene (nondosage forms).
6. Carfentanil.
7. Dihydrocodeine.
8. Diphenoxylate.
9. Fentanyl.
10. Isomethadone.
11. Levomethorphan.
12. Levorphanol.
13. Metazocine.
14. Methadone.
15. Methadone-Intermediate,4-cyano-2-

dimethylamino-4,4-diphenylbutane.  
16. Moramide-Intermediate,2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.

17. Nabilone.
18. Pethidine (meperidine).
19. Pethidine-Intermediate-A,4-cyano-1-methyl-4-phenylpiperidine.
20. Pethidine-Intermediate-B,ethyl-4-phenylpiperidine-4-carboxylate.
21. Pethidine-Intermediate-C,1-methyl-4-phenylpiperidine-4-carboxylic acid.
22. Phenazocine.
23. Phencyclidine.
24. 1-Phenylcyclohexylamine.
25. Piminodine.
26. 1-Piperidinocyclohexanecarbonitrile.
27. Racemethorphan.
28. Racemorphan.
29. Sufentanil.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, optical isomers, salts of their isomers, and salts of their optical isomers:

1. Amobarbital.
2. Amphetamine.
3. Glutethimide.
4. Methamphetamine.
5. Methylphenidate.
6. Pentobarbital.
7. Phenmetrazine.
8. Phenylacetone.
9. Secobarbital.

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, including thiobarbituric acid, or any salt of a derivative of barbituric acid or thiobarbituric acid, including, but not limited to, butabarbital and butalbital.
  2. Benzphetamine.
  3. Chlorhexadol.
  4. Chlorphentermine.
  5. Clortermine.
  6. Lysergic acid.
  7. Lysergic acid amide.
  8. Methyprylon.
  9. Phendimetrazine.
  10. Sulfondiethylmethane.
  11. Sulfonethylmethane.
  12. Sulfonmethane.
  13. Tiletamine and zolazepam or any salt thereof.
- (b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined pursuant to s. 893.135(6).

(d) Anabolic steroids.

1. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth and includes:

- a. Androsterone.
- b. Androsterone acetate.
- c. Boldenone.
- d. Boldenone acetate.
- e. Boldenone benzoate.
- f. Boldenone undecylenate.
- g. Chlorotestosterone (4-chlortestosterone).
- h. Clostebol.
- i. Dehydrochlormethyltestosterone.
- j. Dihydrotestosterone (4-dihydrotestosterone).
- k. Drostanolone.
- l. Ethylestrenol.

- m. Fluoxymesterone.
- n. Formebolone (formebolone).
- o. Mesterolone.
- p. Methandienone.
- q. Methandranone.
- r. Methandriol.
- s. Methandrostenolone.
- t. Methenolone.
- u. Methyltestosterone.
- v. Mibolerone.
- w. Nandrolone.
- x. Norethandrolone.
- y. Nortestosterone.
- z. Nortestosterone decanoate.
- aa. Nortestosterone phenylpropionate.
- bb. Nortestosterone propionate.
- cc. Oxandrolone.
- dd. Oxymesterone.
- ee. Oxymetholone.
- ff. Stanolone.
- gg. Stanozolol.
- hh. Testolactone.
- ii. Testosterone.
- jj. Testosterone acetate.
- kk. Testosterone benzoate.
- ll. Testosterone cypionate.
- mm. Testosterone decanoate.
- nn. Testosterone enanthate.
- oo. Testosterone isocaproate.
- pp. Testosterone oleate.
- qq. Testosterone phenylpropionate.
- rr. Testosterone propionate.
- ss. Testosterone undecanoate.
- tt. Trenbolone.
- uu. Trenbolone acetate.
- vv. Any salt, ester, or isomer of a drug or substance described or listed in this subparagraph if that salt, ester, or isomer promotes muscle growth.

2. The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for such administration. However, any person who prescribes, dispenses, or distributes such a steroid for human use is considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(e) Ketamine, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(f) Dronabinol (synthetic THC) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration.

(g) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under s. 505 of the Federal Food, Drug, and Cosmetic Act.

(4) SCHEDULE IV.—A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical

use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, are controlled in Schedule IV:

- (a) Alprazolam.
- (b) Barbitol.
- (c) Bromazepam.
- (d) Camazepam.
- (e) Cathine.
- (f) Chloral betaine.
- (g) Chloral hydrate.
- (h) Chlordiazepoxide.
- (i) Clobazam.
- (j) Clonazepam.
- (k) Clorazepate.
- (l) Clotiazepam.
- (m) Cloxazolam.
- (n) Delorazepam.
- (o) Propoxyphene (dosage forms).
- (p) Diazepam.
- (q) Diethylpropion.
- (r) Estazolam.
- (s) Ethchlorvynol.
- (t) Ethinamate.
- (u) Ethyl loflazepate.
- (v) Fencamfamin.
- <sup>1</sup>(w) Fenfluramine.
- (x) Fenproporex.
- (y) Fludiazepam.
- (z) Flurazepam.
- (aa) Halazepam.
- (bb) Haloxazolam.
- (cc) Ketazolam.
- (dd) Loprazolam.
- (ee) Lorazepam.
- (ff) Lormetazepam.
- (gg) Mazindol.
- (hh) Mebutamate.
- (ii) Medazepam.
- (jj) Mefenorex.
- (kk) Meprobamate.
- (ll) Methohexital.
- (mm) Methylphenobarbital.
- (nn) Midazolam.
- (oo) Nimetazepam.
- (pp) Nitrazepam.
- (qq) Nordiazepam.
- (rr) Oxazepam.
- (ss) Oxazolam.
- (tt) Paraldehyde.
- (uu) Pemoline.
- (vv) Pentazocine.
- (ww) Phenobarbital.
- (xx) Phentermine.
- (yy) Pinazepam.
- (zz) Pipradrol.
- (aaa) Prazepam.

(bbb) Propylhexedrine, excluding any patent or proprietary preparation containing propylhexedrine, unless otherwise provided by federal law.

(ccc) Quazepam.

(ddd) Tetrazepam.

(eee) SPA[(-)-1 dimethylamino-1, 2 diphenylethane].

(fff) Temazepam.

(ggg) Triazolam.

(hhh) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(iii) Butorphanol tartrate.

(jjj) Carisoprodol.

(5) SCHEDULE V.—A substance, compound, mixture, or preparation of a substance in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

(a) Substances controlled in Schedule V include any compound, mixture, or preparation containing any of the following limited quantities of controlled substances, which shall include one or more active medicinal ingredients which are not controlled substances in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the controlled substance alone:

1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

3. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts: Buprenorphine.

(c) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

**History.**—s. 3, ch. 73-331; s. 247, ch. 77-104; s. 1, ch. 77-174; ss. 1, 2, ch. 78-195; s. 2, ch. 79-325; s. 1, ch. 80-353; s. 1, ch. 82-16; s. 1, ch. 84-89; s. 2, ch. 85-242; s. 1, ch. 86-147; s. 2, ch. 87-243; s. 1, ch. 87-299; s. 1, ch. 88-59; s. 3, ch. 89-281; s. 54, ch. 92-69; s. 1, ch. 93-92; s. 4, ch. 95-415; s. 1, ch. 96-360; ss. 1, 5, ch. 97-1; s. 96, ch. 97-264; s. 1, ch. 99-186; s. 2, ch. 2000-320; s. 1, ch. 2001-55; s. 5, ch. 2001-57; s. 1, ch. 2002-78; s. 2, ch. 2003-10; s. 1, ch. 2008-88.

**Note.**—Section 1, ch. 97-1, added paragraph (4)(w) listing fenfluramine. Section 5, ch. 97-1, repealed paragraph (4)(w) effective upon the removal of fenfluramine from the schedules of controlled substances in 21 C.F.R. s. 1308. The Drug Enforcement Administration of the United States Department of Justice filed a proposed final rule removing fenfluramine from the schedules, see 62 F.R. 24620, May 6, 1997.

**893.0301 Death resulting from apparent drug overdose; reporting requirements.**—If a person dies of an apparent drug overdose:

(1) A law enforcement agency shall prepare a report identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 which is found on or near the deceased or among the deceased's possessions. The report must identify the person who prescribed the controlled substance, if known or ascertainable. Thereafter, the law enforcement agency shall submit a copy of the report to the medical examiner.

(2) A medical examiner who is preparing a report pursuant to s. 406.11 shall include in the report information identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 that was found in, on, or near the deceased or among the deceased's possessions.

**History.**—s. 6, ch. 2007-156.

**893.031 Industrial exceptions to controlled substance scheduling.**—

(1) For the purpose of this section, the following meanings of terms shall apply:

(a) "Manufacture" means any process or operation necessary for manufacturing a product.

(b) "Distribution" means any process or operation necessary for distributing a product, including, but not limited to, wholesaling, delivery or transport, and storage.

(c) "Manufacturer of 1,4-Butanediol" means a person who is involved in the manufacture of 1,4-Butanediol for use in the manufacture of an industrial product and who provides that manufactured 1,4-Butanediol to a distributor of 1,4-Butanediol or a manufacturer of an industrial product.

(d) "Distributor of 1,4-Butanediol" means a person who is involved in the distribution of 1,4-Butanediol.

(e) "Manufacturer of gamma-butyrolactone (GBL)" means a person who:

1. Is involved in the manufacture of gamma-butyrolactone (GBL) for use in the manufacture of an industrial product and who provides that manufactured gamma-butyrolactone (GBL) to a distributor of gamma-butyrolactone (GBL) or a manufacturer of an industrial product; and

2. Is in compliance with any requirements to register with the United States Drug Enforcement Administration as a List I Chemical registrant.

(f) "Distributor of gamma-butyrolactone (GBL)" means a person who:

1. Is involved in the distribution of gamma-butyrolactone (GBL); and

2. Is in compliance with any requirements to register with the United States Drug Enforcement Administration as a List I Chemical registrant.

(g) "Manufacturer of an industrial product" means a person who is involved in the manufacture of an industrial product in which that person acquires:

1. 1,4-Butanediol from a manufacturer of 1,4-Butanediol or a distributor of 1,4-Butanediol and who possesses that substance for use in the manufacture of an industrial product; or

2. Gamma-butyrolactone (GBL) from a manufacturer of gamma-butyrolactone (GBL) or a distributor of gamma-butyrolactone (GBL) and who possesses that substance for use in the manufacture of an industrial product.

(h) "Distributor of an industrial product" means a person who is involved in the distribution of an industrial product.

(i) "Industrial product" means a nondrug, noncontrolled finished product that is not for human consumption.

(j) "Finished product" means a product:

1. That does not contain either 1,4-Butanediol or gamma-butyrolactone (GBL); or

2. From which neither 1,4-Butanediol nor gamma-butyrolactone (GBL) can be readily extracted or readily synthesized and which is not sold for human consumption.

(2) 1,4-Butanediol is excepted from scheduling pursuant to s. 893.03(1)(d)1. when that substance is in the possession of:

(a) A manufacturer of 1,4-Butanediol or a distributor of 1,4-Butanediol;

(b) A manufacturer of an industrial product or a distributor of an industrial product; or

(c) A person possessing a finished product.

(3) Gamma-butyrolactone (GBL) is excepted from scheduling pursuant to s. 893.03(1)(d)2. when that substance is in the possession of:

(a) A manufacturer of gamma-butyrolactone (GBL) or a distributor of gamma-butyrolactone (GBL);

(b) A manufacturer of an industrial product or a distributor of an industrial product; or

(c) A person possessing a finished product.

(4) This section does not apply to:

(a) A manufacturer of 1,4-Butanediol or a distributor of 1,4-Butanediol who sells, delivers, or otherwise distributes that substance to a person who is not a distributor of 1,4-Butanediol or a manufacturer of an industrial product;

(b) A manufacturer of gamma-butyrolactone (GBL) or a distributor of gamma-butyrolactone (GBL) who sells, delivers, or otherwise distributes that substance to a person who is not a distributor of gamma-butyrolactone (GBL) or a manufacturer of an industrial product;

(c) A person who possesses 1,4-Butanediol but who is not a manufacturer of 1,4-Butanediol, a distributor of 1,4-Butanediol, a manufacturer of an industrial product, a distributor of an industrial product, or a person possessing a finished product as described in paragraph (2)(c) or paragraph (3)(c);

(d) A person who possesses gamma-butyrolactone (GBL) but who is not a manufacturer of gamma-butyrolactone (GBL), a distributor of gamma-butyrolactone (GBL), a manufacturer of an industrial product, a distributor of an industrial product, or a person possessing a finished product as described in paragraph (2)(c) or paragraph (3)(c);

(e) A person who extracts or synthesizes either 1,4-Butanediol or gamma-butyrolactone (GBL) from a finished product as described in subparagraph (1)(j)2. or a person who extracts or synthesizes 1,4-Butanediol or gamma-butyrolactone (GBL) from any product or

material, unless such extraction or synthesis is authorized by law; or

(f) A person whose possession of either 1,4-Butanediol or gamma-butyrolactone (GBL) is not in compliance with the requirements of this section or whose possession of either of those substances is not specifically authorized by law.

History.—s. 1, ch. 2003-10.

**893.033 Listed chemicals.**—The chemicals listed in this section are included by whatever official, common, usual, chemical, or trade name designated.

(1) **PRECURSOR CHEMICALS.**—The term "listed precursor chemical" means a chemical that may be used in manufacturing a controlled substance in violation of this chapter and is critical to the creation of the controlled substance, and such term includes any salt, optical isomer, or salt of an optical isomer, whenever the existence of such salt, optical isomer, or salt of optical isomer is possible within the specific chemical designation. The following are "listed precursor chemicals":

- (a) Anthranilic acid.
- (b) Benzaldehyde.
- (c) Benzyl cyanide.
- (d) Chloroephedrine.
- (e) Chloropseudoephedrine.
- (f) Ephedrine.
- (g) Ergonovine.
- (h) Ergotamine.
- (i) Hydriodic acid.
- (j) Ethylamine.
- (k) Isosafrole.
- (l) Methylamine.
- (m) 3, 4-Methylenedioxyphenyl-2-propanone.
- (n) N-acetylanthranilic acid.
- (o) N-ethylephedrine.
- (p) N-ethylpseudoephedrine.
- (q) N-methylephedrine.
- (r) N-methylpseudoephedrine.
- (s) Nitroethane.
- (t) Norpseudoephedrine.
- (u) Phenylacetic acid.
- (v) Phenylpropanolamine.
- (w) Piperidine.
- (x) Piperonal.
- (y) Propionic anhydride.
- (z) Pseudoephedrine.
- (aa) Safrole.

(2) **ESSENTIAL CHEMICALS.**—The term "listed essential chemical" means a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this chapter. The following are "listed essential chemicals":

- (a) Acetic anhydride.
- (b) Acetone.
- (c) Anhydrous ammonia.
- (d) Benzyl chloride.
- (e) 2-Butanone.
- (f) Ethyl ether.
- (g) Hydrochloric gas.
- (h) Hydriodic acid.
- (i) Iodine.
- (j) Potassium permanganate.

(k) Toluene.

**History.**—s. 2, ch. 91-279; s. 6, ch. 2001-57; s. 2, ch. 2003-15; s. 1, ch. 2005-128.

**893.035 Control of new substances; findings of fact; delegation of authority to Attorney General to control substances by rule.—**

(1)(a) New substances are being created which are not controlled under the provisions of this chapter but which have a potential for abuse similar to or greater than that for substances controlled under this chapter. These new substances are sometimes called “designer drugs” because they can be designed to produce a desired pharmacological effect and to evade the controlling statutory provisions. Designer drugs are being manufactured, distributed, possessed, and used as substitutes for controlled substances.

(b) The hazards attributable to the traffic in and use of these designer drugs are increased because their unregulated manufacture produces variations in purity and concentration.

(c) Many such new substances are untested, and it cannot be immediately determined whether they have useful medical or chemical purposes.

(d) The uncontrolled importation, manufacture, distribution, possession, or use of these designer drugs has a substantial and detrimental impact on the health and safety of the people of Florida.

(e) These designer drugs can be created more rapidly than they can be identified and controlled by action of the Legislature. There is a need for a speedy and expert administrative determination of their proper classification under this chapter. It is therefore necessary to delegate to an administrative agency restricted authority to identify and classify new substances that have a potential for abuse, so that they can be controlled in the same manner as other substances currently controlled under this chapter.

(2) The Attorney General shall apply the provisions of this section to any substance not currently controlled under the provisions of s. 893.03. The Attorney General may by rule:

(a) Add a substance to a schedule established by s. 893.03, or transfer a substance between schedules, if he or she finds that it has a potential for abuse and he or she makes with respect to it the other findings appropriate for classification in the particular schedule under s. 893.03 in which it is to be placed.

(b) Remove a substance previously added to a schedule if he or she finds the substance does not meet the requirements for inclusion in that schedule.

Rules adopted under this section shall be made pursuant to the rulemaking procedures prescribed by chapter 120.

(3)(a) The term “potential for abuse” in this section means that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being:

1. Used in amounts that create a hazard to the user’s health or the safety of the community;

2. Diverted from legal channels and distributed through illegal channels; or

3. 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.

(b) The terms “immediate precursor” and “narcotic drug” shall be given the same meanings as provided by s. 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 802, as amended and in effect on April 1, 1985.

(4) In making any findings under this section, the Attorney General shall consider the following factors with respect to each substance proposed to be controlled or removed from control:

(a) Its actual or relative potential for abuse.

(b) Scientific evidence of its pharmacological effect, if known.

(c) The state of current scientific knowledge regarding the drug or other substance.

(d) Its history and current pattern of abuse.

(e) The scope, duration, and significance of abuse.

(f) What, if any, risk there is to the public health.

(g) Its psychic or physiological dependence liability.

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

The findings and conclusions of the United States Attorney General or his or her delegee, as set forth in the Federal Register, with respect to any substance pursuant to s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811, as amended and in effect on April 1, 1985, shall be admissible as evidence in any rulemaking proceeding under this section, including an emergency rulemaking proceeding under subsection (7).

(5) Before initiating proceedings under subsection (2), the Attorney General shall request from the Department of Health and the Department of Law Enforcement a medical and scientific evaluation of the substance under consideration and a recommendation as to the appropriate classification, if any, of such substance as a controlled substance. In responding to this request, the Department of Health and the Department of Law Enforcement shall consider the factors listed in subsection (4). The Department of Health and the Department of Law Enforcement shall respond to this request promptly and in writing; however, their response is not subject to chapter 120. If both the Department of Health and the Department of Law Enforcement recommend that a substance not be controlled, the Attorney General shall not control that substance. If the Attorney General determines, based on the evaluations and recommendations of the Department of Health and the Department of Law Enforcement and all other available evidence, that there is substantial evidence of potential for abuse, he or she shall initiate proceedings under paragraph (2)(a) with respect to that substance.

(6)(a) The Attorney General shall by rule exempt any nonnarcotic substance controlled by rule under this section from the application of this section if such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

(b) The Attorney General may by rule exempt any compound, mixture, or preparation containing a substance controlled by rule under this section from the application of this section if he or she finds that such compound, mixture, or preparation meets the requirements of either of the following subcategories:

1. A mixture or preparation containing a nonnarcotic substance controlled by rule, which mixture or preparation is approved for prescription use and which contains one or more other active ingredients which are not listed in any schedule and which are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse.

2. A compound, mixture, or preparation which contains any substance controlled by rule, which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

(7)(a) If the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03 on a temporary basis is necessary to avoid an imminent hazard to the public safety, he or she may by rule and without regard to the requirements of subsection (5) relating to the Department of Health and the Department of Law Enforcement schedule such substance in Schedule I if the substance is not listed in any other schedule of s. 893.03. The Attorney General shall be required to consider, with respect to his or her finding of imminent hazard to the public safety, only those factors set forth in paragraphs (3)(a) and (4)(d), (e), and (f), including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

(b) The Attorney General may use emergency rulemaking provisions under s. 120.54(4) in scheduling substances under this subsection. Notwithstanding the provisions of s. 120.54(4)(c), any rule adopted under this subsection shall not expire except as provided in subsection (9).

(8)(a) Upon the effective date of a rule adopted pursuant to this section adding or transferring a substance to a schedule under s. 893.03, such substance shall be deemed included in that schedule, and all provisions of this chapter applicable to substances in that schedule shall be deemed applicable to such substance.

(b) A rule adopted pursuant to this section shall continue in effect until it is repealed; until it is declared invalid in proceedings under s. 120.56 or in proceedings before a court of competent jurisdiction; or until it expires under the provisions of subsection (9).

(9) The Attorney General shall report to the Legislature by March 1 of each year concerning the rules adopted under this section during the previous year. Each rule so reported shall expire on the following June

30 unless the Legislature adopts the provisions thereof as an amendment to this chapter.

(10) The repeal, expiration, or determination of invalidity of any rule shall not operate to create any claim or cause of action against any law enforcement officer or other enforcing authority for actions taken in good faith in reliance on the validity of the rule.

(11) In construing this section, due consideration and great weight should be given to interpretations of the United States Attorney General and the federal courts relating to s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811, as amended and in effect on April 1, 1985. All substantive rules adopted under this part shall not be inconsistent with the rules of the United States Attorney General and the decisions of the federal courts interpreting the provisions of s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811, as amended and in effect on April 1, 1985.

(12) The adoption of a rule transferring a substance from one schedule to another or removing a substance from a schedule pursuant to this section shall not affect prosecution or punishment for any crime previously committed with respect to that substance.

History.—s. 3, ch. 85-242; s. 72, ch. 87-226; s. 255, ch. 94-218; s. 318, ch. 96-410; s. 1826, ch. 97-102; s. 16, ch. 99-186.

**893.0355 Control of scheduled substances; delegation of authority to Attorney General to reschedule substance, or delete substance, by rule.—**

(1) The Legislature has determined that, from time to time, additional testings, approvals, or scientific evidence may indicate that controlled substances listed in Schedules I, II, III, IV, and V hereof have a greater potential for beneficial medical use in treatment in the United States than was evident when such substances were initially scheduled. It is the intent of the Legislature to quickly provide a method for an immediate change to the scheduling and control of such substances to allow for the beneficial medical use thereof so that more flexibility will be available than is possible through rescheduling legislatively.

(2) The Attorney General is hereby delegated the authority to adopt rules rescheduling specified substances to a less controlled schedule, or deleting specified substances from a schedule, upon a finding that reduced control of such substances is in the public interest. In determining whether reduced control of a substance is in the public interest, the Attorney General shall consider the following:

(a) Whether the substance has been rescheduled or deleted from any schedule by rule adopted by the United States Attorney General pursuant to s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811.

(b) The substance's actual or relative potential for abuse.

(c) Scientific evidence of the substance's pharmacological effect, if known.

(d) The state of current scientific knowledge regarding the substance.

(e) The substance's history and current pattern of abuse.

(f) The scope, duration, and significance of abuse.

- (g) What, if any, risk there is to the public health.  
 (h) The substance's psychic or physiological dependence liability.

(3) In making the public interest determination, the Attorney General shall give great weight to the scheduling rules adopted by the United States Attorney General subsequent to such substances being listed in Schedules I, II, III, IV, and V hereof, to achieve the original legislative purpose of the Florida Comprehensive Drug Abuse Prevention and Control Act of maintaining uniformity between the laws of Florida and the laws of the United States with respect to controlled substances.

(4) Rulemaking under this section shall be in accordance with the procedural requirements of chapter 120, including the emergency rule provisions found in s. 120.54. The Attorney General may initiate proceedings for adoption, amendment, or repeal of any rule on his or her own motion or upon the petition of any interested party.

(5) Upon the effective date of a rule adopted pursuant to this section, the rule's rescheduling or deletion of a substance shall be effective for all purposes under this chapter.

(6) Rules adopted pursuant to this section shall be reviewed each year by the Legislature. Each rule shall remain in effect until the effective date of legislation that provides for a different scheduling of a substance than that set forth in such rule.

(7) The adoption of a rule rescheduling a substance or deleting a substance from control pursuant to this section shall not affect prosecution or punishment for any crime previously committed with respect to that substance.

(8) The provisions of this section apply only to substances controlled expressly by statute and not to substances controlled by rules adopted under the authority granted in the provisions of s. 893.035.

**History.**—s. 4, ch. 85-242; s. 1435, ch. 97-102.

**893.0356 Control of new substances; findings of fact; "controlled substance analog" defined.—**

(1)(a) New substances are being created which are not controlled under the provisions of this chapter but which have a potential for abuse similar to or greater than that for substances controlled under this chapter. These new substances are called "controlled substance analogs," and can be designed to produce a desired pharmacological effect and to evade the controlling statutory provisions. Controlled substance analogs are being manufactured, distributed, possessed, and used as substitutes for controlled substances.

(b) The hazards attributable to the traffic in and use of controlled substance analogs are increased because their unregulated manufacture produces variations in purity and concentration.

(c) Many such new substances are untested, and it cannot be immediately determined whether they have useful medical or chemical purposes.

(d) The uncontrolled importation, manufacture, distribution, possession, or use of controlled substance analogs has a substantial and detrimental impact on the health and safety of the people of Florida.

(e) Controlled substance analogs can be created more rapidly than they can be identified and controlled by action of the Legislature. There is a need for a speedy determination of their proper classification under this chapter. It is therefore necessary to identify and classify new substances that have a potential for abuse, so that they can be controlled in the same manner as other substances currently controlled under this chapter.

(2)(a) As used in this section, "controlled substance analog" means a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

1. Is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03; and

2. Has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03.

(b) "Controlled substance analog" does not include:

1. A controlled substance;

2. Any substance for which there is an approved new drug application;

3. Any compound, mixture, or preparation which contains any controlled substance which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or

4. Any substance to which an investigational exemption applies under s. 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

(3) The term "potential for abuse" in this section means that a substance has properties as a central nervous system stimulant or depressant or a 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.

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.

(4) The following factors shall be relevant to a finding that a substance is a controlled substance analog within the purview of this section:

(a) Its actual or relative potential for abuse.

(b) Scientific evidence of its pharmacological effect, if known.

(c) The state of current scientific knowledge regarding the substance.

(d) Its history and current pattern of abuse.

- (e) The scope, duration, and significance of abuse.
- (f) What, if any, risk there is to the public health.
- (g) Its psychic or physiological dependence liability.
- (h) Its diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

(i) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(5) A controlled substance analog shall, for purposes of drug abuse prevention and control, be treated as a controlled substance in Schedule I of s. 893.03.

(6) In construing this section, due consideration and great weight should be given to interpretations of the United States Attorney General and the federal courts relating to s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811, as amended and in effect on April 1, 1985. New substances controlled under this section shall not be treated in a manner inconsistent with the rules of the United States Attorney General and the decisions of the federal courts interpreting the provisions of s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811, as amended and in effect on April 1, 1985.

(7) The treatment of a new substance as a controlled substance pursuant to this section shall not affect prosecution or punishment for any crime previously committed with respect to that substance.

**History.**—s. 3, ch. 87-243; s. 11, ch. 99-186; s. 20, ch. 2000-320.

#### **893.04 Pharmacist and practitioner.—**

(1) A pharmacist, in good faith and in the course of professional practice only, may dispense controlled substances upon a written or oral prescription of a practitioner, under the following conditions:

(a) Oral prescriptions must be promptly reduced to writing by the pharmacist or recorded electronically if permitted by federal law.

(b) The written prescription must be dated and signed by the prescribing practitioner on the day when issued.

(c) There shall appear on the face of the prescription or written record thereof for the controlled substance the following information:

1. The full name and address of the person for whom, or the owner of the animal for which, the controlled substance is dispensed.

2. The full name and address of the prescribing practitioner and the practitioner's federal controlled substance registry number shall be printed thereon.

3. If the prescription is for an animal, the species of animal for which the controlled substance is prescribed.

4. The name of the controlled substance prescribed and the strength, quantity, and directions for use thereof.

5. The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled.

6. The initials of the pharmacist filling the prescription and the date filled.

(d) The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 2 years.

(e) Affixed to the original container in which a controlled substance is delivered upon a prescription

or authorized refill thereof, as hereinafter provided, there shall be a label bearing the following information:

1. The name and address of the pharmacy from which such controlled substance was dispensed.

2. The date on which the prescription for such controlled substance was filled.

3. The number of such prescription, as recorded in the prescription files of the pharmacy in which it is filled.

4. The name of the prescribing practitioner.

5. The name of the patient for whom, or of the owner and species of the animal for which, the controlled substance is prescribed.

6. The directions for the use of the controlled substance prescribed in the prescription.

7. A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

(f) A prescription for a controlled substance listed in Schedule II may be dispensed only upon a written prescription of a practitioner, except that in an emergency situation, as defined by regulation of the Department of Health, such controlled substance may be dispensed upon oral prescription but is limited to a 72-hour supply. A prescription for a controlled substance listed in Schedule II may not be refilled.

(g) A prescription for a controlled substance listed in Schedule III, Schedule IV, or Schedule V may not be filled or refilled more than five times within a period of 6 months after the date on which the prescription was written unless the prescription is renewed by a practitioner.

(2)(a) A pharmacist may not dispense a controlled substance listed in Schedule II, Schedule III, or Schedule IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the order is valid. The pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent.

(b) Any pharmacist who dispenses by mail a controlled substance listed in Schedule II, Schedule III, or Schedule IV is exempt from the requirement to obtain suitable identification for the prescription dispensed by mail if the pharmacist has obtained the patient's identification through the patient's prescription benefit plan.

(c) Any controlled substance listed in Schedule III or Schedule IV may be dispensed by a pharmacist upon an oral prescription if, before filling the prescription, the pharmacist reduces it to writing or records the prescription electronically if permitted by federal law. Such prescriptions must contain the date of the oral authorization.

(d) Each written prescription prescribed by a practitioner in this state for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include both a written and a numerical notation of the quantity of the controlled substance prescribed on the face of the prescription and a notation of the date, with the abbreviated month written out on the face of the prescription. A pharmacist may, upon verification by

the prescriber, document any information required by this paragraph. If the prescriber is not available to verify a prescription, the pharmacist may dispense the controlled substance but may insist that the person to whom the controlled substance is dispensed provide valid photographic identification. If a prescription includes a numerical notation of the quantity of the controlled substance or date, but does not include the quantity or date written out in textual format, the pharmacist may dispense the controlled substance without verification by the prescriber of the quantity or date if the pharmacy previously dispensed another prescription for the person to whom the prescription was written.

(e) A pharmacist may not dispense more than a 30-day supply of a controlled substance listed in Schedule III upon an oral prescription issued in this state.

(f) A pharmacist may not knowingly fill a prescription that has been forged for a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

(3) Notwithstanding subsection (1), a pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication for any medicinal drug other than a medicinal drug listed in Schedule II, in compliance with the provisions of s. 465.0275.

(4) The legal owner of any stock of controlled substances in a pharmacy, upon discontinuance of dealing in controlled substances, may sell said stock to a manufacturer, wholesaler, or pharmacy. Such controlled substances may be sold only upon an order form, when such an order form is required for sale by the drug abuse laws of the United States or this state, or regulations pursuant thereto.

**History.**—s. 4, ch. 73-331; s. 2, ch. 75-18; s. 12, ch. 79-12; s. 2, ch. 90-2; s. 1436, ch. 97-102; s. 301, ch. 99-8; s. 2, ch. 2007-156; s. 5, ch. 2009-202.

### **893.05 Practitioners and persons administering controlled substances in their absence.—**

(1) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the same to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under the veterinarian's direction and supervision only.

(2) When any controlled substance is dispensed by a practitioner, there shall be affixed to the original container in which the controlled substance is delivered a label on which appears:

- (a) The date of delivery.
- (b) The directions for use of such controlled substance.
- (c) The name and address of such practitioner.
- (d) The name of the patient and, if such controlled substance is prescribed for an animal, a statement describing the species of the animal.
- (e) A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

(3) Any person who obtains from a practitioner or the practitioner's agent, or pursuant to prescription, any controlled substance for administration to a patient during the absence of such practitioner shall return to such practitioner any unused portion of such controlled substance when it is no longer required by the patient.

**History.**—s. 5, ch. 73-331; s. 1437, ch. 97-102.

### **1893.055 Prescription drug monitoring program.**

(1) As used in this section, the term:

(a) "Patient advisory report" or "advisory report" means information provided by the department in writing, or as determined by the department, to a prescriber, dispenser, pharmacy, or patient concerning the dispensing of controlled substances. All advisory reports are for informational purposes only and impose no obligations of any nature or any legal duty on a prescriber, dispenser, pharmacy, or patient. The patient advisory report shall be provided in accordance with s. 893.13(7)(a)8. The advisory reports issued by the department are not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient arising out of matters that are the subject of the report; and a person who participates in preparing, reviewing, issuing, or any other activity related to an advisory report may not be permitted or required to testify in any such civil action as to any findings, recommendations, evaluations, opinions, or other actions taken in connection with preparing, reviewing, or issuing such a report.

(b) "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, or Schedule IV in s. 893.03.

(c) "Dispenser" means a pharmacy, dispensing pharmacist, or dispensing health care practitioner.

(d) "Health care practitioner" or "practitioner" means any practitioner who is subject to licensure or regulation by the department under chapter 458, chapter 459, chapter 461, chapter 462, chapter 464, chapter 465, or chapter 466.

(e) "Health care regulatory board" means any board for a practitioner or health care practitioner who is licensed or regulated by the department.

(f) "Pharmacy" means any pharmacy that is subject to licensure or regulation by the department under chapter 465 and that dispenses or delivers a controlled substance to an individual or address in this state.

(g) "Prescriber" means a prescribing physician, prescribing practitioner, or other prescribing health care practitioner.

(h) "Active investigation" means an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

(i) "Law enforcement agency" means the Department of Law Enforcement, a Florida sheriff's department, a Florida police department, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and which its agents and officers

are empowered by law to conduct criminal investigations and make arrests.

(j) "Program manager" means an employee of or a person contracted by the Department of Health who is designated to ensure the integrity of the prescription drug monitoring program in accordance with the requirements established in paragraphs (2)(a) and (b).

(2)(a) By December 1, 2010, the department shall design and establish a comprehensive electronic database system that has controlled substance prescriptions provided to it and that provides prescription information to a patient's health care practitioner and pharmacist who inform the department that they wish the patient advisory report provided to them. Otherwise, the patient advisory report will not be sent to the practitioner, pharmacy, or pharmacist. The system shall be designed to provide information regarding dispensed prescriptions of controlled substances and shall not infringe upon the legitimate prescribing or dispensing of a controlled substance by a prescriber or dispenser acting in good faith and in the course of professional practice. The system shall be consistent with standards of the American Society for Automation in Pharmacy (ASAP). The electronic system shall also comply with the Health Insurance Portability and Accountability Act (HIPAA) as it pertains to protected health information (PHI), electronic protected health information (EPHI), and all other relevant state and federal privacy and security laws and regulations. The department shall establish policies and procedures as appropriate regarding the reporting, accessing the database, evaluation, management, development, implementation, operation, storage, and security of information within the system. The reporting of prescribed controlled substances shall include a dispensing transaction with a dispenser pursuant to chapter 465 or through a dispensing transaction to an individual or address in this state with a pharmacy that is not located in this state but that is otherwise subject to the jurisdiction of this state as to that dispensing transaction. The reporting of patient advisory reports refers only to reports to patients, pharmacies, and practitioners. Separate reports that contain patient prescription history information and that are not patient advisory reports are provided to persons and entities as authorized in paragraphs (7)(b) and (c) and s. 893.0551.

(b) The department, when the direct support organization receives at least \$20,000 in nonstate moneys or the state receives at least \$20,000 in federal grants for the prescription drug monitoring program, and in consultation with the Office of Drug Control, shall adopt rules as necessary concerning the reporting, accessing the database, evaluation, management, development, implementation, operation, security, and storage of information within the system, including rules for when patient advisory reports are provided to pharmacies and prescribers. The patient advisory report shall be provided in accordance with s. 893.13(7)(a)8. The department shall work with the professional health care licensure boards, such as the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Pharmacy; other appropriate organizations, such as the Florida Pharmacy Association, the Office of Drug

Control, the Florida Medical Association, the Florida Retail Federation, and the Florida Osteopathic Medical Association, including those relating to pain management; and the Attorney General, the Department of Law Enforcement, and the Agency for Health Care Administration to develop rules appropriate for the prescription drug monitoring program.

(c) All dispensers and prescribers subject to these reporting requirements shall be notified by the department of the implementation date for such reporting requirements.

(d) The program manager shall work with professional health care licensure boards and the stakeholders listed in paragraph (b) to develop rules appropriate for identifying indicators of controlled substance abuse.

(3) The pharmacy dispensing the controlled substance and each prescriber who directly dispenses a controlled substance shall submit to the electronic system, by a procedure and in a format established by the department and consistent with an ASAP-approved format, the following information for inclusion in the database:

(a) The name of the prescribing practitioner, the practitioner's federal Drug Enforcement Administration registration number, the practitioner's National Provider Identification (NPI) or other appropriate identifier, and the date of the prescription.

(b) The date the prescription was filled and the method of payment, such as cash by an individual, insurance coverage through a third party, or Medicaid payment. This paragraph does not authorize the department to include individual credit card numbers or other account numbers in the database.

(c) The full name, address, and date of birth of the person for whom the prescription was written.

(d) The name, national drug code, quantity, and strength of the controlled substance dispensed.

(e) The full name, federal Drug Enforcement Administration registration number, and address of the pharmacy or other location from which the controlled substance was dispensed. If the controlled substance was dispensed by a practitioner other than a pharmacist, the practitioner's full name, federal Drug Enforcement Administration registration number, and address.

(f) The name of the pharmacy or practitioner, other than a pharmacist, dispensing the controlled substance and the practitioner's National Provider Identification (NPI).

(g) Other appropriate identifying information as determined by department rule.

(4) Each time a controlled substance is dispensed to an individual, the controlled substance shall be reported to the department through the system as soon thereafter as possible, but not more than 15 days after the date the controlled substance is dispensed unless an extension is approved by the department for cause as determined by rule. A dispenser must meet the reporting requirements of this section by providing the required information concerning each controlled substance that it dispensed in a department-approved, secure methodology and format. Such approved

formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail.

(5) When the following acts of dispensing or administering occur, the following are exempt from reporting under this section for that specific act of dispensing or administration:

(a) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(b) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.

(c) A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.

(d) A practitioner when administering a controlled substance in the emergency room of a licensed hospital.

(e) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.

(f) A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(6) The department may establish when to suspend and when to resume reporting information during a state-declared or nationally declared disaster.

(7)(a) A practitioner or pharmacist who dispenses a controlled substance must submit the information required by this section in an electronic or other method in an ASAP format approved by rule of the department unless otherwise provided in this section. The cost to the dispenser in submitting the information required by this section may not be material or extraordinary. Costs not considered to be material or extraordinary include, but are not limited to, regular postage, electronic media, regular electronic mail, and facsimile charges.

(b) A pharmacy, prescriber, or dispenser shall have access to information in the prescription drug monitoring program's database which relates to a patient of that pharmacy, prescriber, or dispenser in a manner established by the department as needed for the purpose of reviewing the patient's controlled substance prescription history. Other access to the program's database shall be limited to the program's manager and to the designated program and support staff, who may act only at the direction of the program manager or, in the absence of the program manager, as authorized. Access by the program manager or such designated staff is for prescription drug program management only or for management of the program's database and its system in support of the requirements of this section and in furtherance of the prescription drug monitoring program. Confidential and exempt information in the database shall be released only as provided in paragraph (c) and s. 893.0551.

(c) The following entities shall not be allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program

manager, the program manager's program and support staff, information that is confidential and exempt under s. 893.0551. Prior to release, the request shall be verified as authentic and authorized with the requesting organization by the program manager, the program manager's program and support staff, or as determined in rules by the department as being authentic and as having been authorized by the requesting entity:

1. The department or its relevant health care regulatory boards responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances and who are involved in a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances.

2. The Attorney General for Medicaid fraud cases involving prescribed controlled substances.

3. A law enforcement agency during active investigations regarding potential criminal activity, fraud, or theft regarding prescribed controlled substances.

4. A patient or the legal guardian or designated health care surrogate of an incapacitated patient as described in s. 893.0551 who, for the purpose of verifying the accuracy of the database information, submits a written and notarized request that includes the patient's full name, address, and date of birth, and includes the same information if the legal guardian or health care surrogate submits the request. The request shall be validated by the department to verify the identity of the patient and the legal guardian or health care surrogate, if the patient's legal guardian or health care surrogate is the requestor. Such verification is also required for any request to change a patient's prescription history or other information related to his or her information in the electronic database.

Information in the database for the electronic prescription drug monitoring system is not discoverable or admissible in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the appropriate regulatory board.

(d) The following entities shall not be allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information that contains no identifying information of any patient, physician, health care practitioner, prescriber, or dispenser and that is not confidential and exempt:

1. Department staff for the purpose of calculating performance measures pursuant to subsection (8).

2. The Program Implementation and Oversight Task Force for its reporting to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the prescription drug monitoring program. This subparagraph expires July 1, 2012.

(e) All transmissions of data required by this section must comply with relevant state and federal privacy and security laws and regulations. However, any authorized agency or person under s. 893.0551 receiving such

information as allowed by s. 893.0551 may maintain the information received for up to 24 months before purging it from his or her records or maintain it for longer than 24 months if the information is pertinent to ongoing health care or an active law enforcement investigation or prosecution.

(f) The program manager, upon determining a pattern consistent with the rules established under <sup>2</sup>paragraph (2)(d) and having cause to believe a violation of s. 893.13(7)(a)8., (8)(a), or (8)(b) has occurred, may provide relevant information to the applicable law enforcement agency.

(8) To assist in fulfilling program responsibilities, performance measures shall be reported annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives by the department each December 1, beginning in 2011. Data that does not contain patient, physician, health care practitioner, prescriber, or dispenser identifying information may be requested during the year by department employees so that the department may undertake public health care and safety initiatives that take advantage of observed trends. Performance measures may include, but are not limited to, efforts to achieve the following outcomes:

(a) Reduction of the rate of inappropriate use of prescription drugs through department education and safety efforts.

(b) Reduction of the quantity of pharmaceutical controlled substances obtained by individuals attempting to engage in fraud and deceit.

(c) Increased coordination among partners participating in the prescription drug monitoring program.

(d) Involvement of stakeholders in achieving improved patient health care and safety and reduction of prescription drug abuse and prescription drug diversion.

(9) Any person who willfully and knowingly fails to report the dispensing of a controlled substance as required by this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(10) All costs incurred by the department in administering the prescription drug monitoring program shall be funded through federal grants or private funding applied for or received by the state. The department may not commit funds for the monitoring program without ensuring funding is available. The prescription drug monitoring program and the implementation thereof are contingent upon receipt of the nonstate funding. The department and state government shall cooperate with the direct-support organization established pursuant to subsection (11) in seeking federal grant funds, other nonstate grant funds, gifts, donations, or other private moneys for the department so long as the costs of doing so are not considered material. Nonmaterial costs for this purpose include, but are not limited to, the costs of mailing and personnel assigned to research or apply for a grant. Notwithstanding the exemptions to competitive-solicitation requirements under s. 287.057(3)(f), the department shall comply with the competitive-solicitation requirements under s. 287.057 for the procurement of any goods or services required by this section.

(11) The Office of Drug Control, in coordination with the department, may establish a direct-support organization that has a board consisting of at least five members to provide assistance, funding, and promotional support for the activities authorized for the prescription drug monitoring program.

(a) As used in this subsection, the term "direct-support organization" means an organization that is:

1. A Florida corporation not for profit incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.

2. Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures or provide funding to or for the direct or indirect benefit of the department in the furtherance of the prescription drug monitoring program.

(b) The direct-support organization is not considered a lobbying firm within the meaning of s. 11.045.

(c) The director of the Office of Drug Control shall appoint a board of directors for the direct-support organization. The director may designate employees of the Office of Drug Control, state employees other than state employees from the department, and any other nonstate employees as appropriate, to serve on the board. Members of the board shall serve at the pleasure of the director of the Office of Drug Control. The director shall provide guidance to members of the board to ensure that moneys received by the direct-support organization are not received from inappropriate sources. Inappropriate sources include, but are not limited to, donors, grantors, persons, or organizations that may monetarily or substantively benefit from the purchase of goods or services by the department in furtherance of the prescription drug monitoring program.

(d) The direct-support organization shall operate under written contract with the Office of Drug Control. The contract must, at a minimum, provide for:

1. Approval of the articles of incorporation and bylaws of the direct-support organization by the Office of Drug Control.

2. Submission of an annual budget for the approval of the Office of Drug Control.

3. Certification by the Office of Drug Control in consultation with the department that the direct-support organization is complying with the terms of the contract in a manner consistent with and in furtherance of the goals and purposes of the prescription drug monitoring program and in the best interests of the state. Such certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

4. The reversion, without penalty, to the Office of Drug Control, or to the state if the Office of Drug Control ceases to exist, of all moneys and property held in trust by the direct-support organization for the benefit of the prescription drug monitoring program if the direct-support organization ceases to exist or if the contract is terminated.

5. The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

6. The disclosure of the material provisions of the contract to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications, and an explanation to such donors of the distinction between the Office of Drug Control and the direct-support organization.

7. The direct-support organization's collecting, expending, and providing of funds to the department for the development, implementation, and operation of the prescription drug monitoring program as described in this section and s. 2, chapter 2009-198, Laws of Florida, as long as the task force is authorized. The direct-support organization may collect and expend funds to be used for the functions of the direct-support organization's board of directors, as necessary and approved by the director of the Office of Drug Control. In addition, the direct-support organization may collect and provide funding to the department in furtherance of the prescription drug monitoring program by:

a. Establishing and administering the prescription drug monitoring program's electronic database, including hardware and software.

b. Conducting studies on the efficiency and effectiveness of the program to include feasibility studies as described in subsection (13).

c. Providing funds for future enhancements of the program within the intent of this section.

d. Providing user training of the prescription drug monitoring program, including distribution of materials to promote public awareness and education and conducting workshops or other meetings, for health care practitioners, pharmacists, and others as appropriate.

e. Providing funds for travel expenses.

f. Providing funds for administrative costs, including personnel, audits, facilities, and equipment.

g. Fulfilling all other requirements necessary to implement and operate the program as outlined in this section.

(e) The activities of the direct-support organization must be consistent with the goals and mission of the Office of Drug Control, as determined by the office in consultation with the department, and in the best interests of the state. The direct-support organization must obtain a written approval from the director of the Office of Drug Control for any activities in support of the prescription drug monitoring program before undertaking those activities.

(f) The Office of Drug Control, in consultation with the department, may permit, without charge, appropriate use of administrative services, property, and facilities of the Office of Drug Control and the department by the direct-support organization, subject to this section. The use must be directly in keeping with the approved purposes of the direct-support organization and may not be made at times or places that would unreasonably interfere with opportunities for the public to use such facilities for established purposes. Any moneys received from rentals of facilities and properties managed by the Office of Drug Control and the department may be held by the Office of Drug Control

or in a separate depository account in the name of the direct-support organization and subject to the provisions of the letter of agreement with the Office of Drug Control. The letter of agreement must provide that any funds held in the separate depository account in the name of the direct-support organization must revert to the Office of Drug Control if the direct-support organization is no longer approved by the Office of Drug Control to operate in the best interests of the state.

(g) The Office of Drug Control, in consultation with the department, may adopt rules under s. 120.54 to govern the use of administrative services, property, or facilities of the department or office by the direct-support organization.

(h) The Office of Drug Control may not permit the use of any administrative services, property, or facilities of the state by a direct-support organization if that organization does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

(i) The direct-support organization shall provide for an independent annual financial audit in accordance with s. 215.981. Copies of the audit shall be provided to the Office of Drug Control and the Office of Policy and Budget in the Executive Office of the Governor.

(j) The direct-support organization may not exercise any power under s. 617.0302(12) or (16).

(12) A prescriber or dispenser may have access to the information under this section which relates to a patient of that prescriber or dispenser as needed for the purpose of reviewing the patient's controlled drug prescription history. A prescriber or dispenser acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information from the prescription drug monitoring program. This subsection does not create a private cause of action, and a person may not recover damages against a prescriber or dispenser authorized to access information under this subsection for accessing or failing to access such information.

(13) To the extent that funding is provided for such purpose through federal or private grants or gifts and other types of available moneys, the department, in collaboration with the Office of Drug Control, shall study the feasibility of enhancing the prescription drug monitoring program for the purposes of public health initiatives and statistical reporting that respects the privacy of the patient, the prescriber, and the dispenser. Such a study shall be conducted in order to further improve the quality of health care services and safety by improving the prescribing and dispensing practices for prescription drugs, taking advantage of advances in technology, reducing duplicative prescriptions and the overprescribing of prescription drugs, and reducing drug abuse. The requirements of the National All Schedules Prescription Electronic Reporting (NASPER) Act are authorized in order to apply for federal NASPER funding. In addition, the direct-support organization shall provide funding for the department, in collaboration with the Office of Drug Control, to conduct training for health care practitioners and other appropriate

persons in using the monitoring program to support the program enhancements.

(14) A pharmacist, pharmacy, or dispensing health care practitioner or his or her agent, before releasing a controlled substance to any person not known to such dispenser, shall require the person purchasing, receiving, or otherwise acquiring the controlled substance to present valid photographic identification or other verification of his or her identity to the dispenser. If the person does not have proper identification, the dispenser may verify the validity of the prescription and the identity of the patient with the prescriber or his or her authorized agent. Verification of health plan eligibility through a real-time inquiry or adjudication system will be considered to be proper identification. This subsection does not apply in an institutional setting or to a long-term care facility, including, but not limited to, an assisted living facility or a hospital to which patients are admitted. As used in this subsection, the term "proper identification" means an identification that is issued by a state or the Federal Government containing the person's photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

(15) The Agency for Health Care Administration shall continue the promotion of electronic prescribing by health care practitioners, health care facilities, and pharmacies under s. 408.0611.

(16) By October 1, 2010, the department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this section, which shall include as necessary the reporting, accessing, evaluation, management, development, implementation, operation, and storage of information within the monitoring program's system.

**History.**—s. 1, ch. 2009-198; s. 41, ch. 2010-151; s. 12, ch. 2010-211.

**1Note.**—Section 2, ch. 2009-198, provides that:

"(1) The Program Implementation and Oversight Task Force is created within the Executive Office of the Governor. The director of the Office of Drug Control shall be a nonvoting, ex officio member of the task force and shall act as chair. The Office of Drug Control and the Department of Health shall provide staff support for the task force.

"(a) The following state officials shall serve on the task force:

- "1. The Attorney General or his or her designee.
- "2. The Secretary of Children and Family Services or his or her designee.
- "3. The Secretary of Health Care Administration or his or her designee.
- "4. The State Surgeon General or his or her designee.

"(b) In addition, the Governor shall appoint 12 members of the public to serve on the task force. Of these 12 appointed members, one member must have professional or occupational expertise in computer security; one member must be a Florida-licensed, board-certified oncologist; two members must be Florida-licensed, fellowship-trained, pain-medicine physicians; one member must be a Florida-licensed primary care physician who has experience in prescribing scheduled prescription drugs; one member must have professional or occupational expertise in e-Prescribing or prescription drug monitoring programs; two members must be . . . Florida-licensed pharmacists; one member must have professional or occupational expertise in the area of law enforcement and have experience in prescription drug investigations; one member must have professional or occupational expertise as an epidemiologist and have a background in tracking and analyzing drug trends; and two members must have professional or occupational expertise as providers of substance abuse treatment, with priority given to a member who is a former substance abuser.

"(c) Members appointed by the Governor shall be appointed to a term of 3 years each. Any vacancy on the task force shall be filled in the same manner as the original appointment, and any member appointed to fill a vacancy shall serve only for the unexpired term of the member's predecessor.

"(d) Members of the task force and members of subcommittees appointed under subsection (4) shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

"(e) The task force shall meet at least quarterly or upon the call of the chair.

"(2) The purpose of the task force is to monitor the implementation and safeguarding of the electronic system established for the prescription drug monitoring program under s. 893.055, Florida Statutes, and to ensure privacy, protection of individual medication history, and the electronic system's appropriate

use by physicians, dispensers, pharmacies, law enforcement agencies, and those authorized to request information from the electronic system.

"(3) The Office of Drug Control shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year which contains a summary of the work of the task force during that year and the recommendations developed in accordance with the task force's purpose as provided in subsection (2). Interim reports may be submitted at the discretion of the chair.

"(4) The chair of the task force may appoint subcommittees that include members of state agencies that are not represented on the task force for the purpose of soliciting input and recommendations from those state agencies as needed by the task force to accomplish its purpose as provided in subsection (2). In addition, the chair may appoint subcommittees as necessary from among the members of the task force in order to efficiently address specific issues. If a state agency is to be represented on any subcommittee, the representative shall be the head of the agency or his or her designee. The chair may designate lead and contributing agencies within a subcommittee.

"(5) The direct-support organization created in s. 893.055, Florida Statutes, may collect, expend, and provide funds and other assistance to the department for the development, implementation, and operation of the task force.

"(6) The task force shall provide a final report in accordance with the task force's purpose as provided in subsection (2) on July 1, 2012, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such report shall be prepared using only data that does not identify a patient, a prescriber, or a dispenser. The task force shall expire and this section is repealed on that date unless reenacted by the Legislature."

**2Note.**—Substituted by the editors for a reference to paragraph (2)(c). Paragraph (2)(d) relates to development of rules; paragraph (2)(c) relates to notification of an implementation date for reporting requirements.

### **893.0551 Public records exemption for the prescription drug monitoring program.—**

(1) For purposes of this section, the term:

- (a) "Active investigation" has the same meaning as provided in s. 893.055.
- (b) "Dispenser" has the same meaning as provided in s. 893.055.
- (c) "Health care practitioner" or "practitioner" has the same meaning as provided in s. 893.055.
- (d) "Health care regulatory board" has the same meaning as provided in s. 893.055.
- (e) "Law enforcement agency" has the same meaning as provided in s. 893.055.
- (f) "Pharmacist" means any person licensed under chapter 465 to practice the profession of pharmacy.
- (g) "Pharmacy" has the same meaning as provided in s. 893.055.
- (h) "Prescriber" has the same meaning as provided in s. 893.055.

(2) The following information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- (a) Name.
- (b) Address.
- (c) Telephone number.
- (d) Insurance plan number.
- (e) Government-issued identification number.
- (f) Provider number.
- (g) Drug Enforcement Administration number.
- (h) Any other unique identifying information or number.

(3) The department shall disclose such confidential and exempt information to the following entities after using a verification process to ensure the legitimacy of that person's or entity's request for the information:

- (a) The Attorney General and his or her designee when working on Medicaid fraud cases involving

prescription drugs or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud regarding prescription drugs. The Attorney General or his or her designee may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. The Attorney General's Medicaid fraud investigators may not have direct access to the department's database.

(b) The department's relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a specific controlled substances investigation for prescription drugs involving a designated person. The health care regulatory boards may request information from the department but may not have direct access to its database. The health care regulatory boards may provide such information to a law enforcement agency pursuant to ss. 456.066 and 456.073.

(c) A law enforcement agency that has initiated an active investigation involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances. The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. A law enforcement agency may request information from the department but may not have direct access to its database.

(d) A health care practitioner who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. 893.05 and 893.055.

(e) A pharmacist who certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with ss. 893.04 and 893.055.

(f) A patient or the legal guardian or designated health care surrogate for an incapacitated patient, if applicable, making a request as provided in s. 893.055(7)(c)4.

(g) The patient's pharmacy, prescriber, or dispenser who certifies that the information is necessary to provide medical treatment to his or her current patient in accordance with s. 893.055.

(4) The department shall disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. 893.055(7)(f). The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s. 893.13(8)(b).

(5) Any agency or person who obtains such confidential and exempt information pursuant to this section

must maintain the confidential and exempt status of that information.

(6) Any person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

**History.**—s. 1, ch. 2009-197; s. 13, ch. 2010-211.

**Note.**—Substituted by the editors for a reference to s. 893.055(7)(b)2., which does not exist; paragraph (7)(f) relates to provision of information to law enforcement agencies.

### **893.06 Distribution of controlled substances; order forms; labeling and packaging requirements.**

(1) Controlled substances in Schedules I and II shall be distributed by a duly licensed manufacturer, distributor, or wholesaler to a duly licensed manufacturer, wholesaler, distributor, practitioner, pharmacy, as defined in chapter 465, hospital, or laboratory only pursuant to an order form. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with federal law respecting the use of order forms.

(2) Possession or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty.

(3) A person in charge of a hospital or laboratory or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains controlled substances under the provisions of this section or otherwise, shall not administer, dispense, or otherwise use such controlled substances within this state, except within the scope of her or his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

(4) It shall be unlawful to distribute a controlled substance in a commercial container unless such container bears a label showing the name and address of the manufacturer, the quantity, kind, and form of controlled substance contained therein, and the identifying symbol for such substance, as required by federal law. No person except a pharmacist, for the purpose of dispensing a prescription, or a practitioner, for the purpose of dispensing a controlled substance to a patient, shall alter, deface, or remove any labels so affixed.

**History.**—s. 6, ch. 73-331; s. 1438, ch. 97-102.

### **893.065 Counterfeit-resistant prescription blanks for controlled substances listed in Schedule II, Schedule III, or Schedule IV.**

—The Department of Health shall develop and adopt by rule the form and content for a counterfeit-resistant prescription blank which may be used by practitioners for the purpose of prescribing a controlled substance listed in Schedule II, Schedule III, or Schedule IV. The Department of Health may require the prescription blanks to be printed on distinctive, watermarked paper and to bear the

preprinted name, address, and category of professional licensure of the practitioner and that practitioner's federal registry number for controlled substances. The prescription blanks may not be transferred.

*History.—*s. 4, ch. 2007-156.

### 893.07 Records.—

(1) Every person who engages in the manufacture, compounding, mixing, cultivating, growing, or by any other process producing or preparing, or in the dispensing, importation, or, as a wholesaler, distribution, of controlled substances shall:

(a) On January 1, 1974, or as soon thereafter as any person first engages in such activity, and every second year thereafter, make a complete and accurate record of all stocks of controlled substances on hand. The inventory may be prepared on the regular physical inventory date which is nearest to, and does not vary by more than 6 months from, the biennial date that would otherwise apply. As additional substances are designated for control under this chapter, they shall be inventoried as provided for in this subsection.

(b) On and after January 1, 1974, maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise disposed of by him or her, except that this subsection shall not require the maintenance of a perpetual inventory.

Compliance with the provisions of federal law pertaining to the keeping of records of controlled substances shall be deemed a compliance with the requirements of this subsection.

(2) The record of controlled substances received shall in every case show:

(a) The date of receipt.

(b) The name and address of the person from whom received.

(c) The kind and quantity of controlled substances received.

(3) The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show:

(a) The date of selling, administering, or dispensing.

(b) The correct name and address of the person to whom or for whose use, or the owner and species of animal for which, sold, administered, or dispensed.

(c) The kind and quantity of controlled substances sold, administered, or dispensed.

(4) Every inventory or record required by this chapter, including prescription records, shall be maintained:

(a) Separately from all other records of the registrant, or

(b) Alternatively, in the case of Schedule III, IV, or V controlled substances, in such form that information required by this chapter is readily retrievable from the ordinary business records of the registrant.

In either case, records shall be kept and made available for a period of at least 2 years for inspection and copying by law enforcement officers whose duty it is to enforce the laws of this state relating to controlled substances.

(5) Each person shall maintain a record which shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any; the kind and quantity of such controlled substances; and the date of the discovering of such loss, destruction, or theft.

*History.—*s. 7, ch. 73-331; s. 1439, ch. 97-102.

### 893.08 Exceptions.—

(1) The following may be distributed at retail without a prescription, but only by a registered pharmacist:

(a) Any compound, mixture, or preparation described in Schedule V.

(b) Any compound, mixture, or preparation containing any depressant or stimulant substance described in s. 893.03(2)(a) or (c) except any amphetamine drug or sympathomimetic amine drug or compound designated as a Schedule II controlled substance pursuant to this chapter; in s. 893.03(3)(a); or in Schedule IV, if:

1. The compound, mixture, or preparation contains one or more active medicinal ingredients not having depressant or stimulant effect on the central nervous system, and

2. Such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the controlled substances which do have a depressant or stimulant effect on the central nervous system.

(2) No compound, mixture, or preparation may be dispensed under subsection (1) unless such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold at retail without a prescription.

(3) The exemptions authorized by this section shall be subject to the following conditions:

(a) The compounds, mixtures, and preparations referred to in subsection (1) may be dispensed to persons under age 18 only on prescription. A bound volume must be maintained as a record of sale at retail of excepted compounds, mixtures, and preparations, and the pharmacist must require suitable identification from every unknown purchaser.

(b) Such compounds, mixtures, and preparations shall be sold by the pharmacist in good faith as a medicine and not for the purpose of evading the provisions of this chapter. The pharmacist may, in his or her discretion, withhold sale to any person whom the pharmacist reasonably believes is attempting to purchase excepted compounds, mixtures, or preparations for the purpose of abuse.

(c) The total quantity of controlled substance listed in Schedule V which may be sold to any one purchaser within a given 48-hour period shall not exceed 120 milligrams of codeine, 60 milligrams dihydrocodeine, 30 milligrams of ethyl morphine, or 240 milligrams of opium.

(d) Nothing in this section shall be construed to limit the kind and quantity of any controlled substance that may be prescribed, administered, or dispensed to any person, or for the use of any person or animal, when it is prescribed, administered, or dispensed in compliance with the general provisions of this chapter.

(4) The dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan)

shall not be deemed to be included in any schedule by reason of enactment of this chapter.

**History.**—s. 8, ch. 73-331; s. 1, ch. 77-174; s. 6, ch. 80-354; s. 4, ch. 89-281; s. 2, ch. 93-92; s. 1440, ch. 97-102; s. 105, ch. 97-264; s. 12, ch. 99-186.

### **893.09 Enforcement.—**

(1) The Department of Law Enforcement, all state agencies which regulate professions or institutions affected by the provisions of this chapter, and all peace officers of the state shall enforce all provisions of this chapter except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, this state, and all other states relating to controlled substances.

(2) Any agency authorized to enforce this chapter shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this chapter. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

(3) All law enforcement officers whose duty it is to enforce this chapter shall have authority to administer oaths in connection with their official duties, and any person making a material false statement under oath before such law enforcement officers shall be deemed guilty of perjury and subject to the same punishment as prescribed for perjury.

(4) It shall be unlawful and punishable as provided in chapter 843 for any person to interfere with any such law enforcement officer in the performance of the officer's official duties. It shall also be unlawful for any person falsely to represent himself or herself to be authorized to enforce the drug abuse laws of this state, the United States, or any other state.

(5) No civil or criminal liability shall be imposed by virtue of this chapter upon any person whose duty it is to enforce the provisions of this chapter, by reason of his or her being lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

**History.**—s. 9, ch. 73-331; s. 1, ch. 77-174; s. 30, ch. 79-8; s. 1441, ch. 97-102.

### **893.10 Burden of proof; photograph or video recording of evidence.—**

(1) It is not necessary for the state to negative any exemption or exception set forth in this chapter in any indictment, information, or other pleading or in any trial, hearing, or other proceeding under this chapter, and the burden of going forward with the evidence with respect to any exemption or exception is upon the person claiming its benefit.

(2) In the prosecution of an offense involving the manufacture of a controlled substance, a photograph or video recording of the manufacturing equipment used in committing the offense, including, but not limited to, grow lights, growing trays, and chemical fertilizers, may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

(3) After a law enforcement agency documents the manufacturing equipment by photography or video recording, the manufacturing equipment may be

destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must be recorded by the supervising law enforcement officer in the manner described in s. 893.12(1)(a), and records must be maintained for 24 months.

**History.**—s. 10, ch. 73-331; s. 1442, ch. 97-102; s. 3, ch. 2008-184; s. 19, ch. 2010-117.

### **893.101 Legislative findings and intent.—**

(1) The Legislature finds that the cases of *Scott v. State*, Slip Opinion No. SC94701 (Fla. 2002) and *Chicone v. State*, 684 So.2d 736 (Fla. 1996), holding that the state must prove that the defendant knew of the illicit nature of a controlled substance found in his or her actual or constructive possession, were contrary to legislative intent.

(2) The Legislature finds that knowledge of the illicit nature of a controlled substance is not an element of any offense under this chapter. Lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses of this chapter.

(3) In those instances in which a defendant asserts the affirmative defense described in this section, the possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption that the possessor knew of the illicit nature of the substance. It is the intent of the Legislature that, in those cases where such an affirmative defense is raised, the jury shall be instructed on the permissive presumption provided in this subsection.

**History.**—s. 1, ch. 2002-258.

### **893.105 Testing and destruction of seized substances.—**

(1) Any controlled substance or listed chemical seized as evidence may be sample tested and weighed by the seizing agency after the seizure. Any such sample and the analysis thereof shall be admissible into evidence in any civil or criminal action for the purpose of proving the nature, composition, and weight of the substance seized. In addition, the seizing agency may photograph or videotape, for use at trial, the controlled substance or listed chemical seized.

(2) Controlled substances or listed chemicals that are not retained for sample testing as provided in subsection (1) may be destroyed pursuant to a court order issued in accordance with s. 893.12.

**History.**—s. 1, ch. 82-88; s. 3, ch. 91-279.

### **893.11 Suspension, revocation, and reinstatement of business and professional licenses.—**

Upon the conviction in any court of competent jurisdiction of any person holding a license, permit, or certificate issued by a state agency, for sale of, or trafficking in, a controlled substance or for conspiracy to sell, or traffic in, a controlled substance, if such offense is a felony, the clerk of said court shall send a certified copy of the judgment of conviction with the person's license number, permit number, or certificate number on the face of such certified copy to the agency head by whom the convicted defendant has received a license, permit, or certificate to practice his or her profession or to carry on

his or her business. Such agency head shall suspend or revoke the license, permit, or certificate of the convicted defendant to practice his or her profession or to carry on his or her business. Upon a showing by any such convicted defendant whose license, permit, or certificate has been suspended or revoked pursuant to this section that his or her civil rights have been restored or upon a showing that the convicted defendant meets the following criteria, the agency head may reinstate or reactivate such license, permit, or certificate when:

(1) The person has complied with the conditions of paragraphs (a) and (b) which shall be monitored by the Department of Corrections while the person is under any supervisory sanction. If the person fails to comply with provisions of these paragraphs by either failing to maintain treatment or by testing positive for drug use, the department shall notify the licensing, permitting, or certifying agency, which shall revoke the license, permit, or certification. The person under supervision may:

(a) Seek evaluation and enrollment in, and once enrolled maintain enrollment in until completion, a drug treatment and rehabilitation program which is approved or regulated by the Department of Children and Family Services. The treatment and rehabilitation program shall be specified by:

1. The court, in the case of court-ordered supervisory sanctions;

2. The Parole Commission, in the case of parole, control release, or conditional release; or

3. The Department of Corrections, in the case of imprisonment or any other supervision required by law.

(b) Submit to periodic urine drug testing pursuant to procedures prescribed by the Department of Corrections. If the person is indigent, the costs shall be paid by the Department of Corrections; or

(2) The person has successfully completed an appropriate program under the Correctional Education Program.

This section does not apply to any of the taxes, fees, or permits regulated, controlled, or administered by the Department of Revenue in accordance with s. 213.05.

**History.**—s. 11, ch. 73-331; s. 1, ch. 77-117; s. 19, ch. 78-95; s. 3, ch. 90-266; s. 126, ch. 91-112; s. 14, ch. 95-325; s. 1443, ch. 97-102; s. 302, ch. 99-8.

### **893.12 Contraband; seizure, forfeiture, sale.—**

(1) All substances controlled by this chapter and all listed chemicals, which substances or chemicals are handled, delivered, possessed, or distributed contrary to any provisions of this chapter, and all such controlled substances or listed chemicals the lawful possession of which is not established or the title to which cannot be ascertained, are declared to be contraband, are subject to seizure and confiscation by any person whose duty it is to enforce the provisions of the chapter, and shall be disposed of as follows:

(a) Except as in this section otherwise provided, the court having jurisdiction shall order such controlled substances or listed chemicals forfeited and destroyed. A record of the place where said controlled substances or listed chemicals were seized, of the kinds and quantities of controlled substances or listed chemicals destroyed, and of the time, place, and manner of

destruction shall be kept, and a return under oath reporting said destruction shall be made to the court by the officer who destroys them.

(b) Upon written application by the Department of Health, the court by whom the forfeiture of such controlled substances or listed chemicals has been decreed may order the delivery of any of them to said department for distribution or destruction as hereinafter provided.

(c) Upon application by any hospital or laboratory within the state not operated for private gain, the department may, in its discretion, deliver any controlled substances or listed chemicals that have come into its custody by authority of this section to the applicant for medical use. The department may from time to time deliver excess stocks of such controlled substances or listed chemicals to the United States Drug Enforcement Administration or destroy same.

(d) The department shall keep a full and complete record of all controlled substances or listed chemicals received and of all controlled substances or listed chemicals disposed of, showing:

1. The exact kinds, quantities, and forms of such controlled substances or listed chemicals;

2. The persons from whom received and to whom delivered;

3. By whose authority received, delivered, and destroyed; and

4. The dates of the receipt, disposal, or destruction,

which record shall be open to inspection by all persons charged with the enforcement of federal and state drug abuse laws.

(2)(a) Any vessel, vehicle, aircraft, or drug paraphernalia as defined in s. 893.145 which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

(b) All real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is used, or intended to be used, in any manner or part, to commit or to facilitate the commission of, or which real property is acquired with proceeds obtained as a result of, a violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(c) All moneys, negotiable instruments, securities, and other things of value furnished or intended to be furnished by any person in exchange for a controlled substance described in s. 893.03(1) or (2) or a listed chemical in violation of any provision of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any

provision of this chapter or which are acquired with proceeds obtained in violation of any provision of this chapter may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(d) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, or which are acquired with proceeds obtained, in violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) or a listed chemical may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

(e) If any of the property described in this subsection:

1. Cannot be located;
2. Has been transferred to, sold to, or deposited with, a third party;
3. Has been placed beyond the jurisdiction of the court;
4. Has been substantially diminished in value by any act or omission of the defendant; or
5. Has been commingled with any property which cannot be divided without difficulty,

the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this subsection.

(3) Any law enforcement agency is empowered to authorize or designate officers, agents, or other persons to carry out the seizure provisions of this section. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever she or he shall discover any vessel, vehicle, aircraft, real property or interest in real property, money, negotiable instrument, security, book, record, or research which has been or is being used or intended to be used, or which is acquired with proceeds obtained, in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken or is taking place, to seize such vessel, vehicle, aircraft, real property or interest in real property, money, negotiable instrument, security, book, record, or research and place it in the custody of such person as may be authorized or designated for that purpose by the respective law enforcement agency pursuant to these provisions.

(4) The rights of any bona fide holder of a duly recorded mortgage or duly recorded vendor's privilege on the property seized under this chapter shall not be affected by the seizure.

**History.**—s. 12, ch. 73-331; ss. 10, 11, ch. 74-385; s. 471, ch. 77-147; s. 185, ch. 79-164; s. 4, ch. 80-30; s. 9, ch. 80-68; s. 5, ch. 89-148; s. 4, ch. 91-279; s. 1444, ch. 97-102; s. 1, ch. 98-395; s. 303, ch. 99-8; s. 13, ch. 99-186; s. 21, ch. 2000-320; s. 17, ch. 2004-11.

### 893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell,

manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. For the purposes of this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. For purposes of this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(g) Except as authorized by this chapter, it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If any person violates this paragraph and:

1. 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 commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child under 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to purchase in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such

substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who delivers, without consideration, not more than 20 grams of cannabis, as defined in this chapter, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this paragraph, "cannabis" does not include the resin extracted from the plants of the genus *Cannabis* or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(4) Except as authorized by this chapter, it is unlawful for any person 18 years of age or older to deliver any controlled substance to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of such a substance, or to use such person to assist in avoiding detection or apprehension for a violation of this chapter. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, nor shall the person so convicted be placed on probation.

(5) It is unlawful for any person to bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this subsection, "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(c) Except as provided in this chapter, it is unlawful to possess in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

(7)(a) It is unlawful for any person:

1. To distribute or dispense a controlled substance in violation of this chapter.

2. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. To refuse an entry into any premises for any inspection or to refuse to allow any inspection authorized by this chapter.

4. To distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

6. To use to his or her own personal advantage, or to reveal, any information obtained in enforcement of this chapter except in a prosecution or administrative hearing for a violation of this chapter.

7. To possess a prescription form which has not been completed and signed by the practitioner whose name appears printed thereon, unless the person is that practitioner, is an agent or employee of that practitioner, is a pharmacist, or is a supplier of prescription forms who is authorized by that practitioner to possess those forms.

8. To withhold information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person making the request has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the previous 30 days.

9. To acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. To affix any false or forged label to a package or receptacle containing a controlled substance.

11. To furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

12. To store anhydrous ammonia in a container that is not approved by the United States Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

(b) Any person who violates the provisions of subparagraphs (a)1.-7. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; except that, upon a second or subsequent violation, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who violates the provisions of subparagraphs (a)8.-12. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8)(a) Notwithstanding subsection (9), a prescribing practitioner may not:

1. Knowingly assist a patient, other person, or the owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practice of the prescribing practitioner's professional practice;

2. Employ a trick or scheme in the practice of the prescribing practitioner's professional practice to assist a patient, other person, or the owner of an animal in obtaining a controlled substance;

3. Knowingly write a prescription for a controlled substance for a fictitious person; or

4. Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing such prescription is to provide a monetary benefit to, or obtain a monetary benefit for, the prescribing practitioner.

(b) If the prescribing practitioner wrote a prescription or multiple prescriptions for a controlled substance for the patient, other person, or animal for which there was no medical necessity, or which was in excess of what was medically necessary to treat the patient, other person, or animal, that fact does not give rise to any presumption that the prescribing practitioner violated subparagraph (a)1., but may be considered with other competent evidence in determining whether the prescribing practitioner knowingly assisted a patient, other person, or the owner of an animal to obtain a controlled substance in violation of subparagraph (a)1.

(c) A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Notwithstanding paragraph (c), if a prescribing practitioner has violated paragraph (a) and received \$1,000 or more in payment for writing one or more prescriptions or, in the case of a prescription written for a controlled substance described in s. 893.135, has written one or more prescriptions for a quantity of a controlled substance which, individually or in the aggregate, meets the threshold for the offense of trafficking in a controlled substance under s. 893.15,

the violation is reclassified as a felony of the second degree and ranked in level 4 of the Criminal Punishment Code.

(9) The provisions of subsections (1)-(8) 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 any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(d) Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(e) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(f) Common carriers.

(g) Manufacturers, wholesalers, and distributors.

(h) Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.

(10) If a person violates any provision of this chapter and the violation results in a serious injury to a state or local law enforcement officer as defined in s. 943.10, firefighter as defined in s. 633.30, emergency medical technician as defined in s. 401.23, paramedic as defined in s. 401.23, employee of a public utility or an electric utility as defined in s. 366.02, animal control officer as defined in s. 828.27, volunteer firefighter engaged by state or local government, law enforcement officer employed by the Federal Government, or any other local, state, or Federal Government employee injured during the course and scope of his or her employment, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the injury sustained results in death or great bodily harm, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 13, ch. 73-331; s. 1, ch. 76-200; s. 1, ch. 77-174; s. 2, ch. 79-1; s. 3, ch. 79-325; s. 5, ch. 80-30; s. 2, ch. 80-70; s. 490, ch. 81-259; s. 2, ch. 82-16; s. 52, ch. 83-215; s. 1, ch. 84-77; s. 5, ch. 85-242; s. 4, ch. 87-243; s. 2, ch. 88-381; s. 4, ch. 89-281; s. 1, ch. 89-524; ss. 1, 6, ch. 90-111; s. 1, ch. 93-59; s. 2, ch. 93-92; s. 1, ch. 93-194; ss. 22, 23, ch. 93-406; s. 2, ch. 96-360; s. 2, ch. 97-1; s. 1, ch. 97-43; s. 1827, ch. 97-102; s. 22, ch. 97-194; s. 106, ch. 97-264; s. 1, ch. 97-269; s. 47, ch. 97-271; s. 1, ch. 98-22; s. 1, ch. 99-154; s. 14, ch. 99-186; s. 3, ch. 2000-320; s. 11, ch. 2002-78; s. 2, ch. 2002-81; s. 3, ch. 2003-10; s. 1, ch. 2003-95; s. 2, ch. 2005-128; s. 108, ch. 2006-197; s. 2, ch. 2006-306; s. 2, ch. 2008-88; s. 6, ch. 2010-113.

### **893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—**

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of,

in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as “trafficking in cannabis,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity of cannabis involved:

1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$25,000.

2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$50,000.

3. Is 10,000 pounds or more, or is 10,000 or more cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$200,000.

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a “cannabis plant” if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a “cannabis plant” or in the charging of an offense under this paragraph. Upon conviction, the court shall impose the longest term of imprisonment provided for in this paragraph.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as “trafficking in cocaine,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s.

893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance or mixture, commits a felony of the first degree, which felony shall be known as “trafficking in illegal drugs,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture

containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of any person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), and who knows that the probable result of such importation would be the death of any person commits capital importation of phencyclidine, a capital felony punishable as provided in ss. 775.082 and

921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(e)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), commits a felony of the first degree, which felony shall be known as "trafficking in methaqualone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 200 grams or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 25 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly brings into this state 50 kilograms or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), and who knows that the probable result of such importation would be the death of any person commits capital importation of methaqualone, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(f)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine,

or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(h)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or any mixture

containing gamma-hydroxybutyric acid (GHB), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of gamma-hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-hydroxybutyric acid (GHB), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(i)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-butyrolactone (GBL)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly manufactures or brings into the state 150 kilograms or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-butyrolactone (GBL), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(j)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or

who is knowingly in actual or constructive possession of, 1 kilogram or more of 1,4-Butanediol as described in s. 893.03(1)(d), or of any mixture containing 1,4-Butanediol, commits a felony of the first degree, which felony shall be known as "trafficking in 1,4-Butanediol," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 5 kilograms or more, but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$500,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of 1,4-Butanediol as described in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of 1,4-Butanediol, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. Any 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 of the following substances described in s. 893.03(1)(a) or (c):

- a. 3,4-Methylenedioxyamphetamine (MDMA);
- b. 4-Bromo-2,5-dimethoxyamphetamine;
- c. 4-Bromo-2,5-dimethoxyphenethylamine;
- d. 2,5-Dimethoxyamphetamine;
- e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- f. N-ethylamphetamine;
- g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- i. 4-methoxyamphetamine;
- j. 4-methoxymethamphetamine;
- k. 4-Methyl-2,5-dimethoxyamphetamine;
- l. 3,4-Methylenedioxy-N-ethylamphetamine;
- m. 3,4-Methylenedioxyamphetamine;
- n. N,N-dimethylamphetamine; or
- o. 3,4,5-Trimethoxyamphetamine,

individually or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-o., commits a felony of the first degree, which felony shall be known as "trafficking in Phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved:

a. Is 10 grams or more but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory

minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

3. Any person who knowingly manufactures or brings into this state 30 kilograms or more of any of the following substances described in s. 893.03(1)(a) or (c):

- a. 3,4-Methylenedioxyamphetamine (MDMA);
- b. 4-Bromo-2,5-dimethoxyamphetamine;
- c. 4-Bromo-2,5-dimethoxyphenethylamine;
- d. 2,5-Dimethoxyamphetamine;
- e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- f. N-ethylamphetamine;
- g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- i. 4-methoxyamphetamine;
- j. 4-methoxymethamphetamine;
- k. 4-Methyl-2,5-dimethoxyamphetamine;
- l. 3,4-Methylenedioxy-N-ethylamphetamine;
- m. 3,4-Methylenedioxyamphetamine;
- n. N,N-dimethylamphetamine; or
- o. 3,4,5-Trimethoxyamphetamine,

individually or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-o., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(l)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$500,000.

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or

importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(2) A person acts knowingly under subsection (1) if that person intends to sell, purchase, manufacture, deliver, or bring into this state, or to actually or constructively possess, any of the controlled substances listed in subsection (1), regardless of which controlled substance listed in subsection (1) is in fact sold, purchased, manufactured, delivered, or brought into this state, or actually or constructively possessed.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum term of imprisonment.

(4) The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) commits a felony of the first degree and is punishable as if he or she had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

(6) A mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

(7) For the purpose of further clarifying legislative intent, the Legislature finds that the opinion in *Hayes v. State*, 750 So. 2d 1 (Fla. 1999) does not correctly

construe legislative intent. The Legislature finds that the opinions in *State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998) and *State v. Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) correctly construe legislative intent.

**History.**—s. 1, ch. 79-1; s. 1, ch. 80-70; s. 2, ch. 80-353; s. 491, ch. 81-259; s. 1, ch. 82-2; s. 3, ch. 82-16; s. 53, ch. 83-215; s. 5, ch. 87-243; ss. 1, 4, ch. 89-281; s. 1, ch. 90-112; s. 3, ch. 93-92; s. 24, ch. 93-406; s. 15, ch. 95-184; s. 5, ch. 95-415; s. 54, ch. 96-388; s. 3, ch. 97-1; s. 182B, ch. 97-102; s. 23, ch. 97-194; s. 9, ch. 99-188; s. 4, ch. 2000-320; s. 2, ch. 2001-55; s. 7, ch. 2001-57; ss. 1, 2, 3, ch. 2002-212; s. 4, ch. 2003-10; s. 3, ch. 2005-128; s. 7, ch. 2008-184.

### **893.1351 Ownership, lease, rental, or possession for trafficking in or manufacturing a controlled substance.—**

(1) A person may not own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person may not knowingly be in actual or constructive possession of any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, or part thereof, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge that the place, structure, trailer, or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another and who knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) For the purposes of this section, proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

**History.**—s. 1, ch. 91-118; s. 10, ch. 99-188; s. 22, ch. 2000-320; s. 1, ch. 2002-212; s. 14, ch. 2005-128; s. 2, ch. 2008-184.

### **893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—**

(1) It is the intent of this section to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of

enforcing ordinances in counties and municipalities under circumstances when a pending or repeated violation continues to exist.

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;

(b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(d) By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03; or

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

(3) Any county or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances described in subsection (2). Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as described in subsection (2).

(4) If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

(a) The maintaining of the nuisance;

(b) The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or

(c) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

(5) An order entered under subsection (4) shall expire after 1 year or at such earlier time as is stated in the order.

(6) An order entered under subsection (4) may be enforced pursuant to the procedures contained in s. 120.69. This subsection does not subject a municipality that creates a board under this section, or the board so created, to any other provision of chapter 120.

(7) The board may bring a complaint under s. 60.05 seeking temporary and permanent injunctive relief against any nuisance described in subsection (2).

(8) This section does not restrict the right of any person to proceed under s. 60.05 against any public nuisance.

(9) As used in this section, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563 or any imitation controlled substance defined in s. 817.564.

(10) The provisions of this section may be supplemented by a county or municipal ordinance. The ordinance may include, but is not limited to, provisions that establish additional penalties for public nuisances, including fines not to exceed \$250 per day; provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances; provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance; establish penalties, including fines not to exceed \$500 per day for recurring public nuisances; provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order; provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. Where a local government seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to the authority of this section shall not exceed \$15,000. Nothing contained within this section prohibits a county or municipality from proceeding against a public nuisance by any other means.

**History.**—s. 7, ch. 87-243; s. 2, ch. 90-207; s. 1, ch. 91-143; s. 6, ch. 93-227; s. 1, ch. 94-242; s. 42, ch. 96-388; s. 1829, ch. 97-102; s. 1, ch. 97-200; s. 2, ch. 98-395; s. 1, ch. 2000-111; s. 5, ch. 2001-66; s. 24, ch. 2008-238.

**893.145 "Drug paraphernalia" defined.**—The term "drug paraphernalia" means 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 this chapter or s. 877.111. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

(10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(b) Water pipes.

(c) Carburetion tubes and devices.

(d) Smoking and carburetion masks.

(e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

(f) Miniature cocaine spoons, and cocaine vials.

(g) Chamber pipes.

(h) Carburetor pipes.

(i) Electric pipes.

(j) Air-driven pipes.

(k) Chillums.

(l) Bongs.

(m) Ice pipes or chillers.

(n) A cartridge or canister, which means a small metal device used to contain nitrous oxide.

(o) A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that

contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.

(p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.

(q) A whip-it, which means a device that may be used to expel nitrous oxide.

(r) A tank.

(s) A balloon.

(t) A hose or tube.

(u) A 2-liter-type soda bottle.

(v) Duct tape.

*History.*—s. 1, ch. 80-30; s. 6, ch. 2000-320; s. 15, ch. 2000-360.

**893.146 Determination of paraphernalia.**—In determining whether an object is drug paraphernalia, a court or other authority or jury shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) The proximity of the object, in time and space, to a direct violation of this act.

(3) The proximity of the object to controlled substances.

(4) The existence of any residue of controlled substances on the object.

(5) 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.

(6) Instructions, oral or written, provided with the object concerning its use.

(7) Descriptive materials accompanying the object which explain or depict its use.

(8) Any advertising concerning its use.

(9) The manner in which the object is displayed for sale.

(10) 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.

(11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

(12) The existence and scope of legitimate uses for the object in the community.

(13) Expert testimony concerning its use.

*History.*—s. 2, ch. 80-30; s. 1445, ch. 97-102.

**893.147 Use, possession, manufacture, delivery, transportation, or advertisement of drug paraphernalia.**—

(1) **USE OR POSSESSION OF DRUG PARAPHERNALIA.**—It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

(a) To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or

conceal a controlled substance in violation of this chapter; or

(b) To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) **MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA.**—It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

(a) To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act; or

(b) To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) **DELIVERY OF DRUG PARAPHERNALIA TO A MINOR.**—

(a) Any person 18 years of age or over who violates subsection (2) by delivering drug paraphernalia to a person under 18 years of age is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) It is unlawful for any person to sell or otherwise deliver hypodermic syringes, needles, or other objects which may be used, are intended for use, or are designed for use in parenterally injecting substances into the human body to any person under 18 years of age, except that hypodermic syringes, needles, or other such objects may be lawfully dispensed to a person under 18 years of age by a licensed practitioner, parent, or legal guardian or by a pharmacist pursuant to a valid prescription for same. Any person who violates the provisions of this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) **TRANSPORTATION OF DRUG PARAPHERNALIA.**—It is unlawful to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport:

(a) A controlled substance in violation of this chapter; or

(b) Contraband as defined in s. 932.701(2)(a)1.

Any person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) **ADVERTISEMENT OF DRUG PARAPHERNALIA.**—It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the

advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 3, ch. 80-30; s. 1, ch. 81-149; s. 54, ch. 83-215; s. 1, ch. 85-8; s. 223, ch. 91-224; s. 16, ch. 2000-360.

#### **893.149 Unlawful possession of listed chemical.**

(1) It is unlawful for any person to knowingly or intentionally:

(a) Possess a listed chemical with the intent to unlawfully manufacture a controlled substance;

(b) 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.

(2) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances resulting from the prohibited activities listed in s. 893.13(1)(g).

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, shall 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.

**History.**—s. 5, ch. 91-279; s. 3, ch. 2003-15; s. 4, ch. 2005-128.

#### **1893.1495 Retail sale of ephedrine and related compounds.—**

(1) For purposes of this section, the term “ephedrine or related compounds” means ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

(2) A person may not knowingly obtain or deliver to an individual in any retail over-the-counter sale any nonprescription compound, mixture, or preparation containing ephedrine or related compounds in excess of the following amounts:

(a) In any single day, any number of packages that contain a total of 3.6 grams of ephedrine or related compounds;

(b) In any single retail, over-the-counter sale, three packages, regardless of weight, containing ephedrine or related compounds; or

(c) In any 30-day period, in any number of retail, over-the-counter sales, a total of 9 grams or more of ephedrine or related compounds.

(3) A person may not knowingly display and offer for retail sale any nonprescription compound, mixture, or preparation containing ephedrine or related compounds

other than behind a checkout counter where the public is not permitted or other such location that is not otherwise accessible to the general public.

(4) A person who is the owner or primary operator of a retail outlet where any nonprescription compound, mixture, or preparation containing ephedrine or related compounds is available for sale may not knowingly allow an employee to engage in the retail sale of such compound, mixture, or preparation unless the employee has completed an employee training program that shall include, at a minimum, basic instruction on state and federal regulations relating to the sale and distribution of such compounds, mixtures, or preparations.

(5)(a) Any person purchasing, receiving, or otherwise acquiring any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine or related compounds must:

1. Be at least 18 years of age.
2. Produce a government-issued photo identification showing his or her name, date of birth, address, and photo identification number or an alternative form of identification acceptable under federal regulation 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).
3. Sign his or her name on a record of the purchase, either on paper or on an electronic signature capture device.

(b) The Department of Law Enforcement shall approve an electronic recordkeeping system for the purpose of recording and monitoring the real-time purchase of products containing ephedrine or related compounds and for the purpose of monitoring this information in order to prevent or investigate illegal purchases of these products. The approved electronic recordkeeping system shall be provided to a pharmacy or retailer without any additional cost or expense. A pharmacy or retailer may request an exemption from electronic reporting from the Department of Law Enforcement if the pharmacy or retailer lacks the technology to access the electronic recordkeeping system and such pharmacy or retailer maintains a sales volume of less than 72 grams of ephedrine or related compounds in a 30-day period. The electronic recordkeeping system shall record the following:

1. The date and time of the transaction.
2. The name, date of birth, address, and photo identification number of the purchaser, as well as the type of identification and the government of issuance.
3. The number of packages purchased, the total grams per package, and the name of the compound, mixture, or preparation containing ephedrine or related compounds.
4. The signature of the purchaser, or a unique number relating the transaction to a paper signature maintained at the retail premises.

(c) The electronic recordkeeping system shall provide for:

1. Real-time tracking of nonprescription over-the-counter sales under this section.
2. The blocking of nonprescription over-the-counter sales in excess of those allowed by the laws of this state or federal law.

(6) A nonprescription compound, mixture, or preparation containing any quantity of ephedrine or related

compounds may not be sold over the counter unless reported to an electronic recordkeeping system approved by the Department of Law Enforcement. This subsection does not apply if the pharmacy or retailer has received an exemption from the Department of Law Enforcement under paragraph (5)(b).

(7) Prior to completing a transaction, a pharmacy or retailer distributing products containing ephedrine or related compounds to consumers in this state shall submit all required data into an electronic recordkeeping system approved by the Department of Law Enforcement at the point of sale or through an interface with the electronic recordkeeping system, unless granted an exemption by the Department of Law Enforcement pursuant to paragraph (5)(b).

(8) The data submitted to the electronic recordkeeping system must be retained within the system for no less than 2 years following the date of entry.

(9) The requirements of this section relating to the marketing, sale, or distribution of products containing ephedrine or related compounds supersede any local ordinance or regulation passed by a county, municipality, or other local governmental authority.

(10) This section does not apply to:

- (a) Licensed manufacturers manufacturing and lawfully distributing products in the channels of commerce.
- (b) Wholesalers lawfully distributing products in the channels of commerce.
- (c) Health care facilities licensed under chapter 395.
- (d) Licensed long-term care facilities.
- (e) Government-operated health departments.
- (f) Physicians' offices.
- (g) Publicly operated prisons, jails, or juvenile correctional facilities or private adult or juvenile correctional facilities under contract with the state.
- (h) Public or private educational institutions maintaining health care programs.
- (i) Government-operated or industry-operated medical facilities serving employees of the government or industry operating them.

(11) Any individual who violates subsection (2), subsection (3), or subsection (4) commits:

- (a) For a first offense, a misdemeanor of the second degree, punishable as provided in s. 775.083.
- (b) For a second offense, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (c) For a third or subsequent offense, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) Information contained within the electronic recordkeeping system shall be disclosed in a manner authorized by state or federal law. Any retailer or entity that collects information on behalf of a retailer as required by the Combat Methamphetamine Epidemic Act of 2005 and this section may not access or use that information, except for law enforcement purposes pursuant to state or federal law or to facilitate a product recall for public health and safety.

(13) A person who sells any product containing ephedrine or related compounds who in good faith releases information under this section to federal, state, or local law enforcement officers, or any person acting

on behalf of such an officer, is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(14) The Department of Law Enforcement shall contract or enter into a memorandum of understanding, as applicable, with a private third-party administrator to implement the electronic recordkeeping system required by this section.

(15) The Department of Law Enforcement shall adopt rules necessary to implement this section.

**History.**—s. 5, ch. 2005-128; s. 1, ch. 2010-191.

**Note.**—Section 2, ch. 2010-191, provides that “[t]his act shall take effect July 1, 2010, and shall be implemented by January 1, 2011.”

**893.15 Rehabilitation.**—Any person who violates s. 893.13(6)(a) or (b) relating to possession may, in the discretion of the trial judge, be required to participate in a substance abuse services program approved or regulated by the Department of Children and Family Services pursuant to the provisions of chapter 397, provided the director of such program approves the placement of the defendant in such program. Such required participation shall be imposed in addition to any penalty or probation otherwise prescribed by law. However, the total time of such penalty, probation, and program participation shall not exceed the maximum length of sentence possible for the offense.

**History.**—s. 15, ch. 73-331; s. 46, ch. 91-110; s. 40, ch. 93-39; s. 3, ch. 94-107; s. 39, ch. 97-194; s. 304, ch. 99-8.

**893.165 County alcohol and other drug abuse treatment or education trust funds.**—

(1) Counties in which there is established or in existence a comprehensive alcohol and other drug abuse treatment or education program which meets the standards for qualification of such programs by the Department of Children and Family Services are authorized to establish a County Alcohol and Other Drug Abuse Trust Fund for the purpose of receiving the assessments collected pursuant to s. 938.23 and disbursing assistance grants on an annual basis to such alcohol and other drug abuse treatment or education program.

(2) Assessments collected by the clerks of court pursuant to s. 938.23 shall be remitted to the board of county commissioners of the county in which the indictment was found or the prosecution commenced for payment into the County Alcohol and Other Drug Abuse Trust Fund. The county commissioners shall require a full report from all clerks of county courts and clerks of circuit courts once each month of the amount of assessments imposed by their courts.

(3)(a) No county shall receive assessments collected pursuant to s. 938.23 in an amount exceeding that county’s jurisdictional share as described in subsection (2).

(b) Assessments collected by clerks of circuit courts having more than one county in the circuit, for any

county in the circuit which does not have a County Alcohol and Other Drug Abuse Trust Fund, shall be remitted to the Department of Children and Family Services, in accordance with administrative rules adopted, for deposit into the department’s Grants and Donations Trust Fund for distribution pursuant to the guidelines and priorities developed by the department.

(4) No assessments shall be remitted to a county until the board of county commissioners has submitted documentation to the court substantiating the establishment of its County Alcohol and Other Drug Abuse Trust Fund.

(5) If the board of county commissioners chooses to establish a County Alcohol and Other Drug Abuse Trust Fund, the board shall be responsible for the establishment of such fund and its implementation, administration, supervision, and evaluation.

(6) In order to receive assistance grants from the County Alcohol and Other Drug Abuse Trust Fund, county alcohol and other drug abuse prevention, treatment, or education programs shall be designated by the board of county commissioners as the chosen program recipients. Designations shall be made annually, based on success of the programs.

(7) An alcohol and other drug abuse treatment or education program recipient shall, in seeking assistance grants from the County Alcohol and Other Drug Abuse Trust Fund, provide the board of county commissioners with detailed financial information and requests for expenditures.

**History.**—s. 4, ch. 88-381; s. 3, ch. 93-194; s. 37, ch. 97-271; s. 305, ch. 99-8; s. 5, ch. 2009-47.

**893.20 Continuing criminal enterprise.**—

(1) Any person who commits three or more felonies under this chapter in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

(2) A person who commits the offense of engaging in a continuing criminal enterprise is guilty of a life felony, punishable pursuant to the Criminal Punishment Code and by a fine of \$500,000.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld.

(4) This section does not prohibit separate convictions and sentences for violation of this section and for felony violations of this chapter.

(5) This section must be interpreted in concert with its federal analog, 21 U.S.C. s. 848.

**History.**—s. 1, ch. 89-145; s. 25, ch. 93-406; s. 24, ch. 97-194.