

House Bill No. 1935

An act relating to controlled substances; creating s. 893.101, F.S.; providing legislative findings and intent; providing for affirmative defense in certain criminal cases; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 893.101, Florida Statutes, is created to read:

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.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 13, 2002.

Filed in Office Secretary of State May 13, 2002.