

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1041 Controlled Substances
SPONSOR(S): Criminal Justice Subcommittee; Berman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse" of the substance listed therein and whether there is a currently accepted medical use for the substance.

Schedule III substances have a potential for abuse less than the substances contained in schedules I and II, and have an accepted medical use in treatment in the United States. Some examples of schedule III substances are barbituric acid, nalorphine, and anabolic steroids.

The bill amends s. 893.03(3), F.S., to add the following substances to schedule III of Florida's controlled substance schedules:

- hCG;
- CJC-1295;
- GHRH;
- GHRP-6;
- HGH;
- Somatropin; and
- Tesamorelin.

As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of schedule III controlled substances will apply to these newly added substances.

The bill will likely have a negative fiscal impact on the Florida Department of Law Enforcement and the Department of Corrections. See fiscal section.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”¹ of the substance listed therein and whether there is a currently accepted medical use for the substance.

Schedule III substances have a potential for abuse less than the substances contained in schedules I and II, and have an accepted medical use in treatment in the United States.² The abuse of a schedule III substance may lead to moderate or low physical dependence, or high psychological dependence. Some examples of schedule III substances are barbituric acid, nalorphine, and anabolic steroids.³

Human Chorionic Gonadotropin (hCG)

Human Chorionic Gonadotropin (hCG), is a hormone produced during pregnancy which is found in the blood and urine of pregnant women.⁴ The U.S. Food and Drug Administration (FDA) has approved the use hCG to treat infertility and other medical conditions.⁵ However, the hCG is not approved for over-the-counter sale and the FDA has prohibited the sale of hCG products for weight loss.⁶

Human Growth Hormone (HGH) and Derivatives

Human Growth Hormone (HGH) is a polypeptide hormone that is secreted by the pituitary gland and is essential for body growth.⁷ The daily secretion of HGH increases throughout ones childhood and starts to decline after adolescence.⁸ In 1985, synthetic HGH was developed.⁹ Some examples of synthetic HGH are somatropin, somatrem, tesamorelin.¹⁰

The FDA has approved synthetic HGH use in children to treat growth issues due to Turner’s syndrome, Prader-Willi syndrome, chronic renal insufficiency, HGH deficiency, children born small for gestational age, and idiopathic short stature.¹¹ Synthetic HGH has also been approved by the FDA for use in adults for the wasting syndrome of AIDS, lipodystrophy associated with HIV, and HGH deficiency.¹² However, synthetic HGH is commonly abused by athletes, body builders, and aging adults to increase muscle mass and decrease body fat.¹³

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

² See s. 893.03(3), F.S.

³ Section 893.03(3), F.S.

⁴ U.S. Food and Drug Administration, <http://www.fda.gov/Drugs/DrugSafety/DrugSafetyPodcasts/ucm282161.htm> (last visited on March 28, 2013).

⁵ *Id.*

⁶ *Id.*

⁷ *Supra* note 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* note 4; *Tesamorelin: A growth hormone-releasing factor analogue for HIV-associated lipodystrophy*, *Annals of Pharmacotherapy*, Linda Spooner, <http://www.theannals.com/content/early/2012/01/31/aph.1Q629> (last visited on March 28, 2013).

¹¹ *Supra* note 4.

¹² *Supra* note 4; *Tesamorelin: A growth hormone-releasing factor analogue for HIV-associated lipodystrophy*, *Annals of Pharmacotherapy*, Linda Spooner, <http://www.theannals.com/content/early/2012/01/31/aph.1Q629> (last visited on March 28, 2013).

¹³ *Supra* note 4.

Growth-hormone-releasing hormone (GHRH) stimulates the body to produce more HGH.¹⁴ GHRH is also known as growth hormone releasing factor or sermorelin.¹⁵ Growth hormone-releasing hexapeptide (GHRP-6) and CJC-1295 are artificially-made hormones, which also increase HGH levels.¹⁶

Criminal Penalties

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on what schedule the substance is listed in. Other factors, such as the quantity of controlled substance involved, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

The offenses and penalties associated with controlled substances listed in schedule III are set forth in s. 893.13, F.S., as follows:

- Actual or constructive possession is a third degree felony;¹⁷
- Selling, manufacturing, delivering, or possessing with the intent to sell, manufacture, or deliver is a third degree felony;¹⁸
- Selling, manufacturing, delivering, or possessing with the intent to sell, manufacture, or deliver when such act occurs within 1,000 feet of specified locations¹⁹ is a second degree felony;²⁰
- Purchasing, or possessing with the intent to purchase, is a third degree felony;
- Delivering to a person under 18, hiring a person under 18 as an agent or employee to use in the sale or delivery, and using a person under 18 to assist in detection or apprehension is a second degree felony;²¹ and
- Bringing into the state is a third degree felony.²²

Effect of the Bill

The bill amends s. 893.03(3), F.S., to add the following substances to schedule III of Florida controlled substance schedules:

- hCG;
- CJC-1295;
- GHRH;
- GHRP-6;
- HGH;
- Somatropin; and
- Tesamorelin.

As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of schedule III controlled substances will apply to these newly added substances.

¹⁴ *GHRH Growth Hormone Releasing Hormone*, http://www.ncbi.nlm.nih.gov/gene?cmd=Retrieve&dopt=full_report&list_uids=2691 (last visited on March 28, 2013).

¹⁵ *Id.*

¹⁶ *Growth hormone-releasing hexapeptide is a potent stimulator of growth hormone gene expression and release in the growth hormone-releasing hormone-deprived infant rat*, Locatelli V, et al., <http://www.ncbi.nlm.nih.gov/pubmed/7970930> (last visited March 28, 2013).

¹⁷ 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 ch. 893, F.S.

¹⁸ Chapters 893 and 499, F.S., allow specified persons to possess scheduled drugs for medical or research purposes.

¹⁹ Subsections 893.13(1)(c) – (f) and (h), F.S., include the following locations: a child care facility; an elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight; a state, county or municipal park, community center, or a publicly owned recreational facility; a public or private college, university, or other postsecondary educational institution; a physical place of worship at which a church or religious organization regularly conducts religious services; a convenience business; a public housing facility; or an assisted living facility.

²⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²¹ When such act is committed by a person 18 years of age or older.

²² Unless authorized by ch. 893, F.S., or the person is licensed by a federal agency.

The bill reenacts ss. 893.13(1)-(6) and 921.0022(3)(b)-(e), F.S., to incorporate the amendments to s. 893.03, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3. Reenacts s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity.

Section 4. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill adds additional chemical substances to schedule III of Florida's controlled substance schedules. According to FDLE, this could have a major fiscal impact.²³ The addition of these substances will require FDLE to purchase all of the required standards necessary to test the proposed chemical substances.²⁴ Furthermore, because of the large molar mass (molecular size) of some of the substances being added to the list, FDLE laboratories would be unable to test for them using current instrumentation.²⁵ The required instruments would cost approximately \$400,000 for each per instrument.²⁶ FDLE currently offers drug analysis in six regional crime laboratories, making the potential fiscal impact of this bill between \$400,000 up to \$2.4 million.²⁷

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the felony criminal penalties described above will apply to the newly scheduled substances.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

²³ FDLE Analysis HB 1041 Relating to Controlled Substances (on file with the Criminal Justice Subcommittee).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment eliminated the mention of GHRF and sermorelin because they are alternate names for GHRH and re-categorized the substances added to schedule III to place them in the general listing of prohibited drugs.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.