

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/CS/SB 1448

INTRODUCER: Criminal Justice Committee; Health Policy Committee; and Senator Smith

SUBJECT: Controlled Substances

DATE: April 8, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|---------------|
| 1. | Davlantes | Stovall | HP | Fav/CS |
| 2. | Clodfelter | Cannon | CJ | Fav/CS |
| 3. | | | ACJ | |
| 4. | | | AP | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1448 adds several substances that are misused as athletic performance-enhancing drugs or weight-loss drugs to Schedule III of the Florida Comprehensive Drug Abuse Prevention and Control Act.¹ The bill also re-enacts parts of ss. 893.13 and 921.0022, F.S., to incorporate the addition of these substances to Schedule III. These substances are available as prescription drugs, and possession of any prescription drug without a valid prescription is a second degree misdemeanor. Designation as a Schedule III controlled substance raises the penalty for possession to a third degree felony and also criminalizes possession or distribution of any possible non-prescription form of the substance.

This bill could have a major fiscal impact upon the Florida Department of Law Enforcement (FDLE), estimated between \$400,000 and \$2.4 million. Alternatively, it could have a fiscal impact on local law enforcement agencies and state attorney's offices if testing for the substances is performed by private laboratories.

The bill provides an effective date of October 1, 2013.

¹ This Act is found in ch. 893, F.S.

The bill amends section 893.03(3) of the Florida Statutes. The bill reenacts sections 893.13(1) - (6) and section 921.0022(3)(b) – (e), of the Florida Statutes.

II. Present Situation:

Controlled Substances

“Controlled substance” means any substance named or described in Schedules I-V of s. 839.03, F.S.² Drug schedules are specified by the United States Department of Justice Drug Enforcement Administration (DEA) in 21 C.F.R. ss. 1308.11-15 and in s. 893.03, F.S.

Schedule I controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, lysergic acid diethylamide (LSD), and marijuana. Schedule II controlled substances have a high potential for abuse, which may lead to severe psychological or physical dependence, including morphine and its derivatives, amphetamines, cocaine, and pentobarbital. Schedule III controlled substances have lower abuse potential than Schedule II substances but may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of hydrocodone (such as Vicodin) or less than 90 mg of codeine per dose (such as Tylenol #3), ketamine, and anabolic steroids. Schedule IV substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan). Schedule V controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.³

Anabolic Steroid Abuse

An anabolic steroid is any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth.⁴ Anabolic steroids have both legitimate medical uses, such as treating delayed puberty and certain hormonal genetic disorders, and a plethora of illegitimate uses, such as building muscle bulk among athletes or bodybuilders.

Illegally obtained anabolic steroids are usually given at doses 10 to 100 times higher than their medically-indicated doses and may be administered as pills, injections, or skin creams. Steroid abusers often take two different types of steroids at once or may cycle between taking no drug and high doses of a drug over weeks to months.

Anabolic steroids can have serious and permanent effects if taken for extended periods. In addition to building bone density and muscle bulk, steroids can:⁵

² Section 893.02(4), F.S.

³ DEA, Office of Diversion Control, *Controlled Substance Schedules*, available at: <http://www.deadiversion.usdoj.gov/schedules/#define> (last visited on March 15, 2013).

⁴ Section 893.03(3)(d)1., F.S.

⁵ WebMD, *Anabolic Steroid Abuse*, available at: <http://men.webmd.com/guide/anabolic-steroid-abuse-topic-overview>. (last visited on March 15, 2013).

- Drastically reduce sperm count;
- Shrink the testicles;
- Cause infertility;
- Enlarge breast size in men and decrease it in women;
- Increase body hair in women;
- Make skin rough in women;
- Enlarge the clitoris;
- Deepen the voice of women;
- Halt bone growth in adolescents;
- Cause heart attacks, even in young and healthy people;
- Cause strokes, even in young and healthy people;
- Elevate blood pressure;
- Cause liver disease and liver cancer;
- Interfere with normal cholesterol levels;
- Cause acne;
- Cause balding; and
- Cause psychiatric problems.

Once someone is addicted to steroids, he or she will also need increasing amounts of the drug to achieve the same effect and will experience withdrawal symptoms.⁶

Anabolic steroids are already considered Schedule III by the state and can only be legally administered with a prescription.⁷

Specific Drugs Introduced in the Bill

hCG

Human chorionic gonadotropin, or hCG, is normally produced by the placenta to help maintain progesterone levels in the early stages of pregnancy. It can also be administered as injections to treat fertility problems in women or certain puberty problems in men.⁸ Among anabolic steroid abusers, hCG is used to counteract the reduction in testosterone levels caused by steroids. The hCG has experienced recent popularity as a weight loss drug used in combination with a severely restricted caloric diet, although the U.S. Food and Drug Administration (FDA) has prohibited its sale as a homeopathic weight loss medication.⁹

HGH-Related Substances

Human growth hormone (HGH), also known as somatotropin, is normally produced by the pituitary gland in the brain and spurs growth in children and in adolescents. The HGH also helps regulate many other functions related to homeostasis. Its medical indications include treatment of

⁶ *Id.*

⁷ Section 893.03(3), F.S.

⁸ WebMD, *Drugs & Medications- HCG*, available at: <http://www.webmd.com/drugs/drug-11192-HCG.aspx?drugid=11192&drugname=HCG> (last visited on March 15, 2013).

⁹ FDA, *hCG Diet Products are Illegal*, available at: <http://www.fda.gov/forconsumers/consumerupdates/ucm281333.htm> (last visited on March 15, 2013).

poor growth in children, pituitary dysfunction, and muscle wasting caused by HIV/AIDS. It is also frequently abused for performance enhancement or anti-aging purposes.¹⁰ Somatropin is a synthetic version of HGH.¹¹

Growth hormone releasing factor (GHRH) stimulates the body to produce more HGH. GHRH is also known as growth hormone releasing factor (GHRF) or sermorelin.¹²

Penalties Related to Unlawful Possession or Distribution of Prescription Drugs

The substances that are newly proscribed in the bill are available as prescription drugs. Section 499.03, F.S., provides that possession of any prescription drug that was obtained without a valid prescription of a licensed practitioner is a second degree misdemeanor, and that possession of a prescription drug that was obtained without a valid prescription of a licensed practitioner with the intent to sell, dispense, or deliver is a third degree felony. There are no recent reported appellate cases involving convictions for possession or distribution of prescription drugs that were not also controlled substances.

Penalties Related to Sale or Use of Schedule III Drugs

It is unlawful for any unauthorized person¹³ to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver any controlled substance. Such misuse of a Schedule III drug constitutes a third-degree felony.¹⁴ Such an act is considered a second-degree felony if it occurs within 1000 feet of:

- A child care facility as defined in s. 402.302, F.S.;
- An elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight;
- A recreational facility;^{15,16}
- A college, university, or other postsecondary institution;¹⁷
- A place of worship;
- A convenience business as defined in s. 812.171, F.S.;¹⁸
- A public housing facility;¹⁹ or

¹⁰ WebMD, *Human Growth Hormone*, available at: <http://www.webmd.com/fitness-exercise/human-growth-hormone-hgh> (last visited on March 15, 2013).

¹¹ FDA, *Somatotropin Information*, available at: <http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm237839.htm> (last visited on March 15, 2013).

¹² Entrez Gene, *GHRH Growth Hormone Releasing Hormone*, available at: http://www.ncbi.nlm.nih.gov/gene?cmd=Retrieve&dopt=full_report&list_uids=2691 (last visited on March 15, 2013).

¹³ Chapters 893 and 499, F.S., provide exceptions for those allowed to possess scheduled drugs, such as for medical or research purposes.

¹⁴ Section 893.13(1)(a)2., F.S.

¹⁵ Per s. 893.13(1)(c), F.S., recreational facilities include real property comprising a state, county, or municipal park; facilities operated by nonprofit, community-based organizations for the provision of recreational, social, or educational services to the public (“community centers”); or publicly-owned recreational facilities.

¹⁶ Section 893.13(1)(c)2., F.S.

¹⁷ Section 893.13(1)(d)2., F.S.

¹⁸ Section 893.13(1)(e)2., F.S.

¹⁹ Section 893.13(1)(f)2., F.S.

- As assisted living facility.²⁰

Possession of any controlled substance that was not lawfully obtained by a practitioner or pursuant to a valid prescription or order of a practitioner is a third degree felony.²¹ It is also a third degree felony to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a Schedule III controlled substance.²²

III. Effect of Proposed Changes:

Section 1 amends s. 893.03(3), F.S., to add hCG, HGH, somatropin, and GHRH (also known as sermorelin) to the list of Schedule III controlled substances in Florida. Designation as a Schedule III controlled substance raises the penalty for possession of these substances to a third degree felony and also criminalizes possession or distribution of any possible non-prescription form of the substance.

Sections 2 and 3 reenact, respectively, s. 893.13(1) - (6)²³ and 921.0022(3)(b) – (e),²⁴ F.S., to incorporate the amendments made to s. 893.03, F.S., in Section 1 of the bill.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁰ Section 893.13(1)(h)2., F.S.

²¹ Section 893.13(6)(a), F.S.

²² Section 893.13(1)(a)2., F.S.

²³ This provides prohibited acts and penalties for violating the Florida Comprehensive Drug Abuse Control and Prevention Act.

²⁴ This is the Offense Severity Ranking Chart of the Criminal Punishment Code.

B. Private Sector Impact:

Persons who use these drugs without a prescription may be more likely to be prosecuted and will be subject to significantly increased penalties.

C. Government Sector Impact:

FDLE estimates that it would experience a fiscal impact between \$400,000 and \$2.4 million. Because the substances added to Schedule III by this bill are too large and complex to be handled by FDLE's current laboratory equipment, one or more new analyzing machines would have to be purchased at a cost of approximately \$400,000 per machine. Ideally, a new machine would be purchased for each of FDLE's six regional crime laboratories. However, the required machines could be purchased for one or a few of the regional laboratories.

The bill's fiscal impact to the state could also be reduced by requiring local law enforcement agencies to contract with private laboratories for analysis of these substances, for which the fiscal impact has not been determined. Based on discussions with a private laboratory that has the capability to test for the substances, FDLE believes that the cost for a private laboratory to prepare standards and conduct tests could be as high as \$1,150 per sample. There could also be a need for personnel of the private testing laboratory to testify at trial. FDLE's experience with testimony in outsourced DNA-testing cases is that it costs between \$4000 to \$5000 to reimburse expenses and other costs for testimony by a private laboratory employee. The costs of outsourcing tests would be incurred by local law enforcement agencies or the state attorney's office.²⁵

The Criminal Justice Impact Conference has determined that the bill will have an insignificant impact on the need for prison bed space.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Criminal Justice on April 8, 2013:**

Removes CJC-1295, GHRF-6, and tesamorelin from the bill. It also adds sermorelin back into the bill as a synonym for GHRH.

²⁵ FDLE, *2013 Bill Analysis of SB 1448*. A copy is on file with the Senate Health Policy Committee.

CS by Health Policy on March 20, 2013:

The CS eliminates mention of GHRF and sermorelin in the bill as they are alternate names for GHRH. The CS also recategorizes the drugs added to Schedule III by this bill to place them in the general listing of prohibited drugs rather than under the paragraph devoted to anabolic steroids.

B. Amendments:

None.

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