

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: SB 736

INTRODUCER: Senator Brodeur

SUBJECT: Controlled Substances

DATE: March 10, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 736 adds nitazene derivatives (“nitazenes”), which are synthetic opioids, to the list of Schedule I controlled substances. Many of these nitazenes are currently Schedule 1 controlled substances pursuant to emergency rule of the Florida Attorney General. The bill will codify this scheduling. There is a Schedule I scheduling exception for any listed nitazene that is specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

The Legislature’s Office of Economic and Demographic Research preliminary estimates that the House companion bill (HB 1135), which is similar to SB 736, will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”¹ of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

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 the substance 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.

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Controlled Substance Offenses Under ss. 893.135 and 893.135, F.S.

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance.² The penalty for violating s. 893.13, F.S., generally depends on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

Emergency Rule Scheduling of Nitazenes

On April 26, 2022, Florida Attorney General Ashley Moody (“AG”) adopted an emergency rule scheduling³ the following nitazenes, which are synthetic opioids, as Schedule I controlled Substances:

- Butonitazene;
- Etodesnitazene/etazene;

² See e.g., s. 893.13(1)(a) and (b) and (6), F.S.

³ The Attorney General has emergency rulemaking authority to add a substance to a controlled substance schedule established under s. 893.03, F.S., if she finds that it has the potential for abuse and she makes with respect to it the other findings appropriate for classification in the particular schedule under s. 893.03, F.S. Section 893.035(2)(a) and (5)-(8), F.S. The Attorney General must report to the Legislature by March 1 of each year concerning rules adopted under s. 893.035, F.S., during the previous year, and each rule so reported expires the following June 30 unless the Legislature adopts the provisions thereof as an amendment to ch. 893, F.S. Section 893.035(10), F.S.

- Flunitazene;
- Metodesnitazene;
- Metonitazene;
- N-Pyrrolidino Etonitazene/etonitazephyne;
- Protonitazene;
- Isotodesnitazene; and
- Isotonitazene.⁴

AG findings in support of the emergency scheduling include the following information:

- “Nitazenes are within a category of synthetic opioids in the benzimidazole-opioid class” that were developed in Swiss research labs in the 1950’s as analgesics but the research did not lead to an accepted medical use anywhere in the world.
- The chemical structure of the listed nitazenes is dissimilar to any currently scheduled substance in Schedule I under s. 893.03, F.S.
- Many of the listed nitazenes have emerged in the illicit drug market and are easily available in that market. It is believed they are primarily produced in China and shipped to the United States through common mail carrier.
- Nitazenes have been primarily found in liquid form, or brown, white, or gray powders, though they are often mixed with other opioids, including fentanyl.
- The Florida Department of Law Enforcement and the U.S. Drug Enforcement Administration (DEA) have found the listed nitazenes have a high potential for abuse and no currently accepted medical use in the United States. Several of the listed nitazenes are more potent than fentanyl and morphine.
- Severe side effects include respiratory depression, loss of consciousness, and death.
- The AG identified 268 nitazene cases in Florida since 2020 and suspects there are more cases than reported.
- The medical examiner reported five confirmed deaths related to N-Pyrrolidino Etonitazene/etonitazephyne in Pinellas/Pasco counties since 2021, and three other suspected cases.
- Isotonitazene has been linked to at least 10 deaths in Florida since 2020, according to the Florida Medical Examiners Commission.
- Isotonitazene is classified as a Schedule I controlled substance under federal law, and, effective January 5, 2022, several of the listed nitazenes were temporarily placed in Schedule I by the DEA.⁵

III. Effect of Proposed Changes:

The bill adds several nitazene derivatives, which are synthetic opioids, to the list of Schedule I controlled substances, unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

⁴ Adoption text for Emergency Rule 2ER22-1, Department of Legal Affairs, available at [http://myfloridalegal.com/webfiles.nsf/WF/CPAL-CDUPT2/\\$file/Web+Link.pdf](http://myfloridalegal.com/webfiles.nsf/WF/CPAL-CDUPT2/$file/Web+Link.pdf) (last visited on March 6, 2023).

⁵ *Findings of the Attorney General in Support of Emergency Rule 2ER22-1*, Department of Legal Affairs, available at [http://myfloridalegal.com/webfiles.nsf/WF/CPAL-CDUPT2/\\$file/Web+Link.pdf](http://myfloridalegal.com/webfiles.nsf/WF/CPAL-CDUPT2/$file/Web+Link.pdf) (last visited on March 6, 2023).

The nitazene derivatives include any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a benzimidazole ring with an ethylamine¹ substitution at the 1-position and a benzyl ring substitution at the 2-position structure:

- With or without substitution on the benzimidazole ring with alkyl, alkoxy, carboalkoxy, amino, nitro, or aryl groups, or halogens;
- With or without substitution at the ethylamine amino moiety with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system;
- With or without inclusion of the ethylamine amino moiety in a cyclic structure;
- With or without substitution of the benzyl ring; or
- With or without replacement of the benzyl ring with an aromatic ring, including, but not limited to:
 - Butonitazene.
 - Clonitazene.
 - Etodesnitazene.
 - Etonitazene.
 - Flunitazene.
 - Isotodesnitazene.
 - Isotonitazene.
 - Metodesnitazene.
 - Metonitazene.
 - Nitazene.
 - N-Desethyl Etonitazene.
 - N-Desethyl Isotonitazene.
 - N-Piperidino Etonitazene.
 - N-Pyrrolidino Etonitazene.
 - Protonitazene.

Many of these nitazene derivatives are currently Schedule 1 controlled substances pursuant to emergency rule scheduling of the Florida Attorney General.⁶

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

⁶ See “Present Situation” section of this analysis.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the House companion bill, (HB 1135), which is similar to SB 736, will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).⁷

The EDR provided the following information relevant to its estimate:

Per [Department of Corrections], in FY 18-19, there were 1,689 new commitments to prison for the Schedule I drug offense category where nitazene derivatives will be included, and in FY 19-20, there were 931 new commitments. In FY 20-21, there were 779 new commitments, and there were 1,016 new commitments in FY 21-22. This drug offense category contains various kinds of drugs, so it is not possible to see how each drug contributes to the total number of new commitments. It is also not known how the addition of nitazene derivatives will impact the prison population. Furthermore, it is possible that the new commitments in the latter half of FY 21-22 have already been impacted by the Attorney General temporarily adding nitazene derivatives to Schedule I controlled substances in April of 2022.⁸

⁷ *HB 1135 – Nitazene Derivatives (Similar SB 736)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

⁸ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.