

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 Appropriations Committee on Criminal and Civil Justice

BILL: SB 1512

INTRODUCER: Senator Brodeur

SUBJECT: Controlled Substances

DATE: February 7, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1512 amends s. 893.13, F.S., to add tianeptine to the list of Schedule I controlled substances.

“Tianeptine” is an antidepressant agent with a novel neurochemical profile. It increases serotonin (5-hydroxytryptamine; 5-HT) uptake in the brain (in contrast with most antidepressant agents) and reduces stress-induced atrophy of neuronal dendrites.¹

The bill may have a positive, indeterminate impact on prison admissions. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Tianeptine or “gas station heroin” is an opioid, like heroin and morphine.² Currently, tianeptine is not listed as a controlled substance on the Florida Controlled Substance Schedules. Tianeptine is used as a prescription drug in some European, Asian, and Latin American countries, but it is not approved as a drug in the United States.³

On September 20, 2023, Florida’s Attorney General issued Emergency Rule ER23-1, immediately placing tianeptine as a Schedule I Substance in order to curtail its abuse by Florida’s children, young adults, and others.

¹ National Library of Medicine, *Tianeptine: a review of its use in depressive disorders*, Wagstaff, A.J., Ormrod, D., Spencer, C.M., available at, <https://pubmed.ncbi.nlm.nih.gov/11463130/>, (last visited January 14, 2024).

² Cleveland Clinic, *The Dangers of Gas Station Heroin*, available at, <https://health.clevelandclinic.org/gas-station-heroin-tianeptine>, (last visited January 16, 2024).

³ U.S. Food and Drug Administration, *Tianeptine in Dietary Supplements*, available at, <https://www.fda.gov/food/dietary-supplement-ingredient-directory/tianeptine-dietary-supplements> (Last visited January 24, 2024).

The emergency rule states:

(1) Under the authority of Section 893.035, F.S., the following substance is hereby added to Schedule I, subsection 893.03(1)(a), F.S.:

TIANEPTINE (7-((3-chloro-6-methyl-5,5-dioxido-6,11-dihydrodibenzo[c,f][1,2]thiazepin-11-yl)amino)heptanoic acid.

(2) All provisions of Chapter 893, F.S., applicable to controlled substances listed in Schedule I shall be applicable to the substances listed in subsection (1) above.

The Attorney General found that these circumstances presented an immediate and imminent hazard to the public health, safety, and welfare which requires emergency action. In addition, the Attorney General has found that the above-mentioned compound meets the statutory criteria for placement as a controlled substance in Schedule I, s. 893.03(1)(a), F.S. The emergency rule and the temporary scheduling of tianeptine expire on June 30, 2024.⁴

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”⁵ of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- 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.

⁴ Department of Legal Affairs 2ER23-1, Addition of Tianeptine to Schedule 1, available at, <https://www.flrules.org/gateway/ruleNo.asp?id=2ER23-1> (last visited January 24, 2024).

⁵ 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 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 Analog

A “controlled substance analog” is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I; or
- Schedule II of s. 893.03, F.S.; and
- The substance 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, F.S.

Controlled Substance Offenses Under ss. 893.13 and 893.135, F.S.

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance.⁶ 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.

Section 893.13(1), F.S., prohibits a person from selling, manufacturing,⁷ or delivering,⁸ or possessing with the intent to sell, manufacture, or deliver a controlled substance. The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold, and the location where the sale takes place. Generally, sale of a controlled substance is punishable as either a second degree felony⁹ or third degree felony.¹⁰

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

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

⁷ “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:

- 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.
- A practitioner, or 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. Section 893.02(15)(a), F.S.

⁸ “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. Section 893.02(6), F.S.

⁹ 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.

¹⁰ Section 893.13(1), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

Drug trafficking occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into the state, or is in actual or constructive possession of, a specified quantity of a controlled substance.¹¹ Generally, a drug trafficking offense is punishable as a first degree felony.^{12,13} Section 893.135, F.S., outlines threshold amounts of the applicable controlled substance for each trafficking offense. All drug trafficking offenses are subject to mandatory minimum sentences and heightened fines, which are determined by the threshold amounts.

III. Effect of Proposed Changes:

The bill amends s. 893.13, F.S., to add tianeptine to the list of Schedule I controlled substances.

“Tianeptine” is an antidepressant agent with a novel neurochemical profile. It increases serotonin (5-hydroxytryptamine; 5-HT) uptake in the brain (in contrast with most antidepressant agents) and reduces stress-induced atrophy of neuronal dendrites.¹⁴

The bill amends ss. 893.131 and 893.135, F.S., to make conforming changes.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Florida law criminalizes trafficking in cannabis; cocaine; illegal drugs, which include morphine, opium, hydromorphone, or any salt derivative, isomer, or salt of an isomer thereof, including heroin; hydrocodone, oxycodone; fentanyl; phencyclidine; methaqualone; amphetamine; flunitrazepam; gamma-hydroxybutyric (GHB); gamma-butyrolactone (GBL); 1,4-Butanediol; phenethylamines; lysergic acid diethylamide (LSD); synthetic cannabinoids; and n-benzyl phenethylamines. Section 893.135, F.S.

¹²A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹³ Trafficking in certain controlled substances can be a capital offense under specified circumstances. See, e.g., s. 893.135(1)(h)2., F.S. (Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine . . . 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).

¹⁴ National Library of Medicine, *Tianeptine: a review of its use in depressive disorders*, Wagstaff, A.J., Ormrod, D., Spencer, C.M., available at, <https://pubmed.ncbi.nlm.nih.gov/11463130/>, (last visited January 14, 2024).

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:

A preliminary Criminal Justice Impact Conference (CJIC) analysis concluded that the bill may have a positive indeterminate prison bed impact due to the potential increase in the number of offenders going to prison for drug offenses under s. 893.13, F.S.¹⁵

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, 893.131, and 893.135.

VIII. 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.

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

¹⁵ Office of Economic and Demographic Research *SB 1512 Preliminary Estimate*, (on file with the Senate Committee on Criminal Justice).