SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 4, 1998 Revised: _____ _____ _____ _____

Subject: Controlled Substances

	Analyst	Staff Director	Reference	Action
1.	Erickson	Miller	CJ	Favorable/CS
2.			WM	
3.				
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 276 amends s. 893.03, F.S., Florida's controlled substance schedules, to add ketamine to Schedule III. The CS also deletes reference to gamma-hydroxy-butyrate (GHB) from Schedule II and substitutes reference to gamma-hydroxy-butyric-acid (GHB). The CS also deletes reference to dextropropoxyphene (in its non-dosage form) from Schedule II and (in its dosage form) from Schedule IV, and substitutes reference to propoxyphene in Schedules II and IV.

This CS substantially amends s. 893.03, F.S.

II. Present Situation:

Section 893.03, F.S., classifies controlled substances into five categories or "schedules" to regulate their manufacture, distribution, or dispensation, while minimizing collateral interference with the legitimate business of physicians, pharmacists, and drug manufacturers. Florida's controlled substance schedules are largely patterned after the federal controlled substance schedules. In most instances, the Florida Legislature's classification of controlled substances parallels the federal classifications.

> Ketamine, an anesthetic for human and veterinary use, is a legitimately manufactured product that is being abused with increasing frequency. On the street, the drug is often called "K" or "Special K." It produces effects similar to those produced by [phencyclidine] (PCP), and the visual effects of LSD. Drug users say "Special K" produces a better high than PCP or LSD because its effect lasts an hour or less. The

drug, however, can affect the senses, judgment, and coordination for 18 to 20 hours.

Ketamine hydrochloride is used as an anesthetic for . . . animals. Vets use it primarily to immobilize cats or monkeys. . . . The synthesis of ketamine is complicated, and to date, diversion of the legitimate product is the only known source on the street.

Ketamine hydrochloride powder can look very similar to pharmaceutical grade cocaine HCl. Ketamine powder can be snorted like cocaine, mixed into drinks, or smoked. The liquid is either injected, applied to smokable materials, or consumed in drinks.

Veterinarians pay a retail price of about $7 per vial of liquid. Middlemen may pay $30-$45 per vial, and drug users may pay $100-$200 per vial. A pharmaceutical vial of liquid contains the equivalent of about one gram of powder. A small quantity called a “bump,” is about 0.2 gram and costs about $20.

Ketamine can produce a very wide range of effects, and users adjust the dosage depending on the effect desired. The drug’s effect can be influenced by body size, built-up tolerance, the presence of alcohol or other drugs, the method of administration, and the setting in which the drug is consumed. In the past several years, law enforcement has encountered ketamine powder packaged in small plastic bags, folded paper, aluminum foil, and capsules. These packets commonly contain 0.2 gram, and more recently, 0.07 gram.

Some users inhale about 0.02 grams in each nostril, repeated in 5-10 minute intervals until the desired state is reached. A dose of 0.07 gram may produce intoxication. A larger dose of 0.2 gram may result in “K-land,” a “mellow, colorful wonder-world.” A dose of 0.5 grams can produce a so-called “K-hole” or “out-of-body, near-death experience.” With repeated daily exposure, users can develop tolerance and psychological dependence.

Ketamine abuse has been reported at teen “rave” parties. Law enforcement agencies are encountering ketamine abuse when stopping drivers for what appears to be driving while intoxicated. Veterinary clinics have been burglarized for ketamine. These are among the factors that have caused the DEA to re-evaluate the control status of the drug. . . .

Drug Enforcement Administration Bulletin (*Ketamine Abuse Increasing*), dated February 4, 1997.

Effective November 12, 1997, the Office of the Attorney General adopted an emergency administrative rule (2ER97-2) making ketamine a controlled substance in Schedule III. According to Attorney General's staff, the regular administrative rule is scheduled to take effect in February of this year. Substances in Schedule III have less potential for abuse than substances in Schedules I and II, and have some accepted medical use. Schedule III substances may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage.

In its findings in support of the emergency rule, the Attorney General found that ketamine meets all the statutory requirements for placement in Schedule III. The Attorney General noted that ketamine is not a controlled substance in Florida, and therefore, illegal possession, sale, or other abuse of this drug is only a misdemeanor offense. The Attorney General stated that law enforcement officers are reportedly reluctant to make misdemeanor arrests for unlawful sale or possession of ketamine, preferring instead to focus on felony drug offenses.

Section 893.13, F.S., defines controlled substance offenses and prescribes penalties for these offenses. Rather than proscribing, for example, the sale of cocaine, the section proscribes the sale of substances contained in paragraph (a) of subsection (2) (Schedule II) where this drug is listed. The reference to this paragraph pulls in all other drugs which are listed in this paragraph such as opium or morphine. Generally, the felony degree of controlled substance offenses is highest if the offense involves a substance listed in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b), F.S. Sale of cocaine [listed in s. 893.03(2)(a)] and GHB [listed in s. 893.03(2)(b)] is generally a second degree felony. However, where the sale of these drugs occurs within certain prescribed areas such as within 1,000 feet of the real property comprising an elementary school, the sale is a first degree felony. By contrast, the sale of ketamine (a Schedule III drug under emergency rule), is a third degree felony, unless the sale occurs in prescribed areas (as previously noted), in which case the sale of ketamine is a second degree felony. The maximum punishment for a third degree felony is five years imprisonment; for a second degree felony, 15 years imprisonment; and for a first degree felony, 30 years imprisonment, unless life imprisonment is specified by statute.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 276 amends s. 893.03, F.S., Florida's controlled substance schedules, to:

- Add ketamine to the list of Schedule III controlled substances. The CS additionally captures any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of ketamine. Penalties for controlled substance offenses involving ketamine will vary depending upon the offense. For example, the sale, manufacture, delivery, etc., of ketamine is a third degree felony (except when the sale occurs in certain prescribed areas, as previously noted). The maximum punishment for a third degree felony is five years imprisonment; for a second degree felony, 15 years imprisonment.

- Delete reference to gamma-hydroxy-butyrate (GHB) from Schedule II and substitute reference to gamma-hydroxy-butyric acid (GHB). The substitution of the acid form will encompass all of the various forms of GHB, including but not limited to, butyrolactone (under the "esters" category). Presently, in an attempt to escape regulation of GHB, illicit chemists modify the liquid form of GHB by shifting the PH into the acid range, which produces the contaminant, butyrolactone. Butyrolactone masks the presence of GHB.

- Delete reference to dextroproxyphene (in its non-dosage form) from Schedule II and (in its dosage form) from Schedule IV, and substitute reference to propoxyphene for dextropropoxyphene in Schedules II and IV. Propoxyphene is commonly known by the registered trademark name, Darvon. Changing dextroproxyphene to propoxyphene is basically a simplification to insure consistency in the way it is listed in the medical literature and how it is designated on laboratory analysis forms.

Dextroproxyphene is a molecular configuration having a right-handed twist (Darvon is technically the right-handed, twisted form of propoxyphene. Devopropoxyphene, the left-handed, twisted form has no pharmaceutical usage, i.e., it is not manufactured). By not substituting propoxyphene for dextropropoxyphene, chemists will technically be forced to distinguish between the left-handed configuration and the right-handed configuration. This would add an unnecessary cost and burden since there is no known use for the left-handed configuration.

- Provide that the act shall take effect October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not met to consider the fiscal impact of CS/SB 276. A preliminary estimate by the Department of Corrections of the fiscal impact of CS/SB 276 is that the CS is likely to have an insignificant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the petition for emergency rule submitted by the Attorney General, ketamine is not currently listed in the federal controlled substance schedules.

VIII. Amendments:

None.