

STORAGE NAME: h0091c.cp

DATE: February 17, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 91

RELATING TO: Controlled Substances

SPONSOR(S): Representative Stafford

COMPANION BILL(S): SB 152(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 0
 - (2) CRIME AND PUNISHMENT YEAS 6 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 91 amends ch. 893, Florida Statutes, by adding Gamma-hydroxy Butyric Acid (GHB) to Schedule II and Ketamine to Schedule III, thereby clarifying the penalties for unlawful possession and sale.

This bill places in law the Attorney General's emergency rules that expire in June of 1999 which make these two drugs unlawful. The emergency rules were adopted by the Attorney General because these two drugs presented an immediate danger to the public health, safety, and welfare.

Technical changes are made to delete references to the Department of Business and Professional Regulation and to add references to the Department of Health to reflect the reorganization of the agencies. The bill also deletes references to Dextropropoxyphene and adds references to Propoxyphene to insure consistency with the way the drug is listed in the medical literature and on laboratory analysis forms.

There is no fiscal impact on the state, local government, or the private sector in general.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 893.03, F.S. classifies controlled substances into five categories or "schedules" to regulate their manufacture, distribution and dispensation.

Gamma-hydroxy Butyric Acid (GHB) is a drug with no currently accepted medical use in the United States. It has strong sedative effects and has been a known drug of abuse since 1990. In 1997, the Florida Legislature placed Gamma-hydroxy-butyrate in ch. 893, Florida Statutes, as a schedule II drug. Gamma-hydroxy-butyrate is a derivative of Gamma-hydroxy butyric acid. However, a major prosecution of a criminal defendant charged with distributing GHB was dismissed by a trial court in Duval County because the court found that gamma-hydroxy-butyrate, the substance prohibited by the statute, was different from gamma-hydroxybutyric acid, the substance possessed by the defendant. Other law enforcement agencies have also reported difficulties prosecuting GHB cases because of the deficiency in the statutory nomenclature.

The Attorney General filed an emergency rule scheduling Gamma-hydroxy butyric acid in schedule II on the recommendations of the Department of Health and Department of Law Enforcement declaring that it presented an immediate danger to the public health, safety, and welfare. The emergency rule expires in June 1999.

Ketamine is an anesthetic drug used primarily in veterinary medicine and occasionally in human medicine. It is a legitimately manufactured pharmaceutical with an increasing frequency of abuse. It is known to be abused at teen "rave" parties. It is known on the street as "Special K", "Vitamin K", "Ket", and "K". Effects are similar to "PCP", and "LSD", with shorter duration. It is abused at teen "rave parties" and a \$7.00 vial bought by a veterinarian sells for \$100-\$200 on the street (DEA-1997). The drug is not controlled under ch. 893, Florida Statutes.

Effective November 12, 1997, Florida Attorney General Robert Butterworth adopted an emergency administrative rule (2ER97-2) which temporarily schedules Ketamine as a controlled substance in Schedule III. The regular administrative rule took effect on February 2, 1998. Rule 2-40.003, F.A.C. Substances in Schedule III have less potential for abuse than substances in Schedules I and II, and have some accepted medical use. Use of Schedule III substances may lead to moderate or low physical dependence or high psychological dependence, or, in the case of anabolic steroids, for example, may lead to physical damage.

In its findings in support of the emergency rule scheduling Ketamine, the Attorney General found that Ketamine meets all of the statutory requirements for placement in Schedule III. The Attorney General found that Ketamine is currently not a controlled substance in Florida, and therefore, illegal possession, sale, or other abuse of this drug is only a misdemeanor offense. According to law enforcement authorities, the relatively light penalties associated with criminal misuse of the drug has contributed to its increased popularity. Additionally, the Attorney General found that law enforcement officers are reluctant to make misdemeanor arrests for unlawful sale or possession of Ketamine, preferring instead to focus on felony drug offenses. Findings of the Attorney General in Support of Emergency Rule 2ER97-2, In Re: Emergency Rule 2ER97-2, Adding Ketamine, A.K.A. "K" and "Special K," to Schedule III, [Section] 893.03(3), F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill deletes reference to "gamma-hydroxy-butyrate" from Schedule II and substitutes reference to "gamma hydroxybutric acid". The new reference would encompass all of the various forms of GHB. The bill would simply codify the Attorney General rule changes relating to "GHB". Sale of Gamma hydroxybutric acid would be a second degree felony unless the sale of the drug occurs within certain proscribed areas such as within 1,000 feet of an elementary school, in which case it would be a first degree felony.

The maximum punishment for a third degree felony is five years imprisonment; for a second degree felony, 15 years imprisonment. For a first degree felony, the maximum punishment is 30 years imprisonment, unless life imprisonment is specified by statute. s. 775.082, F.S.

The bill codifies the emergency rules relating to Ketamine by making it a Schedule III drug. The sale of Ketamine would be a third degree felony, unless the sale occurs in proscribed areas, in which case the sale of Ketamine is a second degree felony.

The bill also deletes reference to "bulk dextropropoxyphene (in its non-dosage form)" from Schedule II and inserts reference to "bulk propoxyphene (in its non-dosage form)". The bill also deletes reference to "dextropropoxyphene (in its dosage form)" from Schedule IV, and substitutes reference to "propoxyphene (dosage forms)". Deleting the reference to dextropropoxyphene and adding the reference to propoxyphene would insure consistency in the way the drug is listed in the medical literature and how it is designated on laboratory analysis forms.

The bill would also make a technical amendment to sec. 893.035, F.S. which relates to the delegation of authority to the Attorney General to control substances by rule. Before the Attorney General is permitted to promulgate a rule designating a drug as a controlled substance, the Attorney General must request a medical and scientific evaluation of the substance from the Department of Business and Professional Regulation and the Department of Law Enforcement. This change would conform the language of the statute to reflect the reorganization of the Department of Business and Professional Regulation and the creation of the Department of Health. Sec. 20.43 F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 893.03 and 893.035, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsections (2), (3), and (4) of s. 893.03, Florida Statutes, to delete certain named drugs and insert a more inclusive name for these drugs and to include a drug not currently scheduled.

Subsection (2) is amended to delete Gamma-hydroxy-butyrate (GHB) and add Gamma-hydroxy Butyric Acid (GHB) which is a more inclusive name for this drug. Bulk Dextropropoxyprone is replaced with bulk Propoxyprone which is a technical change.

Subsection (3) is amended to include Ketamine and its various forms for the first time.

Subsection (4) is amended to replace Dextropropoxyphene with Propoxyphene which is a technical change.

Sections 2-15. Technical. Various sections are reenacted to incorporate amendments to section 893.03, Florida Statutes.

Section 16. Technical. Amends s. 893.035, Florida Statutes, to correct references to the Department of Health rather than the Department of Business and Professional Regulation.

Section 17. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

By adding Gamma-hydroxy Butyric Acid to Schedule II and Ketamine to Schedule III, it will clarify the penalties for unlawful possession and sale of these drugs and assist in prosecuting violators.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

According to the Department of Health, this bill will have no fiscal impact on the department. The Criminal Justice Estimating Conference has determined that this bill will have no impact on state prisons.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Health Care Licensing and Regulation Committee at its meeting on 1/19/99. Amendment one was technical and corrected the spelling of "butyric acid". Amendment two changed the effective date from October 1, 1999, to July 1, 1999.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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