SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 160

SPONSOR: Criminal Justice Committee and Senator Wise

SUBJECT: Controlled Substances

DATE: February 14, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.				
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 160 provides that for purposes of certain industrial uses, 1,4-Butanediol and gamma-butyrolactone are excepted from scheduling as Schedule I controlled substances when in the possession of authorized manufacturers and distributors of BD or GBL, authorized manufacturers and distributors of industrial products, and authorized persons who possess finished products.

This CS also clarifies the hours during which it is unlawful to sell, manufacture, deliver, or possess a controlled substance within 1,000 feet of the real property comprising a child care facility or public or private elementary, middle, or secondary school.

This CS also corrects a case citation in a legislative intent provision pertaining to interpretation of the hydrocodone trafficking laws.

This CS takes effect upon becoming a law.

This CS substantially amends ss. 893.13 and 893.135, F.S., creates s. 893.031, F.S., and reenacts s. 893.03(1)(d), F.S.

II. Present Situation:

A. 1, 4-Butanediol and Gamma-Butyrolactone: Description, History of Legislation and Regulation, and Present Legal Status

According to the United States Drug Enforcement Administration (DEA), the chemical substances 1,4-Butanediol (BD or BDO) and gamma-butyrolactone (GBL) are analogs and

precursors of gamma-hydroxybutyrate (GHB), which is a Schedule I controlled substance under both federal and Florida law, except as it relates to certain FDA-approved applications. When ingested, BD and GBL convert in the human body to GHB, with physical effects similar to those resulting from consumption of GHB. *See Addition of Gamma-Hydroxybutyric Acid to Schedule I*, 65 Fed.Reg. 13235-13238 (March 13, 2000); "Club Drugs: methylenedioxymethamphetamine, flunitrazepam, ketamine hydrochloride, and y-hydroxybutyrate" (Kelly M. Smith, Lisa L. Larive, and Frank Romanelli), *American Journal of Health-System Pharmacy*, v. 59, issue 11 (June 1, 2002); "Forensic Science Update: Gamma-Hydroxybutyrate (GHB)" (Carl S. Hornfeldt, Kevin Lothridge, and J.C. Upshaw Downs), *Forensic Science Communications*, v. 4, n. 1 (January 2002).

The National Institute on Drug Abuse (NIDA) reports the following information on GHB, GBL, and BD:

> Since about 1990, GHB (gamma hydroxybutyrate) has been abused in the U.S. for euphoric, sedative, and anabolic (body building) effects. It is a central nervous system depressant that was widely available over-the-counter in health food stores during the 1980s and until 1992. It was purchased largely by body builders to aid fat reduction and muscle building. Street names include Liquid Ecstasy, Soap, Easy Lay, and Georgia Home Boy....
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> Coma and seizures can occur following abuse of GHB and, when combined with methamphetamine, there appears to be an increased risk of seizure. Combining use with other drugs such as alcohol can result in nausea and difficulty breathing. GHB may also produce withdrawal effects, including insomnia, anxiety, tremors, and sweating.
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> GHB and two of its precursors, gamma butyrolactone (GBL) and 1,4 butanediol (BD) have been involved in poisonings, overdoses, date rapes, and deaths. These products, obtainable over the internet and sometimes still sold in health food stores, are also available at some gyms, raves, nightclubs, gay male parties, college campuses, and the street. They are commonly mixed with alcohol (which may cause unconsciousness), have a short duration of action, and are not easily detectable on routine hospital toxicology screens.

Club Drugs, NIDA InfoFact Fact Sheet, National Institute on Drug Abuse, United States Department of Health and Human Services (2001).

BD and GBL have extensive uses in the manufacture of industrial products, many of which predate the first reported use of BD and GBL for human consumption. According to the Gamma Butyrolactone (GBL) and Butanediol (BDO) Panel (hereinafter referred to as the "GBL/BDO Panel" or the "Panel") of the American Chemistry Council, an organization representing over 180 manufacturers and distributors, BD is "used as an intermediate in common industrial and commercial products such as polyether diols, urethane polymers, and polyester polymers. Many of the polyester polymers end up as automotive components such as car bumpers." Attachment to letter from Courtney M. Price, Vice President, CHEMSTAR, to Katherine Keough, Executive Director, National Association of State Controlled Substance Authorities, dated May 30, 2002 (on file with the Committee). BD is also "used as

a plasticizer, a carrier solvent in printing inks, and a cleaning agent." *Id.* "GBL is used significantly as an intermediate to manufacture industrial chemicals such as N-methylpyrrolidone. However, because of its strong solvency properties, GBL is also used for circuit board cleaning in the electronics and high technology industries, and in paint stripping applications. Other uses of GBL include the production of herbicides and as a processing aid in the production of pharmaceuticals." *Id.* (Information provided on BASF Corporation's website describes the use of N-methylpyrrolidone in petrochemical processing, gas desulfurization, plastics, surface coatings, paint stripping and cleaning, electronic equipment manufacture, and plant protection (insecticides, fungicides, herbicides, seed treatment products, and bioregulators)).

The major United States manufacturers of BD for industrial uses are BASF Corporation, DuPont Specialty Chemicals, Lyondell Chemical Company, and BP Amoco Lima Chemicals. The major United States manufacturers of GBL for industrial uses are BASF Corporation and Lyondell Chemical Company. According to information provided by staff of the BDO/GBL Panel, production/consumption of BD for industrial uses averages 300,000 metric tons per year, with similar consumption for GBL.

In 1990, the Food and Drug Administration (FDA) banned over-the-counter sales of GHB. "In January 1999 the FDA issued a request for a voluntary recall of all GBL-containing products sold in health food stores and warned the public of its abuse potential and danger to the public health. 1,4-butanediol, a chemical related to both GHB and GBL has also been declared a Class I Health Hazard. In 1999 the FDA issued another warning on 1,4 butanediol, GHB, and GBL stating that these pose a significant health hazard...." (DEA) Diversion Control Program (website). "The ban on the sale of GHB by the FDA and tighter regulations in various states led to an increase in illegally synthesized GHB and the sale and use ... [of GBL and BD]." (Hornfeldt, Lothridge & Downs 2002). In 2000, federal legislation was enacted that addressed directly GHB and GBL, and, less directly, BD.

> In Public Law 106-172, Congress found that the abuse of GHB was "an imminent hazard to the public safety." Pub. Law No. 106-172, § 3(a)(1) (2000). Accordingly, Congress ordered the Attorney General to issue a final order placing the drug in Schedule I. On March 13, 2000, the Drug Enforcement Administration, under authority delegated by the Attorney General, issued its Final Rule naming GHB a Schedule I Controlled Substance.
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> *Addition of Gamma-Hydroxybutyric Acid to Schedule I*, 65 Fed.Reg. 13235-13238 (March 13, 2000) (to be codified at 21 C.F.R. pts. 1301 and 1308).

United States v. Fisher, 289 F.3d 1329, 1335 (11th Cir. 2002).

> The DEA's Final Rule contained the following statement regarding GBL:
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> The DEA has received reports that GBL, the solvent precursor for GHB, is being abused due to its rapid conversion to GHB soon after ingestion. On January 21, 1999, the FDA issued a request for a voluntary recall of all GBL-containing products sold in health food stores and warned the public of its danger to the public health. FDA has also declared 1,4-butanediol, a chemical related to both GHB and GBL, a Class I Health Hazard. On

> May 11, 1999, the FDA issued another warning on 1,4 butanediol, GHB and GBL stating that these substances pose a significant health hazard. Public Law 106-172 also placed certain controls on GBL. These will be the subject of a separate Federal Register Notice.
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> *Addition of Gamma-Hydroxybutyric Acid to Schedule I*, 65 Fed.Reg. 13235- 13238 (March 13, 2000) (to be codified at 21 C.F.R. pts. 1301 and 1308).

Fisher at p. 1335, n. 8.

> Although Congress did not designate GBL as a controlled substance, it recognized the dangerous proclivities of the chemical. In Section 2 of Public Law 106-172, Congress made the following finding: "If taken for human consumption, common industrial chemicals such as gamma butyrolactone [GBL] and 1,4-butanediol are swiftly converted by the body into GHB. Illicit use of these and other GHB analogues and precursor chemicals is a significant and growing law enforcement problem." Pub. Law No. 106-172, § 2(4) (2000).
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> In addition, Congress added GBL to the "List I Chemicals." Pub. Law No. 106-172, § 3(b)(2)(c) (2000); 21 U.S.C. § 802(34)(X). List I chemicals are chemicals that are used in manufacturing controlled substances. 21 U.S.C. § 802(34). Finally, Congress added a section to the definition of a controlled substance analogue. Pub. Law. No. 106-172, § 5(a); 21 U.S.C. § 802(32)(B). The new section states, "The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) of this paragraph that the chemical is a controlled substance analogue." 21 U.S.C. § 802(32)(B).

Fisher at p. 1335.

Federal prosecutions involving BD and GBL are limited to prosecutions under the federal "analogue" statute of acts involving or relating to human consumption of BD and GBL. 21 U.S.C. § 813; 21 U.S.C. § 802(32)(A). *See GHB Analogs*, Information Bulletin, National Drug Intelligence Center (August 2002).

Because BD is not a controlled substance or a List I Chemical under federal law, industries that manufacture, distribute, or use BD in the manufacture of industrial products are not subject to the federal regulatory requirements that would apply to handlers of controlled substances or List I Chemicals, though diversion of BD is punishable under both federal and state laws. Actions to curtail BD diversion are industry-initiated, industry-driven, and industry-sustained. However, the DEA has not indicated any concern about BD diversion from manufacturers and distributors of BD for industrial uses or industries using BD in the manufacture of industrial products. Some major manufacturers of BD, like BASF and Lyondell, are also manufacturers of GBL, and are subject to DEA regulatory oversight for that chemical. Lyondell and BASF (which produces more BD than any other BD manufacturer) are both members of the BDO/GBL Panel. According to the Panel, its members have worked with the DEA and several states to help create effective regulatory systems and prevent chemical diversion, conduct training programs within the Panel members' companies on proper safety and handling procedures, and institute other measures

to help preclude chemical diversion. Attachment to letter from Courtney M. Price, Vice President, CHEMSTAR, to Katherine Keough, Executive Director, National Association of State Controlled Substance Authorities, dated May 30, 2002 (on file with the Committee). Additionally, chemical industries have instituted measures to maintain and improve site security and handling, transportation, and storage of chemicals because of concerns regarding potential terrorist acts.

Because GBL is a List I Chemical under federal law, a GBL handler is required to register with the DEA and comply with federal regulatory requirements for List I Chemical registrants, which include "elaborate documentation and justification of all purchases and sales." (Smith, Larive & Romanelli 2002). *See* Letter from Courtney M. Price, Vice President, CHEMSTAR, to Katherine Keough, Executive Director, National Association of State Controlled Substance Authorities, dated May 30, 2002 (on file with the Committee) ("Requirements for listed chemicals ... include an annual registration requirement for persons who manufacture GBL for distribution, or who distribute, import, or export the chemical. There are also extensive reporting requirements applicable to registered companies. DEA has investigation and suspension authorities and may impose a variety of penalties to ensure registrants comply with these requirements.").

In 1999, then Florida Department of Agriculture and Consumer Services Commissioner Bob Crawford issued a warning to the public to immediately cease using dietary supplements containing GBL. Division of Food Safety Inspectors were directed to immediately begin removing those products from the marketplace and to begin issuing "stop sale" orders in all establishments in which those products were identified. "Crawford Issues Warning on GBL, Begins 'Stop Sale' Action," DOACS Press Release, Florida Department of Agriculture and Consumer Services (January 22, 1999). Subsequently, Commissioner Crawford issued another warning to the public to avoid using products containing BD that were being promoted as sleep aids. "Crawford Issues Warning on Diet Supplements," DOACS Press Release, Florida Department of Agriculture and Consumer Services (May 12, 1999).

In that same year, the Legislature scheduled GHB as a Schedule II controlled substance. ch. 99-186, L.O.F. GBL and BD were not specifically scheduled, but it appears that GBL was considered an ester of GHB. "Suspect Arrested, Charged with Sale of 26 Cases of Blue Nitro," News Release, Office of Statewide Prosecution, Florida Attorney General's Office (July 23, 1999). Esters of GHB were (and are) Schedule II controlled substances.

In 2000, the Legislature scheduled BD and GBL as Schedule II controlled substances. ch. 2001-320, L.O.F.

In 2001, the Legislature rescheduled GHB as a Schedule I controlled substance, except for FDA-approved applications of the substance, which are scheduled in Schedule III. ch. 2001-57, L.O.F.; s. 893.03((1)(d)3., F.S.; s. 893.03(3)(g), F.S. The Legislature also rescheduled BD and GBL as Schedule I controlled substances. ch. 2001-57, L.O.F.; s. 893.03(1)(d)1. and 2., F.S.

In 2002, then Attorney General Bob Butterworth, responding to the concerns of industries that use BD for industrial purposes, authorized such use by emergency rule. *See* Department

of Legal Affairs' Rule No. 2ER02-1, "Deleting Specified Uses of 1,4-Butanediol From the Substances Scheduled Under Section 893.03," v. 28, n. 22, Florida Administrative Weekly (May 31, 2002). (Pursuant to s. 893.035(9), F.S., the Attorney General is required to report to the Legislature by March 1 of each year concerning rules adopted under s. 893.035, F.S., and each rule so reported expires on the following June 30 unless the Legislature adopts the provisions of the rule as an amendment to ch. 893, F.S.). Provided are the findings and conclusions of that office in support of the emergency rule:

> SPECIFIC REASON FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: 1,4-Butanediol was placed on Schedule I of Section 893.03, Florida Statutes, pursuant to Laws of Florida Chapter 2001-57, s. 5, effective July 1, 2001. As a substance listed on Schedule I and as provided in Section 893.01(1)(d), Florida Statutes, the possession in Florida of any material, compound, mixture, or preparation which contains any quantity of 1,4-Butanediol is subject to the appropriate penalties provided in Section 893.13, Florida Statutes. 1,4-Butanediol is not, however, listed as a controlled substance under the provisions of the Code of Federal Regulations as promulgated by the United States Drug Enforcement Administration. As a result, the use of 1,4-Butanediol in manufacturing has not been exempted by the DEA from the penalties that would otherwise adhere to its possession under Section 21 C.F.R. 1308.23, no[r] has it been placed on the list of Exempt Chemical Preparations as found in Section 21 C.F.R. 1308.24. Therefore, under present Florida Law, manufacturers that use 1,4-Butanediol as part of their legitimate manufacturing activities are not able to use the substance in any form insofar as no exemption which would allow for its use in manufacturing exists under Florida law.
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> 1,4-Butanediol has numerous legitimate industrial uses, both as an intermediate for the chemical and textile industries and in the manufacture of polyurethanes, polybutyleneterephthalantes and engineering grade thermoplastics and thermosetting plastics. 1,4-Butanediol is also used in the production of cellular plastics, thermoplastic polyesters, hot-melt adhesives and plasticizers. Thus, unless immediate action is taken to permit the use of 1,4-Butanediol in industrial activities, many legitimate businesses will likely suffer irreparable injury, including but not limited to, severe restrictions on present activities or even forced closure.
>
> The Office of the Attorney General has reviewed the legislative history underlying the addition of 1,4-Butanediol to the list of Schedule I controlled substances set forth in Section 893.03, Florida Statutes. That review has resulted in no evidence that the Legislature intended that 1,4-butanediol could not be used in industrial, chemical and other manufacturing activities even though possession of 1,4-Butanediol was clearly intended to be banned when its intended use was for human consumption.
>
> REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: It is apparent that treating 1,4-Butanediol as a controlled substance intended for human consumption or use and therefore banning its use under all circumstances would result in an extreme hardship to numerous legitimate industries with no corresponding benefit to public health and safety. As a result, only by immediately permitting the use of 1,4-butanediol in industrial, chemical and manufacturing activities

can the plainly unintended consequence of dislocating and disrupting entire industries be forestalled.

Id. (Staff notes that the manufacture, distribution, and possession of pharmaceuticals approved by the FDA and authorized under ch. 499, F.S., are excepted from the prohibitions and penalties provided in ss. 893.13 and 893.135, F.S.).

Provided also is the text of the emergency rule:

2ER01-1 Deleting Specified Uses Of 1,4-Butanediol From the Substances Scheduled Under Section 893.03, Florida Statutes.
Pursuant to Sections 893.0355(2) and (4), Florida Statutes, the following substances are deleted from the schedule of controlled substances listed in Section 893.03, Florida Statutes:
(1) 1,4-Butanediol when it is in the possession of the manufacturer of 1,4-Butanediol and the manufacturer is in compliance with the Drug Enforcement Agency requirements for List I Chemicals.
(2) 1,4-Butanediol when it is in the possession of a person for the purpose of the legitimate manufacture of industrial products.
(3) 1,4-Butanediol when it is in the possession of a person with a finished product containing 1,4-Butanediol from which the 1,4-Butanediol cannot be extracted or synthesized.

Id.

Subsections (1) and (2) of the rule mirror a temporary rule of the Oregon State Board of Pharmacy. *Oregon Bulletin* (Admin. Order No.: BP 3-2002 (Temp)) (March 1, 2002) (Oregon Department of State, State Archives website). The Board was apprised by a company that uses BD in the manufacture of industrial products that the company was unable to obtain BD from BASF because Oregon had made BD a Schedule I controlled substance. After subsequent fact-finding, the Board determined that a temporary rule was necessary to allow for industrial use of BD. Minutes, Oregon State Board of Pharmacy (January 30-31, 2002) (Oregon State Board of Pharmacy website).

Because the emergency rule of the Attorney General's Office only applies to BD, it appears that GBL's use for industrial purposes is precluded under Florida law (unless the pharmaceutical exception, previously noted, applies). In papers provided to the Attorney General's Office subsequent to issuance of the emergency rule, which consist of prepared responses from the GBL/BDO Panel to a list of questions, the Panel response was that the Schedule I scheduling of GBL would have a "significant economic impact." (Document, dated August 22, 2002, on file with the Committee). The Panel response described that economic impact as follows:

> The Panel estimates that hundreds of jobs are being negatively affected. For example, consider transportation of GBL alone. In addition to preventing uses of the chemical in Florida, the current prohibition also prevents use of the [P]ort of Miami for international export as well as any shipments that would otherwise go to Florida. In this respect, it is important to consider not only the jobs and services directly impacted, but also the jobs and economic impacts being impacted through indirect means.

B. Selling Controlled Substances Near Schools; Hours of School Operation Relevant to Offense

Section 893.13(1)(c), F.S., provides that it is unlawful to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility (as defined in s. 402.302, F.S.) or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 a.m. Depending upon the controlled substance, the offense is a first degree felony or a second degree felony.

In *Jennings v. State*, 682 So.2d 144 (Fla. 1996), the Florida Supreme Court considered a challenge to this provision. The appellant had been convicted of one count of selling cocaine within 1,000 feet of a school and three counts of possessing cocaine within 1,000 feet of a school with intent to sell, pursuant to s. 893.13(1)(c), F.S. The incidents giving rise to the convictions occurred at different times: one in the evening; the other in the afternoon. The appellant charged that s. 893.13(1)(c), F.S., was unconstitutionally vague because it failed to put a person on reasonable notice as to whether the period of time (hours of operation of the school) relevant to the offense ends at noon or midnight.

The First District Court of Appeals held that, in context, the Legislature clearly intended the time period to end at midnight. *Jennings v. State*, 667 So.2d 442, 444 (Fla. 1st DCA 1996) ("We do not believe 'common understanding and practices' lend support to the view that the Legislature intended to provide a greater penalty for drug sales at morning recess than for sales during the lunch hour or after school lets out. We can think of little justification for such an interpretation of the statute. In context, it is clear that the term '12 a.m.' in section [893.13(1)(c)], Florida Statutes (1993) must mean 'midnight,' by which time --the Legislature had reason to hope-- school children will be at home fast asleep.") The Florida Supreme Court agreed with the First District Court of Appeals' holding, adopted its reasoning, and held that "[t]he statute covers the eighteen hour period from 6 a.m. until 12 a.m., which is the time that marks the beginning of the next day." *Id.*

C. Incorrect Case Citation; Statement of Intent Regarding Hydrocodone Trafficking Provisions

Section 893.135(7), F.S., provides, in part, that "[f]or the purpose of clarifying legislative intent, the Legislature finds that the opinion in *Hayes v. State*, 760 So.2d 1 (Fla. 1999) does not correctly construe legislative intent." In the *Hayes* case, the Florida Supreme Court held that s. 893.135, F.S., the drug trafficking statute, did not apply to possession of hydrocodone in amounts under 15 milligrams per dosage unit. The Court construed s. 893.135, F.S., in relation to the scheduling of hydrocodone in s. 893.03, F.S.

The citation to the *Hayes* case in subsection (7) is incorrect. The correct case citation should be "*Hayes v. State*, 750 So.2d 1 (Fla. 1999)."

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 160 creates s. 893.031, F.S., a new section of the Florida Statutes, which provides that for purposes of certain industrial uses, 1,4-Butanediol and gamma-butyrolactone are excepted from scheduling as Schedule I controlled substances when in the possession of authorized manufacturers and distributors of BD or GBL, authorized manufacturers and distributors of industrial products, and authorized persons who possess finished products. The CS creates a matrix of definitions of key terms, in conjunction with the creation of provisions that specify to whom the scheduling exceptions for BD and GBL apply and do not apply.

Key Terms Defined:

Subsection (1) of s. 893.031, F.S., defines the key terms for the purpose of this section as follows:

"Manufacture" means any process or operation necessary for manufacturing a product.

"Distribution" means any process or operation necessary for distributing a product, including, but not limited to, wholesaling, delivery or transport and storage.

"Manufacturer of 1,4-Butanediol" means a person who is involved in the manufacture of 1,4-Butanediol for use in the manufacture of an industrial product, and who provides that manufactured 1,4-Butanediol to a distributor of 1,4-Butanediol or a manufacturer of an industrial product.

"Distributor of 1,4-Butanediol" means a person who is involved in the distribution of 1,4-Butanediol.

"Manufacturer of gamma-butyrolactone (GBL)" means a person who:

- Is involved in the manufacture of gamma-butyrolactone for use in the manufacture of an industrial product, and who provides that manufactured gamma-butyrolactone to a distributor of gamma-butyrolactone or a manufacturer of an industrial product; and

- Is in compliance with any requirements to register with the United States Drug Enforcement Administration as a List I chemical registrant.

"Distributor of gamma-butyrolactone (GBL)" means a person who:

- Is involved in the distribution of gamma-butyrolactone; and

- Is in compliance with any requirements to register with the United States Drug Enforcement Administration as a List I Chemical registrant.

"Manufacturer of an industrial product" means a person who is involved in the manufacture of an industrial product in which that person acquires:

- 1,4-Butanediol from a manufacturer of 1,4-Butanediol or a distributor of 1,4-Butanediol, and who possesses that substance for use in the manufacture of an industrial product; or

- Gamma-butyrolactone from a manufacturer of gamma-butyrolactone or a distributor of gamma-butyrolactone, and who possesses that substance for use in the manufacture of an industrial product.

"Distributor of an industrial product" means a person who is involved in the distribution of an industrial product.

"Industrial product" means a non-drug, non-controlled finished product that is not for human consumption.

"Finished product" means a product:

- That does not contain either 1,4-Butanediol or gamma-butyrolactone; or

- From which neither 1,4-Butanediol nor gamma-butyrolactone can be readily extracted or readily synthesized, and which is not sold for human consumption.

Exceptions from Schedule I Scheduling of BD:

Subsection (2) provides that BD is excepted from Schedule I scheduling when that substance is in the possession of:

- A manufacturer of 1,4-Butanediol or a distributor of 1,4-Butanediol;

- A manufacturer of an industrial product or a distributor of an industrial product; or

- A person possessing a finished product.

Exceptions from Schedule I Scheduling of GBL:

Subsection (3) provides that GBL is excepted from Schedule I scheduling when that substance is in the possession of:

- A manufacturer of gamma-butyrolactone or distributor of gamma-butyrolactone;

- A manufacturer of an industrial product or a distributor of an industrial product; or

- A person possessing a finished product.

Exclusions from Scheduling Exceptions:

Subsection (4) provides that s. 893.031, F.S., does not apply to:

- A manufacturer of 1,4-Butanediol or a distributor of 1,4-Butanediol who sells, delivers, or otherwise distributes that substance to a person who is not a distributor of 1,4-Butanediol or a manufacturer of an industrial product;

- A manufacturer of gamma-butyrolactone or a distributor of gamma-butyrolactone who sells, delivers, or otherwise distributes that substance to a person who is not a distributor of gamma-butyrolactone or a manufacturer of an industrial product;

- A person who possesses 1,4-Butanediol but who is not a manufacturer of 1,4-Butanediol, a distributor of 1,4-Butanediol, a manufacturer of an industrial product, a distributor of an industrial product, or a person possessing a finished product;

- A person who possesses gamma-butyrolactone but who is not a manufacturer of gamma-butyrolactone, a distributor of gamma-butyrolactone, a manufacturer of an industrial product, a distributor of an industrial product, or a person possessing a finished product;

- A person who extracts or synthesizes either 1,4-Butanediol or gamma-butyrolactone from a finished product; or a person who extracts or synthesizes 1,4-Butanediol or gamma-butyrolactone from any product or material, unless such extraction or synthesis is authorized by law; or

- A person whose possession of either 1,4-Butanediol or gamma-butyrolactone is not in compliance with the requirements of this section or whose possession of either of those substances is not specifically authorized by law.

Since the term "person" is not specifically defined, the definition of "person" in s. 1.01(3), F.S., applies (s. 1.01, F.S., is the general definitions section for the construction of the Florida Statutes). This definition of "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business, trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Nothing in the provisions of s. 893.031, F.S., indicates legislative intent to preclude or preempt other sections that may authorize particular uses of BD or GBL, provide exceptions for the scheduling of BD or GBL, or provide exceptions from controlled substance prohibitions and penalties for particular uses of BD or GBL, such as:

- The scheduling exceptions provided in s. 893.03, F.S., for excluded drugs listed within the purview of 21 C.F.R. § 1308.22 ("Excluded Substances"), 21 C.F.R. § 1308.24 ("Exempt Chemical Preparations"), 21 C.F.R. § 1308.32 ("Exempted Prescription Products"), or 21 C.F.R. § 1308.34 ("Exempt Anabolic Steroid Products");

- The exceptions provided in ss. 893.13 and 893.135, F.S., from the prohibitions and penalties of those sections for acts authorized under ch. 893, F.S. or ch. 499, F.S.; and

- The exceptions provided in s. 893.13(9), F.S., from the prohibitions and penalties of that section for possession of controlled substances for medical or scientific use or purpose by persons specified in that subsection, or their agents or employees.

The CS also reenacts s. 893.03(1)(d), F.S., which contains the provisions scheduling BD and GBL in schedule 1.

The CS also amends s. 893.03(1)(c), F.S., to clarify the hours during which it is unlawful to sell, manufacture, deliver or possess a controlled substance within 1,000 feet of the real property comprising a child care facility or public or private elementary, middle or secondary school. The CS clarifies the hours applicable to the offense are 6:00 a.m. to 12 midnight.

Finally, the CS corrects an incorrect case citation in s. 893.135(7), F.S., a provision clarifying legislative intent with regard to trafficking in hydrocodone.

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:

The CS appears to be beneficial to the private sector because authorized manufacturers and distributors of BD or GBL, and authorized manufacturers and distributors of industrial products that use BD or GBL for industrial purposes will not have to risk possible exposure to criminal liability. Therefore, since the CS removes a possible impediment to legitimate commerce, the CS should have a positive fiscal impact on the private sector.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.