

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 Controlled Substances
SPONSOR(S): D. Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice</u>	_____	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Presently, 1,4-Butanediol (BD) and gamma-butyrolactone (GBL) are Schedule I controlled substances under Florida law. However, BD and GBL also have numerous, legitimate industrial uses or applications. Florida statutory law does not currently provide any exception from the scheduling of BD and GBL when those substances are manufactured and distributed for industrial use by manufacturers and distributors of industrial products. In May of 2002, the Attorney General's Office used its emergency rule authority to create an industrial exception for BD. HB 825 creates industrial exceptions to the controlled substance scheduling of BD and GBL.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0825.ps.doc
DATE: March 4, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Gamma-butyrolactone and 1,4 Butanediol

When ingested, the chemicals gamma-butyrolactone (GBL) and 1,4-Butanediol (BD or BDO) convert in the human body into gamma-hydroxybutyrate (GHB). The National Institute on Drug Abuse 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....

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.

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).¹

BD and GBL are also extensively used in the manufacture of industrial products. According to the GBL and BDO Panel of the American Chemistry Council:

GBL and BDO have many industrial uses and represent critical ingredients in several widely used industrial and commercial products. GBL is used significantly

¹ Available at: <http://www.nida.nih.gov/Infobox/Clubdrugs.html>

as an intermediate to manufacture industrial chemicals....GBL is 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 chemicals. BDO is used as an intermediate in common industrial and commercial products such as....polyester polymers. Many of the polyester polymers end up as automotive components such as car bumpers. BDO is also used as a plasticizer, a carrier solvent in printing inks and a cleaning agent.²

Drug Schedules

Florida and federal drug statutes lists controlled substances in "schedules" ranging from Schedule I to Schedule V.³ A Schedule I drug has a high potential for abuse, has no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. GBL and BDO are Schedule I controlled substances in Florida but are not listed in federal drug schedules.⁴ GHB is a Schedule I controlled substance, except for FDA approved applications of the substance, which are scheduled in Schedule III.⁵ GHB is also a Schedule I drug under federal law.⁶

In order to prevent the misuse of GBL, yet allow for legitimate industrial use, Congress has made GBL a "List I" chemical.⁷ A List I chemical is a chemical used in the manufacture of a controlled substance. A person who manufactures or distributes GBL must register with the Drug Enforcement Administration and is subject to federal regulations including reporting and recordkeeping requirements⁸.

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.

Florida statutory law does not currently provide any exception from the scheduling of BD and GBL when those substances are manufactured and distributed for industrial use by manufacturers and distributors of industrial products.

In 2002, in response to the concerns of industries that use BD for industrial purposes, Attorney General Bob Butterworth issued an emergency rule⁹ which authorized such use. The emergency rule contained the following:

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 health and safety. As a result, only by immediately permitting the use of 1,4-butanediol in industrial, chemical and

² Information available at : www.nascsa.org/PDF/chemcoun602.PDF

³ s. 893.03(2)-(5), F.S

⁴ s. 893.03(1)(d)1.and 2., F.S. In 2000, GBL and BD were made Schedule II controlled substances. ch. 2000-320, Laws of Florida. During the 2001 session, the legislature rescheduled GBL and BD as Schedule I controlled substances. ch 2001-57, Laws of Florida.

⁵ ss. 893.03(1)(d)3 and 893.03(3)g, F.S.

⁶ 21 C.F.R. 1308.11(e)(1). 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 or GBL.

⁷ 21 U.S.C. 802(34)(x).

⁸ See 21 U.S.C. 822; 21 CFR 1309;

⁹ Section 893.0355 gives the Attorney General the authority to adopt rules rescheduling controlled substances. Such a rule remains in effect until the effective date of legislation that provides for a different scheduling than that set forth by the rule. s. 893.0355(6), F.S.

manufacturing activities can the plainly unintended consequences of dislocating and disrupting entire industries be forestalled.¹⁰

HB 825

BD and GBL: HB 825 creates a new section in chapter 893 to provide that for purposes of certain industrial uses, BD and GBL 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 bill provides that BD is excepted from Schedule I scheduling when it is in the possession of:

1. A manufacturer or distributor of 1,4-Butanediol
2. A manufacturer of an industrial product or a distributor of an industrial product¹¹; or
3. A person possessing a finished product.

The bill provides the same exceptions for GBL. The bill clarifies that the above exceptions do not apply to a manufacturer or distributor of GBL or BD who sells, distributes these substances to a person who is not a distributor of one of these substances or of a industrial product. The exceptions also do not apply to a person who possesses BD or GBL and is not a manufacturer or distributor of BD or GBL or of a industrial product.

Clarification to other provision in chapter 893: The bill also amends section 893.03(1)(c), F.S. which provides that it is unlawful to sell, manufacture or deliver a controlled substance within 1,000 feet of the real property comprising a child care facility or a public or private elementary, middle or secondary school between the hours of 6 a.m. and 12 a.m. In Jennings v. State, 682 So.2d 144 (Fla. 1996), the Florida Supreme Court considered a challenge to the statute. The defendant claimed that the provision was unconstitutionally vague because it failed to put a person on reasonable notice as to whether the period of time relevant to the offense ended at noon or midnight. The Florida Supreme Court ruled 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.” The bill codifies the court’s decision and makes it clear that the enhanced penalties apply for drug offenses committed near a school for the eighteen hour period each day between six o’clock in the morning and midnight.¹²

C. SECTION DIRECTORY:

Section 1: Creating s. 893.031; creates definitions; provides exceptions from Schedule I for certain uses of GBL and BD.

Section 2: Reenacting s. 893.03, F.S.

Section 3: Amending s. 893.13(1)(c); clarifying that “12 a.m.” should be interpreted as “12 midnight”.

Section 4: Amending s. 893.135(7); correcting incorrect case citation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁰ 28 Fla. Admin. Weekly 22-2240 (May 31, 2002)

¹¹ The bill contains definitions of the terms “manufacture”, “distribution”, “manufacturer of 1,4-Butanediol”, “distributor of 1,4-Butanediol”, “manufacturer of gamma-butyrolactone”, “distributor of gamma-butyrolactone”, “manufacturer of an industrial product”, “distributor of an industrial product”, “industrial product”, and “finished product”.

¹² The bill also corrects an incorrect case citation contained in section 893.135(7). The correct case citation should be Hayes v. State, 750 So.2d. 1 (Fla. 1999).

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to be beneficial to the private sector because it will shield manufacturers and distributors of industrial products from criminal liability for possession of GBL or BD.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES