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.)

BILL: CS/SB 152

SPONSOR: Criminal Justice Committee, Senators Brown-Waite, Sullivan, and others

SUBJECT: Controlled Substances

DATE: January 7, 1999 REVISED: _____ _____ _____ _____

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

I. Summary:

Committee Substitute for Senate Bill 152 would amend s. 893.03, F.S., Florida's controlled substance schedules, to add ketamine to Schedule III for purposes of classification and penalties relating to controlled substance offenses. The CS would also delete reference to "gamma-hydroxy-butyrate (GHB)" from Schedule II and substitute reference to "gamma-hydroxybutyric-acid (GHB)." The CS would also delete reference to "bulk dextropropoxyphene" (in its non-dosage form) from Schedule II and "dextropropoxyphene" (in its dosage form) from Schedule IV, and substitute reference to "propoxyphene" in Schedules II and IV.

This CS would substantially amend ss. 893.03 and 893.035, F.S. Committee Substitute for Senate Bill 152 would also reenact ss. 39.01(3)(a) and (g), 440.102(11)(b), 458.326(3), 465.035(2), 766.101(3)(a), 817.563, 831.31, 856.015(1)(d), 893.02(4), 893.0356(2)(a), 893.08(1)(b), 893.12(2)(b), (c), and (d), 893.13(1), (2)(a), (4), (5)(a) and (b), and (7), and 921.0022(3)(b), (c), (d), (e), and (g), to incorporate the amendments to s. 893.03, F.S., in cross-references.

II. Present Situation:

A. Controlled Substance Schedules

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.

B. Ketamine

The federal Drug Enforcement Administration (DEA) has noticed an increase in the illicit use of the anesthetic, ketamine. In a DEA bulletin entitled "Ketamine Abuse Increasing," which was issued on February 4, 1997, the DEA describes ketamine, its properties and effects, and its illicit use:

> 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.
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> > 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.
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> > 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.
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> * * *
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> 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. . . .
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> 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.
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> 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. . . .

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 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 further found 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. 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.

Section 893.13, F.S. (1998 Supp.), prescribes controlled substance offenses and penalties for those offenses. Rather than specifically proscribing, for example, the sale of cocaine, the section proscribes the sale of substances contained in paragraph (a) of subsection (2) (Schedule II) where that drug is listed. The reference to this paragraph also applies to all other drugs which are listed in that paragraph, such as opium or morphine. Generally, the highest felony degree for controlled substance offenses attaches to those offenses involving substances listed in s. 893.03(1)(a), (b), (d), and (2)(a) and (b), F.S. Sale of cocaine [listed in s. 893.03(2)(a), F.S.] or GHB [listed in s. 893.03(2)(b), F.S.] is generally a second degree felony. However, where the sale of either of these drugs occurs within certain prescribed areas, such as within 1,000 feet of the real property comprising an elementary school, it is a first degree felony. By contrast, the sale of ketamine (a Schedule III drug under rule authority), is a third degree felony, unless the sale occurs in prescribed areas (as previously noted in this section), 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. For a first degree felony, the maximum punishment is 30 years imprisonment, unless life imprisonment is specified by statute. s. 775.082, F.S.

C. GHB

During its 1997 regular session, the Florida Legislature designated "Gamma-hydroxy-butyrate (GHB)" a Schedule II controlled substance. See ch. 97-1, L.O.F.; s. 893.03(2)(a)6., F.S.

Effective November 9, 1998, the Attorney General adopted an emergency rule (2ER98-1) to correct this statutory nomenclature describing GHB. The rule change lists in Schedule II,

"gamma hydroxybutyric acid (GHB)," and any salt, compound, derivative or preparation of gamma hydroxybutyric acid, including, any isomers, esters, ethers, and salts of isomers, esters and ethers of gamma hydroxybutyric acid, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. The regular administrative rule is scheduled to go into effect next month.

In its findings in support of the emergency rule correcting the GHB statutory nomenclature, the Attorney General found:

> GHB, or gamma-hydroxybutyric acid, is a fast-acting central nervous depressant. GHB is a hydroscopic compound (absorbs water) that is a naturally occurring four-carbon molecule with a chemical structure similar to that of gamma-aminobutyric acid, or GABA, which is an amino acid found in the human brain that slows down or inhibits certain activities. GHB is thought to act on the central nervous system like GABA, perhaps even at the same receptor. The exact mechanisms that lead to GHB toxicity, however, have not been discovered. Gamma-hydroxybutyrate (GHB) may be quite easily prepared as the sodium salt from gamma butyrolactone (gamma-hydroxybutyric acid lactone) using sodium hydroxide (lye). . . . GHB has been tested for use as a general anesthetic, as a bodybuilding aid, and as a treatment for sleep disorders. However, the substance has not been approved for any medical use. In the late 1980s, GHB was marketed and sold in health food stores as a "growth hormone stimulator." In recent times, however, the substance has built a reputation for being abused for recreational purposes.
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> GHB, either alone or in combination with other drugs, can cause massive central nervous system depressions. It increases dopamine levels in the brain. Abusers risk many potentially serious side effects including: coma, seizures, insomnia, anxiety, tremor, somnolence, dizziness, nausea, vomiting, weakness, confusion, agitation, hallucination, bradycardia (slow heart rate), decreased respiratory effort (decreased number of breaths per minute), unconsciousness and respiratory arrest. Alcohol and other central nervous system depressants have a synergistic effect with GHB thereby increasing the risk of respiratory depression and coma. There is no antidote for GHB overdose. Treatment is restricted to nonspecific supportive care. One disturbing feature of GHB is the inability to accurately predict physiological responses. Intoxication by GHB results in a wide range of drugged states as individuals respond quite differently to identical dosage amounts.

Findings of the Attorney General in Support of Emergency Rule 2ER98-1, In Re: Emergency Rule 2ER98-1, Adding Gamma-Hydroxybutyric Acid, A.K.A. "GHB," to Schedule II, [Section] 893.03(2)(a), F.S., pp. 3-4.

"Butyrolactone," the Attorney General further found, "a chemical commonly used as a paint stripper as well as a base chemical for solvents, is the chemical used to clandestinely make GHB." Id., at p. 5. Diluting butyrolactone with water makes "GBL," which, like gamma hydroxybutyric acid, is an immediate precursor to the GHB enumerated in current law. Butyrolactone is not specifically listed as a controlled substance under current law. The purpose of the emergency rule, then, is to correct this "glitch" in the law. Id.

D. Dextropropoxyphene

Propoxyphene is a centrally acting narcotic analgesic agent structurally related to methadone. It is commonly known by the registered trademark name, Darvon. Dextropropoxyphene (Darvon) is a molecular configuration of propoxyphene having a right-handed twist. Devopropoxyphene is a molecular configuration of propoxyphene having a left-handed twist. Unlike dextropropoxyphene, devopropoxyphene has no pharmaceutical usage, i.e., it is not manufactured for any medical use.

Bulk dextropropoxyphene (non-dosage form) is a Schedule II controlled substance. s. 893.03(2)(b)5., F.S. Dextropropoxyphene (dosage form) is a Schedule IV controlled substance. s. 893.03(4)(o), F.S.

E. Inapplicable Reference to the Department of Business and Professional Regulation in s. 893.035, F.S.

Section 893.135, F.S., authorizes the Attorney General to temporarily schedule controlled substances, subject to subsequent legislative ratification. Currently, this law requires that the Department of Law Enforcement and the Department of Business and Professional Regulation conduct a "medical and scientific evaluation" of any substance under consideration for temporary scheduling (by rule) as a controlled substance. The reference to the Department of Professional Regulation is in the law because, at one time, the Board of Pharmacy and the Board of Pharmacy Services were housed in that department. However, pharmacy services are now housed in the Department of Health. See s. 20.43(30(g)11., F.S. (1998 Supp.); ss. 381.0201 and 381.0203(2), F.S.; s. 465.004, F.S. (1998 Supp.). Therefore, the current reference in s. 893.035, F.S., to the Department of Business and Professional Regulation is inapplicable.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 152 would amend s. 893.03, F.S., Florida's controlled substance schedules, to:

- Add to the list of Schedule III controlled substances, ketamine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Penalties applied to offenses involving ketamine are the same as are currently imposed by virtue of the Attorney General's temporary scheduling (by rule) of ketamine in Schedule III. The CS would merely codify the substance of the Attorney General's rule. Penalties for Schedule III offenses vary depending upon the type of offense committed. For example, the sale, manufacture, or delivery of a Schedule III substance is a third degree felony (except when the sale occurs in certain prescribed areas, as

previously noted in the "Present Situation" section). The maximum punishment for a third degree felony is five years imprisonment. s. 775.082, F.S.

- Delete reference to "gamma-hydroxy-butyrate (GHB)" from Schedule II and substitute reference to "gamma-hydroxybutyric acid (GHB)." The reference also would include the substitution of this acid form and would encompass all of the various forms of GHB, including but not limited to, butyrolactone (under the "esters" category). The CS would merely codify the substance of the Attorney General's rule change.

- Delete reference to "bulk dextropropoxyphene (in its non-dosage form)" from Schedule II and "dextropropoxyphene" (in its dosage form) from Schedule IV, and substitute reference to "propoxyphene" in Schedules II and IV. Deleting the reference to dextropropoxyphene and adding the reference to propoxyphene would insure consistency in the way it is listed in the medical literature and how it is designated on laboratory analysis forms. Further, by substituting propoxyphene for dextropropoxyphene, chemists would not have to distinguish between the left-handed molecular configuration and the right-handed molecular configuration, thereby relieving them of an unnecessary cost and burden.

Committee Substitute for Senate Bill 152 would also reenact ss. 39.01(3)(a) and (g), 440.102(11)(b), 458.326(3), 465.035(2), 766.101(3)(a), 817.563, 831.31, 856.015(1)(d), 893.02(4), 893.0356(2)(a), 893.08(1)(b), 893.12(2)(b), (c), and (d), 893.13(1), (2)(a), (4), (5)(a) and (b), and (7), and 921.0022(3)(b), (c), (d), (e), and (g), to incorporate the amendments to s. 893.03, F.S., in cross-references.

Committee Substitute for Senate Bill 152 would also amend s. 893.035, F.S., which relates to the delegation of authority to the Attorney General to control substances by rule, to delete inapplicable references to the Department of Business and Professional Regulation and substitute references to the Department of Health. This technical change would conform terminology to reflect the reorganization of the Department of Business and Professional Regulation and the creation of the Department of Health.

The act would take effect July 1, 1999.

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 (CJEC) estimates that SB 152 will have no appreciable prison bed impact. The only difference between SB 152 and CS/SB 152 is the effective date, so there should be no change in the CJEC estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.