



**House
Legislative
Analysis
Section**

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**GAMMA-BUTYROLACTONE:
PROHIBIT SALE, MANUFACTURE,
AND POSSESSION**

**House Bill 5556 as enrolled
Public Act 302 of 2000
Sponsor: Rep. Jennifer Faunce**

**House Bill 5557 as enrolled
Public Act 304 of 2000
Sponsor: Rep. Mike Kowall**

**Second Analysis (10-9-00)
House Committee: Criminal Law and
Corrections
Senate Committee: Judiciary**

THE APPARENT PROBLEM:

On January 21 of 1999, the Food and Drug Administration (FDA) released a paper warning about the risks of *gamma-butyrolactone* (GBL). GBL has been marketed as a dietary supplement that is claimed to build muscles, improve physical performance, enhance sex, reduce stress and induce sleep. According to the FDA, GBL has been associated with reports of at least 55 adverse health effects, including one death. In 19 of those cases, the consumers became unconscious or comatose and several required intubation for assisted breathing. Other reported effects include seizures, vomiting, slow breathing, and slow heart rate. Although GBL was once studied as a possible anesthetic, its most common legitimate use is as an industrial solvent and floor stripper.

When taken orally, GBL is converted in the body to *gamma hydroxy butyrate* (GHB). *Gamma hydroxy butyrate* (GHB) is a metabolite of gamma-amino butyric acid found in mammalian central nervous systems. It is a central nervous system depressant that can have euphoric and hallucinatory effects. Most commonly found in liquid form, *GHB* has been used by assailants to incapacitate victims for the purpose of committing sexual assault. *GHB* is currently classified as a schedule 1 controlled substance (Public Act 248 of 1998).

Because GBL can have the same effect as GHB, it has also been used in the same manner -- by assailants to incapacitate victims for the purpose of committing sexual assault. Current law does not prohibit the manufacture, delivery, possession, or use of GBL,

which some suggest provides a loophole to the law against drug-aided criminal sexual conduct enacted by Public Act 319 of 1998.

THE CONTENT OF THE BILLS:

House Bill 5556 would amend the Public Health Code (MCL 333.7401a, et al.) to prohibit the manufacture, delivery, or possession of gamma-butyrolactone (GBL) or any material containing GBL.

The bill would create two felonies involving GBL or any material, compound, mixture, or preparation containing GBL. The first -- manufacture, delivery, or possession with the intent to manufacture or deliver -- would be punishable by not more than seven years in prison and/or a fine of no more than \$5,000. The second -- knowing or intentional possession -- would be punishable by not more than two years in prison and/or a fine of no more than \$2,000. The bill would apply to an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including a governmental entity.

"Delivery" would be defined in the bill as the actual, constructive, or attempted transfer from one person to another of GBL or any mixture containing GBL, whether or not an agency relationship existed. "Manufacture" would mean the production, preparation, propagation, compounding, conversion, or processing of GBL or any mixture containing GBL, whether done directly or indirectly, by extraction from

natural substances or by chemical synthesis, or by a combination of extraction and chemical synthesis. "Manufacture" would include packaging or repackaging the substance or labeling or re-labeling a container.

The bill would provide an affirmative defense for the manufacture, delivery, or possession of GBL or a mixture containing GBL, provided that it was for use in commercial applications (as an ingredient in a lawful product, for use in the manufacture of a lawful product, or for lawful use as a solvent) and was not for human consumption.

In addition, references to GBL and the felonies established by the bill would be placed in the provisions of the act prohibiting the sale of drugs to minors, on school property, on or near public or private parks, and the use or attempted use of a controlled substance in order to commit or attempt criminal sexual conduct.

The bill would expand the following crimes to include GBL:

- The manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver a controlled substance by someone who is 18 years old or older to someone who is three years or more younger.
- The possession of a controlled substance on school property by an individual who is 18 years old or older.

A violation of either of these provisions that involved GBL could be punished either under the current prohibition or the bill's provisions.

Furthermore, the law providing an enhanced sentence (up to an additional two years of imprisonment) for certain drug violations if they were committed in or near public or private parks would be amended to include violations involving GBL. More specifically, in addition to current prohibitions regarding parks, the bill would include GBL in the code's provisions against an individual who was 18 years old or older delivering or possessing with intent to deliver certain controlled substances to a minor in or within 1,000 feet of a public or private park and would add GBL to the provision against possession of a controlled substance by an individual 18 years old or older in a public or private park.

Finally, the bill would expand the provisions on forfeiture to include illegal drugs other than those currently listed; this would have the effect of allowing

for the forfeiture of the drug GBL itself (and other illegal drugs), raw materials, products, or equipment used in manufacturing, things of value furnished in exchange for the drug, and property used as a container or to convey the drug.

House Bill 5557 would amend the Code of Criminal Procedure's statutory sentencing guidelines (MCL 777.13 and 777.18) to include the following:

- Delivery or manufacture of gamma-butyrolactone as a class E crime involving a controlled substance with a statutory maximum of seven years.
- Possession of gamma-butyrolactone as a class G crime involving a controlled substance with a statutory maximum of two years.
- The bill would also add gamma-butyrolactone to the existing guidelines for the following crimes:

a) Delivery of a controlled substance *or GBL* with intent to commit criminal sexual conduct, which is a class C crime against a person with a statutory maximum of 20 years. [Emphasis on the new language.]

b) Controlled substance offense *or offense involving GBL* in or near a park as a controlled substance crime, which is a class G crime involving a controlled substance with a statutory maximum of two years. [Emphasis on the new language.]

c) Controlled substance offense *or an offense involving GBL* on or near school property, which would be a controlled substance crime with a variable statutory maximum. [Emphasis on the new language.] [The guidelines for this crime do not include a classification.]

[Note: The bill also contains the addition of a class G public safety crime -- Waste discharge violations -- substantial endangerment, which carries a five year statutory maximum and minor changes to some descriptions of existing waste discharge violations.]

House Bill 5557 would not take effect unless House Bill 5556 was enacted into law.

BACKGROUND INFORMATION:

Public Health Code classification of drugs. Following federal law, the Public Health Code classifies controlled substances under one of four "schedules." Scheduled drugs must have the potential for abuse

(where, in general, the abuse is "associated with" a stimulant or depressive effect on the central nervous system) and are either (a) illegal and without any medically accepted use in the United States (all schedule 1 drugs), or (b) prescription drugs with medically accepted uses in the United States that have a potential for psychological or physical dependence in addition to the potential for abuse (schedules 2, 3, and 4).

** Schedule 1 drugs -- all of which are illegal -- must have a high potential for abuse and no accepted medical use in treatment in the United States or lack accepted safety for use in treatment under medical supervision (MCL 333.7211). In addition to opiates and opium derivatives (including heroin), schedule 1 includes hallucinogenic drugs (such as LSD and mescaline) and non-therapeutic uses of marijuana. This now includes the drug *gamma hydroxy butyrate* (GHB) {Public Act 248 of 1998}.

** Schedule 2 prescription drugs must have a high potential for abuse, a currently accepted medical use in treatment in the United States (or a currently accepted medical use with severe restrictions), and their abuse must have the potential to lead to severe psychic or physical dependence (MCL 333.7213). Schedule 2 includes opium and any of its derivatives (including codeine and morphine), coca leaves and derivatives (including cocaine), other opiates (such as fentanyl, methadone, and pethidine), and substances containing any quantity of such drugs as amphetamine, methamphetamine, methaqualone, amobarbital, pentobarbital, and secobarbital.

** Schedule 3 prescription drugs must have a potential for abuse less than those listed in schedules 1 and 2, have a currently accepted medical use in treatment in the United States, and their abuse must have the potential to lead to moderate or low physical dependence or high psychological dependence (MCL 333.7216). Schedule 3 includes any substance with any quantity of a derivative of barbituric acid and drugs containing limited quantities of codeine, opium, or morphine.

** Schedule 4 prescription drugs must have a low potential for abuse relative to those in schedule 3, have a currently accepted medical use in the United States, and their abuse must have the potential to lead only to limited physical or psychological dependence relative to schedule 3 drugs (MCL 333.7217). Schedule 4 includes such drugs as barbitol, chloral hydrate, lorazepam, meprobamate, diazepam (brand name Valium), and phenobarbital. Flunitrazepam/Rohypnol

(another so-called "date-rape" drug) is currently classified as a schedule 4 controlled substance (Public Act 319 of 1998).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have an indeterminate impact on state and local units of government, depending upon on how they affected the numbers of felony convictions, sentence types, and lengths of imprisonment for convicted offenders, and the collection of penal fine revenues (which are constitutionally dedicated to local libraries). (10-27-00)

ARGUMENTS:

For:

The use of GBL as a date-rape drug is potentially worse than the use of other so-called date-rape drugs like Rohypnol. While Rohypnol is not licensed for use in this country, it does at least have legitimate medically accepted uses and is produced as a medication. GBL is an industrial solvent and is not intended for human consumption, and thus the risk of harm to people who consume it (whether purposely or by someone else's hand) is far greater than it is with a more "legitimate" drug. The act needs to be amended so that the use of this substance as a means of incapacitating an intended rape victim can be prosecuted. Further, it makes sense to prohibit its manufacture, possession, use, or sale in other instances as well. At this time, and in all likelihood for the future, there is no legitimate use of this substance for human consumption. The bill provides exceptions for its legitimate commercial uses, but there is no good reason that anyone would be ingesting this compound or possessing any amount of it for ingestion.

Analyst: W. Flory

#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.