

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 241 CS Alcoholic Beverages
SPONSOR(S): Henriquez and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 794

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Business Regulation Committee</u>	<u>(W/D)</u>	<u></u>	<u></u>
3) <u>Justice Appropriations Committee</u>	<u>(W/D)</u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u>6 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

An alcohol vaporizing device allows users to inhale alcohol in the form of vapor. HB 241 makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A second conviction within 5 years is a third degree felony. A person who purchases or uses an alcohol vaporizing device shall be subject to a fine of \$250.

HB 241 creates s. 563.09, F.S. to provide that a licensee shall not conduct a malt beverage tasting except as provided in the section. A malt beverage tasting may be conducted:

- On the licensed premises of a vendor who is licensed to sell alcoholic beverages for consumption on the premises;
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store for malt beverages or a package store for malt, wine, and fortified wines (such as port or sherry) with a licensed premises consisting of at least 7,000 square feet of publicly accessible floor space; or
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store regardless of the amount of publicly accessible floor space.

The bill further provides that an importer, manufacturer, or distributor is prohibited from assisting, by any gifts or loans of money or property of any description or by the giving of any rebates of any kind, a vendor who is licensed to sell malt beverages under s. 563.02(1)(a), F.S., malt, wines, and fortified wines under s. 564.02(1)(a), F.S., or any alcoholic beverages regardless of alcoholic content under s. 565.02(1)(a), F.S., in the conduct of a malt beverage tasting and the vendor may not accept or receive such assistance.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill prohibits the use of an alcohol vaporizing device.

B. EFFECT OF PROPOSED CHANGES:

Alcohol vaporizing devices: An alcohol vaporizing device which is also known as an alcohol without liquor machine or AWOL allows users to inhale alcohol in the form of vapor. The device works by pouring an alcoholic spirit into a diffuser capsule in the alcohol vaporizing device. The alcohol is absorbed by oxygen bubbles, and the user inhales the alcohol vapor. Alcohol vaporizing devices are being marketed on the internet as a low calorie and hangover free way to consume alcohol. There does not appear to be any evidence supporting either of these claims. There are obviously health risks associated with consuming a large amount of alcohol in a short amount of time. There is currently no federal or state regulation of these devices.

HB 241 creates s. 562.61, F.S. which provides that no person shall purchase, sell, offer for sale, or use an alcohol vaporizing device. The bill makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A person who violates the provision by selling or offering for sale an alcohol vaporizing device after having been previously convicted of such offense within the past 5 years commits a third degree felony. A person who purchases or uses an alcohol vaporizing device shall be subject to a \$250 fine.

The term "alcohol vaporizing device" is defined as "any device, machine, or process which mixes spirits, liquor or other alcohol products with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation."

Malt beverage tastings:

The Beverage Law provides a three-tier system of alcoholic beverage regulation composed of manufacturers, distributors, and vendors. Manufacturers may only distribute and sell their products to distributors.¹ Distributors sell and distribute alcoholic beverages to vendors.² Vendors may only sell alcoholic beverages at retail.³ Manufacturers and distributors cannot be licensed as vendors, and vendors cannot be licensed as manufacturers or distributors.⁴ Section 561.221, F.S., provides an exception to vendors engaged in brewing malt beverages at a single location and in an amount which will not exceed 10,000 kegs (at 15.5 gallons per keg) per year.

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

Paragraph 561.42(12)(f), F.S., prohibits manufacturers or distributors of beer from conducting any sampling activities that include tasting of their product at a vendor's premises licensed for off-premises sales only. Paragraph 561.42(12)(g), F.S., also prohibits manufacturers and distributors of beer to engage in cooperative advertising with vendors.

¹ See s. 561.14(1), F.S.

² See s. 561.14(2), F.S.

³ See s. 561.14(3), F.S.

⁴ See s. 561.22, F.S.

Current law does not prohibit vendors from conducting beverage tastings on their licensed premises, provided that the tastings are not conducted with the assistance of manufacturers or distributors or otherwise violate s. 561.42, F.S. Current law provides exceptions for wine and spirituous beverages that permit distributors to conduct tastings at a vendor's licensed premises.

Section 564.08, F.S., authorizes licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S. The wine tasting must be limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., provides that licensed distributors of spirituous beverages and vendors are authorized to conduct spirituous beverage tastings in any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S. The spirituous beverage tasting must be limited to, and directed toward, the general public of the age of legal consumption.

Neither of these exceptions allow *manufacturers* to conduct wine or spirituous beverage tastings.

HB 241 creates s. 563.09, F.S. relating to malt beverage tastings to provide that a licensee shall not conduct a malt beverage tasting except as provided in the section. A malt beverage tasting may be conducted:

- On the licensed premises of a vendor who is licensed to sell alcoholic beverages for consumption on the premises:
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store for malt beverages or a package store for malt, wine, and fortified wines (such as port or sherry) with a licensed premises consisting of at least 7,000 square feet of publicly accessible floor space; or
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store regardless of the amount of publicly accessible floor space.

The bill further provides that an importer, manufacturer, or distributor is prohibited from assisting, by any gifts or loans of money or property of any description or by the giving of any rebates of any kind, a vendor who is licensed to sell malt beverages under s. 563.02(1)(a), F.S., malt, wines, and fortified wines under s. 564.02(1)(a), F.S., or any alcoholic beverages regardless of alcoholic content under s. 565.02(1)(a), F.S., in the conduct of a malt beverage tasting and the vendor may not accept or receive such assistance.

C. SECTION DIRECTORY:

Section 1. Creates s. 562.61, F.S. relating to alcohol vaporizing devices.

Section 2. Creates s. 563.09, F.S. relating to malt beverage tastings.

Section 3. Provides effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On February 22, 2005, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would prohibit a business from selling or purchasing alcohol vaporizing devices.

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted an amendment to clarify that it will be a first degree misdemeanor to sell an alcohol vaporizing device. As written, the original bill appeared to apply only to offering to sell a device and not to actually selling a device.

The Justice Council adopted an amendment permitting malt beverage tastings as described in the above analysis.