

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.)

Prepared By: Health Care Committee

BILL: CS/SB 794

SPONSOR: Regulated Industries Committee and Senator Haridopolos

SUBJECT: Alcoholic Beverages

DATE: April 18, 2005

REVISED: 04/20/05

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | Munroe | Wilson | HE | Fav/2 amendments |
| 3. | | | CJ | |
| 4. | | | JA | |
| 5. | | | | |
| 6. | | | | |

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The committee substitute (CS) prohibits the purchase, sale, offering for sale, or use of alcohol-vaporizing devices that mix alcoholic beverages with pure oxygen or other gas to produce a vaporized product for consumption by inhalation.

The CS provides that selling or offering for sale an alcohol-vaporizing device constitutes a first-degree misdemeanor. A violation within five years of a previous conviction would be a third-degree felony. Purchasing or using an alcohol-vaporizing device would result in a \$250 fine.

The CS permits licensees to conduct malt beverage tasting within the interior structures of licensed premises if the tastings are limited to and directed towards the general public. Vendors selling beer, malt beverages, wines, and fortified wines for off premises consumption and operating a place of business with less than 5,000 square feet of floor space would not be able to conduct these tastings.

This bill creates sections 562.61 and 563.09, Florida Statutes.

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (department) is the agency authorized to enforce the provisions of the Beverage Law in chs. 561, 562, 563, 564, 565, 567, and 568, F.S. Chapter 563, F.S., relates to malt beverages. Section 563.01, F.S., defines the terms "beer" and "malt beverage" to mean all brewed beverages containing malt.

It is unlawful to sell alcoholic beverages without a license issued by the division, or to sell alcoholic beverages in a manner not permitted under the Beverage Law or the license held.¹

Section 561.01(4)(a), F.S., defines the term "alcoholic beverages" to mean "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume."

Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

Alcohol-vaporizing Devices

The alcohol-vaporizing devices mix alcoholic beverages with oxygen to create a mixture that can be inhaled. According to recent media reports, vaporized alcoholic beverages have a greater intoxicating effect because the alcohol is directly absorbed into the blood stream and bypasses the stomach and liver. According to medical and scientific experts interviewed by the press, alcohol-vaporizing devices may cause brain or lung damage because the alcohol goes directly to the brain or lungs without being filtered by the liver, and the effect on the brain or lungs could be many times greater than if the alcoholic beverage had been drunk.²

Recent media reports, have noted the increased popularity of such devices and their ready availability to the public in alcoholic beverage licensed premises and for personal use. The devices are available for purchase over the Internet. Alcohol-vaporizing devices are available for purchase on the Internet auction site Ebay, where the devices may be purchased directly without bidding for \$299.³

Scope of Licensure

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.⁴ Distributors sell and distribute alcoholic beverages to vendors.⁵

¹ See s. 562.12, F.S.

² See Joel Currier, "States take sober view of alcohol vapor devices," *St. Louis Post-Dispatch*, February 21, 2005, page A01; and Carol Emert, "New inhaler sends the booze straight to the brain," *San Francisco Chronicle*, September 30, 2004, page F5.

³ See <www.ebay.com> and search for "alcohol vaporizer." Internet site last visited and searched on March 18, 2005.

⁴ See s. 561.14(1), F.S.

⁵ See s. 561.14(2), F.S.

Vendors may only sell alcoholic beverages at retail.⁶ Manufacturers and distributors cannot be licensed as vendors, and vendors cannot be licensed as manufacturers or distributors.⁷ 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 561.221(2), F.S., provides that:

[t]he division is authorized to issue vendor's licenses to a manufacturer of malt beverages, even if such manufacturer is also licensed as a distributor, for the sale of alcoholic beverages on property consisting of a single complex, which property shall include a brewery and such other structures which promote the brewery and the tourist industry of the state. However, such property may be divided by no more than one public street or highway.

Tied House Evil

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. Specifically, s. 561.42(1), F.S., provides:

No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist 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. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

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.

Alcoholic Beverages Tastings

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.

⁶ See s. 561.14(3), F.S.

⁷ See s. 561.22, F.S.

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.

III. Effect of Proposed Changes:

Section 1. Creates s. 562.61, F.S., to prohibit the purchase, sale, offering for sale, or use of an alcohol-vaporizing device. The bill defines an alcohol-vaporizing device as any device, machine, or process that mixes spirits, liquor, or other alcohol products with pure oxygen or other gas to produce a vaporized product for consumption by inhalation.

The bill provides that selling or offering for sale an alcohol-vaporizing device constitutes a first-degree misdemeanor punishable by the imposition of a fine of up to \$1,000 and jail time of up to 1 year. A violation within five years of a previous conviction would be a third-degree felony punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Purchasing or using an alcohol-vaporizing device would result in a \$250 fine.

Section 2. Creates s. 563.09, F.S., to permit licensees to conduct malt beverage tasting within the interior structures of licensed premises if the tastings are limited to and directed towards the general public. The bill provides that this section does not apply to a licensee subject to the license tax under paragraph 563.02(1)(a), F.S., or paragraph 564.02(1)(a), F.S., operating a place of business with less than 5,000 square feet of floor space.⁸

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution..

⁸ Sections 563.02(1)(a) and 564.02(1)(a), F.S., provide the applicable amount of the license fee for licensees authorized to sell malt beverages and wine, respectively, for consumption off the licensed premises.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The effect of the malt beverage tastings provision is not clear. The bill authorizes licensees to conduct malt beverage tastings. The Beverage Law does not define the term “licensee,” but the term could be construed to include manufacturers, distributors, and vendors. If the term is intended to include manufacturers and distributors, malt beverage tastings conducted by manufacturers and distributors on the licensed premises of vendors would contradict the specific prohibition in paragraph 561.42(12)(f), F.S. If this is the intent of the bill, paragraph 561.42(12)(f), F.S., should be repealed to remove the contradictory provision. If the term includes manufacturers and distributors, manufacturers and distributors would also be permitted to conduct malt beverage tastings on their licensed premises.

VII. Related Issues:

The bill creates a criminal offense which prohibits the purchase, sale, offering for sale, or use of an alcohol-vaporizing device. An alcohol-vaporizing device is defined to mean “any device, machine, or process that 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.” Licensed health care practitioners may prescribe or administer bronchodilators and inhaled steroids. Such medicines contain trace amounts of alcohol.⁹ The bill does not provide an exception to the prohibition for the administration or prescription of other alcohol products by a health care practitioner duly licensed under the laws of Florida or another state.

⁹ See e.g., Aerobid®-M(flunisolide) an anti-inflammatory steroid which administered via an inhaler system, Physician’s Desk Reference, 59th Edition (2005), Montvale, NJ, at pages 1266-1269.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 183484 by Health Care:

The amendment provides that criminal offenses applicable to alcohol-vaporizing devices do not apply to the administration or prescription of alcohol-containing products by a health care practitioner licensed in Florida or another state.

Barcode 725518 by Health Care:

The amendment revises requirements in the bill that allow malt beverage tastings to limit them to:

- 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.

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.

The amendment has a statutory reference to “s. 563.021(1)(a), F.S.,” which needs to be corrected to “s. 563.02(1)(a), F.S.”