

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4109 Adulterated Syrup
SPONSOR(S): Trujillo
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Krol	Cunningham
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 865.07, F.S., makes it a second degree misdemeanor to sell or advertise for sale any adulterated or mixed syrups unless the percentage of such adulteration or mixture is clearly marked. The statute has not been amended in a substantive way since its creation in 1903.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.

The bill repeals s. 865.07, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Current law provides protection to consumers against misbranding of food¹ in ch. 500, F.S. Section 500.11(1), F.S., provides that a food is misbranded if:

- Its labeling is false or misleading in any particular.
- It is offered for sale under the name of another food.
- It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated.
- Its container is so made, formed, or filled as to be misleading.
- In package form, unless it bears a label containing:
 - The name and place of business of the manufacturer, packer, or distributor;
 - An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under this subparagraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department.

Section 500.12(1)(a)4., F.S., provides that a food permit² is not needed by any person who sells sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. However, the statute still requires that such bottles contain:

- A label listing the producer's name and street address,
- All added ingredients,
- The net weight or volume of product, and
- A statement that reads, "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

Any person who violates the above provisions may have his or her food permit suspended³ or revoked, and may have a fine of up to \$5,000 imposed by the Department of Agriculture and Consumer Services.

Section 865.07, F.S., was created in 1903.⁴ The statute makes it a second degree misdemeanor⁵ for any person to sell, offer for sale, or advertise for sale any adulterated or mixed syrups whatever, unless the percentage of such adulteration or mixture and the name and post office address of the manufacturer is clearly stamped or labeled on the barrel, can, case, bottle, or other receptacle containing such syrup or mixture.

Section 865.07, F.S., defines "adulterated mixture" or "admixture," as "all mixtures of two or more ingredients differing in their nature and quality, such as sugarcane syrup, sorghum syrup, maple syrup, molasses, or glucose."

¹ Section 500.03(1)(I), F.S., defines "food" as "articles used for food or drink for human consumption; chewing gum; articles used for components of any such article; and articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims."

² See s. 500.12, F.S.

³ Section 500.12(4)(a), F.S.

⁴ Sections 1, 2, 3, ch. 5231, 1903; GS 3706; RGS 5657; CGL 7860.

⁵ A second degree misdemeanor is punishable by up to 60 days imprisonment and a \$500 fine. Sections 775.082 and 775.083, F.S.

Section 865.07, F.S., has not been amended in a substantive way since its creation. It was amended in 1971⁶ to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a \$1,000 fine.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.⁷

The Effect of the Bill

The bill repeals s. 865.07, F.S. Persons who sell or advertise for sale any adulterated or mixed syrups without the percentage of such adulteration or mixture clearly marked would likely still be able to be penalized pursuant to ss. 500.11 and 500.12, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 865.07, F.S., relating adulterated syrup.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

⁶ Section 1119, ch. 71-136, L.O.F.

⁷ E-mail from Lynn Dodson with the Florida Department of Law Enforcement. November 30, 2011. (On file with Criminal Justice Subcommittee staff).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES