

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 49 Retail Sale of Smoking Devices

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Rouson and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Jones	Cunningham
2) Business & Professional Regulation Subcommittee	11 Y, 0 N	Livingston	Luczynski
3) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Jones Darity
4) Judiciary Committee	18 Y, 0 N, As CS	Jones	Havlicak

SUMMARY ANALYSIS

Currently, it is a first degree misdemeanor, with an exception, for any person to offer for sale at retail, the following smoking pipes and smoking devices (which are also included in the definition of "drug paraphernalia" in s. 893.145, F.S.):

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens or punctured metal bowls;
- Water pipes;
- Carburetion tubes and devices;
- Chamber pipes;
- Carburetor pipes;
- Electric pipes;
- Air-driven pipes;
- Chillums; Bongos; and
- Ice pipes or chillers.

An exception currently allows retail tobacco product dealers to sell the listed smoking pipes and devices if they:

- Derive at least 75 percent of its annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derive no more than 25 percent of its annual gross revenues from the retail sale of the smoking pipes and smoking devices listed above.

The bill removes the exception that allows retail tobacco products dealers to sell the smoking devices listed above so long as their gross revenues meet the above-described criteria. As a result, all persons, including all retail tobacco products dealers, will be prohibited from selling such devices at retail, except for wooden pipes. The bill makes a second or subsequent violation of the statute a third degree felony.

The Criminal Justice Impact Conference met on February 27, 2013, and determined the bill had an indeterminate impact on state prison beds. However, since the penalty in the bill for a second or subsequent offense is an unranked third degree felony, the impact will likely be insignificant. The bill also authorizes the Division of Alcoholic Beverages and Tobacco to assess fines of up to \$1,000 against a tobacco dealer violating the drug paraphernalia statute. Since these fines are deposited into the General Revenue Fund, the bill may result in increased revenues (likely insignificant) to that fund.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Section 569.0073, F.S., makes it a first degree misdemeanor¹ for any person to offer for sale at retail the following smoking pipes and smoking devices:

- Metal wooden acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens or punctured metal bowls;
- Water pipes;
- Carburetion tubes and devices;
- Chamber pipes;
- Carburetor pipes;
- Electric pipes;
- Air-driven pipes;
- Chillums;
- Bongs; and
- Ice pipes or chillers.

The statute provides an exception that allows retail tobacco products dealers² to sell the above listed items if they:

- Derive at least 75 percent of their annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derive no more than 25 percent of their annual gross revenues from the retail sale of the smoking pipes and smoking devices listed above.³

Section 893.145, F.S., includes the above listed items in the definition of drug paraphernalia subject to civil forfeiture.

Retail tobacco product dealers are governed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation (Division).⁴ The Division is currently able to suspend or revoke the permit of a dealer if they violate any of the provisions in ch. 569, F.S.⁵

Effect of the Bill

The bill amends s. 569.0073, F.S., to remove the exception that allows retail tobacco products dealers to sell the smoking devices listed above so long as their gross revenues meet the above-described criteria. As a result, all persons, including all retail tobacco products dealers, will be prohibited from selling such devices at retail, except for wooden pipes. The bill makes a second or subsequent violation of the statute a third degree felony.⁶

The bill also amends s. 569.006, F.S., to specify that a violation of the drug paraphernalia⁷ statute (s. 893.147, F.S.),⁸ is cause for a retail tobacco product dealers' permit to be suspended or revoked. The

¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

² Section 569.002, F.S., defines "retail tobacco products dealer" as the holder of a retail tobacco products dealer permit.

³ Sections 569.0073(1)(b)1. and 2. and 893.145, F.S.

⁴ Section 569.003, F.S.

⁵ Section 569.006, F.S.

⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 893.145, F.S., defines the term "drug paraphernalia" as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893 or s. 877.111, F.S. The statute further lists items that are included in the definition.

section further authorizes the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to assess fines of up to \$1,000 against a dealer for each violation. Those fines are deposited into the General Revenue Fund.

B. SECTION DIRECTORY:

Section 1. Amends s. 569.0073, F.S., relating to retail sale of smoking pipes and smoking devices.

Section 2. Amends s. 569.006, F.S., relating to retail tobacco dealers; administrative penalties.

Section 3. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to assess fines of up to \$1,000 against a tobacco dealer violating the drug paraphernalia statute. Since these fines are deposited into the General Revenue Fund, the bill may result in increased revenues (likely insignificant) to that fund.

2. Expenditures:

The Criminal Justice Impact Conference met on February 27, 2013 and determined the bill had an indeterminate impact on state prison beds. The bill was subsequently amended, however the effect of the bill appears not to have changed. Since the penalty in the bill for a second or subsequent offense is an unranked third degree felony, the impact will likely be insignificant.

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 expands the application of s. 569.0073, F.S., violations of which are a first degree misdemeanor. As such, it may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private retailers who were legally selling the items under s. 569.0073, F.S., may see a loss of income since the bill makes retail sale of any of the items listed in 569.0073, F.S., a first degree misdemeanor.

D. FISCAL COMMENTS:

None.

⁸ Section 893.147, F.S. establishes the following five drug paraphernalia crimes: use or possession of drug paraphernalia; manufacture or delivery of drug paraphernalia; delivery of drug paraphernalia to a minor; transportation of drug paraphernalia; and advertisement of drug paraphernalia.

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.

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

On March 19, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorable as a committee substitute. The strike-all amendment:

- Removes the section of the bill relating to drug paraphernalia; and
- Removes the exception in s. 569.0073, F.S., that allows retail tobacco products dealers to sell the specified smoking devices.

On April 16, 2013, the Judiciary Committee adopted one amendment and reported the bill favorable as a committee substitute. The amendment removes wooden pipes from the list of smoking devices that the bill prohibits from sale.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.