

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 998

INTRODUCER: Regulated Industries Committee and Senator Margolis

SUBJECT: Alcoholic Beverages

DATE: March 27, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 998 prohibits the sale, purchase, use, or possession of powdered alcohol, defined in the bill as alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill prohibits licensed alcoholic beverage vendors from selling powdered alcohol.

The bill provides that a person who violates the prohibition on selling or offering to sell powdered alcohol commits a first degree misdemeanor, and a second violation within 5 years is a third degree felony.

A person who purchases, uses, offers for use, or possess powdered alcohol commits a noncriminal violation, punishable by a fine of \$250.

The bill provides an exception for the use of powdered alcohol for research purposes by specified entities.

The prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by or on behalf of a licensed manufacturer or a common carrier.

## II. Present Situation:

### Florida Beverage Law

Alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces the Beverage Law.<sup>3</sup>

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.

(b) The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.”

Section 561.01(5), F.S., defines the terms “intoxicating beverage” and “intoxicating liquor” to “mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume.”

Chapter 565, F.S., provides for the regulation of liquor. 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.”

Section 500.04(2), F.S., prohibits the adulteration or misbranding of any food.

Section 500.10(3), F.S., provides that food may be deemed adulterated if it is:

“...a confectionary that bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4 percent, harmless natural gum, and pectin; however, this subsection shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; to any confectionery by reason of its containing less than 0.5 percent by volume of alcohol derived solely from the use of flavoring extracts; or to any candy by reason of its containing more than 0.5 percent but less than 5 percent by volume of alcohol derived from any source, if such candy:

(a) Is not sold to persons under 21 years of age;

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<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

<sup>2</sup> *See* s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

- (b) Is labeled with the following statement written in conspicuous print on the principal display panel of the package, or if sold in individual units, in a conspicuous manner adjacent to the product: “This product may not be sold to anyone under 21 years of age”;
- (c) Is not sold in a form containing liquid alcohol so that it constitutes an alcoholic beverage under the Beverage Law; and
- (d) Is distributed directly to Florida consumers only from permanent facilities owned or controlled by the product's manufacturer, or from a vendor licensed pursuant to chapter 565, or from a vendor approved by the Department of Business and Professional Regulation consistent with rules adopted by such department establishing standards for such vendors.”

### **The Alcohol and Tobacco Tax and Trade Bureau**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is a bureau under the U.S. Department of Treasury. The TTB is responsible for assuring that alcohol and tobacco industry operators meet permit requirements; that alcohol beverage products comply with federal production, labeling, and marketing requirements; and for enforcing the tax code to ensure proper federal tax payment on alcohol, tobacco, firearms, and ammunition products. The TTB carries out these responsibilities by developing regulations, analyzing products, and ensuring tax and trade compliance with the Federal Alcohol Administration Act and the Internal Revenue Code. The TTB approved labels for several varieties of the powdered alcohol product “Palcohol” on March 10, 2015.<sup>4,5</sup>

### **Powdered Alcohol**

Powdered alcohol is alcohol that has been molecularly encapsulated in a starch or sugar. The product which, when combined with a liquid, produces an alcoholic beverage. A U.S. patent for the process was registered as early as 1974.<sup>6</sup>

It is not clear under the Beverage Law whether powdered alcohol may be considered an alcoholic beverage. According to the Department of Business and Professional Regulation, the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.<sup>7</sup> The TTB recognizes that powdered alcohol intended for beverage use falls within the jurisdiction of both the federal government and state governments.

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<sup>4</sup> Alcohol and Tobacco Tax and Trade Bureau Public COLA Registry, available at: <https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do> (last visited March 25, 2015). The Application for Certification of Label Approval for the aforementioned Palcohol products is on file with the Senate Committee on Commerce and Tourism.

<sup>5</sup> According to labels for the product, Palcohol has 10 percent alcohol-by-volume when mixed with 6 ounces of water.

<sup>6</sup> General Foods Corporation, *Preparation of an Alcohol Containing Powder* (March 31, 1972) available at: <http://www.google.com/patents/US3795747> (last visited March 25, 2015).

<sup>7</sup> 2015 Department of Business and Professional Regulation Legislative Bill Analysis for HB 823/SB 998, (March 12, 2015) (on file with the Senate Regulated Industries Committee).

The states of Alaska, Louisiana, South Carolina, Vermont, and Virginia have banned the sale of powdered alcohol.<sup>8</sup> The states of Delaware and Michigan define powdered alcohol as an alcoholic beverage.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill creates s. 562.63(1), F.S., to define the term “powdered alcohol” to mean alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill creates s. 562.63(2), F.S., to prohibit the sale, offering for sale, purchase, use, offering for use, or possession of powdered alcohol.

The bill creates s. 562.63(3), F.S., to prohibit alcoholic beverage vendors licensed under s. 565.02(1)(a)-(f), F.S.,<sup>10</sup> from selling or offering for sale powdered alcohol as an alcoholic beverage.

The bill creates s. 562.63(4)(a), F.S., to provide that a person who violates the prohibition in this section by selling or offering to sell powdered alcohol commits a misdemeanor of the first degree, which is punishable by a term of imprisonment not to exceed 1 year or a fine not to exceed \$1,000. The bill provides that a second violation within 5 years is a felony of the third degree, which is punishable by a term of imprisonment not to exceed 5 years, or a fine not to exceed \$5,000. A person who violates the prohibition within 5 years of a first offense may also be treated as a habitual offender, which, in the case of a felony of the third degree, may result in a term of imprisonment not to exceed 10 years.

The bill creates s. 562.63(4)(b), F.S., to provide that a person who violates the prohibition in this section by purchasing, using, offering for use, or possessing powdered alcohol commits a noncriminal violation, punishable by a fine of \$250.

The bill creates s. 562.63(5), F.S., to provide an exception for the use of powdered alcohol for research purposes by health care providers that primarily conduct scientific research, state institutions, state universities, private colleges and universities, and pharmaceutical or biotechnology companies.

The bill creates s. 562.63(6), F.S., to provide that the prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

The bill provides an effective date of July 1, 2015.

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<sup>8</sup> See Morton, Heather, *Powdered Alcohol 2015 Legislation*, National Conference of State Legislatures (March 11, 2015) at <http://www.ncsl.org/research/financial-services-and-commerce/powdered-alcohol-2015-legislation/ct/df8216d7b7de6938c301e601e592f776eb0045dd9244348e1143cf5a1e963a3ae43cfdc60de6aeb2bc5403695afb7fbd8f4528943d913bb079480573998f6cb7.aspx> (last visited March 25, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Criminal Justice Impact Conference reported a positive, but insignificant, impact on prison costs for HB 1247, which is substantially similar.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In section 562.63(3), F.S., the bill prohibits a licensed beverage vendor from selling powdered alcohol *as an alcoholic beverage*, which could be read to imply that a licensed beverage vendor could sell powdered alcohol for reasons other than to be consumed as an alcoholic beverage. Section 562.63(2), F.S., however, prohibits the sale of powdered alcohol by “a person.” If the intent is to enact an outright ban on the sale of powdered alcohol by licensed vendors, the phrase “as an alcoholic beverage” could be removed.

The bill permits an exception for research purposes for certain entities including “state institutions,” which are not defined. The phrase would therefore be subject to interpretation.

**VIII. Statutes Affected:**

This bill creates section 562.63 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on March 18, 2015:**

The CS creates s. 562.63(6), F.S., to provide that the prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

- B. **Amendments:**

None.