

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1247 Alcoholic Beverages

**SPONSOR(S):** Regulatory Affairs Committee; Appropriations Committee; Avila and Berman

**TIED BILLS:** **IDEN./SIM. BILLS:** HB 823, CS/CS/SB 998

| REFERENCE                              | ACTION              | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|---------------------|-----------|--|
| 1) Business & Professions Subcommittee | 10 Y, 3 N           | Butler    | Luczynski                                |
| 2) Appropriations Committee            | 25 Y, 1 N, As<br>CS | McAuliffe | Leznoff                                  |
| 3) Regulatory Affairs Committee        | 15 Y, 1 N, As<br>CS | Butler    | Hamon                                    |

### SUMMARY ANALYSIS

Powdered alcohol is a product containing alcohol in a powdered form intended for human consumption, usually after being mixed with water to create an alcoholic drink.

The bill prohibits the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume.

The bill provides that a person who violates this prohibition by selling powdered alcohol commits a misdemeanor of the first degree. The bill provides that a second violation within five years is a felony of the third degree. A person who violates the prohibition within five years of a first offense may also be treated as a habitual offender, which may result in a term of imprisonment not to exceed 10 years.

The bill provides that health care providers that operate primarily for the purpose of conducting scientific research, state institutions, state universities, private colleges or universities, or pharmaceutical or biotechnology companies may use powdered alcohol for research purposes.

The bill provides that possession of powdered alcohol solely for the purpose of transportation through the state by a licensed manufacturer or by a common carrier on the manufacturer's behalf, is not prohibited.

The bill provides that a manufacturer licensed under the Beverage Law is not prohibited from the manufacture powdered alcohol for distribution and sale outside of the state.

The bill provides that the prohibition on the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume will be repealed on July 1, 2016, unless the Legislature reenacts the law.

The Criminal Justice Impact Conference (CJIC) met March 27, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the state's prison bed population by less than 10 inmates annually.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.<sup>1</sup>

The term "alcoholic beverages" is defined by s. 561.01(4)(a), F.S., to mean "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume" and that the percentage of alcohol by volume is determined by comparing the volume of ethyl alcohol with all other ingredients in the beverage.

The terms "intoxicating beverage" and "intoxicating liquor" are defined by s. 561.01(5), F.S., to "mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume."

Liquor and distilled spirits are regulated specifically by ch. 565, F.S. The terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" by s. 565.01, F.S., 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.

##### **Powdered Alcohol**

Powdered alcohol is a product which, when combined with a liquid, produces an alcoholic beverage. The Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury have approved labels for the sale of the powdered alcohol product Palcohol on March 10, 2015.<sup>2</sup> The manufacturer of Palcohol has indicated that the alcohol produced from a single product is equivalent to the amount of alcohol in a mixed drink.<sup>3</sup> The manufacturer of this product does not indicate the actual percentage by volume of alcohol in the six ounces of liquid that are mixed with the powdered alcohol.

It is not clear whether powdered alcohol may be considered an alcoholic beverage under the Beverage Law. According to the Department, while there is no regulation of "distilled spirits in powdered form"<sup>4</sup> the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.<sup>5</sup>

The states of Alaska, Louisiana, South Carolina, Utah, Vermont, and Virginia have banned the sale of powdered alcohol.<sup>6</sup> The states of Delaware and Michigan define powdered alcohol as an alcoholic beverage.<sup>7</sup>

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<sup>1</sup> s. 561.02, F.S.

<sup>2</sup> Candice Choi, *Powdered Alcohol Gets Federal Agency's Approval*, ABC NEWS (Mar. 11, 2015), <http://abcnews.go.com/Health/wireStory/powdered-alcohol-federal-agencys-approval-29552087>; PALCOHOL, <http://www.palcohol.com/home.html> (last visited Mar. 19, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2015 House Bill 823/Senate Bill 998, p. 2 (Mar. 12, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> See Heather Morton, *Powdered Alcohol 2015 Legislation*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Apr. 10, 2015), <http://www.ncsl.org/research/financial-services-and-commerce/powdered-alcohol-2015-legislation.aspx>.

<sup>7</sup> *Id.*

## **Effect of Proposed Changes**

The bill creates s. 562.62(1), F.S., to prohibit a person from selling an alcoholic beverage that is intended for human consumption and sold in a powdered form, or that contains more than 76 percent alcohol by volume.

The bill creates s. 562.62(2), F.S., to provide that a person who violates the prohibition in subsection (1) by selling powdered alcohol commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>8</sup> The bill provides that a second violation within five years is a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s.775.084, F.S.<sup>9</sup>

The bill creates s. 562.62(3), F.S., to provide the following entities are not prohibited from using powdered alcohol for research purposes:

- Health care provider that operates primarily for the purpose of conducting scientific research;
- State institutions;
- State universities, private colleges or universities; or
- Pharmaceutical or biotechnology companies.

The bill creates s. 562.62(4), F.S., to provide that s. 562.62, F.S., does not apply to the possession of powdered alcohol solely for the purpose of transportation through this state by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

The bill creates s. 562.62(5), F.S., to provide that manufacturer licensed under the Beverage Law is not prohibited from manufacturing powdered alcohol in this state for distribution and sale outside of the state.

The bill provides that the prohibition on the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume will be repealed on July 1, 2016, unless the Legislature reenacts the law.

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

### **B. SECTION DIRECTORY:**

**Section 1** creates s. 562.62, F.S., creating a prohibition and limited exceptions related to powdered alcohol.

**Section 2** provides an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

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<sup>8</sup> s. 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and s. 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

<sup>9</sup> s. 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years, s. 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000, s. 775.084, F.S., provides increased penalties for habitual offenders, and s. 775.084(4)(a), F.S., provides that a habitual felony offender may be sentenced, in the case of a felony of the third degree, for a term of years not exceeding 10.

The Criminal Justice Impact Conference (CJIC) met March 27, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the state's prison bed population by less than 10 inmates annually.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Owners of powdered alcohol products may not sell them in Florida. These products have only recently been approved for sale, and the market for such products is unknown. This should not affect the current sales of any private business, but will prevent the sales of a business that may have otherwise been planning to sell powdered alcohol.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 7, 2015, the Appropriations Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment provides that the prohibition on the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume will be repealed on July 1, 2016, unless the Legislature reenacts the law.

On April 14, 2015, the Regulatory Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The adopted amendment made the following changes:

- Clarify that several entities are not prohibited from using powdered alcohol for research purposes;
- Provide that a licensed manufacturer, or a common carrier on behalf of the manufacturer, is not prohibited from transporting powdered alcohol through the state;
- Provide that a licensed manufacturer is not prohibited from manufacturing powdered alcohol in this state for distribution and sale outside of the state.

The staff analysis is drafted to reflect the committee substitute.