

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: SB 1154

INTRODUCER: Senator Haridopolos

SUBJECT: Alcoholic Beverages

DATE: February 27, 2006

REVISED: 03/08/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/1 amendment
2.	Munroe	Wilson	HE	Fav/1 amendment
3.			CJ	
4.				
5.				
6.				

Please see last section for Summary of Amendments

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Technical amendments were recommended

☐

Amendments were recommended

☒

Significant amendments were recommended

I. Summary:

The bill prohibits the purchase, sale, offering for sale, or use of alcohol-vaporizing devices that mix alcoholic beverages 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. It provides that 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.

This bill creates section 562.61, Florida Statutes.

II. Present Situation:

Florida Beverage Law

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

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.³ A manufacturer of alcohol vaporizing devices sells the device for \$299.⁴

According to the National Conference of State Legislatures, 14 states were considering bans on alcohol vaporizing devices or products during 2005.⁵ Seven states have passed legislation banning these devices or products. These include the states of Arizona,⁶ Maine,⁷ Tennessee,⁸ Colorado,⁹ Michigan,¹⁰ Nevada,¹¹ and Kansas.¹² Georgia provides a driving offense for persons who are impaired by alcohol, drugs, or toxic vapor.¹³

¹ See s. 562.12, F.S.

² See Kathleen Burge, “Machine makes it easy to inhale hard liquor,” *The Boston Globe*, January 25, 2006, page B1; 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 January 27, 2006.

⁴ See www.awolmachine.com. Internet site last visited and searched on January 27, 2006.

⁵ *Maine Bill Would Ban Machine that Vaporizes Alcohol*, NCSL Substance Abuse Snapshot, National Conference of State Legislatures, April 18, 2005 (<http://www.ncsl.org/programs/health/apr18.htm>, last visited February 1, 2006).

⁶ Article 3, s. 4-244, *Ariz. Rev. Stat. Ann.* (2005).

⁷ Chapter 83, s. 2088, *Maine Rev. Stat. Ann.* (2005).

⁸ Chapter 4, pt. 2, s. 57-4-205, *West’s Tenn. Code Ann.* (2005).

⁹ Article 47, pt. 9, s. 12-47-902.5, *West’s Colo. Rev. Stat. Ann.* (2005).

¹⁰ Section 436.1105 and s. 436.1914, *Mich. Compiled Laws Ann.* (2005).

U. S. Representative Robert Beauprez (R-CO.) has filed a bill, H.R. 613, the “Alcohol Without Liquid Machine Safety Act of 2005,” in the U.S. Congress to prohibit the introduction, or delivery for introduction, of any alcohol without liquid machines unless premarket approval is given by the U.S. Commissioner of the Food and Drug Administration. The approval is based upon the Commissioner’s determination that the machines are safe. The bill was introduced February 8, 2005, and was referred to the Subcommittee on Commerce, Trade and Consumer Protection of the House Committee on Energy and Commerce. Action has not been taken on the bill.¹⁴

III. Effect of Proposed Changes:

The bill 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 one year. A violation within five years of a previous conviction would be a third-degree felony punishable by the imposition of a fine of up to \$5,000 and prison time of up to five years 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.

The bill would take effect July 1, 2006.

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 Art. VII, s. 18 of the Florida Constitution.

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 Art. III, Subsection 19(f) of the Florida Constitution.

¹¹ Nevada, Ch. No. 352, 73rd Regular Session, 2005.

¹² Senate Bill 298, s. 15, 2005 Regular Session.

¹³ Section 40-6-391, Ga. Code Ann. (2005).

¹⁴ See < <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00613:@@L&summ2=m&> > (last visited February 24, 2006).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill creates a criminal offense for selling or offering for sale an alcohol-vaporizing device. The initial violation for selling or offering for sale an alcohol-vaporizing device constitutes a first-degree misdemeanor. The bill provides that a violation within five years of a previous conviction would be a third-degree felony. Consequently, the bill could have an impact on the courts, county jails and state prison system. Pursuant to s. 921.002(4)(b), F.S., the Criminal Justice Estimating Conference is charged with reviewing the potential impact of newly created crimes on the state prison system. As of February 24, 2006, the Conference has not reviewed this bill's prison bed impact. Staff anticipates that the Conference will conclude that this bill's impact will be insignificant.

VI. Technical Deficiencies:

The bill provides that any person who purchases or uses an alcohol-vaporizing device shall be subject to a fine of \$250. The bill should clarify that a person who does so commits a noncriminal violation with a fine of \$250.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 111180 by Regulated Industries:

The amendment provides an exception for the administration or prescription of alcohol-containing products by a health care practitioner licensed in Florida or another state.

Barcode 572794 by Health Care:

The amendment provides that any person who purchases or uses an alcohol vaporizing device commits a noncriminal violation with a fine of \$250.

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