

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 187 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Criminal & Civil Justice Policy Council; Finance & Tax Council; Rouson and others
TIED BILLS: IDEN./SIM. BILLS: SB 366

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Finance & Tax Council, 16 Y, 0 N, As CS, Aldridge, Langston. Row 2: Criminal & Civil Justice Policy Council, 14 Y, 0 N, As CS, Thomas, Havlicak.

SUMMARY ANALYSIS

Florida law currently defines drug paraphernalia and includes an element of intent whereby a court, jury, or other authority, must consider specific factors identified in statute when determining in a criminal case whether an object constitutes drug paraphernalia. In Florida, it is currently unlawful to:

- Use or possess drug paraphernalia to produce a controlled substance or introduce a controlled substance into the body.
Advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of such objects for use as drug paraphernalia.
Deliver, manufacture with intent to deliver, or possess with intent to deliver drug paraphernalia when it is known or reasonable to know that it will be used to produce a controlled substance or introduce a controlled substance into the body.
Use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia when it is known or reasonable to know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1, F.S.
Deliver drug paraphernalia to a minor when it is known or reasonable to know that it will be used to produce or introduce into the body a controlled substance.

The bill provides that it is a first degree misdemeanor for any person to offer for sale any of the smoking pipes and devices listed below unless the person:

- Has a retail tobacco products dealer permit under s. 569.003, F.S.; and
Derives at least 75 percent of its annual gross revenues from the sale of cigarettes, cigars and other tobacco products; or
Derives no more than 25 percent of its annual gross revenues from the sale of the following items:
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
Ice pipes or chillers

The bill has an effective date of July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Drug Paraphernalia

Federal Law

Federal law defines “drug paraphernalia” as any “equipment, product, or material of any kind which is primarily intended or designed for use in . . . injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful [Drug paraphernalia] includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, [etc.] into the body.”¹ This same section makes it illegal for any person to sell or offer for sale drug paraphernalia.² It does not apply to any person authorized by local, state, or federal law to manufacture, possess, or distribute such items.³ It also does not apply to any item that is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.⁴

Florida Law

In Florida, the definition of “drug paraphernalia” also provides an example list of items that constitute drug paraphernalia.⁵ Florida law also similarly includes an element of intent whereby a court, jury, or other authority, must consider specific factors identified in statute when determining in a criminal case whether an object constitutes drug paraphernalia. Such factors include proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.⁶

¹ 21 U.S.C. § 863(d) (2002).

² 21 U.S.C. § 863(a) (2002).

³ 21 U.S.C. § 863(f) (2002).

⁴ See id.

⁵ See s. 893.145, F.S.

⁶ See s. 893.146, F.S.

In Florida, it is a first-degree misdemeanor to use or possess drug paraphernalia to produce a controlled substance or introduce a controlled substance into the body,⁷ or to advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of such objects for use as drug paraphernalia.⁸

It is a third-degree felony to deliver, manufacture with intent to deliver, or possess with intent to deliver drug paraphernalia when it is known or reasonable to know that it will be used to produce a controlled substance or introduce a controlled substance into the body.⁹ It is also a third-degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia when it is known or reasonable to know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1, F.S.¹⁰

It is a second-degree felony to deliver drug paraphernalia to a minor when it is known or reasonable to know that it will be used to produce or introduce into the body a controlled substance.¹¹

PROPOSED CHANGES

The bill creates s. 569.0073, F.S., which provides that it is unlawful for any person to offer for sale any of the smoking pipes and devices listed below unless the person:

- Has a retail tobacco products dealer permit under s. 569.003, F.S.; and
 - Derives at least 75 percent of its annual gross revenues from the sale of cigarettes, cigars and other tobacco products; or
 - Derives no more than 25 percent of its annual gross revenues from the sale of the following items:
 - 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
 - Ice pipes or chillers

Any person who violates s. 569.0073, F.S., is guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.¹²

B. SECTION DIRECTORY:

Section 1: Creates s. 569.0073, F.S., relating to smoking pipes and smoking devices.

Section 2: Provides an effective date of July 1, 2010.

⁷ See s. 893.147(1), F.S.

⁸ See s. 893.147(5), F.S.

⁹ See s. 893.147(2), F.S.

¹⁰ See s. 893.147(4), F.S.

¹¹ See s. 893.147 (3), F.S.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. See ss. 775.082 and 775.083, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill creates a 1st degree misdemeanor, which could impact county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill prohibits sales of certain items and will impact sellers of these items accordingly.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 11, 2010, the Finance & Tax Council adopted a strike-all amendment removing the surtax provision contained in the bill as filed. The amendment does the following:

- Provides that it is unlawful for any person to offer for sale specified smoking pipes and devices unless the person:
 - Has a retail tobacco products dealer permit under s. 569.003, F.S.

- Derives at least 75 percent of its annual gross revenues from the sale of cigarettes, cigars and other tobacco products.
 - Derives no more than 25 percent of its annual gross revenues from the sale of specified smoking pipes and devices.
- Provides that any person who violates the new law is guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.

On April 12, 2010, the Criminal & Civil Justice Policy Council adopted an amendment that clarified that it is unlawful for any person to offer for sale smoking pipes and devices unless the person:

- Has a retail tobacco products dealer permit under s. 569.003, F.S.; **and**
 - Derives at least 75 percent of its annual gross revenues from the sale of cigarettes, cigars and other tobacco products; **or**
 - Derives no more than 25 percent of its annual gross revenues from the sale of smoking pipes and devices.

The analysis has been updated to reflect the council substitute.