

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.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 998

INTRODUCER: Senator Margolis

SUBJECT: Alcoholic Beverages

DATE: March 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

I. Summary:

SB 998 prohibit the sale, offering for sale, purchase, use, offering for use, or possession of powdered alcohol. It defines 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 prohibits alcoholic beverage vendors who are licensed to sell distilled spirits from selling or offering for sale powdered alcohol as an alcoholic beverage.

The bill provides 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 one year or a fine not to exceed \$1,000. The bill provides that a second violation within five years is a felony of the third degree, which is punishable by a term of imprisonment not to exceed five years, or a fine not to exceed \$5,000. A person who violates the prohibition within five 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 provides that 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 health care providers that primarily conduct scientific research, state institutions, state universities, private colleges and universities, and pharmaceutical or biotechnology companies.

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

II. Present Situation:

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

Section 561.01(4)(a), F.S., defines the terms “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;

(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

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

² *See* s. 561.14, F.S.

³ Section 561.02, F.S.

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.

Powdered Alcohol

Powdered alcohol is a product which, when combined with a liquid, produced an alcoholic beverage. Recent reports indicate that the Alcohol and Tobacco Tax and Trade Bureau has approved labels for the the sale of the powdered alcohol product Palcohol on March 10, 2015.⁴ The manufacturer of Palcohol indicated that the alcohol produced “by adding six ounces of liquid to it, is equal to a standard mixed drink.”⁵ However, 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 under the Beverage Law whether powdered alcohol may be considered an alcoholic beverage. According to the department, while there is no regulation of “distilled spirits in powdered form”⁶ the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.⁷

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

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.

⁴ See Choi, Candice, “Powdered Alcohol Gets Federal Agency’s Approval,” *ABC News* (Mar. 11, 2015). A copy of the article is available at: <http://abcnews.go.com/Health/wireStory/powdered-alcohol-federal-agencys-approval-29552087> (last visited March 11, 2015); and the Internet site for Palcohol located at <http://www.palcohol.com/home.html> (last visited March 11, 2015).

⁵ *Id.*

⁶ 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).

⁷ *Id.* at page 1.

⁸ 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 14, 2015).

⁹ *Id.*

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.,¹⁰ 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, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹¹ 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.¹²

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 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ 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.

¹¹ Section 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. Section 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.

¹² Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000. Section 775.084, F.S., provides increased penalties for habitual offenders. Section 775.084(4)(a), 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impact of this bill has not been subject to an impact conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 562.63 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.