

Date of Hearing: June 8, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 819 (Huff) – As Amended March 15, 2016

SENATE VOTE: 39-0

SUBJECT: Powdered alcohol

SUMMARY: Prohibits the possession, manufacture, distribution, or sale of powdered alcohol. Furthermore, it requires the Department of Alcoholic Beverage Control (ABC) to revoke the license of any licensee who engages in any such activity. The bill makes the violation of these provisions punishable as an infraction. Specifically, **this bill:**

- 1) Prohibits ABC from issuing a license to manufacture, distribute, or sell powdered alcohol.
- 2) Defines “powdered alcohol” to mean an alcohol prepared or sold in a powder or crystalline form that is used for human consumption in that form or reconstituted as an alcoholic beverage when mixed with water or any other liquid.
- 3) Requires that ABC revoke or suspend any license if the licensee or the agent or employee of the licensee manufactures, distributes, or offers for retail sale powdered alcohol.
- 4) Prohibits the possession, purchase, sale, offer for sale, distribution, manufacture, or use of powdered alcohol.
- 5) Specifies that any person who sells, offers for sale, manufactures, or distributes powdered alcohol is guilty of an infraction that shall be punishable by a fine of not more than \$500.
- 6) Specifies that any person who possesses, purchases, or uses powdered alcohol is guilty of an infraction and subject to a fine of \$125.

EXISTING LAW:

- 1) Federal Law grants states the authority to establish alcoholic beverage laws and administrative structures to regulate the sale and distribution of alcoholic beverages.
- 2) Establishes the Alcoholic Beverage Control Act (Act) which contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by ABC.
- 3) Imposes regulations on the sale of alcoholic beverages and creates penalties for violations of those regulations.
- 4) Grants ABC exclusive authority to administer the provisions of the Act.
- 5) Establishes three types of alcoholic beverages for tax purposes, namely, distilled spirits, beer and wine.

6) Stipulates that any person who sells or offers for sale any vaporized form of alcohol produced by an alcohol vaporizing device shall be guilty of a misdemeanor punishable by a \$1,000 fine or imprisonment in a county jail for up to six months. Provides that any person who purchases or uses any vaporized form of alcohol produced by an alcohol vaporizing device is subject to a fine of \$250.

7) Prohibits the use in any advertisement of alcoholic beverages, of any subject matter, language or slogans addressed to and intended to encourage minors to drink alcoholic beverages.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Powdered alcohol: As the name suggests, powdered alcohol is powder that when mixed with water or any other liquid becomes an alcoholic beverage. Small amounts of liquid alcohol are enclosed in cyclodextrins, which are literally small rings of sugar. Once water or any other liquid is added the sugar dissolves and the alcohol is freed into the drink. Powdered alcohol gained media attention in the United States when in April 2014 the U.S. Alcohol and Tobacco Tax and Trade Bureau (TBB) approved labels for a product called Palcohol.

Proponents of powdered alcohol have touted its lightweight and its ease to transport as some of the benefits of powdered alcohol compared to liquid alcohol. The creator of Palcohol, has stated that powdered alcohol is ideal for such outdoor activities as hiking. The Palcohol website had previously touted additional benefits including that it would be easier to sneak powdered alcohol into sporting events and concerts and the ability to sprinkle powdered alcohol on food for “an extra kick.”

Critics of powdered alcohol argue that this type of product will be much easier to over consume, conceal and be acquired by minors. Critics point to the ability to add powdered alcohol to liquid alcohol to produce a greater concentration than intended. In addition, critics point to the ease in which people, including youths, could bring alcohol to places where it is banned; such as sporting events, movie theaters, parks, and schools.

Powdered Alcohol Authorization: Though the TBB approved the Palcohol labels in April of 2014, within two weeks the TBB issued a statement stating that the approval had been issued in error. However, in March 2015, the TBB again approved four powdered alcohol products with the brand name “Palcohol” for sale in the U.S.

Shortly after TBB approval, the U. S. Food and Drug Administration (FDA) responded to inaccurate reports that implied that the FDA had approved powdered alcohol as being safe. Rather, the FDA clarified that its role was to evaluate the nonalcoholic ingredients. Based on that evaluation, the FDA stated, “the use of ingredients in the proposed products was in compliance with FDA’s regulations. The agency notes that the ingredients used in the products are typical of ingredients found in many processed foods.” The FDA concluded that they had no legal basis to block their entry into the U.S. market.

However, individual states, not the TBB, are responsible for regulating the sale of alcohol and tobacco products at the retail level, including sales to minors. As of January 2016, twenty-seven

states have banned powdered alcohol outright. Two states, Maryland and Minnesota have a one-year temporary statutory ban. Three states, Colorado, Delaware, and New Mexico, have added powdered alcohol in their statutory definitions of alcohol so that the product can be regulated under existing alcohol regulations.

As of today, powdered alcohol is not being sold anywhere in the United States, though the Palcohol website does state that, “we will be working on getting the production facility up and running. It will take a while but hopefully it will be available soon.”

Powdered distilled spirits are already taxed in California in the same manner and to the same extent as other distilled spirits in Title 18 of the California Code of Regulations, Article 6, Classification of Particular Beverages, Regulation 2557.

Vaporized alcohol: Existing state law bans the sale or use of any vaporized form of alcohol produced by an alcohol vaporizing device. Vaporized alcohol is alcohol mixed with pure oxygen or another gas to produce a vaporized product that can be inhaled. To date, no notable enforcement cost can be attributed to the ban of this type of alcohol.

Purpose of the bill: According to the author, “the ease of this substance presents an array of potential health problems in California as it can be snorted, added to an energy drink, slipped to unknowing recipients, or even added to beverages already containing alcohol in an attempt to create a dangerously potent concoction.”

A 2013 study from the U.S. Centers for Disease Control (CDC) found that the societal costs for binge drinking are higher in California than in any other state: \$32 billion for one year of excessive alcoholic festivities. Problems caused by binge drinking include lost work productivity, poor health, crime, automobile accidents and property damage. The same study concluded that underage binge drinking cost California an additional \$3.5 billion. It is incumbent on each state to decide if this product should be sold in their borders.

The author further argues that, “because this new product can be easily sold and transferred, this is a prime product for abuse by children and teenagers. Alcohol-related harm to California youth can present itself in several ways including death, injuries, assaults, sexual violence, unsafe sex, suicide attempts, and academic problems. Permitting the sale of powdered alcohol in California sends the wrong message to youth and young adults about responsible drinking.”

Related legislation: AB 819 (Irwin) of 2016. Prohibits the purchase, sale, offer for sale, distribution, manufacture, possession, or use of powdered alcohol. Prohibits ABC from issuing a license to manufacture, distribute, or sell powdered alcohol, as defined, and would require ABC to revoke the license of any licensee who manufactures, distributes, or sells powdered alcohol. (Pending in Senate Governmental Organization Committee)

Prior legislation: SB 39 (Padilla), Chapter 140, Statutes of 2011. Prohibited the importation, production, manufacture, distribution, or sale of beer to which caffeine has been directly added as a separate ingredient at retail locations in California, as defined.

AB 1598 (Beall, 2010). Would have prohibited the sale, production, importation, manufacture or distribution of a caffeinated malted beverage, as defined. (Failed passage in Assembly Governmental Organization Committee)

AB 346 (Beall), Chapter 624, Statutes of 2008). Required that any container of beer or alcoholic beverage that derives 0.5% or more of its alcoholic content by volume from flavors or other ingredients containing distilled alcohol and that is sold by a manufacturer or importer to a wholesaler or retailer within this state to bear a label or a firmly affixed sticker that includes specified information regarding its alcohol content and its status as an alcoholic beverage.

AB 273 (Baca), Chapter 29, Statutes of 2006. Prohibits the sale, purchase, and use of any vaporized form of alcohol produced by an alcohol vaporizing device, as defined.

AB 1657 (Chan, 2004). Would have limited the sale of any prepackaged alcoholic beverage product made with a “gelatin” base to businesses that prohibit the presence of persons under the age of 21. (Failed passage in Senate Governmental Organization Committee)

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Board of Supervisors
Alcohol Justice
American Nurses Association, California
Association of California Healthcare Districts
California Academy of Family Physicians
California Alcohol Policy Alliance
California Alcohol Policy Alliance
California Association of Driving Under the Influence Treatment Programs
California Beer and Beverage Distributors
California College and University Police Chiefs Association
California Council on Alcohol Problems
California District Attorneys Association
California Friday Night Live Partnership
California Public Health Association-North
California State PTA
California State Sheriffs Association
Children’s Hospital Los Angeles, Division of Adolescent and Young Adult Medicine
Children’s Hospital Los Angeles, Substance Abuse Prevention & Treatment Program
City of El Cajon City Council
City of Hayward
City of Los Angeles City Council
Consumer Federation of California
Contra Costa County Board of Supervisors
County Behavioral Health Directors Association
County Health Executives Association of California
County of El Dorado Board of Supervisors
Eden Youth and Family Center
Health Officers Association of California
Institute for Public Strategies
Janus of Santa Cruz
John McMahon, Sheriff-Coroner, San Bernardino County

Los Angeles County Sheriff's Office
Los Angeles Drug and Alcohol Policy Alliance
Lutheran Office of Public Policy
McGeorge Legislative and Public Policy Clinic
National Association of Social Workers, California Chapter
National Council on Alcoholism and Drug Dependence of the San Fernando Valley
Partnership for a Positive Pomona
Pueblo Y Salud, Inc.
Saving Lives Coalition
SHIELDS For Families
Social Model Recovery Systems
Sonoma County Board of Supervisors
The Wall Las Memorias Project
Ventura County Board of Supervisors
Youth Leadership Institute
Numerous Individual Letters from Public

Opposition

None on file

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