

Date of Hearing: April 6, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1554 (Irwin) – As Introduced January 4, 2016

SUBJECT: Powdered alcohol

SUMMARY: Prohibits the Department of Alcoholic Beverage Control (ABC) from issuing a license to manufacture, distribute, or sell powdered alcohol, as defined, and would require the department to revoke the license of any licensee who manufactures, distributes, or sells powdered alcohol, as specified. Would also prohibit the purchase, sale, offer for sale, distribution, manufacture, possession, or use of powdered alcohol. Specifically, **this bill:**

- 1) Defines “Powdered alcohol” as 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. “Powdered alcohol” does not include “vaporized alcohol,” as defined.
- 2) Provides that a license shall not be issued to any applicant to authorize the manufacture, distribution, or retail sale of powdered alcohol.
- 3) Provides ABC shall 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) Specifies that a person shall not purchase, sell, offer for sale, manufacture, distribute, possess, or use powdered alcohol.
- 5) Provides 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 five hundred dollars (\$500).
- 6) Provides that any person who purchases, possesses, or uses powdered alcohol is guilty of an infraction and subject to a fine of one hundred twenty-five dollars (\$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: Unknown

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. Palcohol creator, Mark Phillips, 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.

Purpose of the bill: According to the author, more than 10,000 people die in California annually from excessive alcohol use and in 2006 excessive alcohol use cost California nearly \$32 billion. Concerns have been raised that powdered alcohol would add to these numbers. Health and safety concerns that have been associated with powdered alcohol include: low cost; easy youth access to the packets; similar size and shape of packets to nonalcoholic children's drink packets; potential mixing with a small amount of water to make a single very potent drink; mixing powdered alcohol with beer or alcopops; mixing powdered alcohol with energy drinks or other youth-oriented products; concealment by underage drinkers attending events/locations where alcohol is prohibited; ingestion of the product by snorting or eating; and easy theft.

The author states that powdered alcohol products manufactured in other countries, such as Subyou and Booz2Go, have been marketed squarely at teenagers with slogans emphasizing how cheap and inconspicuous the powdered products are. The original website of Palcohol boasted that powdered alcohol can be smuggled into concerts and sporting events, added to food, and even snorted to “get drunk almost instantly.” The site has since been updated and Palcohol reports that they have added enough volume to the powder that snorting would no longer be effective.

Proponents state that powdered alcohol is a dangerous alcohol product, and has great appeal to underage drinkers. California already suffers more alcohol-related harm than any other state. Currently, powdered alcohol is not available for sale in California. Supporters state that powdered alcohol usage will be dangerous, prone to abuse, and could cause overdoses. Therefore, the reason why more than two dozen states have permanently banned the consumption and selling of powdered alcohol products.

Proponents further state that California has protected children and adults from consuming dangerous forms of alcohol in the past. AB 273 (Baca), Chapter 29, Statutes of 2006, prohibited the sale, purchase, and use of any vaporized form of alcohol produced by an alcohol vaporizing device. In 2011, SB 39 (Padilla, Chapter 140) 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.

Proponents conclude that it is imperative for the safety of all of our children to define powdered alcohol in statute and prohibit the sale, distribution, manufacture, purchase, possession or use of powdered alcohol in California.

Related legislation: SB 819 (Huff) of 2016. Would prohibit ABC from issuing a license to manufacture, distribute, or sell powdered alcohol, as defined. (Pending in Senate Appropriations)

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

University of the Pacific, McGeorge School of Law, Legislative and Public Policy Clinic
(Sponsor)

Alcohol Justice

Alcohol Policy Panel of San Diego County

Association for Los Angeles Deputy Sheriffs

Association of California Healthcare Districts

California Association of Code Enforcement Officers

California Beer and Beverage Distributors

California College and University Police Chiefs Association

California District Attorneys Association

California Friday Night Live Partnership

California Narcotic Officers Association

California State Sheriffs' Association

Children's Hospital Los Angeles, Division of Adolescent and Young Adult Medicine

Children's Hospital Los Angeles, Substance Abuse Treatment and Prevention Program

City of El Cajon City Council

Consumer Federation of California
Contra Costa County Board of Supervisors
County Health Executives Association of California
El Dorado County Board of Supervisors
Health Officers Association of California
Institute for Public Strategies
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Lutheran Office of public Policy – California
Marin County Board of Supervisors
Pacific Clinics
Partnership for a Positive Pomona
Placer County Board of Supervisors
Pueblo Y Salud, Inc.
Riverside Sheriffs Association
Saving Lives Coalition
Social Model Recovery Systems
Sonoma County Board of Supervisors
Techniques for Effective Alcohol Management
The Wall Las Memorias Project
Ventura County Board of Supervisors
Women Against Gun Violence
Youth Leadership Institute

Opposition

None on file

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