

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 961 Malt Beverages
SPONSOR(S): Commerce Committee, Gruters and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1224

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|---------------------|---------|--|
| 1) Careers & Competition Subcommittee | 8 Y, 7 N | Willson | Anstead |
| 2) Commerce Committee | 23 Y, 3 N, As CS | Willson | Hamon |

SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Specifically, if a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

The bill amends s. 561.42(14), F.S., to provide that a vendors may accept glassware from a distributor, at no charge, subject to the following conditions:

- The distributor received the glassware at no direct or indirect charge from a malt beverage manufacturer, importer, brand owner or registrant of malt beverage, or any broker, sales agent, or sales person thereof.
- The glassware prominently and permanently advertises a brand name.
- The distributor does not give the vendor more than 10 cases per calendar year per licensed premises.
- The vendor does not sell the glassware or return it to a distributor for cash, credit, or replacement.
- Manufacturers and importers provide a no-charge invoices when glassware is given to a distributor.
- Records relating to the sale or gift of glassware between industry members be kept for three years and that copies be provided under certain circumstances.

The bill provides definitions as follows:

- A "case" means a box containing up to 24 pieces of glassware.
- "Glassware" means a glass container that holds up to 23 fluid ounces.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.
- “Distributors” are those licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.⁵
- “Vendors” are those licensed to sell alcoholic beverages at retail only and may not purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.

Three-Tier System and Tied House Evil

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁶

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁷ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.⁸ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁹

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 563.01, F.S.

⁵ s. 561.01(5), F.S.

⁶ s. 561.14, F.S.

⁷ s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁸ s. 561.22(1), F.S.

⁹ ss. 563.022(14) and 561.14(1), F.S.

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁰

Florida’s Tied House Evil Law¹¹ prohibits a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever.

A manufacturer or distributor is also prohibited from:

- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; or
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

However, the Tied House Evil Law authorizes a manufacturer, distributor, importer or registrant of malt beverage to sell expendable retailer advertising specialties (such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like), to a vendor at a price not less than the actual cost to the industry member who initially purchased them.¹²

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For violations of the Beverage Law where no penalty is provided, first-time offenses are guilty of a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S. authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed \$1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

Effect of the Bill

The bill amends s. 561.42(14), F.S., to provide that a vendor licensed to sell malt beverages for on-premises consumption may accept glassware from a distributor, at no charge, subject to the following conditions:

- The distributor received the glassware at no direct or indirect charge from a malt beverage manufacturer, importer, brand owner or registrant of malt beverage, or any broker, sales agent, or sales person thereof.
- The glassware prominently and permanently advertises a brand name.
- The distributor does not give the vendor more than 10 cases per calendar year per licensed premises.
- The vendor does not sell the glassware or return it to a distributor for cash, credit, or replacement.
- Manufacturers and importers provide a no-charge invoices when glassware is given to a distributor.
- Records relating to the sale or gift of glassware between industry members be kept for three years and that copies be provided under certain circumstances.

The bill provides definitions as follows:

¹⁰ See Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), <http://scholarship.law.unc.edu/nclr/vol88/iss6/6>.

¹¹ s. 561.42(1), F.S.

¹² s. 561.42(14), F.S.

- A “case” means a box containing up to 24 pieces of glassware.
- “Glassware” means a single-service glass container that holds up to 23 fluid ounces.

B. SECTION DIRECTORY:

Sections 1 Amends s. 561.42, F.S.; authorizing a distributor to give specified glassware to vendors; requiring specified glassware to bear certain branding; providing an annual limit on the amount of glassware that may be given by a distributor to a vendor; prohibiting a vendor from selling the glassware or returning it to the distributor; and requiring that certain invoices be used and certain records be kept.

Section 2 Provides an effective date.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Vendors who receive free glassware may save money on glassware purchases. Manufacturers who offer vendors free glassware may increase sales from the advertising on the glassware.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2018, the Commerce Committee adopted an amendment and reported the bill favorably as a committee substitute.

The amendment:

- Required manufacturers and importers to provide a no-charge invoice when glassware is given to a distributor.
- Reduced the number of glassware cases, from 15 to 10, a distributor may give to a vendor per calendar year per licensed premises.
- Required that certain records relating to the sale or gift of glassware between industry members be kept for three years and that copies be provided under certain circumstances.
- Removed a provision specifying that branded glassware is intended to be used only to serve the beer advertised on the glassware.
- Removed the provision stating that the substance of the bill is scheduled for repeal on June 30, 2021.

This analysis is drafted to the committee substitute.