

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 961	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SUBJECT/SHORT TITLE</b>	Beverage Law	101	Y's 13 N's
<b>SPONSOR(S):</b>	Commerce Committee; Gruters and others	<b>GOVERNOR'S ACTION:</b>	Approved
<b>COMPANION BILLS:</b>	CS/SB 1224		

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**SUMMARY ANALYSIS**

CS/HB 961 passed the House on March 1, 2018, and subsequently passed the Senate on March 8, 2018.

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 vendor 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 invoice 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 was approved by the Governor on March 30, 2018, ch. 2018-135, L.O.F., and will become effective on October 1, 2018.

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

**STORAGE NAME:** h0961z1.CCS

**DATE:** April 2, 2018

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Current Situation

##### Beverage Law

In Florida, the Beverage Law<sup>1</sup> regulates the manufacture, distribution, and sale of wine, beer, and liquor. The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.<sup>2</sup>

“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.<sup>3</sup>

Section 561.14, F.S., establishes license and registration classifications, including:

- “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.<sup>4</sup>
- “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.<sup>5</sup>

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>6</sup> A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.<sup>7</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>8</sup>

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

<sup>2</sup> s. 561.02, F.S.

<sup>3</sup> s. 563.01, F.S.

<sup>4</sup> s. 561.01(5), F.S.

<sup>5</sup> s. 561.14, F.S.

<sup>6</sup> s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>7</sup> s. 561.22(1), F.S.

<sup>8</sup> 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.<sup>9</sup> Florida’s Tied House Evil Law<sup>10</sup> 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.<sup>11</sup>

### *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 ss. 775.082, 775.083, or 775.084, F.S. 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 invoice 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.

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<sup>9</sup> 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/vol188/iss6/6>.

<sup>10</sup> s. 561.42(1), F.S.

<sup>11</sup> s. 561.42(14), F.S.

The bill provides definitions as follows:

- 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.

## 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 and manufacturers who offer vendors free glassware may increase sales from the advertising on the glassware.

### D. FISCAL COMMENTS:

None.