

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1153 Beverage Law
SPONSOR(S): Business & Professions Subcommittee, DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:** SB 1584

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------------|---------|--|
| 1) Business & Professions Subcommittee | 8 Y, 6 N, As CS | Willson | Anstead |
| 2) Government Operations & Technology Appropriations Subcommittee | | | |
| 3) Commerce Committee | | | |

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors, as well as the business relations between beer distributors and manufacturers. Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters are generally prohibited from holding a vendor's license. There are limited exceptions, subject to certain conditions, including the ability for a craft brewery to hold a vendor's license, a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.

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. The bill amends the Tied House Evil Law.

The bill allows a brewer whose total production volume is less than 60,000 barrels (1,860,000 gallons) per year to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors in certain containers, if the brewer does not have an existing franchise agreement with a distributor.

The bill provides for limited exemptions to the current regulations regarding agreements between beer distributors and manufacturers, as follows:

- Exempts breweries that produce 60,000 barrels or less of malt beverages per year from the requirements imposed under the Franchise Law.
- Allows any brewer to provide 120 days written notice and terminate their distributor franchise agreement, but only if the beer manufacturer accounts for 5% or less of the distributors total sales.

The bill reduces certain minimum inventory, warehouse, and sales requirements that a distributor must maintain for licensure.

The bill may have an insignificant, indeterminate fiscal impact on the Department of Business and Professional Regulation. See the Fiscal Analysis section of this analysis for more information.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beverage Law

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

“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.³ As a unit of measurement, a “barrel” means 31 gallons and a “keg” is equal to one-half of a barrel, or 15.5 gallons.⁴

Section 561.14, F.S., specifies 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 in 1933, 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, and manufacturers, distributors, and exporters⁷ are generally prohibited from holding a vendor’s license.⁸ Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions exist, subject to certain conditions, such as the ability for a craft brewery to hold a vendor’s license, a restaurant to hold a manufacturer’s license (brew pub), and a winery to hold up to three vendor’s licenses.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 S. 561.02, F.S.

³ S. 563.01, F.S.

⁴ See U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, *Conversion Tables*, <https://www.ttb.gov/distilled-spirits/conversion-tables> (last visited Jan. 21, 2020).

⁵ S. 561.01(5), F.S.

⁶ S. 561.14, F.S.

⁷ S. 561.01(16), F.S. “Exporter” means any person that sells alcoholic beverages to persons for use outside the state and includes a ship’s chandler and a duty-free shop

⁸ S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁹ See ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), 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 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.

Florida’s Tied House Evil Law prohibits a licensed manufacturer or distributor from:

- having any direct or indirect financial interest in any vendor;
- assisting any vendor using gifts, loans, money or property of any description (except for bottles, barrels or other containers necessary for the transportation of beverages);
- giving any rebates of any kind whatsoever;
- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; and
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.¹¹

However, the Tied House Evil Law authorizes a manufacturer or distributor of malt beverage to:

- Sell, at not less than cost, **branded expendable retailer advertising specialties** to a vendor (trays, coasters, mats, menu cards, napkins, cups, glassware, thermometers, etc.).
- Lend without charge, rent, or sell **durable retailer advertising specialties** which bear advertising matter to a vendor (clocks, pool table lights, etc.).
- Sell, at not less than cost, **consumer advertising specialties** to a vendor (ashtrays, T-shirts, bottle openers, shopping bags, etc.).¹²

Additionally, a distributor of malt beverages is allowed to:

- sell, at not less than cost, draft equipment and tapping accessories to a vendor;
- exchange, or provide without charge, any parts that are not compatible with a competitor’s system and are necessary to dispense the distributor’s brands;
- provide, without charge, replacement parts of nominal intrinsic value (washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers, etc.); and
- provide, without charge, up to ten cases of glassware to a vendor licensed to sell malt beverages for on-premises consumption, subject to certain conditions.¹³

A vendor is prohibited from displaying any sign advertising any brand of alcoholic beverages outside of or on the outside of their establishment, and a manufacturer or distributor may not directly or indirectly give, lend, rent, sell or furnish a vendor with any outside sign. However, a vendor is allowed to display signs and other advertising materials for brands that are sold by the vendor on the interior of their licensed premises.¹⁴

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, F.S.

¹² S. 561.42(14), F.S.

¹³ *Id.* Specifically, a distributor that receives glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer may give such glassware to a vendor licensed to sell malt beverages for on-premises consumption. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A distributor may not give a vendor more than 10 cases of glassware per calendar year per licensed premises. A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit, or replacement. A manufacturer or importer who sells or gives glassware to a distributor, a distributor who sells or gives glassware to a vendor, and such vendor, must maintain records of such sale or gift of glassware.

¹⁴ S. 561.42(10)-(12), F.S. However, only one neon, electric, or similar sign per manufacturer may be displayed in a window.

The Division is authorized to adopt rules and require reports in order to enforce the limitations established under the Tied House Evil Law relating to credits, coupons, and other forms of assistance.¹⁵

Craft Breweries

Section 561.221(2), F.S., allows a brewery to receive up to eight vendor's licenses for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery, which may be divided by no more than one public street or highway. These vendor's licenses are an exception to the three-tier system described in ss. 561.14 and 561.22, F.S., and to the tied house evil restrictions in s. 561.42, F.S.

A craft brewery with multiple manufacturing licenses may transfer malt beverages that it produces between its breweries, up to 100 percent of the yearly production of the receiving brewery. Alcoholic beverages that the craft brewery does not make must be obtained through a distributor, an importer, sales agent, or broker.

Distributor Qualifications

Section 561.411, F.S., requires that a distributor meet and maintain certain minimum qualifications with respect to warehouse inventory and sales. A distributor's warehouse must be owned or leased by the distributor or in public warehouse space dedicated to the distributor's use.

A distributor is required to maintain warehouse space sufficient to store an inventory of alcoholic beverages:

- equal to at least 10% of the distributor's annual case sales, or
- for which the cost of acquisition is not less than \$100,000.

A distributor is required to own and maintain an inventory of alcoholic beverages:

- equal to at least 5% of the distributor's annual sales, or
- for which the cost of acquisition is not less than \$100,000.

Current law requires distributors to sell alcoholic beverages to licensed vendors generally rather than a selected few licensed vendors. A distributor is considered to be selling to licensed vendors generally, if:

- the distributor sells to at least 25% of the licensed vendors in either the county where the distributor's warehouse is located or in the distributor's exclusive sales territory; or
- the distributor's total volume of sales to licensed vendors within the state or within the malt beverage distributor's exclusive sales territory during any 12-month period consists of at least 50% of individual sales which are in quantities of 10 cases or less.

Come-to-Rest Requirement

Section 561.5101, F.S., requires, for purposes of inspection and tax-revenue control, all malt beverages to come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The come-to-rest requirement does not apply to malt beverages that a craft brewery manufacturers and sells to consumers as a vendor, or to malt beverages manufactured and sold by a brew pub. It is a felony of the third degree¹⁶ for any person in the business of selling alcoholic beverages to knowingly and intentionally sell malt beverages in a manner inconsistent with the come-to-rest requirement.

Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail

¹⁵ S. 561.42(8), F.S.

¹⁶ Punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.¹⁷

Manufacturers and distributors are allowed to make deliveries in vehicles that they own or lease.

For compliance purposes, all licensees' vehicles are subject to search and inspection without a search warrant by authorized employees of the Division, sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.¹⁸

Craft breweries that also hold a vendor's licenses are specifically prohibited from making deliveries under this law.¹⁹

Business Relations between Beer Distributors and Manufacturers (Franchise Law)

Section 563.022, F.S., governs the relationship between manufacturers of malt beverages and their distributors. This relationship is highly regulated, and apart from the limited exceptions mentioned previously, Florida brewers are required²⁰ to enter into a "beer distribution agreement" or "franchise agreement" with a distributor to sell their product in this state. The agreement must be in writing, filed with the state, and conform to statutory requirements.²¹

The Franchise Law specifies that distributors, but not brewers, are prohibited from waiving any of the rights granted to them under the Franchise Law.²² Section 563.021, F.S., requires an exclusive sales territory agreement for each brand that the distributor sells for a brewer, which must be filed with the Division. A brewer may not enter into more than one distribution agreement for a given brand in a given territory.

Under the Franchise Law, brewers:

- May provide good faith, written notice that the distributor is in default of any agreement.²³
- May terminate, cancel or refuse to renew the distribution agreement for "good cause."
- May not terminate, cancel, or fail to renew a distribution agreement without "good cause," regardless of the time period specified in the franchise agreement.²⁴
 - "Good cause" exists if:
 - The distributor fails to comply with a reasonable and material provision of the agreement;
 - The brewery provided written notice to the distributor within 18 months of the failure;
 - The distributor was given a reasonable opportunity to make a good faith effort to comply with the agreement; and
 - The distributor was given 30 days to submit a corrective action plan, and an additional 90 days to cure in accordance with the plan.²⁵

A brewer may terminate for cause, upon 15 days' notice, if the distributor:

- Files for bankruptcy, is insolvent, or is otherwise unable to remain in business.
- Has their state or federal license revoked for more than 60 days.

¹⁷ S. 561.57(1)–(2), F.S.

¹⁸ *Id.*

¹⁹ Ss. 561.221 (2)(d), F.S.; 565.57(1), F.S.

²⁰ S. 563.022(15), F.S. The Franchise Law applies to all written or oral agreements between a manufacturer and beer distributor in existence on June 4, 1987, as well as agreements entered into or renewed after June 4, 1987.

²¹ See Brewer's Law, *Florida Distribution Agreement Guide*, <http://brewerslaw.com/wp-content/uploads/2014/06/Florida-Beer-Distribution-Guide.pdf> (last visited Jan. 21, 2020).

²² S. 563.022(13), F.S.

²³ S. 563.022(5)(b)3., F.S.

²⁴ S. 563.022(5)(b)4., F.S.

²⁵ S. 563.022(7), F.S.

- Is convicted of a felony, but only if it has an adverse effect on the good will or interest of the distributor or brewer.
- Commits fraudulent conduct on a matter material to the brewer.
- Intentionally sells the brewer's products outside of their exclusive sales territory.
- Fails to pay for products 15 business days after receiving a demand for immediate payment.
- Sells, transfers, or assigns their interest in the distributorship without the written consent of the brewer.²⁶

The burden is on the brewery to show that it has acted in good faith, that the notice requirements have been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.²⁷

A brewer is required to pay reasonable compensation for the diminished value of the distributor's business if the brewer cancels, terminates or fails to renew their agreement, or refuses to consent to the sale of a distributor's interest in the distributorship, without good cause.²⁸

If a brewer sells or transfers their interest in the brewery, their successor is also bound by the terms and conditions of the distribution agreement.²⁹ The Franchise Law allows a brewer to get out of a distribution agreement if they go out of business or stop making the products covered by the agreement, upon not less than 30 days' prior written notice.³⁰

In the event of a dispute arising under the Franchise Law, the prevailing party is entitled to recover costs and attorney fees.³¹

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 punishable as 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

Limited Self-Distribution for Certain Brewers

The bill:

- Defines the term "barrel" as 31 gallons. (A term not previously defined in the Beverage Law)
- Allows a brewery whose annual total production volume is less than 60,000 barrels (1,860,000 gallons) per year to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors in containers that hold 5.16 gallons, 7.75 gallons, or 15.5 gallons.
 - However, a brewery with an existing franchise agreement with a distributor to distribute its product anywhere in the state is not eligible for this exemption.
- Requires that the brewer comply with certain distribution-specific laws when acting as a distributor, and exempts the craft brewer from the "come-to-rest requirement."

²⁶ S. 563.022(10), F.S.

²⁷ S. 563.022(8), F.S.

²⁸ S. 563.022(17), F.S.

²⁹ S. 563.022(16), F.S.

³⁰ S. 563.022(11), F.S.

³¹ S. 563.022(18)(c), F.S.

Distributor Qualifications

The bill:

- Reduces the inventory and warehouse space minimums that a distributor must maintain for licensure, from not less than 10% of annual case sales and a cost of acquisition of not less than \$100,000 respectively, to not less than 5% and not less than \$50,000.
- Reduces the percentage of licensed vendors to which a distributor must sell in order to be considered “selling to licensed vendors generally”, from 25% to 10%.

Franchise Law - Termination Exemption for Small Accounts

The bill allows any brewery to terminate a franchise agreement with their distributor, after 120 days written notice, but only if the brewer accounts for 5% or less of the distributor’s total sales. This provision is available to any brewer, regardless of size or annual production volume.

Franchise Law - Brewery Exemption

The bill exempts breweries that produce 60,000 barrels or less of malt beverages a year from the requirements imposed under the Franchise Law.

Sale or Purchase of Merchandise

The bill amends s. 561.42, F.S., to specify that a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may not “directly or indirectly” assist any vendor by “furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, or services” unless the manufacturer, distributor, etc., “regularly sells merchandise to vendors” and the sale or purchase is:

- equal to or greater than the fair market value of the merchandise;
- not combined with any sale or purchase of alcoholic beverages;
- separately itemized from the sale or purchase of alcoholic beverages; and
- both the seller and purchaser maintain records.

The bill defines the term “merchandise” as commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under ch. 320, F.S.

Written Agreements for Brand-Naming Rights and Associated Cooperative Advertising

The bill provides that, notwithstanding any other provision of the Tied House Evil Law, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising if:

- The agreement is negotiated at arm’s length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor; and
- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a manufacturer or importer from soliciting or receiving, and prohibits a distributor from paying, any portion of the brand-naming rights or cooperative advertising agreement. The bill also specifies that such an agreement may not in any way obligate or place responsibility, financial or otherwise, on a distributor.

The bill defines "negotiated at arm's length" as the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

The bill provides that a manufacturer, importer or vendor that violates the written agreement for brand-naming rights and associated cooperative advertising provisions is subject to:

- First violation: A civil penalty up to \$25,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- Second violation: A civil penalty up to \$100,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- At the discretion of the division, in lieu of or in addition to the second civil penalty, suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

The bill provides that a violation occurring more than 36 months after a first violation is deemed a first violation.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

- Section 1 Amends s. 561.221, F.S., authorizing a manufacturer who possesses a vendor's license to sell, transport, and deliver to vendors under certain circumstances; providing applicability; and revising requirements for a vendor to be licensed as a manufacturer.
- Section 2 Amends s. 561.411, F.S., revising alcoholic beverage inventory requirements for warehouse space owned or leased by certain distributors; and revising the percentage of licensed vendors a distributor must sell to in certain locations to be presumed to be selling to licensed vendors generally.
- Section 3 Amends s. 561.42, F.S., revising terms; creating exemptions and penalties relating to the Tied House Evil Law.
- Section 4 Amends s. 561.5101, F.S., revising construction related to come-to-rest requirements.
- Section 5 Amends s. 561.57, F.S., authorizing certain manufacturers to transport malt beverages in vehicles owned or leased by certain persons other than the manufacturer.
- Section 6 Amends s. 563.022, F.S., revising the definition of the term "manufacturer"; revising construction; authorizing a manufacturer to terminate a contract with a distributor under certain circumstances.
- Section 7 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides for an indeterminate positive fiscal impact through the creation of new civil penalties as listed above.

2. Expenditures:

The bill will require DBPR to modify information technology systems to manage the new agreements and possible violations. These modifications can be made with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain licensees to benefit financially while negatively impacting other licensees.

D. FISCAL COMMENTS:

The bill may have a positive economic impact on new or small breweries by providing relief from certain regulatory constraints, which will allow them to operate more freely and develop during their early growth stages.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The bill amends the Franchise Law to allow any brewery to terminate a franchise agreement with their distributor, after 120 days written notice, but only if the brewer accounts for 5% or less of the distributor's total sales.

Additionally, the bill exempts breweries whose production volume does not exceed 60,000 barrels of malt beverages a year from the requirements imposed under the Franchise Law.

Article I, section 10 of the Florida Constitution prohibits the passage of any law which impairs the obligation of contracts. Cases interpreting Florida law have held that the application of the Franchise Law, and similar statutes, to contracts existing prior to the enactment of the statutes to be unconstitutional.³²

However, the Florida Supreme Court has held that, relating to the interpretation of substantive changes to statutory law, the general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively but not retroactively.³³ Florida courts have also held that "Even where the Legislature has expressly

³² *Gulfside Distributors, Inc. v. Becco, Ltd.*, 985 F.2d 513, 515 (11th Cir. 1993).

³³ *Smiley v. State*, 966 So. 2d 330, 336 (Fla. 2007). See also Eric Glazer and Louis Goetz, *Florida Community Association Law: Contracts Clause Application In An Ever-Changing Legislative Landscape*, Florida Bar Journal, Vol. 89, No. 8 (Sept./Oct. 2015). "In
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stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.”³⁴

Thus, the provisions in the bill affecting the Franchise Law may be interpreted to apply only prospectively.

B. RULE-MAKING AUTHORITY:

DBPR has sufficient rule-making authority to modify current rules to reflect the modifications provided for in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Business & Professions Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made a technical, conforming change to the bill relating to the use of the term “keg” in s. 561.221, F.S.

Florida, all laws are presumed to apply prospectively, unless they are remedial in nature, or designed to clarify law already in effect, and the legislature clearly expresses its intention that the law is to apply retroactively.”

³⁴ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873 (Fla. 2010).