

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: CS/SB 2864

INTRODUCER: Regulated Industries Committee and Senator King

SUBJECT: Alcohol Beverage Law

DATE: April 8, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Aubuchon	Imhof	RI	Fav/CS
2.			FT	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill prohibits alcohol beverage importers, primary American sources of supply, brand owners or registrants, or any broker, its sales agent or sales person, from obtaining licensure as retail vendors. It includes importers and primary American sources of supply in the current “tied house evil” prohibitions, which currently prohibits licensed manufacturers and distributors from giving gifts or loans to retail vendors.

The bill defines a brand owner as one who directly or indirectly controls any brand, brand name, or label of alcoholic beverage but is not a manufacturer, importer, distributor, primary source of American supply, brand registrant, or broker, its sales agent or sales person.

This bill substantially amends section 561.42, Florida Statutes.

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) is the agency authorized to enforce the provisions of the Beverage Law in chs. 561, 562, 563, 564, 565, 567, and 568, F.S.¹

Definitions

Section 561.01, F.S., defines “alcoholic beverages” as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.”

Section 561.14, F.S., provides the license and registration classifications under the beverage law.

Section 561.14(2), F.S., defines “distributors” as those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”

Section 561.14(5), F.S. defines “importers” as 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; provided that the provisions of ss. 564.045 and 565.095 are in no way violated by such imports. Such licensed importers shall have no direct or indirect affiliation with any vendor licensed in this state. The holder of an importer's license shall be considered as having complied with the licensing requirements of a broker or sales agent. This license classification does not include manufacturers' representatives who are registered with the division under the provisions of ss. 564.045(1) and (2) and 565.095(1) and (2).

Florida's Three-Tier System

In the United States, the regulation of alcohol has traditionally used what is known as the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. The 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.²

There are some exceptions to this regulatory system, usually for special circumstances. Typically the exemptions include allowing beer brewpubs to manufacture malt beverages and to sell them

¹ See s. 561.04(6), F.S.

² Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: <http://www.wsba.org/media/publications/barnews/2004/june-04-price.htm> (last visited April 6, 2008).

to consumers,³ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁴ and allowing in-state wineries to manufacture and sell directly to consumers.⁵

In Florida, alcoholic beverages are regulated by the Beverage Law. These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.⁶

In a three-tier system, each license classification has clearly delineated functions. In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁷ Manufacturers of alcoholic beverages may not be licensed as distributors.

Tied House Evil

Section 561.42, F.S., is known as the “tied house evil” statute. It restricts any licensed manufacturer or distributor from having any financial interest in any retail establishment or from giving financial aid or assistance to any vendor.⁸

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer.⁹ It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. It does not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials.

Licensed manufacturers and distributors may not provide any financial aid or assistance to any retail vendor or directly or indirectly furnish an outside sign of any type; nor may a vendor display such outside sign advertising any alcoholic beverage.¹⁰

Section 561.42, F.S., also prohibits licensed manufactures and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise; and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.

Section 561.42(12), F.S., also provides that manufacturers and distributors of malt beverages:

³ Section 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

⁴ Section 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁵ Section 561.221, F.S.

⁶ Section 561.14, F.S.

⁷ Section 561.14(3), F.S.

⁸ Section 561.42, F.S.

⁹ *Id.*

¹⁰ Section 561.42(10), F.S.

- May provide specified advertising specialties to consumers on any vendors licensed premises;
- Shall not conduct any sampling activities that include tasting of their product at a vendor's premises licensed for off-premises sales only; and
- Shall not engage in cooperative advertising with vendors.

These prohibitions also extend to the vendors accepting or displaying the prohibited items.¹¹

Primary American Source of Supply Brand Registration

Section 564.045, F.S., requires registration of wine brands for the purpose of tax revenue control. Before being shipped, sold, or offered for sale to a distributor or importer in Florida, a wine brand must be registered by the brand's "primary American source of supply," which s. 564.045(1), F.S., defines as the:

manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

The annual license fee for each brand is \$15. All Florida wineries that conduct direct sales to consumers must register the brands they sell and pay the fee for each brand.

There is a substantively similar primary American source of supply registration requirement for liquor in s. 565.095, F.S. However, the registration fee under s. 565.095, F.S., is \$30.

Sections 564.045 and 565.095, F.S., specify that the primary American source of supply registration does not prohibit the ownership by vendors of brands, i.e. private labels, provided that such ownership and use does not otherwise violate the Beverage Law.

Importers of liquor currently pay an annual license fee of \$500.¹²

III. Effect of Proposed Changes:

The bill amends s. 561.42, F.S., to include licensed importers of all alcoholic beverages, primary American sources of supply for wine or distilled spirits, brand owners or registrants, or any broker, its sales agent or sales person from having any financial interest in any retail vendor or providing any financial aid or assistance to any retail vendor. The bill subjects importers,

¹¹ Sections 561.42(1), (10), and (11), F.S.

¹² Section 565.03(3), F.S.

primary American sources, brand owners, brand registrants, or any broker, its sales agent or sales person to the “tied house evil” restrictions of s. 561.42, F.S.

The bill clarifies that s. 561.42, F.S., does not prohibit retail vendors from owning any brand, brand name, or label of alcoholic beverage.

The bill defines a brand owner as one who directly or indirectly controls any brand, brand name, or label of alcoholic beverage but is not a manufacturer, importer, distributor, primary American source of supply, brand registrant, or broker, its sales agent or sales person in s. 561.42(1), F.S.

The bill amends s. 561.42(10), F.S., to include importers, primary American source of supply, brand owner, brand registrant, or any broker, its sales agent sales person, from directly or indirectly furnishing any outside sign for any brand of alcoholic beverage.

The bill amends s. 561.42(12), F.S., to include importers, primary American source of supply, brand owner, brand registrant, or any broker, its sales agent or sales person, who sells their products, from providing unauthorized advertising material subject to the restrictions and permissions found within the section.

The bill provides for an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on April 8, 2008

The committee substitute (CS) does not amend s. 561.01, F.S., to define the terms “distributor” and “importer.”

The CS does not amend s. 561.22, F.S., to include importers and primary American sources of supply within the prohibition.

The CS amends s. 561.42, F.S., to include importers, primary American sources of supply, brand owners, brand registrants, and any broker, its sales agent or sales person, within the tied-house restrictions in this section. The CS deletes the term “licensed” in s. 561.42(1), F.S. It also defines the term “brand owner” and clarifies that this section does not prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

The CS does not amend s. 561.42(3), F.S., to include importers within the restriction.

The CS includes brand owner, brand registrants, or any broker, its sales agent or sales person in s. 561.42(10), F.S.

The CS also includes Primary American source of supply brand owner, brand registrants, or any broker, its sales agent or sales person in various provisions in s. 561.42(12), F.S.

The CS does not amend ss. 561.56 and 562.07(4), F.S., to reference importers.

The CS does not amend s. 561.57(2), F.S., to include licensed importers within the restriction.

The CS does not amend ss. 562.15(1) and 562.26, F.S., to reference importers.

The CS does not amend s. 562.20(2), F.S., to require that importers file the monthly report required by this section.

The CS does not amend s. 563.02, F.S., to require importers of malt beverages, cider, wine coolers, special low-proof products, wine and/or fortified wines to pay an annual license fee of \$1,250.

The CS does not amend s. 563.08, F.S., to require importers to keep a cash deposit of each case of 24 bottles of any malt or brewed beverage.

The CS does not amend s. 564.02, F.S., to require importers that are authorized to sell brewed beverages that contain malt, wines, and fortified wines must pay a license tax of \$1,250 for each establishment or branch the importer operates.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
