

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 Committee on Appropriations

BILL: CS/CS/SB 372

INTRODUCER: Committee on Appropriations, Regulated Industries Committee and Senator Latvala

SUBJECT: Beverage Law

DATE: March 21, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Everette</u>	<u>Eichin</u>	<u>TR</u>	Favorable
3.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Favorable
4.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS
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:

CS/CS/SB 372 expands the authority of licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by the vendor to include vehicles owned or leased by a person disclosed on a license application (authorized person) filed by a vendor. The license application must be approved by the Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (DBPR). In addition, the vehicle must have been issued a permit from the division for that purpose. Permitted vehicles must be operated by the vendor or by the authorized person when transporting alcoholic beverage from a distributor's place of business to the vendor's licensed premises or off-premises storage. A permit expires when the authorized person disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or revoked by the division, whichever occurs first. In addition, a vehicle permit may be canceled at request of the vendor or the authorized person.

The bill will have a minimal, but indeterminate, positive impact on state revenue due to the anticipated increase in the number of \$5 vehicle permits issued.

An authorized person with a vehicle permit would be subject to the same conditions regarding inspection and search as is a licensee under current law. The bill requires the invoices or sales tickets for the purchased alcoholic beverages must be carried in a vehicle used by the vendor or the authorized person when the alcoholic beverages are being transported.

In addition, the bill deletes the requirement that the division must have decals ready for issuance. This would permit the division to issue only paper permits.

The effective date of the bill is July 1, 2013.

This bill substantially amends sections 561.57 and 562.07, Florida Statutes.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.¹ That law regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.² The division within the DBPR administers and enforces the Beverage Law.³

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed 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. Manufacturers cannot sell directly to retailers or directly to consumers. 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.⁴

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,⁵ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁶ and allowing in-state wineries to manufacture and sell directly to consumers.⁷

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See s. 561.01(6), F.S.*

² *See s. 561.14, F.S.*

³ Section 561.02, F.S.

⁴ 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.lanepowell.com/wp-content/uploads/2009/04/pricetee_001.pdf (Last visited February 14, 2013).

⁵ *See s. 561.221(2), F.S.*, which permits the limited manufacture of beer by vendors (brew pubs).

⁶ *See s. 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.

⁷ *See s. 561.221, F.S.*

at retail.⁸ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturer, or bottler.⁹

Deliveries by Licensees

Section 561.57(3), F.S., provides that deliveries of alcoholic beverages by manufacturers, distributors and vendors may only be made in vehicles that are owned or leased by the vendor. According to the division, most retail vendor licensees are a corporate entity. Therefore, retail vendors who own their vehicles as individuals are prohibited from making deliveries away from their places of business and from transporting alcoholic beverage purchases from a distributor's place of business in their personal vehicles, i.e., vehicles that are not registered in the name of the licensed vendor.

Section 561.57(4), F.S., requires the division to prepare permits or decals suitable to be attached to vendor's vehicles upon payment of a \$5 fee. According to the division, it prints vehicle permits on paper and does not issue decals for attachment to the vehicle. Vehicle permit holders keep the paper permits in their vehicles and produce them upon request. The permit expires when the vendor disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first.

Section 561.57(4), F.S., also provides that, by acceptance of a vehicle permit, the licensee agrees the vehicle may be inspected and searched without a search warrant, for the purpose of ascertaining compliance with provisions of the Beverage Law. 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 may conduct such inspections and searches.

Deliveries that are made at a manufacturer's or distributor's warehouse to a vendor or his authorized agent must be made to a vehicle with a vehicle permit which was issued to the purchasing licensee. The invoice or sales ticket covering all such purchases and deliveries must show, in addition to the information required by other rules, the permit number and the fact that the delivery was made at the manufacturer's or distributor's warehouse.¹⁰

Section 562.07, F.S., prohibits transporting more than 12 bottles of alcoholic beverages. However, alcoholic beverage may be transported in vehicles owned or leased by licensed vendors. The exception applies when alcoholic beverages are moved from the distributor's place of business to the vendor's licensed place of business or off-premises storage facility. The vehicles used must have a permit or decal issued pursuant to the Beverage Law.

⁸ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁹ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

¹⁰ Rule 61A-4.030, F.A.C.

III. Effect of Proposed Changes:

The bill amends s. 561.57, F.S., to continue to allow licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by the vendor, and expands the delivery authority to include vehicles owned or leased by a person disclosed on the vendor's license application and approved by the division. Each such vehicle must obtain a permit from the division for that purpose and be operated by the vendor or by the authorized person when transporting alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage. The bill requires the signature of the authorized person on the vehicle permit application.

As with a vendor's vehicle permit, an authorized person's permit would expire when the employee disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or revoked. In addition, a vehicle permit may be canceled by the division at the vendor's or authorized person's request.

An authorized person who accepts a vehicle permit would be subject to the same conditions regarding inspection and search as is a licensee under current law.

The bill requires that the invoices or sales tickets for the purchased alcoholic beverages must be carried in the vehicle used by the vendor or the authorized person when the alcoholic beverages are being transported. The bill continues to require the payment of the \$5 vehicle permit fee.

The bill also amends s. 561.57(4), F.S., to delete the requirement that the division must have decals ready for issuance. The division no longer uses decals. This would permit the division to issue only paper permits.

The bill amends s. 562.07, F.S., which prohibits the transporting of more than 12 bottles of alcoholic beverages, to revise the exception in s. 562.07(2), F.S., to allow the transportation of alcoholic beverages in vehicles which are owned or leased by persons authorized under s. 561.57, F.S.

The effective date of the bill is July 1, 2013.

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:**

Alcoholic beverage vendors and other authorized persons would pay a \$5 fee for a vehicle permit to transport alcoholic beverages.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DBPR, the bill may cause a minimal, but indeterminate, increase in state revenue due to the anticipated increase in the number of \$5 vehicle permits issued.

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/CS by Appropriations on March 21, 2013:**

The committee substitute makes technical changes to conform sentence structure and grammar to the House companion.

CS by Regulated Industries on February 21, 2013:

The committee substitute:

- Deletes language that would have permitted licensed retail vendors to transport alcoholic beverages in vehicles owned or leased by authorized employees of the vendor.
- Permits licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by any person disclosed on a license application filed by a vendor and approved by the division.
- Requires the authorized person sign the vehicle permit application.
- Requires a vehicle permit and the invoices or sales tickets for the purchased alcoholic beverages must be attached to, or carried in, the vehicle used by the vendor or an authorized person when the alcoholic beverages are transported or delivered.
- Deletes language requiring a vehicle permit remain on the vendor's licensed premises when the vehicle is not being used to transport or deliver alcoholic beverages.

- Expands the exception to the prohibition against the transporting of more than 12 bottles of alcoholic beverages to include the transportation of alcoholic beverages in vehicles owned or leased by a person disclosed on a license application filed by a vendor and approved by the division.

B. Amendments:

None.