

**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 Regulated Industries

BILL: SB 372

INTRODUCER: Senator Latvala

SUBJECT: Beverage Law

DATE: February 12, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			TR	
3.			AGG	
4.			AP	
5.				
6.				

**I. Summary:**

The bill permits licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by the vendor, or owned or leased by an authorized employee of the vendor, provided that the vehicle has been issued a permit for that purpose by the Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation. Current law only permits vendors to transport alcoholic beverage in vehicles owned or leased by the vendor.

The authorized employee'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 is revoked by the division, whichever occurs first. In addition the employee's vehicle permit would be canceled by the division upon the vendor's request, the employee's request, or upon the employee's termination of employment by the vendor.

An employee who accepts a vehicle permit would be subject to the same conditions regarding inspection and search as is a licensee under current law. The permit must be carried in the vehicle when the vehicle is being used to transport or deliver alcoholic beverages and the permit must remain on the licensed premises when the vehicle is not being used to transport or deliver alcoholic beverages.

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

The bill provides an effective date of July 1, 2013.

This bill substantially amends section 561.57, Florida Statutes.

## II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.<sup>1</sup> These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.<sup>3</sup>

### 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.<sup>4</sup>

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,<sup>5</sup> allowing individuals to bring small quantities of alcohol back from trips out-of-state,<sup>6</sup> and allowing in-state wineries to manufacture and sell directly to consumers.<sup>7</sup>

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

### 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

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

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

<sup>4</sup> 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/pricce\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf) (Last visited February 14, 2013).

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

<sup>6</sup> 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.

<sup>7</sup> See s. 561.221, F.S.

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

<sup>9</sup> 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.

their places of business and from transporting alcoholic beverage purchases from a distributor's place of business in their personal vehicles, ie., 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 that the vehicle will always be subject to inspection and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

Deliveries that are made at the warehouse of a manufacturer or distributor to a vendor or his authorized agent must be made to a vehicle with an attached vehicle permit issued to the licensee making the purchase. 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 warehouse of the manufacturer or distributor.<sup>10</sup>

Section 562.07, F.S., prohibits transporting more than 12 bottles of alcoholic beverages. Section 562.07(2), F.S., provides an exception to this prohibition for the transportation of alcoholic beverage vehicles owned or leased by licensed vendors who are transporting alcoholic beverage purchases from the distributor's place of business to the vendor's licensed place of business or off-premises storage and to which said vehicles are attached a permit or decal as provided for in the alcoholic beverage law.

### **III. Effect of Proposed Changes:**

The bill amends s. 561.57(3), F.S., to permit licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by the vendor, or owned or leased by authorized employees of the vendor, provided that the vehicle has been issued a permit from the division for that purpose.

As with a vendor's vehicle permit, s. 561.57(4), F.S., also provides that the authorized employee'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 is revoked by the division, whichever occurs first. In addition, the vehicle permit would be canceled by the division upon the vendor's request, the employee's request, or upon the employee's termination of employment by the vendor.

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<sup>10</sup> Rule 61A-4.030, F.A.C.

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

Section 561.57(4), F.S., requires that the permit must be carried in the vehicle when the vehicle is being used to transport or deliver alcoholic beverages. The vehicle permit must remain on the licensed premises when the vehicle is not being used to transport or deliver alcoholic beverages.

The bill also amends s. 561.57(4), F.S., to delete the requirement that the division must have decals ready for issuance.

The bill does not amend the exception in s. 562.07(2), F.S., to the prohibition in s. 562.07, F.S., against the transporting of more than 12 bottles of alcoholic beverage. The exception in s. 562.07(2), F.S., does not include the transportation of alcoholic beverages in vehicles which are owned or leased by authorized employees of the vendor.

The bill provides an effective date of 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 their authorized employees would pay a \$5 fee for a vehicle permit to transport alcoholic beverages.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The bill does not amend the exception in s. 562.07(2), F.S., to the prohibition in s. 562.07, F.S., against the transporting of more than 12 bottles of alcoholic beverage. The exception in s. 562.07(2), F.S., does not include the transportation of alcoholic beverages in vehicles which are owned or leased by authorized employees of the vendor.

**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.)

None.

**B. Amendments:**

None.