

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 45 Vehicle Permits for the Transportation of Alcoholic Beverages

SPONSOR(S): Business & Professional Regulation Subcommittee; Hooper and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 0 N, As CS	Livingston	Luczynski
2) Regulatory Affairs Committee	15 Y, 0 N	Livingston	Hamon

SUMMARY ANALYSIS

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation is responsible for enforcing the provisions of the beverage laws.

Current law authorizes retail vendors to transport alcoholic beverages from a distributor's place of business in vehicles which are owned or leased by the vendor. The bill expands this authority to include vehicles which are owned or leased by a person that has been identified on the vendor's license application and the person is approved by the division. A vehicle permit must be obtained from the division to authorize the use of the vehicle by the vendor and by the designated driver. The signature of the designated driver is required on the vehicle permit application.

A designated driver, with a valid vehicle permit, transporting alcoholic beverages is subject to the same conditions regarding inspection and search as is under current law. These conditions allow warrantless searches of the vehicle by authorized enforcement personnel.

The bill removes language which references the division authority to issue vehicle decals to be attached to the vehicle. Decals are no longer used by the division. However, 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 driver when the alcoholic beverages are being transported.

The bill is anticipated by the DBPR to have minimal, but indeterminate, increase on state revenue due to the anticipated increase in the number of \$5 vehicle permits issued.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages.

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state "sales tax" is collected at the retail level.

Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those restrictions, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a retailer. Many restrictions apply to business and market activities between the three tiers.

Subsection 561.01(14), F.S., defines "licensee" to mean a legal or business entity, person, or persons that hold a license issued by the division. Subsection (20) defines "permit carrier" to mean a licensee authorized to make deliveries as provided in s. 561.57, F.S.

Subsection 561.57(1), F.S., specifies that vendors may make deliveries away from their places of business of sales actually made at the licensed place of business. Section 561.57(2), F.S., allows deliveries by a manufacturer, distributor, or vendor away from his or her place of business to be made only in vehicles which are owned or leased by the licensee.

Subsection 561.57(3), F.S., specifies that a retail vendor may transport alcoholic beverages that have been purchased from a distributor by the vendor from the place of business of the distributor to the vendor's licensed premises or the vendor's storage facility. A vehicle permit or decal is required to be attached to the vendor's owned or leased vehicle to authorize the use of the vehicle for transporting the beverages.

This subsection further specifies that by acceptance of an alcoholic beverage license and the use of the vendor's permitted vehicles, the licensee agrees that the vehicle may be inspected and searched without a search warrant, for the purpose of determining compliance with provisions of the alcoholic beverage laws. Warrantless searches are authorized for 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.

The statute currently authorizes the division to issue vehicle permits or decals upon payment of a \$5 fee by the retail vendor. However, the division no longer issues decals for attachment to the vehicle but issues paper permits. Vehicle permit holders are required to keep the paper permits in their vehicles.

Current provisions specify that a permit is valid and does not expire unless the vendor disposes of the vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division.

Various exemptions from the vehicle permit requirements are specified in s. 561.57, F.S., such as for a licensed salesperson of wine and spirits on behalf of a distributor and common carriers are not required to have vehicle permits to transport alcoholic beverages, among others.

Effect of proposed changes

The bill continues to authorize licensed vendors to make deliveries in vehicles owned or leased by the vendor and expands the delivery authority to include vehicles which are owned or leased by a person that has been identified on the vendor's beverage license application and is approved by the division. A vehicle permit must be obtained from the division to authorize the use of the vehicle by the vendor and by the designated driver to transport alcoholic beverages. The signature of the designated driver is required on the vehicle permit application.

The bill specifies that the vehicles must be operated pursuant to the vehicle permit when transporting alcoholic beverages from a distributor's place of business to the vendors licensed premises or off-premises storage.

As with a vendor's vehicle permit, the bill also provides that the authorized person's permit would expire when the driver disposes of the 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 is canceled by the division upon the vendor's or authorized person's request.

The bill removes language which references the issuance of vehicle decals to be attached to the vehicle. Decals are no longer used by the division. However, 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 driver when the alcoholic beverage are being transported. The bill continues to require the payment of the \$5 vehicle permit fee.

The bill is anticipated by the DBPR to have minimal, but indeterminate increase on state revenue due to the anticipated increase in the number of \$5 vehicle permits issued.

B. SECTION DIRECTORY:

Section 1 amends s. 561.57, F.S., to authorize a designated driver of an alcoholic beverage vendor to transport alcoholic beverages from a distributor's place of business to the vendors place of business in vehicles owned or leased by the driver under the authority of a vehicle permit issued by the division.

Section 2 amends s. 562.07 F.S., to cross reference changes to s. 561.57, F.S., in section 1 of the bill.

Section 3 provides for an effective date of July 1, 2013.

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:

None.

D. FISCAL COMMENTS:

The DBPR estimates “The legislation is anticipated to have minimal, but indeterminate increase on state revenue due to the increase in the number of \$5 vehicle permits issued.”

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2013, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute (CS).

The proposed committee substitute made the following changes to the filed version of 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 any person required to have been disclosed on a license application filed by a vendor and approved by the division.
- Amends s. 561.57(4), F.S., to provide that the signature of the person authorized in s. 561.57(3), F.S., is required in the vehicle permit application.
- Amends s. 562.57(4), F.S., to require 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 staff analysis is drafted to reflect the committee substitute.