

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 695 Tied house regulation

**SPONSOR(S):** Business & Professional Regulation Subcommittee; Holder

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 3 N, As CS	Livingston	Luczynski
2) Regulatory Affairs Committee	15 Y, 0 N	Livingston	Hamon

### SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation 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). Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among the restrictions, a manufacturer or distributor is prohibited 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.

Currently, tied house provisions statutorily prohibit a beer distributor from furnishing discount coupons to consumers when the coupons are redeemable by a retail beer vendor.

The bill prohibits an alcoholic beverage licensee from possessing or using malt beverage coupons, if the coupon is:

- furnished by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person of the licensee; and
- redeemable by a vendor who sells malt beverages to consumers.

The bill authorizes the Division of Alcoholic beverages and Tobacco to adopt rules to establish administrative sanctions for violations of the provisions of the bill.

The bill deletes the existing beer distributor coupon prohibition that is included within the broader coupon prohibition of the bill.

The bill is not anticipated to have a fiscal impact on revenues or expenditures.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

Federal alcoholic beverage regulation applies to manufacturers of wine and spirits, importers, and wholesalers of distilled spirits, wine, or malt beverages. Permits are obtained from the Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB). Federal law provides the platform from which state trade practice laws follow. The laws constrain relations between the three tiers: manufacturer (suppliers), wholesaler, and retailer. Federal law identifies acts by supply tier members that are means to induce retail tier members to buy alcohol products and mandates that they are unlawful if they have an exclusionary effect on trade.

TTB administers the Tied-House provisions of the Federal Alcohol Administration Act (FAA Act) as adopted under Title 27, Code of Federal Regulations (CFR), part 6 (27 CFR part 6). The regulations, among other things, restate the statutorily prohibited means to induce, subject to exceptions listed under Subpart D (27 CFR 6.81 – 6.102).

Currently, 27 CFR 6.96(a), consumer promotions, specifies that the act by an industry member of furnishing to consumers coupons which are redeemable at a retail establishment does not constitute a means to induce provided the following conditions are met:

- All retailers within the market where the coupon offer is made may redeem such coupons; and
- An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

The term “coupon” does not appear to be defined by federal or state law or rule. The common reference is intended to include financial assist activities, such as, cents off (cost/price reduced) at the time of retail sale or redemption by the purchaser from a third party of the amount of discount after the retail sale.

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).

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.

Currently, tied house exception provisions specify that a licensed manufacturer or distributor may give, lend, or sell certain products to a vendor who sells the beverages of the licensee. The products include neon or electric signs, posters, and other specified advertising material. The division is authorized to adopt rules governing promotional displays and advertising, chapter 61A-1, F.A.C. Currently, division rules have not been adopted relating to coupons.

Statutorily, section 561.42(12)(e), F.S., specifies that “Coupons redeemable by vendors shall not be furnished by distributors of beer to consumers”(emphasis added). Distributors, manufacturers, and importers do not sell beer to consumers, they sell beer to vendors. Manufacturer coupons are typically provided to the vendor, not to the consumer. It is the vendor that sells to consumers and provides the coupons to consumers. Neither, current law or the changes to current law in the bill, prohibit the vendor from providing beer coupons to consumers, regardless of who supplies the vendor with the coupons as long as the coupons are not redeemable by the vendor.

### Effect of proposed changes

The bill creates a new s. 561.42(13), F.S., to prohibit an alcoholic beverage licensee from possessing or using malt beverage coupons, if the coupon is:

- furnished by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person of the licensee; and
- redeemable by a vendor who sells malt beverages to consumers.

The bill amends s. 561.42(8), F.S., to specifically authorize the division to adopt rules to establish administrative sanctions for violations of the provisions of the bill.

The bill deletes language that specifically prohibits a beer distributor from furnishing discount coupons to consumers when the coupons are redeemable by a retail beer vendor.

#### B. SECTION DIRECTORY:

Section 1 amends s. 561.42, F.S., to impose administrative sanctions for certain violations and to prohibit alcoholic beverage licensees from possessing or using certain coupons for malt beverage.

Section 2 provides 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:

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits manufacturer and importers of beer from providing coupons that are redeemable by the vendor to consumers. It could be anticipated that the consumer may see less opportunity to purchase malt beverages at a reduced price.

#### D. FISCAL COMMENTS:

None.

## **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 12, 2013, the Business & Professional Regulation Subcommittee considered a strike-all amendment and two amendments to the strike-all amendment. The subcommittee reported the bill favorably with a committee substitute (CS).

The CS makes the following changes to the filed version of the bill:

- Amends the title to remove reference to “coupons furnished by manufacturers, distributors, or importers of beer” and makes the CS an act relating to “tied house regulation.”
- Amends s. 561.42(8), F.S., to specifically authorize the division to adopt rules to establish administrative sanctions for violations of the provisions of the CS.
- Creates a new s. 561.42(13), F.S., to prohibit a licensee from possessing or using malt beverage coupons, if the coupon is:
  - furnished by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person of the licensee; and
  - redeemable by a vendor who sells malt beverages to consumers.
- Amends the new s. 562.42(14), F.S., to remove language that is included in the new broader provision of the CS as filed.

The staff analysis is drafted to reflect the CS.