

**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 698

INTRODUCER: Senator Bradley

SUBJECT: Malt Beverages

DATE: January 8, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			AGG	
3.			FP	

---

## I. Summary:

SB 698 requires distributors of malt beverage kegs to implement an inventory and reconciliation process with vendors in which an accounting of draft kegs is completed and any loss or variance in the number of kegs is paid for by the vendor on a per-keg basis equivalent to the required keg deposit. The bill limits this inventory and reconciliation process to vendors qualifying as an entertainment/resort complex, a theme park, or a marine exhibition park complex. This inventory and reconciliation process may occur twice per year, at the discretion of the distributor, but must occur at least annually. Upon completion of the keg inventory and reconciliation, the vendor must remit payment within 15 days of receiving an invoice from the distributor. The vendor may choose to establish and fund a separate account with the distributor for the purpose of expediting timely payment.

The inventory and reconciliation process for draft kegs is required in lieu of the process required by a rule of the Division of Alcoholic Beverages and Tobacco with the Department of Business and Professional Regulation that requires vendors to give distributors and deposit for draft kegs and sets minimum deposit amount.

The bill would take effect on July 1, 2016.

## II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.<sup>3</sup>

---

<sup>1</sup> Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

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

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

The Beverage Law defines the term “keg” in the context of s. 561.221(3), F.S., which permits a vendor of alcoholic beverages to also be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.<sup>4</sup> These vendors are known in the industry as “brew pubs.” For the purposes of s. 561.221(3), F.S., the term keg is defined to mean 15.5 gallons.

Section 561.01(18), F.S., defines the term “entertainment/resort complex” to mean

a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owner(s)/operator(s) of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity shall include an area within a 5-mile radius of the theme park complex.

Section 565.02(6), F.S., allows a vendor who operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex that is owned, managed, controlled, and operated by such vendor, to operate under a master license issued for the type of service offered if:

- The theme park complex comprises at least 25 enclosed acres of land with permanent exhibitions and a variety of recreational activities;
- The enclosed area has a controlled entrance to, and exit from, the enclosed area; and
- At least one million visitors annually pay admission fees to the theme park complex.

In addition to the annual license fee, an additional tax of \$1,500 is imposed for up to 5 additional bars, \$2,500 for 6 to 10 additional bars, and \$3,500 for more than 10 additional bars. The enclosed area within the theme park is considered an extension of the licensed premises upon the payment of the fee and the notation of such extension on the sketch accompanying the original license application.

Section 565.02(7), F.S., authorizes marine exhibition park complexes to obtain, upon the payment of appropriate fees, a license for on-premises consumption of alcoholic beverages not subject to any quota or limitation if:

- The marine exhibition park complex comprises at least 25 enclosed acres of land;
- The enclosed area has a controlled entrance to, and exit from, the enclosed area;
- At least 450,000 visitors annually pay admission fees to the marine exhibition park; and
- The marine exhibition park has been in continuous existence for at least 30 years.

In addition to the annual license fee for both the theme parks and marine exhibition park complexes, a tax of \$1,500 is imposed for up to 5 additional bars, \$2,500 for 6 to 10 additional bars, and \$3,500 for more than 10 additional bars.

---

<sup>4</sup> Section 561.221(3)(a)1., F.S., defines the term “keg” as 15.5 gallons.

### **Three Tier System and Tied House Evil**

In the United States, the regulation of alcohol, since the repeal of Prohibition, has traditionally been through what is termed the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverage; the distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer.<sup>5</sup> Manufacturers cannot sell directly to retailers or directly to consumers.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>6</sup> Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.<sup>7</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>8</sup>

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>9</sup> Activities between the three-tiers are heavily regulated to prevent a manufacturer or distributor from having and financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

### **Keg Deposits**

Implemented in relevant part pursuant to the tied house prohibition in s. 561.42(1), F.S., rule 61A-4.0131, F.A.C., relating to malt beverage keg deposits, requires distributors of malt beverages, upon sale of such beverages in “draft kegs” to a vendor, to require from all vendors a keg deposit of an amount not less than that charged the distributor by his brewer for each keg of beer sold. The amount of deposit charged to vendors for draft kegs of like brand must be uniform.

Rule 61A-4.0131, F.A.C., requires that charges made for deposits collected and credits allowed for empty containers returned must be shown separately on all sales tickets or invoices. A copy of the sales tickets or invoices must be given to the vendor at the time of delivery.

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

The bill creates s. 563.11, F.S., to require distributors to implement an inventory and reconciliation process with vendors in which an accounting of draft kegs is completed and any

---

<sup>5</sup> Section 561.14, F.S.

<sup>6</sup> Section 561.14(3), F.S. However, see discussion regarding the exceptions provided in s. 561.221, F.S.

<sup>7</sup> Section 561.22, F.S.

<sup>8</sup> Sections 563.022(14) and 561.14(1), F.S.

<sup>9</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*, (June 2004) available 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 December 16, 2015).

loss or variance in the number of kegs is paid for by the vendor on a per-keg basis equivalent to the required keg deposit. The bill limits this process to vendors qualifying as an entertainment/resort complex in s. 561.01(18), F.S., a theme park in s. 565.02(6), F.S., and a marine exhibition park complex in s. 565.02(7), F.S.

This inventory and reconciliation process may occur twice per year, at the discretion of the distributor, but must occur at least annually. Upon completion of the keg inventory and reconciliation, the vendor must remit payment within 15 days of receiving an invoice from the distributor. The vendor may choose to establish and fund a separate account with the distributor for the purpose of expediting timely payment.

The bill provides that the inventory and reconciliation process is in lieu of receiving a per-keg deposit as required by division rule. Because of the rule of statutory construction governing specific cross-references, a law that incorporates an agency's rule by specific reference prevents the agency from later amending that rule, i.e., only the version of the rule in existence at the time the Legislature made the incorporation will be given effect.<sup>10</sup>

Section 563.11, F.S., differs from the draft keg deposit required by rule 61A-4.0131, F.A.C., by not:

- Establishing a minimum or required amount for the keg deposits;
- Requiring that the amount of deposit charged to vendors for draft kegs of a like brand to be uniform; or
- Requiring that the charges for the deposits collected and credits allowed for empty containers to be shown separately on all sales tickets or invoices.

The bill would take effect on July 1, 2016.

#### **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.

---

<sup>10</sup> See The Florida Senate, *Manual for Drafting Legislation, Sixth Edition (2009)*, page 82.

**B. Private Sector Impact:**

Vendors would not be required to provide malt beverage distributors with a draft keg deposit. Vendors and distributors may incur unspecified costs in the development and implementation of the inventory and reconciliation process for draft kegs required by the bill

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 563.11 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.