

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 Rules

BILL: CS/CS/SB 388

INTRODUCER: Rules Committee, Regulated Industries Committee, and Senator Hutson

SUBJECT: Beverage Law

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 388 amends the “tied house evil” statute in s. 561.42, F.S., which prohibits a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans or property, or rebates to retail vendors.

The bill exempts from the tied house evil prohibitions certain financial transactions negotiated at arm’s length for fair market value between a manufacturer of beer or malt beverages and a licensed alcoholic beverage vendor.

Such a financial transaction may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, must not exceed 25 such financial transactions in effect during a calendar year with respect to each theme park, and must be registered with the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR).

The bill amends s. 562.13, F.S., as amended by CS/CS/SB 106 (or similar legislation enacted during the 2017 Regular Session; hereinafter “CS/CS/SB 106”), to permit the employment of persons under the age of 18 (minors) in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that is a package store licensed under s. 565.02(1)(a), F.S., to sell beer, wine, and distilled spirits only in sealed containers for off-

premises consumption. To employ a minor, a vendor must derive 30 percent or less of its monthly gross revenue from the sale of alcoholic beverages. Those vendors may employ a minor only if the minor is supervised by a person 18 years of age or older who verifies the age of any purchaser to be 21 years of age or older and approves the sale of distilled spirits to any purchaser. The bill removes the supervision and verification requirement in s. 562.13, F.S., as amended by CS/CS/SB 106, for sales of beer and wine by a minor.

The bill maintains current law that permits minors to be employed vendors licensed to sell beer or beer and wine, when such sales are only for off premises consumption. Current law does not impose a supervision or verification requirement for sales by minors employed by an alcoholic beverage vendor.

The bill also:

- Repeals the wine container limits, which under current law are limited to containers that hold no more than one gallon reusable containers that holds 5.16 gallons;
- Permits the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverage growlers; and
- Repeals the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to leave a restaurant with a partially consumed bottle of wine, but retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

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

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”⁵
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁶

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 563.01, F.S.

⁵ Section 561.14(1), F.S.

⁶ Section 561.14(2), F.S.

- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.⁷
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹⁰

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.¹² Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹³

Tied House Evil Prohibitions

The three-tier 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.¹⁴

Section 561.42, F.S., known as the “tied house evil” statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.¹⁵ The prohibitions also apply to an importer, primary American source of supply,¹⁶ brand owner or registrant, broker, and sales agent (or sales person thereof).

⁷ Section 561.01(5), F.S.

⁸ Section 561.14(3), F.S.

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

¹¹ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

¹² Section 561.22, F.S.

¹³ Sections 563.022(14) and 561.14(1), F.S.

¹⁴ 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/pricee_001.pdf (last visited March 9, 2017).

¹⁵ Section 561.42(1), F.S.

¹⁶ See s. 564.045, F.S.

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit,¹⁷ for liquors sold, made strictly in compliance with the provisions of s. 561.42, F.S.¹⁸

Section 561.42, F.S., also prohibits licensed manufactures and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;¹⁹
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;²⁰
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises;²¹ and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.²²

Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that hold more than one gallon of wine. However, wine may be sold in a reusable container that holds 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.²³

Section 564.055, F.S., prohibits the sale of cider²⁴ at retail in any individual container that holds more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container that holds one gallon or more of cider, regardless of container type.

¹⁷ Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

¹⁸ Section 561.42(1), F.S.

¹⁹ Section 561.42(4), F.S.

²⁰ Section 561.42(10), F.S.

²¹ Section 561.42(12), F.S.

²² Section 561.42(14)(a), F.S.

²³ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

²⁴ Section 564.06(4), F.S., provides that “cider” is “made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume.” “Must” is the expressed juice of a fruit before and during fermentation. See <https://www.merriam-webster.com/dictionary/must> (last visited April 13, 2017).

Growlers

Malt beverages must be sold or offered for sale in containers that hold no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container that contains one gallon or more of cider, regardless of individual container type.²⁵

However, malt beverages may also be sold or offered for sale in a “growler,” which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. Growlers must identify or be imprinted or labeled with certain information, including the percentage of alcohol by volume, and have an unbroken seal or be incapable of being immediately consumed.²⁶

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee’s employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.²⁷

Employment of Minors

CS/CS/SB 106 by the Rules Committee, the Regulated Industries Committee, and Senator Flores amends the package store restrictions in s. 565.04, F.S.,²⁸ to provide for the phased repeal of the restrictions, revise the locations where a new package store may be located in relation to a school, revise the requirements for sale of certain sizes of distilled spirits containers in certain situations, and prohibit sales of distilled spirits at gasoline service stations locations of less than 10,000 square feet.

CS/CS/SB 106 also revises the circumstances under which an alcoholic beverage vendor may employ minors. CS/CS/SB 106 amends s. 562.13, F.S., to permit minors to be employed by a vendor that is a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station and that derives 30 percent or less of its monthly gross revenue

²⁵ Section 563.06(6), F.S.

²⁶ Section 563.06(7), F.S.

²⁷ Section 564.09, F.S.

²⁸ Section 565.04, F.S., prohibits package stores from selling, offering and exposing for sale other merchandise in addition to distilled spirits, beer and wine. In addition, package stores may not have openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded. However, package stores may sell bitters, grenadine, nonalcoholic mixer-type beverages (not including fruit juices produced outside Florida), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited glassware and party-type foods), miniatures of no alcoholic content and tobacco products.

from the sale of alcoholic beverages. A vendor may employ a minor if the minor is supervised by a person 18 years of age or older who verifies the age of the purchaser to be 21 years of age or older and approves the sale of alcoholic beverages to the purchaser. A vendor may not lawfully employ a minor during a month in which a vendor's gross revenue from the sale of alcoholic beverages exceeds 30 percent its of total revenue.

III. Effect of Proposed Changes:

Tied-House Evil Exception

CS/SB 388 creates s. 561.42(15), F.S., to exempt from the tied house evil prohibitions certain financial transactions negotiated at arm's length for fair market value between a manufacturer of malt beverages and a vendor licensed under the Beverage Law.

Such financial transactions:

- May not involve the sale or distribution of beer or malt beverages;
- May not limit the sale of beer or malt beverages from another manufacturer;
- Must be with a vendor who operates a theme park;
- Must not exceed 25 such financial transactions in effect during a calendar year with respect to each theme park; and
- Must be registered with the division.

The bill defines a "theme park" as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.²⁹

Employment of Minors by Package Stores

The bill amends s. 562.13, F.S., as amended by CS/CS/SB 106 (or similar legislation), to permit the employment of minors in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that is a package store licensed under s. 565.02(1)(a), F.S., to sell beer, wine, and distilled spirits only in sealed containers for off-premises consumption. To employ a minor, those vendors must derive 30 percent or less of its monthly gross revenue from the sale of alcoholic beverages. Those vendors may employ a minor only if the minor is supervised by a person 18 years of age or older who verifies the age of any purchaser to be 21 years of age or older and approves the sale of alcoholic beverages to a purchaser. The bill removes the supervision and verification requirement in s. 562.13, F.S., as amended by CS/CS/SB 106, for sales of beer and wine by a minor.

The bill maintains current law to permit minors to be employed by vendors licensed to sell beer or beer and wine under ss. 563.02(1)(a) and 564.02(1)(a), F.S., when such sales are only for off-premises consumption. Current law does not impose a supervision or verification requirement for sales by minors employed by an alcoholic beverage vendor.

²⁹ This definition of "theme park" is identical to the definition of the term "theme park or entertainment complex" in s. 509.013(9), F.S., which relates to public lodging and public food services establishments.

Wine Containers

The bill repeals the wine container size limits in s. 564.05, F.S.

Cider Containers

The bill amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

Restaurants - Off-Premises Consumption of Wine

The bill amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to leave a restaurant with a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

Effective Date

The bill provides an effective date of July 1, 2017.

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulations reports some potential difficulty in the regulatory monitoring of industry arrangements facilitated by the exemptions provided in the bill.³⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.42, 562.13 (as amended by CS/CS/SB 106), 564.055, and 564.09.

This bill repeals section 564.05 of the Florida Statutes.

IX. 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 Rules on April 12, 2017:

The committee substitute for committee substitute (CS/CS) amends s. 562.13, F.S., as amended by CS/CS/SB 106, to:

- Permit the employment of minors by specified package stores licensed under s. 565.02(1)(a), to sell beer, wine, and distilled spirits;
- Provide a supervision and verification requirement for sales of distilled spirits by minors;
- Remove the supervision and verification requirement for sales of beer and wine; and
- Maintain current law for the employment of minors by vendors licensed to sell beer or beer and wine, when such sales are only for off premises consumption.

The CS/CS also:

- Limits the number of financial transactions that a beer or malt beverage manufacturer may have with a theme park licensed as a vendor to not more than 25 such transactions in effect for each theme park during any calendar year.
- Repeals the wine containers size limitations in s. 565.05, F.S.
- Amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.
- Amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The CS retains the requirement that the restaurant patron must purchase a meal with the bottle of wine.

³⁰ Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis: SB 388*, (Feb. 17, 2017.) (On file with the Committee on Commerce and Tourism.)

CS by Regulated Industries on March 15, 2017:

The committee substitute (CS):

- Does not amend s. 561.42(13), F.S., to prohibit the possession or use of wine and fortified wine coupons or cross-merchandising coupons.
- Amends s. 561.42(15), F.S., to require that, to be exempt from the tied-house evil law, an arms-length financial transaction between a manufacturer of beer or malt beverages and a vendor may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, and must be registered with the division.

B. Amendments:

None.