

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 423 Beverage Law  
**SPONSOR(S):** Careers & Competition Subcommittee, La Rosa  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	9 Y, 6 N, As CS	Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages 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, property, or rebates to retail vendors.

The bill amends s. 561.42, F.S., providing that the tied house evil prohibition does not apply to a financial transaction between a licensed vendor and a manufacturer of beer or malt beverages if:

- The financial transaction is negotiated at arm's length for fair market value;
- The financial transaction does not involve the direct sale or distribution of beer or malt beverages;
- The financial transaction does not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer during or in connection with any sponsored events;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually; and
- The financial transaction is registered with the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation, with a summary of the transaction that includes a description of any sponsored events, activities, or cooperative advertising.

The bill does not have a fiscal impact on state or local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

In Florida, the Beverage Law<sup>1</sup> 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 in the Department of Business and Professional Regulation administers and enforces the Beverage Law.<sup>3</sup>

“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.<sup>4</sup>

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.”
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”
- “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.<sup>5</sup>
- “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.”

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

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the “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.<sup>6</sup>

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>7</sup> A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.<sup>8</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>9</sup>

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.<sup>10</sup>

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<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> s. 561.02, F.S.

<sup>4</sup> s. 563.01, F.S.

<sup>5</sup> s. 561.01(5), F.S.

<sup>6</sup> s. 561.14, F.S.

<sup>7</sup> s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>8</sup> s. 561.22(1), F.S.

<sup>9</sup> ss. 563.022(14) and 561.14(1), F.S.

<sup>10</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), [http://www.lanepowell.com/wp-content/uploads/2009/04/pricee\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf).

Florida's Tied House Evil Law<sup>11</sup> prohibits a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever.

A manufacturer or distributor is also prohibited from:

- engaging in cooperative advertising with a vendor
- naming a vendor in any advertisement for a malt beverage tasting
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

### **Effect of the Bill**

The bill amends s. 561.42, F.S., providing that the tied house evil prohibition does not apply to a financial transaction between a licensed vendor and a manufacturer of beer or malt beverages if:

- The financial transaction is negotiated at arm's length for fair market value;
- The financial transaction does not involve the direct sale or distribution of beer or malt beverages;
- The financial transaction does not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer during or in connection with any sponsored events;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually; and
- The financial transaction is registered with the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation, with a summary of the transaction that includes a description of any sponsored events, activities, or cooperative advertising.

### **B. SECTION DIRECTORY:**

Section 1 Amends s. 561.42, F.S., providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of beer or malt beverages and a licensed vendor, providing conditions for the exemption.

Section 2 Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

Indeterminate. The bill requires DBPR to register financial transactions between manufacturers and vendors. It is unclear at this point how many transactions will occur and it is unclear what, if anything, the bill requires DBPR to do with the transactions once it is received.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None

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<sup>11</sup> s. 561.42(1), F.S.  
**STORAGE NAME:** h0423a.CCS  
**DATE:** 3/30/2017

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers of beer and malt beverages and qualified vendors will no longer be subject to tied house evil prohibitions related to financial transactions other than for the direct sale of beer or malt beverages. This may be of great financial benefit to qualified vendors and manufacturers, and may have a negative financial impact on some distributors.

D. FISCAL COMMENTS:

None

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill exempts a financial transaction that, among other conditions, “does not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer during or in connection with any sponsored events”.

It is unclear whether the bill prohibits the financial transaction from limiting another manufacturer’s sales in connection with a “sponsored event”, or, the financial transaction is the “sponsored event”.

It might prove difficult for DBPR to determine whether a given financial transaction will, in the future, potentially limit the sale of alcoholic beverages from another manufacturer. Similarly, it is unclear how one would prove that a given transaction has or has not indirectly limited the alcoholic beverage sales of another manufacturer.

DBPR expressed the following concerns relating to the bill:<sup>12</sup>

The exemption to the tied house evil prohibition provided in the bill is susceptible to numerous unforeseen financial arrangements that would be otherwise impermissible pursuant to Florida law for any other manufacturer or vendor of alcoholic beverages. Regulatory monitoring of the industry arrangements facilitated pursuant to such an exemption would rely heavily on referrals of complaints by industry or other interested parties, and alleged violations may be difficult to prove for purposes of enforcement.

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<sup>12</sup> See DBPR, Agency Analysis of 2017 House Bill 423 (Feb. 13, 2017).

With the exception of the authority granted in s. 561.221, F.S., for a manufacturer holding multiple manufacturing licenses to transfer malt beverages to or between the manufacturer's own breweries, manufacturers of malt beverages do not sell or deliver malt beverages directly to vendors. Under the Beverage Law, manufacturers sell to distributors and distributors then sell and deliver the malt beverages to vendors. Accordingly, financial transactions between manufacturers and vendors inherently do not involve, either all or in part, the direct sale or distribution of malt beverages between the manufacturer and the vendor. The bill essentially exempts nearly any financial transaction between a manufacturer of malt beverages and a qualified vendor from the prohibitions of the Tied House Evil Law applicable to all other manufacturers and vendors, except for the actual purchase beer.

Pursuant to the bill, so long as certain conditions are met, manufacturers of malt beverages may be able to:

- Have a financial interest, directly or indirectly, in the establishment or business of a qualified vendor licensed under the Beverage Law;
- Provide a qualified vendor with a loan of money or property of any description;
- Give, lend, rent, sell, or furnish a qualified vendor with any outside sign, printed, painted, electric, or otherwise;
- Engage in cooperative advertising with a qualified vendor;
- Name a qualified vendor in any advertisement for a malt beverage tasting; or
- Pay for particular placement, signage, or other brand promotion within a qualified vendor's premises for malt beverages produced by the manufacturer.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 28, 2017, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the provision that would have expanded the scope of s. 561.42(13), F.S., (related to the redemption, possession, or use of coupons for malt beverages by alcoholic beverage vendors,) to include coupons for wine and fortified wine.
- Supplements the conditions in s. 561.42(15), F.S., providing that, in order to be exempt from the tied house evil prohibition:
  - The financial transaction does not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer during or in connection with any sponsored events;
  - The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually; and
  - The financial transaction is registered with the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation, with a summary of the transaction that includes a description of any sponsored events, activities, or cooperative advertising.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.