

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 Appropriations Subcommittee on General Government

BILL: CS/CS/SB 554

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Young and others

SUBJECT: Craft Breweries

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>Fav/CS</u> |
| 3. | <u>Davis</u> | <u>Betta</u> | <u>AGG</u> | <u>Recommend: Favorable</u> |
| 4. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 554 authorizes a craft brewery with a retail vendor's license to sell, transport, and deliver its own beer from its brewery to other vendors. A craft brewery that distributes beer to a vendor is subject to the same restrictions as a licensed distributor (i.e., the brewer cannot give the vendor any financial assistance, such as a gift, loan, or rebate).

A craft brewery may self-distribute to a vendor only beer in kegs or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a "pony keg") or 15.5 gallons (i.e., a keg). A craft brewery may not distribute its own beer to a vendor if it has a franchise agreement with a distributor to distribute its product anywhere in the state, or has a total production volume of more than 7,000 kegs (i.e., 108,500 gallons) of malt beverages a year.

Deliveries of beer to a vendor must be made in vehicles owned by the brewery or in a vehicle owned by a person required to be disclosed on the alcoholic beverage application.

The bill allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

The bill has no impact on state revenues or expenditures because any new costs will be paid from existing resources.

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 of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

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. A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.

Generally, Florida has adopted the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁴ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁵ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁶

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.⁷ Section 561.42, F.S., 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. However, s. 561.423, F.S., permits a distributor of beer or malt beverages to provide in-store servicing of beer or malt beverages.

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

⁵ Section 561.22, F.S.

⁶ Sections 563.022(14) and 561.14(1), F.S.

⁷ 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 (last visited February 13, 2017).

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,⁸ breweries,⁹ and craft distilleries to be licensed as a vendor and sell directly to consumers.¹⁰ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹¹

Craft Breweries

Section 561.221(2), F.S., authorizes the division to issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery (craft brewery), which may be divided by no more than one public street or highway. A vendor license to a craft brewery is an exception to the three-tier system described in ss. 561.14 and 561.22, F.S., and to the tied-house evil restrictions in s. 561.42, F.S.

A craft brewery with multiple manufacturing licenses may transfer malt beverages that it produces between its breweries, as provided in s. 563.022(14)(d), F.S. Such transfers are limited to an amount equal to 100 percent of the yearly production of the receiving brewery.

All malt beverages and other alcoholic beverages that are not manufactured by the craft brewery must be obtained through a distributor, an importer, sales agent, or broker.

A craft brewery may not make deliveries as provided in s. 561.57(1), F.S., which permits a vendor to deliver products sold at the licensed place of business to an off-site location. Telephone or mail orders received at a vendor's licensed place of business are considered a sale actually made at the vendor's licensed place of business. However, deliveries made by a vendor away from his or her place of business may only be made in vehicles that are owned or leased by the licensee. By acceptance of an alcoholic beverage licensee, the vendor is presumed to have agreed to the inspection of the vehicle without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.¹²

The division may not issue more than eight vendor's licenses to a manufacturer of malt beverages.¹³

Come-to-Rest Requirement

Section 561.5101, F.S., requires, for purposes of inspection and tax-revenue control, all malt beverages to come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The come-to-rest requirement does not apply to malt beverages that a craft brewery manufacturers and sells to consumers as a vendor, or

⁸ See s. 561.221(1), F.S.

⁹ See s. 561.221(2), F.S.

¹⁰ See s. 565.03, F.S.

¹¹ See s. 561.221(3), F.S.

¹² Section 561.57(2), F.S.

¹³ Section 561.221(2)(e), F.S.

to malt beverages manufactured and sold by a brew pub. It is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.,¹⁴ for any person in the business of selling alcoholic beverages to knowingly and intentionally sell malt beverages in a manner inconsistent with the come-to-rest requirement, whether the sale is to a vendor or to an ultimate consumer.

Excise Tax Reporting and Payment

Craft brewers are required to report and pay the excise tax on malt beverages imposed by s. 563.05, F.S. Manufacturers and distributors are required to compute and submit the applicable excise taxes on alcoholic beverages with the report required by s. 561.55, F.S., to the division, on or before the 10th of each month, for all beverages sold during the previous calendar month.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 561.221, F.S., to authorize a craft brewery to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors.

A craft brewery that distributes beer to a vendor is subject to the same restrictions as a licensed distributor under ss. 561.42 and 561.423, F.S., (e.g., the brewer cannot give the vendor any financial assistance, such as a gift, loan, or rebate).

A craft brewery may distribute to a vendor only beer in kegs¹⁶ or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a “pony keg”) or 15.5 gallons (i.e., a keg).

A craft brewery may not distribute to a vendor, if it:

- Has a franchise agreement with a distributor to distribute its product anywhere in the state; or
- Has a total production volume of more than 7,000 kegs (i.e., 108,500 gallons) of malt beverages a year.

Section 1 allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

Section 2 amends s. 561.5101, F.S., the come-to-rest requirement, to exempt certain deliveries made by a craft distillery to a vendor as provided in s. 561.221(2)(f), F.S.

Section 3 amends s. 561.57, F.S., to require a brewery to deliver beer to a vendor in a vehicle owned by the brewery or in a vehicle owned by a person required to be disclosed on the alcoholic beverage application,¹⁷ as provided in s. 561.57, F.S.

¹⁴ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000. Section 775.084, F.S., provides increased penalties for habitual offenders.

¹⁵ Section 561.50, F.S.

¹⁶ Section 561.221(3)(a)1., F.S. provides that a “keg” equals 15.5 gallons.

¹⁷ Section 561.17, F.S., requires that the alcoholic beverage license application include all persons, officers, shareholders, and directors of the applicant that have a direct or indirect interest in the business seeking to be licensed under the Beverage Law.

Section 4 amends s. 561.022, F.S., to provide that the Beverage Law does not prohibit a delivery from a brewery to a vendor's licensed premises as provided in s. 561.221(2)(f), F.S.

The effective date of the bill is 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:

According to the DBPR, modifications to the Electronic Data Submission (EDS) System will be necessary to implement this bill. The costs of such modification can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.221, 561.5101, 561.57, and 563.022.

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 Commerce and Tourism Committee on March 27, 2017:

The committee substitute allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

CS by Regulated Industries Committee on February 22, 2017:

The committee substitute:

- Allows a craft brewery to distribute kegs or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a “pony keg”) or 15.5 gallons (i.e., a keg), of malt beverages manufactured on its licensed premises; and
- Clarifies that the authority to distribute does not apply to a manufacturer who has a total production volume of more than 7,000 kegs, (i.e., 108,500 gallons) of malt beverages a year.

- B. **Amendments:**

None.