

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 695	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Business & Professional Regulation Subcommittee; Holder	114 Y's	0 N's
COMPANION BILLS:	(CS/SB 864)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 695 passed the House on April 17, 2013, and subsequently passed the Senate on April 26, 2013.

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. A manufacturer or distributor may not have any financial interest, directly or indirectly, in the establishment or business of a retailer, nor assist a vendor by any gifts or loans of money or property unless an exception is provided.

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 to adopt rules to establish administrative sanctions for violations of the limitations established in s. 561.42, F.S., on credits, coupons, and other forms of assistance.

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 bill was approved by the Governor on June 7, 2013, ch. 2013-145, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current 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.

Additionally, 27 CFR 6.4(b), Jurisdictional limits, provides that Federal Tied-House provisions apply to transactions between a retailer and industry member involving malt beverages only to the extent that the State law imposes similar requirements. Currently, neither Florida law nor division rules impose requirements similar to these federal requirements.

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, typically, provides the coupons to consumers.

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.

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Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Section 561.42, F.S., provides that a manufacturer or distributor may not have any financial interest, directly or indirectly, in the establishment or business of a retailer, nor assist a vendor by any gifts or loans of money or property or by giving rebates of any kind unless an exception is provided.

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 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 limitations established in s. 561.42, F.S., on credits, coupons, and other forms of assistance.

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.

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:

None.

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.