

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: CS/SB 864

INTRODUCER: Regulated Industries Committee and Senator Thrasher

SUBJECT: Tied House Regulation

DATE: March 14, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | | | AFT | |
| 3. | | | AP | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 864 authorizes the division to impose administrative sanctions for any violation of the limitations on credits, coupons and other forms of assistance. Current law only authorizes the division to establish rules and require reports to enforce the limitation on credits and other forms of assistance to the vendor. The bill also extends the rulemaking and the sanctioning authority to violations related to coupons.

The bill also prohibits Beverage Law licensees from possessing or using, in physical or electronic format, any type of malt beverage coupon in this state. This prohibition also applies to cross-merchandizing coupons. The bill specifies the circumstances in which prohibition applies. Current law, which the bill repeals, only prohibits distributors from furnishing coupons to consumers that are redeemable by the vendor.

The effective date of the bill is July 1, 2013.

This bill substantially amends section 561.42, Florida Statutes.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.¹ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.² The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.³

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. 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.⁴

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,⁵ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁶ and allowing in-state wineries to manufacture and sell directly to consumers.⁷

In a three-tier system, each license classification has clearly delineated functions. In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁸ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁹ Importers, whether resident or nonresident, are 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. An importer can have no direct or indirect affiliation with any vendor licensed in this state.¹⁰

Tied House Evil

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ 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*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (Last visited February 28, 2013).

⁵ See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

⁶ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁷ See s. 561.221, F.S.

⁸ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁹ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

¹⁰ Section 561.14(5), F.S.

vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist 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. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

Section 561.42(8), F.S., authorizes the division to establish rules and require reports to enforce limitation on credits and other forms of assistance. This rulemaking authority does not extend to cash deposits on beer sales, as provided in s. 563.08, F.S.

Section 561.42, F.S., defines the types of items or services that may be provided to vendors. For example, s. 561.42(10), F.S., prohibits by manufacturers, distributors, importers, primary American sources of supply,¹¹ or brand owners or registrants, or their brokers, sales agents or sales persons, from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise.

Section 561.42(12)(e), F.S., prohibits distributors of beer from furnishing coupons to consumers that are redeemable by vendors.

Manufacturers and importers are not prohibited from furnishing coupons to consumers that are redeemable by vendors. According to proponents of the bill, manufacturers and importers provide the coupons to the vendor who then furnishes the coupons to the consumer. Proponents of the bill have expressed the concern that such coupons are subject to fraud because vendors may redeem the coupons with the manufacturer or importer without having provided the intended discount or other benefit of the coupon to the consumer.

The division's current administrative rules for the subject of tied house evil do not address the use of coupons.¹² According to the department and several industry representatives, the division

¹¹ Section 564.045(1), F.S., defines the term "primary American source of supply" as the: manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

¹² See ch. 61A-1, F.A.C.

has unsuccessfully attempted over several years to formulate and adopt rules to address the use of coupons by vendors, manufacturers, distributors, and importers.

III. Effect of Proposed Changes:

The bill amends s. 561.42(8), F.S., to authorize the division to impose administrative sanctions for any violation of the limitations on credits, coupons and other forms of assistance to the vendor. Current law only authorizes the division to establish rules and require reports to enforce the limitation on credits and other forms of assistance to the vendor. The bill also extends the rulemaking and the sanctioning authority to violations related to coupons.

The bill also amends s. 561.42(8), F.S., to delete the prohibition against rules relating to cash deposits on beer sales, as provided in s. 563.08, F.S.

The bill deletes s. 561.42(12)(e), F.S., which prohibits beer distributors from furnishing coupons to consumers that are redeemable by vendor.

The bill creates s. 561.42(13), F.S., to prohibit Beverage Law licensees from possessing or using, in physical or electronic format, any type of malt beverage or cross-merchandizing coupons in this state. This prohibition also applies where:

- Coupons are produced, sponsored, or furnished, directly or indirectly, by an alcoholic beverage manufacturer, distributor, importer, brand owner, brand registrant, broker, sales agent, or sales person thereof; and
- Coupons are or purport to be redeemable by a vendor or other person who sells malt beverages to consumers in this state.

The effective date of the bill is July 1, 2013.

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:

Consumers of beer could not be furnished with coupons by manufacturers, distributors, and importers of beer to then be redeemed by an alcoholic beverage vendor. However, the consumer could receive the same coupon from the vendor.

C. Government Sector Impact:

According to the department, its prior efforts to adopt rules to address the use of coupon have resulted in rule challenges and years of litigation between the department and the beer industry. The department advises that it would incur an indeterminate cost saving because further litigation regarding the issue would be eliminated by prohibiting the use of coupons.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

Committee Substitute by Regulated Industries Committee on March 14, 2013:

The committee substitute (CS) amends s. 561.42(8), F.S., to authorize the division to impose administrative sanctions for any violation of the limitations on credits, coupons and other forms of assistance to the vendor.

The CS also amends s. 561.42(8), F.S., to delete the prohibition against rules relating to cash deposits on beer sales, as provided in s. 563.08, F.S.

The CS deletes s. 561.42(12)(e), F.S., which prohibits beer distributors from furnishing coupon to manufacturers and importers of beer from furnishing coupons to consumers that are coupons redeemable by vendor to consumers. Instead, the bill creates s. 561.42(13), F.S., to prohibit Beverage Law licensees from possessing or using, in physical or electronic format, any type of malt beverage or cross-merchandizing coupons in this state. The CS also specifies the circumstances in which prohibition applies.

B. Amendments:

None.