

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 Appropriations

BILL: CS/SB 470

INTRODUCER: Community Affairs Committee and Senator Detert

SUBJECT: Malt Beverage Tastings

DATE: April 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 470 repeals the prohibition against beer tastings and creates conditions under which certain parties are authorized to conduct a tasting. The bill regulates the locations at which a tasting can be held and requires certain methods to be used at a tasting. The bill allows vendors to conduct a tasting on their own premises using malt beverages from their own inventory.

The bill prohibits certain parties from paying a fee or any compensation to a vendor for conducting a tasting. Licensed premises are authorized to hold more than one tasting in a day, but only one tasting may take place at a time. The bill provides for liability of certain parties that contract with third-parties to conduct tastings on their behalf. The bill prohibits certain parties from engaging in cooperative advertising with a vendor.

The bill has no fiscal impact on state funds.

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 via manufacturers, distributors, and

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

vendors.² The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces 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

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.⁵ Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁶ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁷

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,⁸ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁹ and allowing in-state wineries to manufacture and sell directly to consumers.¹⁰

Tied House Evil Prohibitions

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting 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. Specifically, s. 561.42(1), F.S., provides in pertinent part:

No manufacturer, distributor, importer, primary American source of supply, or brand owner... or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the

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 March 4, 2014).

⁵ Section 561.14(2), F.S.

⁶ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁷ 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.

⁸ See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

⁹ 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.

¹⁰ See s. 561.221, F.S.

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.

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 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.

Alcoholic Beverage Tastings

Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

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.

III. Effect of Proposed Changes:

Section 1 deletes brokers from the provisions of s. 561.42(14)(e), F.S., regulating malt beverages.

The bill allows a manufacturer, distributor, importer, or contracted third-party agent thereof, to conduct malt beverage tastings to be held on:

- The licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or
- The licensed premises of any vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:
 - The licensed premises has at least 10,000 square feet of interior floor space exclusive of storage space; or
 - The licensed premises is a package store licensed under s. 565.02(1)(a) F.S.

For tastings conducted on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption on premises, the samples shall be:

- Served to members of the general public of the age of legal consumption.
- Served in a tasting cup, glass, or other open container.

For tastings conducted on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for off premises consumption, the samples shall be:

- Served to members of the general public of the age of legal consumption.
- Served in the interior of the building and each serving must be provided in a tasting cup having a capacity of 3.5 ounces or less.

A manufacturer, distributor, importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind, including the provision of any malt beverage at no or reduced cost, in return for the vendor's authorization of the tasting at his premises.

A manufacturer, distributor, importer, or any contracted third-party agent thereof must provide all of the beverages to be tasted. The total volume of beverages may not exceed 576 ounces per tasting. Any samples provided to a vendor count against the 576-ounce cap. The party conducting the tasting must have paid all excise taxes on the beverages and must return to the manufacturer or distributor's inventory any remaining beverages after the tasting. The party may purchase at retail price the malt beverages to be used for the tasting from the vendor that owns the premises to be used for the tasting, but any remaining beverages must be removed after the tasting.

More than one tasting may be held on the licensed premises per day, but only one manufacturer, distributor, importer, or any contracted third-party agent thereof may conduct a tasting on the premises at any one time.

A manufacturer, distributor, or importer that contracts with a third-party agent to conduct a malt beverage tasting on its behalf is responsible for any violation of this section by that agent.

A vendor may conduct a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

The division may adopt rules pursuant to ss. 561.08 and 561.11, F.S., to implement, administer, and enforce this bill.

A manufacturer, distributor, importer, brand owner, brand registrant, sales agent or sales person, or any contracted third-party agent thereof may not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting.

Section 2 provides an effective date of July 1, 2014.

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:

CS/SB 470 permits distributors to hold tastings at vendors' premises, which could increase costs for distributors and have an indeterminate impact on manufacturers', distributors', and vendors' revenue.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation (department), the bill requires minimal information technology system changes to the Versa: Regulation software. Versa: Regulation is the licensing software the department uses to process applications, track licenses, complaints and legal proceedings. These programming expenditures can be absorbed within existing resources.¹²

¹² Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis: CS/CS/SB 387 (4/2/14).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.42 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 by Community Affairs on March 25, 2014:

- Deletes “brokers” from the provisions regulating malt beverages;
- Allows malt beverage tasting for:
 - Vendors licensed for on-premises consumption; or
 - Vendors licensed for off-premises consumption if the premises meets certain conditions;
- Provides restrictions and requirements for the conduct of tastings;
- Prohibits certain parties from paying a fee to a vendor in return for hosting a tasting;
- Provides for liability of certain parties that contract with third-parties to conduct tastings on their behalf;
- Allows vendors to conduct a tasting on their own premises using malt beverages from their own inventory; and
- Prohibits certain parties from engaging in cooperative advertising with a vendor.

- B. **Amendments:**

None.