

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 470

INTRODUCER: Senator Detert

SUBJECT: Malt Beverages

DATE: March 10, 2014

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 470 repeals the prohibition against beer tastings and permits licensed malt beverage distributors and vendors to conduct malt beverage tastings at licensed premises that are authorized to sell malt beverages by package or for consumption on premises, provided that the malt beverage tasting is limited to and directed toward the general public of the age of legal consumption.

Current law permits wine and spirituous beverage distributors and vendors to conduct wine and spirituous beverage tastings at licensed premises that are authorized to sell such beverages.

**II. Present Situation:**

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (Department) administers and enforces the Beverage Law.<sup>3</sup>

**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

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

<sup>2</sup> *See* s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

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.<sup>4</sup>

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.<sup>5</sup> Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>6</sup> Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.<sup>7</sup>

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

### **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 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.)

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<sup>4</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*, a copy can be found at: [http://www.lanepowell.com/wp-content/uploads/2009/04/pricce\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf) (last visited March 4, 2014).

<sup>5</sup> Section 561.14(2), F.S.

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

<sup>7</sup> 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.

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

<sup>9</sup> 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.

<sup>10</sup> See s. 561.221, F.S.

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,<sup>11</sup> 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.

### **III. Effect of Proposed Changes:**

**Section 1** repeals the prohibition against beer tastings in s. 561.42(14)(e), F.S.

**Section 2** creates s. 563.09, F.S., to permit licensed malt beverage distributors and vendors to conduct malt beverage tastings at licensed premises that are authorized to sell malt beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the malt beverage tasting is limited to and directed toward the general public of the age of legal consumption.

**Section 3** provides an effective date of July 1, 2014.

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<sup>11</sup> 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.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 561.42 of the Florida Statutes.

This bill creates section 563.09 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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