

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 623 Alcoholic Beverages  
**SPONSOR(S):** Tobia  
**TIED BILLS:** **IDEN./SIM. BILLS:** HB 383, SB 814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	7 Y, 5 N	Brown-Blake	Anstead
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law (Beverage Law). The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.<sup>1</sup>

In general, the Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor purchases the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer.

The bill permits distributors that are licensed to sell wine or distilled spirits to purchase the wine or distilled spirits from a licensed vendor.

The bill permits licensed vendors to sell alcoholic beverages to distributors for further distribution to other vendors. However, the act of selling wine or distilled spirits to distributors for redistribution would not classify the vendor as a distributor.

The bill requires the distributors that purchase from vendors to maintain accurate records pursuant to s. 561.55, F.S., of all purchases from a licensed vendor, including detailed supporting receipts from the sale of wine and distilled spirits to the distributor.

The bill requires distributors to report the resale of wine and distilled spirits to vendors on monthly excise tax reports, but are not required to pay the excise taxes on the alcohol that the distributor has purchased from a vendor, as the excise tax on those specific alcoholic beverages has already been paid by the distributor that sold the alcoholic beverages to the vendor originally.

The bill exempts alcoholic beverages purchased from a vendor by a distributor from sales tax.

The bill is expected to have minimal to no financial impact on the Department.

The bill has an effective date of July 1, 2016.

<sup>1</sup> s. 561.02, F.S.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Chapters 561-565 and 567-568, F.S., comprise the Beverage Law. The Division, housed under the Department, is responsible for the regulation of the alcoholic beverage industry.<sup>2</sup>

In general, the Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor purchases the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The chapter provides that distributors are licensed to sell and distribute to persons or entities that are also licensed to sell alcoholic beverages.<sup>3</sup> Distributors and vendors are both “licensed to sell” alcoholic beverages.<sup>4</sup> Therefore, distributors are permitted to sell to other distributors.

Currently, nothing in the Beverage law explicitly permits or prohibits distributors from purchasing alcoholic beverages from vendors. However, the Beverage Law does provide that vendors may only sell alcoholic beverages “at retail.”<sup>5</sup> The term “retail” is defined as “[t]he sale of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing.”<sup>6</sup>

Therefore, the vendor may only sell to the ultimate consumers of the alcoholic beverages, not for further distribution or processing. Additionally, the distributor is not considered an “ultimate consumer” if the distributor is purchasing the alcoholic beverages to distribute other vendors. As such, the vendor may be in violation of the Beverage Law if he or she sold alcoholic beverages to a distributor for distribution to another vendor. The Department interprets the statute to mean that a distributor may not purchase alcoholic beverages from vendors.<sup>7</sup>

Excise taxes on alcoholic beverages are paid by the distributor prior to the distributor’s delivery of the alcoholic beverages to the receiving vendor.<sup>8</sup> The vendor is not responsible for the payment of excise taxes to the Department.

Distributors are required to maintain complete reports of alcoholic beverages purchased from manufacturers and sold to vendors for submission to the Department on the 10th day of every month.<sup>9</sup> However, the Beverage Law does not require a distributor to maintain records of alcoholic beverages that the distributor has purchased from vendors.

The Department conducts semiannual audits of distributors’ principal offices “as provided in s. 561.41, F.S, whereat the division reviews product flow, accuracy of tax payments, actual inventory counts, and compliance with all applicable Florida statutes and administrative rules.”<sup>10</sup>

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<sup>2</sup> s. 561.02, F.S.

<sup>3</sup> s. 561.14(2), F.S.

<sup>4</sup> s. 561.14(2) and (3), F.S.

<sup>5</sup> s. 561.14(3), F.S.

<sup>6</sup> Blacks Law Dictionary, page 1089, (Abridged 8<sup>th</sup> Edition, 2005)

<sup>7</sup> Florida Department of Business and Professional Regulation, 2016 Agency Legislative Bill Analysis House Bill 623, pg. 2, (December 22, 2015).

<sup>8</sup> s. 561.50, F.S.

<sup>9</sup> s. 561.55, F.S.

<sup>10</sup> *Id.* at note 8.

Currently the Beverage Law does not require vendors to collect and maintain records regarding the sale of alcoholic beverages at retail and the Division is not required to conduct audits on vendor's records.

### **Effect of the Bill**

The bill authorizes distributors to sell and distribute for resale to persons who are licensed or registered to sell alcoholic beverages.

Furthermore, the bill permits distributors that are licensed to sell wine or distilled spirits to purchase the wine or distilled spirits from a licensed vendor.

The bill permits licensed vendors to sell alcoholic beverages to distributors for further distribution to other vendors. However, the act of selling wine or distilled spirits to distributors for redistribution would not classify the vendor as a distributor.

The bill requires the distributors that purchase from vendors to maintain accurate records, pursuant to s. 561.55, F.S., of all purchases from a licensed vendor. These records should include supporting receipts from the sale of wine and distilled spirits to the distributor, which must include the vendor's license number, address, and business name. The bill does not amend s. 561.55, F.S., to require a distributor to keep a record of beverages purchased from vendors.

Distributors are required to report the resale of wine and distilled spirits to vendors on monthly excise tax reports, but are not required to pay the excise taxes on the alcohol that the distributor has purchased from a vendor, as the excise tax on those specific alcoholic beverages has already been paid by the distributor that sold the alcoholic beverages to the vendor originally.

The alcoholic beverages purchased from a vendor by a distributor are exempt from sales tax.

It is assumed that the distributor will present his or her license information to the vendor in order to purchase the alcoholic beverages and not be required to pay sales tax. There is no requirement for the vendors to document the sales that are sold to distributors. Additionally, there is no requirement for the vendors to present any records regarding the sale of alcoholic beverages to distributors and the exemption from the sales tax for those alcoholic beverages to the Department of Revenue or the Division.

#### **B. SECTION DIRECTORY:**

**Section 1** amends s. 402.82, 2 F.S., revising a provision relating to the license classification of distributors licensed to sell and distribute alcoholic beverages for resale to specified persons.

**Section 2** provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Department indicates there will be an indeterminate increase in expenditures due to the necessary modifications to the Division's IT systems in order to ensure the taxes were charged at appropriate stages in the distribution of the alcoholic beverages.<sup>11</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Distributors would be able to purchase alcohol from vendors that they otherwise would not be able to carry due to existing exclusivity contracts that many distributors hold with manufacturers.

Vendors may be required to update the information that is printed out on receipts to include their license number, address, and business name. It is unclear whether this would have a cost.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Yes. The Division is permitted to adopt rules governing transactions and reporting requirements provided under the section.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill contains a number of terms that are undefined and not used elsewhere in the Beverage Law, including:

- Registered distributors or vendors.
- Consumer.
- Resale.

The bill language is not clear as to whether it is the vendor's or the distributor's responsibility to ensure that the vendor's name, license number, and address are placed on the receipts. It is also unclear whether the vendor or distributor would be found in violation of the Beverage Law if the vendor's license and address information is not placed on the receipts.

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<sup>11</sup> Florida Department of Business and Professional Regulation, 2016 Agency Legislative Bill Analysis House Bill 623, pg. 4, (December 22, 2015).

It is possible that a vendor will not be aware that they are selling to a distributor rather than at retail, as there is no requirement for a distributor to tell the vendor that he or she is a distributor during the purchase of the alcoholic beverages.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.