

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: SB 388

INTRODUCER: Senator Hutson

SUBJECT: Beverage Law

DATE: March 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

I. Summary:

SB 388 amends the “tied house evil” statute in s. 561.42, F.S., which prohibits a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans or property, or rebates to retail vendors.

The bill prohibits the possession or use of wine or fortified wine coupons, in physical or electronic format, or wine or fortified wine cross-merchandising coupons. Current law prohibits coupons and cross-merchandising coupons for malt beverages.

The bill exempts from the tied house evil prohibitions certain financial transactions negotiated at arm’s length for fair market value between a manufacturer of beer or malt beverages and a vendor licensed under Chapters 561, 562, 563, 564, 565, 567, or 568 (the Beverage Law) if the financial transaction does not involve, either all or in part, the direct sale or distribution of beer or malt beverages between the manufacturer and the licensed vendor.

The bill provides an effective date of July 1, 2017.

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 by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation administers and enforces the Beverage Law.³

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”⁵
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁶
- “Importers” are those 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 in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.⁷
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹⁰

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Licensed manufacturers, distributors, and registered exporters are

⁴ Section 563.01, F.S.

⁵ Section 561.14(1), F.S.

⁶ Section 561.14(2), F.S.

⁷ Section 561.01(5), F.S.

⁸ Section 561.14(3), F.S.

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

¹¹ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

prohibited from also being licensed as vendors.¹² Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹³

Tied House Evil Prohibitions

The three-tier 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.¹⁴

Section 561.42, F.S., known as the “tied house evil” statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.¹⁵ The prohibitions also apply to an importer, primary American source of supply,¹⁶ brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit,¹⁷ for liquors sold, made strictly in compliance with the provisions of s. 561.42, F.S.¹⁸

Section 561.42, F.S., also prohibits licensed manufactures and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;¹⁹
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;²⁰
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises;²¹ and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.²²

¹² Section 561.22, F.S.

¹³ Sections 563.022(14) and 561.14(1), F.S.

¹⁴ 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*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited March 9, 2017).

¹⁵ Section 561.42(1), F.S.

¹⁶ See s. 564.045, F.S.

¹⁷ Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

¹⁸ Section 561.42(1), F.S.

¹⁹ Section 561.42(4), F.S.

²⁰ Section 561.42(10), F.S.

²¹ Section 561.42(12), F.S.

²² Section 561.42(14)(a), F.S.

Section 561.42(13), F.S., prohibits a licensee under the Beverage Law to possess or use, in physical or electronic format, any type of malt beverage coupon or malt beverage cross-merchandising coupon in this state, where:

- The coupon is produced, sponsored, or furnished, directly or indirectly, by a manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person thereof; and
- The coupon is or purports to be redeemable by a vendor or other person who sells malt beverages to consumers in the state.

The Beverage Law does not provide a comparable prohibition against coupons for wine or distilled spirits.

III. Effect of Proposed Changes:

SB 388 amends s. 561.42(13), F.S., to expand the current prohibition against the possession or use of malt beverage coupons or cross-merchandising coupons to include wine and fortified wine coupons.

The bill creates s. 561.42(15), F.S., to exempt from the tied house evil prohibitions certain financial transactions negotiated at arm's length for fair market value between a manufacturer of malt beverages and a vendor licensed under the Beverage Law, if the financial transaction does not involve, either all or in part, the direct sale or distribution of beer or malt beverages between the manufacturer and the licensed vendor.

The bill provides an effective date of July 1, 2017.

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, 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.