

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 423 Beverage Law

SPONSOR(S): Commerce Committee, Careers & Competition Subcommittee, and La Rosa

TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	9 Y, 6 N, As CS	Willson	Anstead
2) Commerce Committee	17 Y, 9 N, As CS	Willson	Hamon

SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages 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, property, or rebates to retail vendors.

The bill amends s. 561.42, F.S., providing that the tied house evil prohibition does not apply to a written agreement for brand naming rights between a manufacturer or importer of malt beverages and a vendor if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give, and the manufacturer or importer does not solicit, preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer, importer or distributor;
- A distributor does not, directly or indirectly, pay any portion of the agreement; and
- The vendor files with the division, at least ninety days in advance, a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill provides that any person or entity that coerces a distributor to pay any portion of the brand naming rights agreement is guilty of a misdemeanor, punishable by "imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the naming rights agreement, plus ten thousand dollars, or by both imprisonment and fine."

The bill also provides that vendors, manufacturers, importers and distributors who violate these provisions will be subject to license suspension for seven days and a fine in an amount not less than the value of the brand naming rights agreement, and when applicable, suspension of its brand registration within the state for 30 days for the brand that is the subject of the brand naming rights agreement.

The bill does not have a fiscal impact on state or local governments. The bill may have a positive financial impact for certain vendors and manufacturers and a negative financial impact for certain distributors.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In Florida, the Beverage Law¹ 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 (DBPR) administers and enforces the Beverage Law.³

“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.”
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”
- “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.⁵
- “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.”

Three-Tier System and Tied House Evil

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the “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.⁶

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁷ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.⁸ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁹

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 s. 561.02, F.S.

⁴ s. 563.01, F.S.

⁵ s. 561.01(5), F.S.

⁶ s. 561.14, F.S.

⁷ s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁸ s. 561.22(1), F.S.

⁹ ss. 563.022(14) and 561.14(1), F.S.

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.¹⁰ Florida’s Tied House Evil Law¹¹ prohibits a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever.

A manufacturer or distributor is also prohibited from:

- engaging in cooperative advertising with a vendor
- naming a vendor in any advertisement for a malt beverage tasting
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For violations of the Beverage Law where no penalty is provided, first-time offenses are guilty of a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S. authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed \$1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

Effect of the Bill

The bill amends s. 561.42, F.S., providing that the tied house evil prohibition does not apply to a written agreement for brand naming rights between a manufacturer or importer of malt beverages and a vendor if:

- The agreement is negotiated at arm’s length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give, and the manufacturer or importer does not solicit, preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer, importer or distributor;
- A distributor does not, directly or indirectly, pay any portion of the agreement; and
- The vendor files with the division, at least ninety days in advance, a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill provides that any person or entity that coerces a distributor to pay any portion of the brand naming rights agreement is guilty of a misdemeanor, punishable by “imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the naming rights agreement, plus ten thousand dollars, or by both imprisonment and fine.”

¹⁰ 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), http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf.

¹¹ s. 561.42(1), F.S.

The bill also provides that vendors, manufacturers, importers and distributors who violate these provisions will be subject to license suspension for seven days and a fine in an amount not less than the value of the brand naming rights agreement, and when applicable, suspension of its brand registration within the state for 30 days for the brand that is the subject of the brand naming rights agreement.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.42, F.S., providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of malt beverages and a licensed vendor, providing conditions for the exemption.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill requires DBPR to register financial transactions between manufacturers and vendors. It is unclear at this point how many transactions will occur and it is unclear what, if anything, the bill requires DBPR to do with the transactions once they are received.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain vendors, manufacturers and importers to benefit financially and may negatively impact certain distributors, manufacturers and importers.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It may prove difficult for DBPR to determine whether a given financial transaction will, in the future, potentially limit the sale of alcoholic beverages from another manufacturer. Similarly, it is unclear how one would prove that a given transaction has or has not indirectly limited the alcoholic beverage sales of another manufacturer.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the provision that would have expanded the scope of s. 561.42(13), F.S., (related to the redemption, possession, or use of coupons for malt beverages by alcoholic beverage vendors) to include coupons for wine and fortified wine.
- Supplemented the conditions in s. 561.42(15), F.S., providing that, in order to be exempt from the tied house evil prohibition:
 - The financial transaction does not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer during or in connection with any sponsored events;
 - The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually; and
 - The financial transaction is registered with the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation, with a summary of the transaction that includes a description of any sponsored events, activities, or cooperative advertising.

On April 24, 2017, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Clarified that manufacturers and importers of malt beverages may enter into written agreements for brand naming rights with vendors that are theme parks under certain conditions.
- Created penalties for the misuse of the exemption to the Tied House Evil Law.
 - Provided that it is a misdemeanor, subject to imprisonment of up to 6 months, and a fine equal to the amount of the value of the naming rights agreement, plus \$10,000, for any person, manufacturer, vendor, or importer, to violate the provisions; and
 - Provided that a vendor may be subject to license suspension for 7 days and a fine for violating these provisions.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.