

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 853 Malt Beverages

**SPONSOR(S):** Commerce Committee, Careers & Competition Subcommittee, Goodson and others

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

| REFERENCE                             | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---------------------------------------|---------------------|---------|--|
| 1) Careers & Competition Subcommittee | 10 Y, 4 N, As<br>CS | Willson | Anstead                                  |
| 2) Commerce Committee                 | 19 Y, 9 N, As<br>CS | Willson | Hamon                                    |

### SUMMARY ANALYSIS

Section 561.42, F.S., the “Tied House Evil Law,” 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, property, or rebates to retail vendors.

Specifically, if a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

The bill amends s. 561.42(14), F.S., to provide that a vendor licensed to sell malt beverages for on-premises consumption may accept glassware from a distributor, at no charge, subject to the following conditions:

- The distributor has received the glassware at no charge from a malt beverage manufacturer or importer;
- The glassware is for on-premises consumption;
- The glassware advertises a permanent and prominent brand name;
- The total pieces of glassware, per licensed premises, does not exceed 3 cases per brand, for up to 3 malt beverage brands per manufacturer or importer per calendar year, for an annual total not to exceed 9 cases per premises; and
- The vendor may not sell the glassware or return it to a distributor for cash, credit, or replacement.

The bill provides definitions as follows:

- A “case” means a box containing up to 24 pieces of glassware.
- “Glassware” means a glass container that holds up to 23 fluid ounces.

Non-branded glassware, as well as branded glassware furnished by anyone other than a distributor, remains subject to the tied house evil prohibition in current law.

The bill specifies that glassware may not be used to induce a retailer to purchase or use the products of one manufacturer, distiller, brewer, vintner or wholesaler instead of the product of a competitor.

The bill does not have a fiscal impact on state or local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

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

##### 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.<sup>4</sup>

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>5</sup> A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.<sup>6</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>7</sup>

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.<sup>8</sup>

Florida’s Tied House Evil Law **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 and may not name a vendor in any advertisement for a malt beverage tasting.<sup>9</sup>

However, the Tied House Evil Law **authorizes** a manufacturer, distributor, importer or registrant of malt beverage to sell expendable retailer advertising specialties (such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like), to a vendor at a price not less than the actual cost to the industry member who initially purchased them.<sup>10</sup>

Currently, if an industry member provides a vendor with glasses, the vendor must pay at least the actual cost to the industry member. Specifically, s. 561.42 (14), F.S., provides that:

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<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means ch.s. 561, 562, 563, 564, 565, 567, and 568, F.S.

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

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

<sup>4</sup> s. 561.14, F.S.

<sup>5</sup> s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>6</sup> s. 561.22(1), F.S.

<sup>7</sup> ss. 563.022(14) and 561.14(1), F.S.

<sup>8</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*, (June 2004), [http://www.lanepowell.com/wp-content/uploads/2009/04/pricee\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf).

<sup>9</sup> s. 561.42, F.S.

<sup>10</sup> s. 561.42(14), F.S.

The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, **glasses**, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

### **Effect of the Bill**

The bill amends s. 561.42(14), F.S., to provide that a vendor licensed to sell malt beverages for on-premises consumption may accept glassware from a distributor, at no charge, subject to the following conditions:

- The distributor has received glassware at no charge from a malt beverage manufacturer or importer;
- The glassware is for on-premises consumption;
- The glassware advertises a permanent and prominent brand name;
- The total pieces of glassware, per licensed premises, does not exceed 3 cases per brand, for up to 3 malt beverage brands per manufacturer or importer per calendar year, for an annual total not to exceed 9 cases per premises; and
- The vendor may not sell the glassware or return it to a distributor for cash, credit, or replacement.

The bill provides definitions as follows:

- A “case” means a box containing up to 24 pieces of glassware.
- “Glassware” means a glass container that holds up to 23 fluid ounces.

Non-branded glassware, as well as branded glassware furnished by other than a manufacturer or importer, remain subject to the tied house evil prohibition in current law.

The bill specifies that glassware may not be used to induce a retailer to purchase or use the products of one manufacturer, distiller, brewer, vintner or wholesaler instead of the product of a competitor.

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

Section 1 Amends s. 561.42, F.S., authorizing a distributor of malt beverages to give specified glassware to vendors licensed to sell malt beverages for on-premises consumption; providing that specified glassware bear certain branding; providing an annual limit on the amount of glassware that may be given by a distributor to a vendor; prohibiting a vendor from selling or returning glassware to a distributor; prohibiting certain uses of glassware.

Section 2 Provides an effective date.

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

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

#### **1. Revenues:**

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

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:

None

### 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 specifies that a vendor may accept glassware from a distributor if:

- The distributor received the single service branded glassware at no charge from a malt beverage manufacturer or importer;
- The glassware is for on-premises consumption;
- The glassware advertises a permanent and prominent brand name;
- The total pieces of glassware, per licensed premises, does not exceed 3 cases advertising up to 3 malt beverage brands per manufacturer or importer per calendar year;
- The vendor may not sell the glassware or return it to a distributor for cash, credit, or replacement; and
- The vendor only uses the glassware to serve the corresponding malt beverage brand advertised on the glassware.

The amendment also clarifies that glassware may not be used to induce a retailer to purchase or use the products of one manufacturer, distiller, brewer, vintner or wholesaler instead of the product of a competitor.

On April 19, 2017, the Commerce Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies the definition of “glassware”.
- Clarifies that a distributor may give a vendor 3 cases per brand, for up to 3 brands per manufacturer, or a total of not more than 9 cases of glassware, per year per licensed premises.
- Removes the language that would make it illegal to use a branded glass to serve anything other than the beer that is advertised on that glass.
- Increases the maximum capacity allowable for glassware, from 22 oz. to 23 oz.
- Revises the effective date, from July 1, 2017 to October 1, 2017.

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