

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 Rules

BILL: CS/SB 574

INTRODUCER: Regulated Industries Committee and Senator Burgess

SUBJECT: In-store Servicing of Alcoholic Beverages

DATE: February 13, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Oxamendi</u>	<u>Twogood</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 574 allows distributors of distilled spirits to perform in-store servicing of distilled spirits sold by the distributor to an alcoholic beverage vendor.

Under the bill, the term “in-store servicing” means:

- Placing distilled spirits, including distilled spirits located in a storage area designated by the vendor, on the vendor's shelves and maintaining the appearance and display of the distilled spirits on the vendor's shelves in the vendor's licensed premises;
- Placing the distilled spirits in displays;
- Placing distilled spirits that are not shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises;
- Rotating distilled spirits; and
- Price stamping of distilled spirits in the vendor's licensed premises.

Under current law, distributors are permitted to perform comparable in-store servicing of wine and beer or malt beverages.

The bill takes effect July 1, 2024.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces¹ the Beverage Law,² which regulates the manufacture, distribution, and sale of wine, beer, and liquor.³ The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

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

“Malt beverages” are brewed alcoholic beverages containing malt.⁴

The term “beer” means a brewed beverage that meets the federal definition of beer in 27 C.F.R. s. 25.11 and contains less than 6 percent alcohol by volume. The terms “beer” and “malt beverage” have the same meaning under the Beverage Law. The terms “beer” and “malt beverage” do not include alcoholic beverages that require a certificate of label approval by the Federal Government as wine or as distilled spirits.

The terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.⁵

The term “wine” means:⁶

all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

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.”⁷

¹ Section 561.02, F.S.

² Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

³ See s. 561.14, F.S.

⁴ Section 563.01, F.S.

⁵ Section 565.01, F.S.

⁶ Section 564.01(1), F.S.

⁷ Section 561.14(1), F.S.

- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁸
- “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.⁹
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and who 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.”¹⁰

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 retail sale of alcoholic beverages by vendors. 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.¹¹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹²

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹³ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.¹⁴ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹⁵

Exceptions to the three-tier regulatory system permit in-state wineries,¹⁶ breweries,¹⁷ and craft distilleries to sell directly to consumers.¹⁸ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of the restaurant.¹⁹

A winery, even if licensed as a distributor,²⁰ may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.²¹

⁸ Section 561.14(2), F.S.

⁹ Section 561.01(5), F.S.

¹⁰ Section 561.14(3), F.S.

¹¹ Section 561.14, F.S.

¹² Section 561.22(1), F.S.

¹³ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

¹⁴ Section 561.22, F.S.

¹⁵ Sections 563.022(14) and 561.14(1), F.S.

¹⁶ See s. 561.221(1), F.S.

¹⁷ See s. 561.221(2), F.S.

¹⁸ See ss. 565.02(12) and 565.03, F.S.

¹⁹ See s. 561.221(3), F.S.

²⁰ Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

²¹ See s. 561.221(1), F.S.

Tied House Evil Prohibitions

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit "tied-house arrangements." Such legislation is referred to as "tied house" or "tied house evil" statutes.²²

Section 561.42, F.S., Florida's "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, property, or rebates.²³ The prohibitions also apply to an importer, primary American source of supply,²⁴ 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 for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.²⁵

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

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;²⁶
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;²⁷
- 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 the licensed premises;²⁸ 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.²⁹

In-Store Servicing - Wine and Malt Beverages

Section 561.424(2), F.S., provides that the "tied house" prohibitions in s. 561.42, F.S., do prohibit a distributor of wine from providing in-store servicing of wine sold by such distributor to a vendor.

²² 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).

²³ Section 561.42(1), F.S.

²⁴ See s. 564.045, F.S.

²⁵ Section 564.42(1). 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.

²⁶ Section 561.42(4), F.S.

²⁷ Section 561.42(10), F.S.

²⁸ Section 561.42(12), F.S.

²⁹ Section 561.42(14)(a), F.S.

The term “in-store servicing” is defined at as:³⁰

...placing the wine on the vendor's shelves and maintaining the appearance and display of said wine on the vendor's shelves in the vendor's licensed premises; placing the wine not so shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises; rotation of vinous beverages; and price stamping of vinous beverages in vendor's licensed premises.

Section 561.424, F.S., does not apply to distilled spirits.

Section 561.423, F.S., also allows a distributor of beer or malt beverages to provide in-store servicing of beer or malt beverages. Under s. 561.423, F.S., the term “In-store servicing” means:

...quality control procedures which include, but are not limited to: rotation of malt beverages on the vendor's shelves, rotation and placing of malt beverages in vendor's coolers, proper stacking and maintenance of appearance and display of malt beverages on vendor's shelves, price-stamping of malt beverages in vendor's licensed premises, and moving or resetting any product or display in order to display a distributor's own product when authorized by the vendor.

III. Effect of Proposed Changes:

The bill amends s. 561.424(2), F.S., to delete the provision that this section does not apply to distilled spirits.

The bill creates s. 561.425, F.S., to allow distributors of distilled spirits to perform in-store servicing of distilled spirits sold by the distributor to an alcoholic beverage vendor.

Under the bill, the term “in-store servicing” means:

- Placing distilled spirits, including distilled spirits located in a storage area designated by the vendor, on the vendor's shelves and maintaining the appearance and display of the distilled spirits on the vendor's shelves in the vendor's licensed premises;
- Placing the distilled spirits in displays;
- Placing distilled spirits that are not shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises;
- Rotating distilled spirits; and
- Price stamping of distilled spirits in the vendor's licensed premises.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁰ Section 561.424(2), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 561.424 of the Florida Statutes.

This bill creates section 561.425 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on February 5, 2024:

The committee substitute:

- Removes from the bill the provision allowing distributors of wine to perform in-store servicing of distilled spirits containing less than six percent alcohol by volume.
- Amends s. 561.424(2), F.S., to delete the provision that this section does not apply to distilled spirits.
- Creates s. 561.425, F.S., to allow distributors of distilled spirits to perform in-store servicing of distilled spirits and defines that the term “in-store servicing.”
- Removes the provision authorizing the Division of Alcoholic Beverages and Tobacco to adopt rules to implement the provision of the bill.

- B. **Amendments:**

None.