

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 709 In-store Servicing of Alcoholic Beverages
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Rizo
TIED BILLS: **IDEN./SIM. BILLS:** SB 574

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Regulation of alcohol in Florida is based upon the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, the distributor obtains the beverages from the manufacturer and then delivers to the vendor, and the vendor makes the ultimate sale to the consumer.

Currently, distributors of wine and beer may provide certain quality control services, or “in-store servicing,” for the products they sell to a vendor, as an exception to the three-tier system, without violating the Beverage Law. However, distributors of liquor may not provide such in-store servicing.

The bill allows distributors of liquor products, to perform in-store servicing for the products they sell to a vendor.

The bill does not appear to have a fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

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

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.⁴ The manufacturer creates the beverages, the distributor obtains the beverages from the manufacturer and then delivers to the vendor, and the vendor makes the ultimate sale to the consumer.⁵

The license and registration classifications used in the Beverage Law include the following:

- “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.”
- “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.”⁶

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers and distributors are generally prohibited from holding a vendor’s license.⁷ Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor’s license (tap room), a restaurant to hold a manufacturer’s license (brew pub), and a winery to hold up to three vendor’s licenses.⁸

Liquor

“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.⁹

Every manufacturer and distributor of liquor beverages:¹⁰

- Containing 17.259 percent or more of alcohol by volume and not more than 55.780 percent of alcohol by volume, except wines, must pay a tax at the rate of \$6.50 per gallon.

¹ Section 561.01(6), F.S., provides that the “Beverage Law” includes 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 Section 561.01, F.S., defines “alcoholic beverages” as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.”

⁵ S. 561.14, F.S.

⁶ S. 561.14, F.S.

⁷ Ss. 561.22(1), 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁸ See ss. 561.22, 561.24, 561.14(1), and 563.022(14), F.S.

⁹ S. 565.01, F.S.

¹⁰ S. 565.12, F.S.

- Containing less than 17.259 percent of alcohol by volume, must pay a tax at the rate provided in Chapter 564, F.S., which outlines tax rates for wine.

In-store Servicing

Distributors of wine and beer or malt beverages may provide certain quality control servicing, or “in-store servicing,” of such products sold by the distributor to a vendor, as an exception to the three-tier system, without violating the Beverage Law.

“In-store servicing” for wine means:

- 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 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 the vendor’s licensed premises.¹¹

The in-store servicing allowance for wine distributors specifically states that the exception does not apply to liquor.¹²

“In-store servicing” for beer or malt beverages includes, but is not limited to:

- Rotation of malt beverages on the vendor’s shelves,
- Rotation and placing of malt beverages in the vendor’s coolers,
- Proper stacking and maintenance of appearance and display of malt beverages on vendor’s shelves,
- Price-stamping of malt beverages in the 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.¹³

Distributors of liquor may not provide in-store servicing, as there is no provision under the Beverage Law allowing it, and s. 561.42, F.S., prohibits financial aid and assistance of any kind from a distributor to a vendor.

RTD Alcohol Products

Ready-to-drink alcohol products (RTDs) are generally premixed drinks that are ready to be consumed immediately, and typically have a lower alcoholic content compared to traditional liquors.¹⁴ There are generally three categories of RTDs:¹⁵

- Malt-based. For example:
 - Hard seltzers.
 - Hard tea.
 - Hard kombucha.
- Wine-based. For example:
 - Wines in cans.
 - Wine cocktails in tetra packs.
- Liquor-based. For example:
 - Ready-to-drink cocktails.
 - Seltzers with a spirits spike.

¹¹ S. 561.424(2), F.S.

¹² *Id.*

¹³ S. 561.423, F.S.

¹⁴ Wildpack Beverage, *RTD Alcohol: How It’s Changed The Beverage Industry*, <https://wildpackbev.com/rtd-alcohol-how-its-changed-the-beverage-industry/> (last visited Jan. 26, 2024).

¹⁵ Kate Dingwall, *Where Is The Ready-To-Drink Category Headed?*, Forbes, Jul. 27, 2022, <https://www.forbes.com/sites/katedingwall/2022/07/27/where-is-the-ready-to-drink-category-headed/?sh=4d07808b4bd1>

(last visited Jan. 26, 2024).

- Shooters.

Vendors with beer and wine licenses are allowed to sell liquor-based products, including RTDs, that have less than 6 percent alcohol by volume. Specifically, s. 564.06(5)(b), F.S., provides that all alcohol products, however derived, distilled, mixed, or fermented, and which contain **less than 6 percent** alcohol by volume which are taxed under Chapter 564, F.S.,¹⁶ must be available for purchase and sale¹⁷ by **any licensee** holding a valid license to sell alcoholic beverages for consumption either on or off premises, and nothing contained in the Beverage Law may be construed to prevent such sales.¹⁸

In 2021, DBPR issued an informational bulletin addressing confusion regarding whether a liquor distributor may provide in-store servicing of RTDs which contain liquor, stating that:¹⁹

Despite being classified as liquor under the Beverage Law, many [RTDs] are available for sale in locations authorized to sell beer and wine only, pursuant to...s. 564.06(5)(b), F.S.... The sale of these products in locations not authorized to sell [other] liquor appears to have caused some confusion in the marketplace regarding whether these RTD items are able to be serviced by distributors. Liquor-based RTDs and other [liquor] items...are not eligible for in-store servicing by distributors.... The in-store servicing of such items would be considered a violation of s. 561.42, F.S. As such, it will be necessary for distributors to make a determination based on the product formulation as to whether the product is eligible for in-store servicing, or whether servicing of such products could potentially be a violation of the Beverage Law.

The bulletin states that in-store servicing of liquor-based products by the distributor is a violation of the Beverage Law, despite the ability of certain vendors to sell liquor products or RTDs with less than 6 percent alcohol.²⁰

Effect of the Bill

The bill provides that the beverage law does not prohibit a distributor of liquor from providing in-store servicing of any liquor sold by the distributor to a vendor.

The bill provides that "in-store servicing" of liquor products means:

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

The bill removes the provision in the wine in-store servicing statute that prohibits in-store servicing of liquor.

The bill provides an effective date of July 1, 2024.

¹⁶ This includes all wine, wine products, and beverages containing less than 17.259 percent of alcohol by volume. Ss. 564.06 and 565.12, F.S.

¹⁷ As provided in ss. 563.02 and 564.02, F.S.

¹⁸ S. 564.06(5)(b), F.S.

¹⁹ Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, Informational Bulletin 2021-003, http://www.myfloridalicense.com/dbpr/abt/informational_bulletins/2021-003_RTdandInStoreServicing.pdf (last visited Jan. 26, 2024).

²⁰ *Id.*

B. SECTION DIRECTORY:

- Section 1: Amends s. 561.424, F.S.; relating to in-store servicing of wine products.
- Section 2: Creates 561.425, F.S.; relating to in-store servicing of liquor products
- 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:

The bill will allow liquor distributors to ensure that liquor-based RTDs are well maintained in retail locations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

- 2. Other:
None.

B. RULE-MAKING AUTHORITY:

The bill allows DBPR to adopt rules to implement the bill. DBPR may need to amend rule 61A-3.050, F.A.C., relating to special low-proof products.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the in-store servicing allowance for liquor products with less than 6% alcohol by volume from the wine provision.
- Creates a new provision to allow in-store servicing for any liquor product.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.