

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB BPRS 14-02 Craft Brewers

SPONSOR(S): Business & Professional Regulation Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee		Brown-Blake	Luczynski

SUMMARY ANALYSIS

The bill sets forth requirements for malt beverage manufacturers, distributors, and vendors in order to support the growth of the craft brewery industry while minimizing the erosion of the three-tier system.

Three-Tier Exceptions:

- Manufacturers with Vendor's Licenses:
 - Permits malt beverage manufacturers to obtain a vendor's license for a retail location attached to a manufacturing premises at two manufacturing premises.
 - Permits the manufacturer/vendor to sell malt beverages that manufacturer brews directly to consumers on-premises, in bottles and cans, and growlers.
 - Permits the manufacturer to sell malt beverages brewed by other manufacturers as authorized by its vendor's license.
- Taprooms:
 - Permits malt beverage manufacturers to have a taproom attached to any manufacturing premises without a vendor's license to sell malt beverages that manufacturer brews directly to consumers.
 - Requires that 70 percent of malt beverages sold in a taproom be brewed on premises.
- Brewpubs
 - Permits brewpubs to hold both a manufacturer and vendor's license.
 - Permits brewpubs to sell malt beverages it brews for on-premises consumption or in growlers.
 - Permits brewpubs to sell malt beverages brewed by other manufacturers as authorized by its vendor's license.
 - Prohibits the brewpub from placing malt beverages into the distribution channel or shipping between brewpubs owned by the same entity.
- The changes to the three-tier exceptions have the effect of forcing businesses to choose to operate primarily as a vendor or a manufacturer rather than under the current law that effectively permits businesses to operate in both tiers.

Growth of the Malt Beverage Industry

- Permits malt beverage manufacturers to treat malt beverages made in collaboration with another manufacturer as their own malt beverages for the purposes of shipping between breweries owned by either of the collaborating manufacturers.
- Permits limited self-distribution of malt beverages by manufacturers of no more than 3000 gallons of malt beverages in a calendar year.
- Growlers:
 - Defines growlers to include 32, 64, 128 ounces, and one and two liter containers.
 - Sets packaging requirements for growlers.
 - Specifies the licensees authorized to fill and sell growlers.
- Permits manufacturers and distributors to conduct tastings of malt beverages at a licensed vendor's premises subject to size, number of samples, and time of day limitations.

The bill is expected to have a minimal impact on the Department of Business and Professional Regulation which can be absorbed with existing resources. The bill is expected to have no impact on local government. The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Three-Tier System

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation, is responsible for the regulation of the alcoholic beverage industry.¹

In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tiered 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.² Because of the perceived evils, manufacturers and distributors are not permitted to have a financial interest in vendors. The following are some limited exceptions to the three-tier regulatory system:

- A manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism.³
- A vendor may obtain a manufacturer's license to manufacture malt beverages if the vendor brews malt beverages at a single location in an amount of no more than 10,000 kegs per year and sells the beverages to consumers for consumption on the premises or consumption on contiguous licensed premises owned by the vendor.⁴
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property.⁵
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.⁶

Manufacturer/Vendor Exceptions

As noted above, there are two exceptions to the prohibition against manufacturers having financial interests in a vendor.

Tourism Exception

¹ Section 561.02, F.S.

² 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*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (Last visited February 1, 2014).

³ Section 561.221(2), F.S.

⁴ Section 561.221(3), F.S.

⁵ Section 561.221(1), F.S.

⁶ Section 562.16, F.S.

The first exception is sometimes referred to as the Tourism Exception. In this exception, a manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism.

This exception first became law 1963, when s. 561.221, F.S., was amended to permit malt beverage manufacturers to hold one vendor's license.⁷ The language was amended in 1967 to permit wine manufacturers to hold one vendor's license,⁸ and again in 1978 to permit malt beverage and wine manufacturers to hold two vendor's licenses.⁹ At the time, three manufacturers met the criteria to hold a vendor's license, but only one did.¹⁰ The next amendment came in SB 758 (1979),¹¹ when the statute was amended to permit malt beverage and wine manufacturers to hold three vendor's licenses.

It wasn't until HB 183 (1984),¹² was passed that the current exception was adopted into law. HB 183 amended s. 561.221, F.S., to remove malt beverage manufacturers from the provision permitting malt beverage and wine manufacturers to hold three vendor's licenses and created a new subsection permitting a malt beverage manufacturer to hold vendor's licenses on a property consisting of a single complex, including a brewery, which promotes the brewery and the tourist industry. HB 183 authorized a malt beverage manufacturer to have unlimited vendor's licenses on a property contiguous to a brewery.¹³ At the time, only one manufacturer took advantage of the amendment, Anheuser Busch, at its Busch Gardens location in Tampa, Florida. This provision has not been amended since 1984.

This exception permits manufacturers to obtain vendor's licenses for the sale of malt beverages at a brewery location if the vendor's license will "promote tourism."¹⁴ The phrase "promote tourism" is not defined in statute or in the Division's rules. As interpreted by the Division, this exception permits the restaurant or taproom attached to the manufacturing premises to sell alcoholic beverages subject to the following conditions:

- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for on-premises consumption.
- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for off-premises consumption in authorized containers, including growlers.
- Any other alcoholic beverages may be sold as authorized by the vendor's license.

In Florida, a number of breweries, known as "craft breweries,"¹⁵ have used the exception to open restaurants or taprooms attached to their breweries in order to build their brand. Since 1995, 90 licenses have been issued in Florida to various entities pursuant to this exception, with 33 being issued in 2012 and 2013 alone.¹⁶ Currently in Florida, approximately 60 breweries are licensed as both manufacturers and vendors pursuant to this exception.

⁷ Chapter 63-11, Laws of Fla.

⁸ Chapter 67-511, Laws of Fla.

⁹ Chapter 78-187, Laws of Fla.

¹⁰ *Senate Staff Analysis and Economic Impact Statement*, SB 758 (1978), May 2, 1978.

¹¹ Chapter 79-54, Laws of Fla.

¹² Chapter 84-142, Laws of Fla.

¹³ *Senate Staff Analysis and Economic Impact Statement*, HB 83 (1984), May 9, 1984.

¹⁴ Section 561.221(2), F.S.

¹⁵ Brewers Association defines a "craft brewery" as a small, independent and traditional brewer, with an annual production of 6 million barrels of beer or less, less than 25% owned or controlled by an alcoholic beverage industry member that is not a craft brewery, and has an all malt flagship beer or at least 50% of its volume in either all malt beers or in beers which use adjuncts to enhance rather than lighten flavor. *Craft Brewery Defined*, available at <http://www.brewersassociation.org/pages/business-tools/craft-brewing-statistics/craft-brewer-defined>, (last viewed February 4, 2014).

¹⁶ Email from Dan Olson, Office of Legislative Affairs, Department of Business and Professional Regulation, Re: CMB licenses with a vendor's license issued pursuant to s. 561.221(2), F.S., by year since 1995, February 4, 2014, (on file with the Business and Professional Regulation Subcommittee).

Since 1977, the brewery industry has grown exponentially nationwide, growing from 89 breweries nationwide to 2,538 in June of 2013.¹⁷ During 2012, in a year when the total U.S. beer market grew by one percent, craft brewers saw a 15 percent rise in volume and a 17 percent increase by dollars compared to growth in 2011.¹⁸

Brewpub Exception

The second exception where an entity may obtain both a license as a manufacturer of malt beverages and a vendor's license for the sale of alcoholic beverages is often referred to as the Brewpub Exception. This exception was added to s. 561.221, F.S., by SB 1218 (1987),¹⁹ which amended the language to permit a vendor to be licensed as a manufacturer of malt beverages at a single location, with the following requirements:

- The brewpub shall not manufacture more than 10,000 kegs per year.
- The malt beverages manufactured on premises must be sold for on-premises consumption.

This exception was originally intended for vendors, such as restaurants, that wished to brew malt beverages to sell on site. Due to the requirement that malt beverages be sold for on-premises consumption, brewpubs are not permitted to sell growlers.

Overlap of Exceptions

The statutory language of the Tourist Exception addresses a manufacturer that wishes to hold a vendor's license to permit the sale of malt beverages directly to the public at a brewery. The statutory language of the Brewpub Exception addresses a vendor that wishes to hold a manufacturer's license to permit the brewing of malt beverages for consumption on premises at a retail location. Nevertheless, some "brewpubs" are licensed under the Tourist Exception. In some cases, these restaurants even use the word "brewpub" in the name of the business. At these manufacturers' locations, the public is able to purchase growlers. However a vendor licensed as a brewpub pursuant to the brewpub exception is not able to sell growlers to the public.

Additionally, the Division has permitted licensees originally licensed pursuant to the Brewpub Exception to change their licensure to a manufacturer with a vendor's license under the Tourist Exception. The law created limited exceptions to the three-tier system; however, as more recently implemented, the overlap between the tiers has become more pronounced.

Malt Beverage Distribution

Manufacturers are prohibited from selling alcoholic beverages to any entity other than a licensed distributor. This prohibition supports the three-tier system. There are a few exceptions to this requirement, as follows:

- Section 561.545(5), F.S., provides an exception for the direct shipping of sacramental alcoholic beverages to bona fide religious organizations as authorized by the Division.
- Section 563.022(14)(d), F.S., permits a manufacturer to ship products between its licensed manufacturing premises without a distributor's license.

These exceptions are limited and do not provide for emergencies, such as a faulty keg or the vendor's failure to order enough alcoholic beverages to cover an event, which has been noted as an occasional problem by industry members.²⁰

¹⁷ Brewers Association, *126-Year Brewery Count*, available at <http://482256.cache1.evolutionhosting.com/attachments/0001/2578/126-Brewery-Count-HR.jpg> (last viewed February 1, 2014).

¹⁸ Brewers Association, *Craft Brewing Facts*, available at <http://www.craftbrewingbusiness.com/news/craft-beer-continues-to-brew-growth/> (last viewed on February 1, 2014).

¹⁹ Chapter 87-63 Laws of Fla.

²⁰ Testimony of industry members, Workshop on Craft Brewers Business Development Regulatory Issues, Business and Professional Regulation Subcommittee, September 24, 2013.

Container Sizes

Standard Containers

Currently, s. 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors be packaged in individual containers of no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type. The industry developed bottles, cans, kegs, half kegs, and other containers based on industry standard sizes, which meet the statutory requirements. Distributors have created a distribution system both state and nationwide with the capacity to transport industry standard sized containers.²¹

Growlers

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of between 32 ounces and two liters that the consumer can take to a vendor for a vendor to fill with the vendor's malt beverage for consumption off the licensed premises.²² The standard size for a growler is 64 ounces.²³ Florida malt beverage law does not specifically address growlers. Florida malt beverage law does not permit the use of a 64 ounce containers or any other container size between 32 ounces and one gallon. As a result, growlers are prohibited in any sizes other than 32 ounces or less, and one gallon.

Tied House Evil Gifts and Tastings

Manufacturers and distributors are prohibited from providing malt beverages for tastings at a vendor's licensed premises, as it would be a violation of the Tied-House Evil provisions of the Beverage Law. Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Additionally, section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such manufacturer, distributor...; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section.

Vendors are not prohibited from providing alcoholic beverages directly to consumers if the alcoholic beverages are paid for by the vendor.

Effect of the Bill

Three-Tier System and Manufacturer/Vendor Exceptions

Brewery with Vendor's License Exception

²¹ Testimony of industry members, Workshop on Craft Brewers Business Development Regulatory Issues, Business and Professional Regulation Subcommittee, January 9, 2013.

²² Beeradvocate, *The Growler: Beer-To-Go!* available at <http://beeradvocate.com/articles/384/> (last viewed February 1, 2014).

²³ Brew-Tek, What is a Growler? available at <http://www.brew-tek.com/products/growlers/what-is-a-growler/> (last viewed at February 3, 2014).

The bill permits manufacturers to obtain a vendor's license at two manufacturing premises licensed by the manufacturer, pursuant to the following requirements:

- The manufacturing premises and the vendor's retail premises must be located on the same property, which may be separated by one street or highway.
- The premises must contain a brewery.
- The manufacturer and the vendor retail premises must be included on a sketch provided to the Division at the time of application for licensure.

The manufacturer is permitted to sell alcoholic beverages to consumers pursuant to their vendor's license in face-to-face transactions subject to the following requirements:

- Malt beverages brewed at the licensed manufacturing premises, at another manufacturing premises owned by the manufacturer, or malt beverages brewed in collaboration with another manufacturer to consumers:
 - For on-premises consumption.
 - For off-premises consumption in authorized containers such as cans or bottles.
 - For off-premises consumption in growlers.
- Malt beverages brewed by another manufacturer:
 - For on-premises consumption.
 - For off-premises consumption in authorized containers such as cans or bottles.
 - For off-premises consumption in growlers if the manufacturer holds a quota license as the vendor's license.
- Wine or liquor for on-premises consumption as authorized by the vendor's license.

The manufacturer maintains its responsibility to keep records and pay excise taxes for the malt beverages it sells or gives to consumers pursuant to its vendor's license.

Taprooms

The bill permits manufacturers to have a taproom without obtaining a vendor's license. Manufacturers who already have two premises with both a manufacturer and vendor's license pursuant to the above exception may have a taproom at any additional manufacturing premises or at any manufacturing premises in lieu of obtaining a vendor license. Manufacturers may only have a taproom pursuant to the following requirements:

- Taprooms must be attached to the licensed manufacturing premises, which may be separated by a street or highway.
- The manufacturing premises and taproom must be included on a sketch provided to the Division at the time of application for licensure.

The manufacturer is authorized to sell only malt beverages it brews in a taproom through face-to-face transactions with consumers according to the following requirements:

- For on-premises consumption.
- For off-premises consumption in authorized containers such as cans or bottles.
- For off-premises consumption in growlers.

Of the malt beverages sold in the taproom, at least 70 percent must have been brewed on the licensed manufacturing premises. No more than 30 percent of the malt beverages sold in the taproom may be brewed by the manufacturer at other licensed manufacturing premises or in collaboration with another manufacturer and shipped to the taproom pursuant to s. 563.022(14)(d), F.S.

The manufacturer maintains its responsibility to keep records and pay excise taxes for the malt beverages it sells or gives to consumers in the taproom. Furthermore, manufacturers are permitted to obtain a permanent food service license in the taproom.

Brewpub Exception

The bill permits the Division to issue both a manufacturer's and a vendor's license to a brewpub subject to the following requirements:

- The brewpub may not brew more than 10,000 kegs of malt beverages on the premises per year.
- The brewpub may not ship malt beverages to or between licensed brewpub premises owned by the same licensed entity pursuant to s. 563.022(14), F.S.
- The brewpub must hold a permanent food service license.
- The brewpub shall not place malt beverages brewed on the premises into the distribution channel.

The brewpub is authorized to sell alcoholic beverages through face-to-face transactions according to the following requirements:

- Malt beverages brewed at the brewpub:
 - For on-premises consumption.
 - For off-premises consumption in growlers.
- Malt beverages brewed by another manufacturer:
 - For on-premises consumption as authorized by the vendor's license.
 - For off-premises consumption in authorized containers such as cans or bottles, as authorized by the vendor's license.
 - For off-premises consumption in growlers if the brewpub holds a quota license as the vendor's license.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

The brewpub maintains its responsibility to keep records and pay excise taxes for the malt beverages it sells or gives to consumers.

Malt Beverages Distribution

Single Manufacturer Inter-Premises Shipping

The authorization for manufacturers to ship products between breweries without a distributor's license pursuant to s. 563.022(14)(d), F.S., does not explicitly provide for malt beverages made in collaboration between two manufacturers. The bill extends the authorization to malt beverages brewed in collaboration, by stating that they shall be considered a product of both collaborating manufacturers. The bill permits collaboration malt beverages to be shipped to the licensed manufacturing premises of either manufacturer without having a distributor's license. Furthermore, the bill provides that a brewpub licensed under s. 561.221(3), F.S., is not a manufacturer for purposes of this provision.

Limited Self-Distribution

The bill provides for limited self-distribution by any malt beverage manufacturer; however, a brewpub licensed under s. 561.221(3), F.S., is not a manufacturer for purposes of this provision. Any malt beverage manufacturer may sell and ensure receipt of no more than 3000 gallons of malt beverages per year directly to vendors. This exception will permit manufacturers to provide replacement kegs or additional malt beverages for emergency requests. While this provision will permit any malt beverages manufacturer to make limited sales and delivery of products directly to vendors, it is expected to serve as a mechanism to assist new manufacturers in establishing customers.²⁴

²⁴ Testimony of industry members, Workshop on Craft Brewers Business Development Regulatory Issues, Business and Professional Regulation Subcommittee, October 9, 2013.

The manufacturer is responsible for keeping records and paying excise taxes for the malt beverages it sells or gives to vendors.

Container Sizes and Growler Requirements

Container Size

The bill provides that authorized containers as defined in section 563.06(6), F.S., do not include growlers. Subsection (7) is created to define growlers, set requirements for growlers, and indicate license types authorized to fill growlers. The new container sizes authorized for use as growlers are limited to use as specified and may not be used for purposes of distribution or sale outside the manufacturer's or vendor's licensed premises.

Growlers

The bill defines growlers as a container originally manufactured to hold malt beverages in the following sizes:

- 32 ounces.
- 64 ounces.
- 128 ounces.
- 1 liter.
- 2 liters.

The requirement that the container be originally manufactured to hold malt beverages insures the exclusion of containers such as empty soda bottles, milk jugs, or other containers not manufactured strictly to hold malt beverages.

Growlers may be filled or refilled by manufacturers and vendors subject to the following requirements:

- A manufacturer may fill or refill a growler with malt beverages brewed by the manufacturer in a taproom or an attached licensed vendor's premises pursuant to s. 561.221(2), F.S.
- A vendor that holds a valid quota license pursuant to ss. 561.20(1) and 565.02(1)(a)-(f), F.S., whether or not that vendor is also licensed as a manufacturer pursuant to s. 561.221, F.S., may fill or refill a growler with malt beverages brewed by any manufacturer.

Growlers must meet the following requirements:

- Have an unbroken seal or be incapable of being immediately consumed.
- Be clean prior to filling.
- Be appropriately labeled. The label must sufficiently cover an existing identifying mark from another manufacturer to indicate the malt beverage placed in the growler, and must include:
 - Name of the manufacturer.
 - Brand.
 - Volume.
 - Percentage of alcohol by volume.
 - Federal health warning.

The bill provides that it is legal to possess and transport empty growler containers.

Tied House Evil Gifts and Tastings

The bill deletes language in s. 561.42(14)(e), F.S., prohibiting manufacturers or distributors from conducting sampling of malt beverages on a vendor's licenses premises. Section 563.09, F.S., is created to permit manufacturers and distributors to conduct malt beverages tastings upon a vendor's licensed premises. The tastings are subject to the following requirements:

- The malt beverage tasting must be limited to patrons 21 years of age or older.
- Samples may be 2 ounces or less and limited to no more than eight product samples.
- No person may receive more than one sample of each product.
- The tasting may be held between 10 a.m. and 8 p.m.

B. SECTION DIRECTORY:

Section 1 amends s. 561.221, F.S., clarifying exceptions to the three-tier system.

Section 2 amends s. 561.42(14)(e), F.S., deleting the prohibition against manufacturers and distributors conducting tastings.

Section 3 amends s. 561.5101(1), F.S., updating a cross-reference.

Section 4 amends 562.34(1) and (3), F.S., providing that possessing and transporting growler containers is lawful.

Section 5 amends 563.022(14)(d) and (g), F.S., clarifying an exception to the three-tier system and permitting limited self-distribution.

Section 6 amends 563.06(1), (6), and (7), F.S., providing a definition and setting requirements for growlers.

Section 7 creates 563.09, F.S., allowing malt beverage tastings to be conducted by manufacturers and distributors.

Section 8 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The Department of Business and Professional Regulation anticipates using existing resources to investigate alleged violations of the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will expand business opportunities for manufacturers and vendors of malt beverages, specifically permitting growlers to be filled by certain licensees, permitting limited self-distribution and inter-premises shipping of collaboration malt beverages, and clarifying exceptions to the three-tier system.

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