

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1329 Malt Beverages

SPONSOR(S): Business & Professional Regulation Subcommittee; Rodrigues

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill sets forth requirements for malt beverage manufacturers, distributors, and vendors in order to support the growth of the malt beverage 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.
 - Permits an entity that has obtained a vendor's license at more than two licensed manufacturing premises before July 1, 2014, or has applied for a vendor's license at more than two licensed manufacturing premises before March 15, 2014, to maintain the previously obtained licenses and those received pursuant to such applications, but not obtain additional vendor's licenses.
- **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**
 - Maintains brewpubs' ability to sell malt beverages, wine, and liquor as currently permitted.
 - Codifies prohibition that brewpubs may not place malt beverages into the distribution channel or ship between brewpubs owned by the same entity.
- The changes to the three-tier exceptions have the effect of requiring 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.

Growlers

- Defines growlers to be containers between 32 ounces and 128 ounces.
- Sets packaging requirements for growlers.
- Specifies the licensees authorized to fill and sell growlers.

The bill is expected to have a minimal fiscal impact on the Department of Business and Professional Regulation which can be absorbed with existing resources and no fiscal 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 of malt beverages having financial interests in a vendor.

Tourism Exception

The first exception is sometimes referred to as the Tourism Exception. In this exception, a manufacturer of malt beverages may obtain vendor's licenses 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

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/pricee_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.

⁷ Chapter 63-11, Laws of Fla.

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 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.

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

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*, SB 813 (1984), May 9, 1984 (CS/HB 183 was substituted for CS/SB 813).

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).

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).

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 may not brew more than 10,000 kegs of malt beverages on the premises per year.
- Malt beverages manufactured on premises must be sold for on-premises consumption.
- Malt beverages brewed by other manufacturers, as well as wine or liquor may be sold for on-premises consumption as authorized by its vendor's license.
- The brewpub must keep records and pay excise taxes for the malt beverages it sells or gives to consumers.

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 Tourism 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 Tourism 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 Tourism 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.

Come to Rest Requirements:

Section 561.5101, F.S., provides that, for purposes of inspection and tax-revenue control, all malt beverages except those brewed in brewpubs pursuant to s. 561.221(3), F.S., must come to rest at the licensed premises of a distributor prior to being sold to a vendor. It may have been an oversight that the exception does not include s. 561.221(2), F.S., for beer brewed at a brewery and sold at retail by the manufacturer under the Tourism Exception.

Common Carriers

"Common carriers" are defined as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."²⁰ Common carriers are prohibited from making delivery of alcoholic beverages when the shipment originates from outside of Florida except to qualified manufacturers, distributors, and exporters,²¹ unless they hold a distributor's license.

Deliveries may be made by manufacturers, distributors, and vendors to those entities, as authorized, provided they use vehicles that are owned by the delivering entity. Vendors are able to make deliveries away from their places of business, provided that telephone or mail orders received at the vendor's licensed place of business is considered a sale made at the licensed place of business, and provided

¹⁹ Chapter 87-63, Laws of Fla.

²⁰ Section 561.01(19), F.S.

²¹ Section 561.54(1), F.S.

that the vehicle used has been issued a permit and is operated by the person on the permit application. In addition, vendors may pick up a delivery from the distributor's place of business so long as they comply with the vehicle ownership and permitting requirements.²²

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, and other containers, as well as the shipping equipment to protect and distribute bottles, cans, and kegs based on industry standard sizes. Distributors have created a distribution system both state and nationwide with the capacity to transport industry standard sized containers.²³

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 manufacturer/vendor to be filled with malt beverage for consumption off the licensed premises.²⁴ The standard size for a growler is 64 ounces.²⁵ Florida malt beverage law does not specifically address growlers.

Florida malt beverage law does not permit the use of 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.

Effect of the Bill

Three-Tier System and Manufacturer/Vendor Exceptions

Brewery with Vendor's License Exception

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 or at another manufacturing premises owned by the 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.

²² Section 561.57(1)-(4), F.S.

²³ Testimony of industry members, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee, January 9, 2013.

²⁴ Beeradvocate, *The Growler: Beer-To-Go!* available at <http://beeradvocate.com/articles/384/> (last viewed February 1, 2014).

²⁵ 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).

- 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 or off-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.

An entity that has applied for a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before March 15, 2014, or has been issued a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before July 1, 2014, may maintain the licenses previously obtained or received based on the application prior to March 15, 2014, but may not obtain or apply for additional vendor's licenses. But manufacturers that hold both a vendor's license and a manufacturer's license must comply with the above listed requirements.

Manufacturers with vendor's licenses are prohibited from creating a chain of more than two vendor licensed manufacturing premises under common control of one entity, either directly or indirectly. However, manufacturers are not prohibited to purchase or own stock in a publicly traded corporation where the licensee does not have and does not obtain a controlling interest. For manufacturers that hold vendor's licenses at more than two licensed manufacturing premises prior to July 1, 2014, or applied for prior to March 15, 2014, the limit of two is replaced with the actual number of manufacturing premises with vendor licenses the entity operates or obtains as a result of the application prior to March 15, 2014.

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 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.

Severability of the Brewery With Vendor's License Exception and Taprooms Exception

The bill provides that, if a provision of s. 561.221(2), F.S., regarding the breweries with a vendor's license exception or taprooms, as reference above, is held invalid, or if the application of the section is held invalid, that the invalidity of the section does not affect other provisions or applications of the act.

Brewpub Exception

The bill maintains the Division's authority to issue both a manufacturer's and a vendor's license to a brewpub subject to the following requirements, in addition to the existing requirements listed above:

- 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 bill expressly codifies the current manner in which brewpubs may sell malt beverages, wine, and liquor for on-premises consumption.

Come to Rest Requirements

The bill exempts malt beverages brewed by a manufacturer with a vendor's license pursuant to s. 561.221(2) or (3), F.S., (Tourist Exception, Taprooms, and Brewpubs) from the requirement that all malt beverages come to rest at the licensed premises of a distributor prior to being sold to a vendor by the distributor.

Common Carriers

The current law regarding deliveries made in vehicles states that common carriers are not required to have vehicle permits to transport alcoholic beverages. The bill clarifies that common carriers shall not make deliveries of malt beverages directly to a consumer.

Container Sizes and Growler Requirements

Container Size

The bill provides that authorized containers as defined in s. 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. Distributors would need to develop and purchase new shipping equipment if growlers of any size between 32 ounces and 128 ounces were permitted to enter the distribution channel, increasing the costs on distributors and, as a result, the increasing the cost of distribution.

Growlers

The bill defines growlers as a container between 32 ounces and 128 ounces, originally manufactured to hold malt beverages. 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.

B. SECTION DIRECTORY:

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

Section 2 amends s. 561.5101(1), F.S., updating a cross-reference.

Section 3 amends s. 561.57(6), F.S., providing that common carriers shall not make deliveries of malt beverages directly to consumers.

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

Section 5 amends s. 563.06(1), (6), and (7), F.S., providing a definition and setting requirements for growlers.

Section 6 provides that s. 561.221(2), F.S., is severable from the other provisions of the section if found invalid.

Section 7 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 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

On March 24, 2014, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

The strike-all amendment made the following changes to the filed version of the bill:

- Provided taprooms for manufacturers to sell malt beverages brewed on the licensed premises and only for on-premises consumption or off-premises consumption in growlers without a vendor's license.
- Provided that manufacturers may obtain a vendor's license for no more than two brewery locations, with provisions for existing licensees with vendor's licenses at more than two brewery locations to maintain those existing licenses.
- Permitted an entity that has obtained a vendor's license at more than two licensed manufacturing premises before July 1, 2014, or has applied for a vendor's license at more than two licensed manufacturing premises before March 15, 2014, to maintain the previously obtained licenses and those received pursuant to such applications, but not obtain additional vendor's licenses.
- Provided that brewpubs are not able to sell alcoholic beverages for off-premises consumption.
- Provided that if any part of s. 561.221(2), F.S., is held to be invalid or its application is held to be invalid, the invalidity does not affect other provisions of the section and the subsection is severable.
- Provided a definition for growler including containers between 32 ounces and 128 ounces.