

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 Fiscal Policy

BILL: CS/CS/SB 186

INTRODUCER: Fiscal Policy Committee; Regulated Industries Committee; Senator Latvala and others

SUBJECT: Malt Beverages

DATE: April 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 186 revises the Beverage Laws related to malt beverages. Related to vendor-licensed brewers the bill:

- Authorizes the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation to issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery (vendor-licensed brewer);
- Repeals the requirement that the licensed property include "other structures which promote the brewery and tourism industry of the state" in order to be eligible as a vendor licensed brewer;
- Limits the amount of malt beverages that can be transferred between breweries owned by the same brewer;
- Limits the number of vendor's licenses that can be issued to a manufacturer of malt beverages;
- Requires all malt beverages and other alcoholic beverages that are not manufactured at a brewery owned by the brewer to be obtained through a distributor, an importer, a sales agent, or a broker; and
- Prohibits vendor-licensed brewers from making deliveries.

Related to malt beverage tastings, the bill:

- Permits malt beverage tastings on certain premises;

- Requires malt beverage tastings to be limited to and directed to members of the general public of the age of legal consumption; and
- Clarifies that vendors may conduct malt beverage tastings on their licensed premises with beverages from their own inventory.

Related to malt beverage containers, the bill:

- Permits the filling and refilling of 32, 64, and 128 ounce malt beverage containers (known as “growlers”) at the point of sale;
- Requires growlers to be identified or be imprinted or labeled with certain information and to have an unbroken seal or be incapable of being immediately consumed.
- Establishes penalties for violations.

The bill is expected to have a minimal fiscal impact to the department.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which 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) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.³

Three Tier System

In the United States, the regulation of alcohol, since the repeal of Prohibition, has traditionally been through what is termed the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverage; the distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer.⁴ Manufacturers cannot sell directly to retailers or directly to consumers.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁵ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁶ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁷

Tied House Evil Prohibitions

The 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

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 561.14, F.S.

⁵ Section 561.14(3), F.S. However, see discussion regarding the exceptions provided in s. 561.221, F.S.

⁶ Section 561.22, F.S.

⁷ Sections 563.022(14) and 561.14(1), F.S.

vendor.⁸ Activities between the three-tiers are heavily regulated to prevent a manufacturer or distributor from having and financial interest, directly or indirectly, in the establishment or business of a licensed vendor. For example, s. 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.

Exception for Vendor-licensed Malt Beverage Manufacturers

There are some exceptions to the three-tier regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,⁹ allowing individuals to bring small quantities of alcohol back from trips out-of-state,¹⁰ and allowing in-state wineries to manufacture and sell directly to consumers.¹¹ There is currently no limit to the number of vendor's licenses the division can issue to a qualifying manufacturer.

Tourism Exception

Section 561.221(2), F.S., permits a manufacturer of malt beverages to be licensed as a vendor, even if the manufacturer is also licensed as a distributor. To qualify for a vendor license, the manufacturer's property must consist of a single complex that includes a brewery and other structures that promote the brewery and the tourism industry of the state. The property may not be divided by more than one public street or highway. This type of license does not limit the amount of malt beverages that may be manufactured. It also does not limit the type of vendor license that the manufacturer may obtain, e.g., a license to sell beer, wine, and liquor, or a license that permits package sales of other alcoholic beverages.

Brewpub Exception

Section 561.221(3), F.S., permits a vendor to also be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.¹² The malt beverages must be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor. These vendors are known in the industry as "brew pubs."

Vendor Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor¹³ along with beer and wine that may be issued per county. The number of licenses is

⁸ 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) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited Mar. 10, 2015).

⁹ See s. 561.221(2) and (3), F.S., which permit the manufacture of beer by vendors.

¹⁰ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

¹¹ See s. 561.221(1), F.S.

¹² Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.

¹³ Section 565.01, F.S., defines "[t]he words "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."

limited to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

On-Premises or Off-Premises Consumption Alcoholic Beverage Licenses

Section 563.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for off-premises consumption¹⁴ and places of business where on-premises consumption is permitted.¹⁵ According to the department, vendors licensed to sell malt beverages for on-premises consumption can also sell alcoholic beverages in sealed containers for the customer to take away from the licensed premises for off-premises consumption. Vendors licensed to sell malt beverages for consumption “only” on the licensed premises are not permitted to sell alcoholic beverages for off-premises consumption.¹⁶

According to alcoholic beverage industry representatives and a representative for the division, vendors with on-premises licenses routinely fill containers with a malt beverage and seal them for customers to take off-premises for later consumption. They note that current law does not prohibit this practice. The vendors typically seal the beverage container before the consumer leaves the premises so that the consumer will not violate any local ordinances that prohibit the carrying in public of open containers of alcoholic beverages or the state-law prohibition against the possession of open containers of alcoholic beverages in vehicles.¹⁷ The Beverage Law does not define the term “sealed container.”

In 1995, the department repealed a rule which explicitly stated that an on-premises malt beverage licensee could sell malt beverages for consumption off-premises in “sealed containers” and could also sell wine and distilled spirits in the “original sealed containers as received from the distributor.”¹⁸

Malt Beverage Containers

Section 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces (one quart). However,

¹⁴ See s. 563.02(1)(a), F.S.

¹⁵ See s. 563.02(1)(b)-(f), F.S.

¹⁶ For example, the brew pub exemption under s. 561.221(3), F.S., permits sales for consumption only on the premises, but not sales for consumption off the premises.

¹⁷ See s. 316.1936, F.S.

¹⁸ Rule 7A-1.008, F.A.C., as amended on March 10, 1985. This rule was subsequently transferred to rule 61A-1.008, F.A.C., and then repealed on July 5, 1995.

malt beverages may be packaged in bulk, kegs, barrels, or in any individual container containing one gallon or more of a malt beverage regardless of individual container type.

Prior to 2001, s. 563.06(6), F.S., provided that malt beverages could be sold by vendors only in 8, 12, 16, or 32-ounce individual containers.¹⁹ Chapter 2001-78, L.O.F., amended that section to allow vendors to sell malt beverages in individual containers of “no more than 32 ounces.” The current provision that allows containers of one gallon or more was unaffected by that amendment.

Section 563.06(7), F.S., provides that any person, firm, or corporation, including its agents, officers or employees, violating any of the provisions of s. 563.06, F.S., is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.²⁰ It also provides that the license, if any, shall be subject to revocation or suspension by the division.

Growlers

Some states permit vendors to sell malt beverages in containers known as “growlers,”²¹ which typically are reusable containers between 32 ounces and one gallon that the consumer can fill with the vendor’s malt beverage for consumption off the licensed premises. According to a representative for several vendors who manufacture malt beverages, the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64-ounce malt beverage container.

Deliveries by Vendors

Section 561.57(1), F.S., permits all vendors to deliver products sold at the licensed place to an off-site location. Telephone or mail orders received at a vendor’s licensed place of business are construed as a sale actually made at the vendor’s licensed place of business. However, deliveries made by a vendor away from his or her place of business may only be made in vehicles that are owned or leased by the licensee. By acceptance of an alcoholic beverage license, the vendor is presumed to agree to the inspection of the vehicle without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.²²

Alcoholic Beverage Tastings

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

¹⁹ See also *Review of the Malt Beverage Container Size Restrictions*, Interim Report No. 2000-65, Florida Senate Committee on Regulated Industries, September 1999, available at

http://archive.flsenate.gov/data/Publications/2000/Senate/reports/interim_reports/pdf/00-65ri.pdf (last visited Mar. 10, 2015).

²⁰ Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding 1 year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

²¹ The term “growlers” is derived from the late 1800s and early 1900s practice in which fresh beer was carried from the local pub to one’s home by means of a small-galvanized pail. When the beer sloshed around the pail, it created a rumbling sound as the carbon dioxide escaped through the lid. See “*The Growler: Beer-to-Go!*,” *Beer Advocate* (July 31, 2002), available at <http://beeradvocate.com/articles/384> (last visited Mar. 10, 2015).

²² Section 561.57(2), F.S.

manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

III. Effect of Proposed Changes:

Vendor-Licensed Brewers

Section 1 amends s. 561.221, F.S., to authorize the division to issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery (otherwise known as a vendor-licensed brewers). The bill clarifies that the exemption for vendor-licensed brewers is notwithstanding the prohibitions in ss. 561.22 and 561.42, F.S., or any other provision in the Beverage Law.

The bill repeals the requirement that the brewery must include "other structures which promote the brewery and the tourist industry of the state" in order to be eligible as a vendor-licensed brewer. It also repeals the requirement that the property cannot be divided by more than one public street or highway.

The bill limits the amount of malt beverages that can be transferred in a manufacturer-to-manufacturer transfer, as provided in s. 563.022(14)(d), F.S., to an amount equal to 100 percent of the yearly production of the receiving brewery. The bill also provides that malt beverages and other alcoholic beverages that are not manufactured at a brewery owned by the vendor-licensed brewer must be obtained through a distributor, an importer, sales agent, or broker.²³

The bill limits the number of vendor's licenses that the division can issue to a manufacturer of malt beverages to nine.

The bill prohibits vendor-licensed brewers from making deliveries under s. 561.57(1), F.S.

²³ This requirement is the same as current law, see s. 561.14(3), F.S. Vendors licensed to sell alcoholic beverages at retail only. No vendor shall 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.

Malt Beverage Tastings

Section 2 amends s. 561.42(14)(e), F.S., to repeal the prohibition against malt beverage tastings at locations licensed for off-premises sales only. The bill permits a manufacturer, distributor, importer, or contracted third-party agent thereof, to conduct malt beverage tastings to be held on:

- The licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on-premises; or
- The licensed premises of any vendor authorized to sell alcoholic beverages only in sealed containers for consumption off-premises if:
 - The licensed premises has at least 10,000 square feet of interior floor space exclusive of storage space; or
 - The licensed premises is a package store licensed under s. 565.02(1)(a), F.S.

The malt beverages tastings must be limited and directed to members of the general public of the age of legal consumption.

The bill does not preclude a vendor, including a vendor or manufacturer licensed under s. 561.221(2) or (3), F.S., from conducting a malt beverage tasting on its licensed premises with beverages from its own inventory.

Growler Sales

Section 3 creates s. 563.0614, F.S., to permit the filling of malt beverages in individual containers of 32, 64, or 128 ounces if the container is filled at the point of sale by any of following licensees:

- Vendor-licensed brewers;²⁴
- Vendors holding a quota license to sell alcoholic beverages only in sealed containers for consumption off-premises;²⁵ and
- Vendors holding a license under which authorizes consumption of malt beverages on-premises, unless such license restricts consumption to on the premises only.²⁶

Except for quota licenses under ss. 561.20(1) and 565.02(1)(a), vendors licensed to sell beverages only for off-premises consumption would not be authorized to sell growlers.

Under the bill, a violation of the requirements to fill containers will result in a first degree misdemeanor and the revocation or suspension of the licensee.²⁷

The bill requires that containers must identify or be imprinted or labeled with information specifying:

- The manufacturer;
- The brand of the malt beverage; and
- The anticipated percentage of alcohol by volume.

²⁴ Licensed pursuant to s. 561.221(2), F.S.

²⁵ Licensed pursuant to s. 561.20(1) and 565.02(1)(a), F.S.

²⁶ Licensed pursuant to s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S.

²⁷ *Supra* at n. 20.

The bill also requires that the container have an unbroken seal or be incapable of being immediately consumed.

The bill authorizes the division to impose a fine of up to \$250 for a violation of the labeling requirements.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Authorized vendors may experience an increase in sales due to the ability to sell malt beverages in a 64-ounce container.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation, the bill will require minimal increase in the department's workload which can be absorbed within existing resources.²⁸

VI. Technical Deficiencies:

None.

²⁸ Department of Business and Professional Regulation, *Legislative Bill Analysis, Senate Bill 186* (Jan. 8, 2015) (on file with the Senate Committee on Commerce and Tourism).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.221 and 561.42.

This bill creates section 563.0614 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/CS by Fiscal Policy on April 2, 2015:

The CS limits the number of vendor's licenses that the division can issue to a manufacturer of malt beverages to nine.

CS by Regulated Industries on February 18, 2015:

The committee substitute (CS) is substantively different from SB 186 as follows:

The CS amends s. 561.221(2), F.S., to provide that the division may issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery. It deletes the requirements that property must include "other structures which promote the brewery and the tourist industry of the state" and the requirement that the property may be divided by no more than one public street or highway.

The CS also amends s. 561.221(2), F.S., to limit the amount of malt beverages that can be transferred in a manufacturer-to-manufacturer transfer, as provided in s. 563.022(14)(d), F.S., to 100 percent of the yearly production of the receiving brewery. The CS provides that all malt beverages and other alcoholic beverages that are not manufactured at a brewery owned by the brewer must be obtained through a distributor, an importer, sales agent, or broker. The CS also prohibits vendor-licensed brewers from making deliveries under s. 561.57(1), F.S.

The CS amends s. 561.42(14)(e), F.S., to repeal the prohibition against malt beverage tastings at locations licensed for off-premises sales only. It permits malt beverage tastings at locations licensed for on-premises consumption and off-premises consumption. It provides that a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off the premises may have malt beverage tastings if the premises has at least 10,000 square feet of interior space or the premises is a package store with a quota license that is licensed for off-premises sales only. The malt beverages tastings must be limited to and directed to members of the general public of the age of legal consumption. The CS bill clarifies that vendors may conduct malt beverage tastings on their licensed premises with beverages from their own inventory.

The CS amends s. 563.0614(2), F.S., to require the labeling of the anticipated percentage of alcohol by volume.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
