

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 387 Malt Beverage Tastings

SPONSOR(S): Regulatory Affairs Committee; Business & Professional Regulation Subcommittee; Passidomo

TIED BILLS: **IDEN./SIM. BILLS:** SB 470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Regulatory Affairs Committee	16 Y, 0 N, As CS	Brown-Blake	Hamon

SUMMARY ANALYSIS

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor, and vendor. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation is responsible for enforcing the provisions of the Beverage Law.

Current law prohibits manufacturers or distributors from conducting tastings of malt beverages at a vendor's premises and 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. A vendor, however, is not prohibited from conducting tastings on its licensed premises of malt beverages that it has purchased.

The bill authorizes distributors and vendors to conduct malt beverages tastings as follows:

- On the licensed premises of a vendor licensed to sell malt beverages for consumption on-premises.
- On the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for off-premises consumption if the interior of the licensed premises has at least 10,000 square feet exclusive of storage space not open to the general public.
- On the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for off-premises consumption if the premises is a package store licensed pursuant to s. 565.02(1)(a), F.S.

The malt beverage tasting must be limited to patrons 21 years of age or older. The bill contains other requirements and restrictions for manufacturers, distributors, and importers conducting a tasting on a vendor's licensed premises.

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:

Present Situation

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (Department) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages within the state. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor, and vendor. The vendor makes the ultimate sale to the consumer. Generally, alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state "sales tax" is collected at the retail level.

Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those restrictions, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a licensed vendor. Many restrictions apply to business and market activities between the three tiers.

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.

Additionally, 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. 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. Therefore, vendors are currently permitted to conduct malt beverage tastings using malt beverages that the vendor owns.

Effect of the Bill

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 licensed premises. Additionally, s. 561.42(14)(e), F.S., is amended to permit manufacturers and distributors to conduct malt beverage tastings upon a vendor's licensed premises. The tastings must take place in a premises licensed to sell alcoholic beverages as follows:

- On the licensed premises of a vendor licensed to sell malt beverages for consumption on-premises.
- On the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for off-premises consumption if the interior of the licensed premises has at least 10,000 square feet exclusive of storage space not open to the general public.
- On the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for off-premises consumption if the premises is a package store licensed pursuant to s. 565.02(1)(a), F.S.

For tastings conducted on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption on-premises, the samples shall be:

- Served to members of the general public of the age of legal consumption.
- Served in a cup, glass, or other open container if served at a vendor's premises where the vendor is licensed to sell malt beverages for on-premises consumption.

For tastings conducted on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises, the samples shall be

- Served to members of the general public of the age of legal consumption.
- Served in the interior space in a tasting cup with a capacity of three and a half ounces or less.

The manufacturer or distributor may purchase the malt beverages from the vendor at no more than retail price, but must remove the unconsumed malt beverages after the tastings and properly dispose of them.

The manufacturer, distributor, importer or contracted third-party agent conducting the tastings shall:

- Not pay a fee or provide any compensation to the vendor to in exchange for authorizing a tasting. The bill also prohibits a vendor from accepting a fee or compensation of any kind to authorize a malt beverage tasting.
- Provide the malt beverages used in the tasting, the total volume not exceeding 576 ounces.
- Properly dispose of any remaining beverages or return any unconsumed malt beverages to the manufacturer's or distributor's inventory.
- Must pay applicable excise taxes, even if the manufacturer or distributor contracts with a third-party agent to conduct the tasting.
- Not pay for advertising which names a vendor under the guise of advertising a tasting.

More than one tasting may be held on the licensed premises each day, but only one manufacturer, distributor, importer, or contracted third-party agent, may conduct a tasting on the premises at any one time.

The bill does not alter a vendor's rights to conduct tastings under the current law, and is supplemental to any special act or ordinance. The bill provides rulemaking authority for the division to adopt rules to implement the tastings provision.

B. SECTION DIRECTORY:

Section 1 amends s. 561.42(14)(e), F.S., to remove the prohibition on malt beverage samplings at vendor's licensed premises; to authorize malt beverage tastings subject to requirements on vendor's license types, interior property requirements, sample size and method of serving, limitations, liabilities, and penalties; authorizes rulemaking.

Section 2 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 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:

The bill will permit distributors to hold tastings at vendor's premises, which could increase costs for distributors and have an indeterminate impact on manufacturers', distributors', and vendors' revenue.

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:

The bill provides rulemaking authority to implement, administer, and enforce the tastings provision added to s. 561.42(14)(e), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 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 that manufacturers and distributors conduct beer tastings at locations licensed for on-premises consumption, package sales locations with 10,000 sq. ft. of interior space, or package sales locations licensed pursuant to s. 565.02(1)(a), F.S., (package sales quota licenses) regardless of square footage.
- Sets limitations on sample size and method of serving, and sets requirements on the manufacturer or distributor conducting the tasting.

On March 20, 2014, the Regulatory Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute.

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

- Permits 3.5 ounce sized tasting cups served at a tasting conducted on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption off premises.
- Prohibits a vendor from accepting a fee or compensation of any kind to authorize a malt beverage tasting.
- Provides that more than one tasting may be held on the licensed premises each day, but only one manufacturer, distributor, or importer may conduct the tasting at any one time.
- Removes a provision specifying that a manufacturer, distributor, or importer who hires a third party contractor to conduct a tasting is responsible for recordkeeping requirements set forth under the paragraph authorizing tastings, because that paragraph does not contain recordkeeping requirements.
- Amends the effective date to July 1, 2014.

The staff analysis is drafted to reflect the committee substitute.