

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 301 Alcoholic Beverages  
**SPONSOR(S):** Regulatory Affairs Committee; Sprowls; Young and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Butler	Luczynski
2) Government Operations Appropriations Subcommittee	9 Y, 1 N	Topp	Topp
3) Regulatory Affairs Committee	14 Y, 0 N, As CS	Brown-Blake	Hamon

### SUMMARY ANALYSIS

The bill modifies the Beverage Law for alcohol manufacturers, distributors, and vendors in order to support changes in the industry while maintaining the three-tier system.

#### Electronic Benefits Transfer Program

Provides that EBT cards cannot be used to purchase alcoholic beverages and maintains the provision that prohibits the use of EBT cards to purchase items from bottle clubs.

#### Malt Beverage Manufacturer/Vendor Licensure Three-Tier Exceptions

- Permits a manufacturer to obtain a vendor's license at eight manufacturing premises; provides for the sale of malt beverages directly to consumers for on-premises and off-premises consumption.
- Provides that the Department of Transportation shall install directional signs for a craft brewery on interstate highways and primary and secondary roads if a craft brewery makes a request.

#### Deliveries of Alcoholic Beverages

A licensed vendor that wishes to transport alcoholic beverages from a distributor's premises no longer needs a vehicle permit for vehicles owned or leased by the vendor or a person disclosed on the vendor's license application.

#### Growlers

Specifies growlers to be containers of 32, 64, and 128 ounces; specifies packaging and labeling requirements and the licensees authorized to fill and sell growlers.

#### Malt Beverage Tastings

Permits manufacturers or distributors to pay for and conduct tasting of malt beverages on a vendor's licensed premises, subject to certain requirements.

#### Craft Distilleries

- Permits craft distilleries to sell two of each branded product, three of one branded product and one additional branded product or up to four of one branded product per year in face-to-face transactions with consumers making the purchases for personal use.
- Provides that the Department of Transportation shall install directional signs for a craft distillery on interstate highways and primary and secondary roads if a craft distillery makes a request.

The bill is expected to have a minimal fiscal impact on the Department of Business and Professional Regulation.

The bill has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **General Beverage Law**

##### 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 (Department), is responsible for the regulation of the alcoholic beverage industry.<sup>1</sup>

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 are generally 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 concept of the perceived "tied house evil," in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>2</sup> Activities between manufacturers, distributors, and vendors are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those regulations, 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.

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;<sup>3</sup>
- 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;<sup>4</sup>
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property;<sup>5</sup>
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.<sup>6</sup>

#### **Electronic Benefits Transfer Program**

##### Current Situation

Currently, the Florida Department of Children and Families (DCF) uses the electronic benefits transfer (EBT) cards to assist in the dissemination of the food assistance benefits and temporary cash assistance payments provided by federal and state government programs such as SNAP

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<sup>1</sup> s. 561.02, F.S.

<sup>2</sup> 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), [http://www.lanepowell.com/wp-content/uploads/2009/04/pricce\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf).

<sup>3</sup> s. 561.221(2), F.S.

<sup>4</sup> s. 561.221(3), F.S.

<sup>5</sup> s. 561.221(1), F.S.

<sup>6</sup> s. 562.16, F.S.

(Supplemental Nutrition Assistance Program) and TANF (Temporary Assistance for Needy Families).<sup>7</sup> The benefits are placed on an EBT card, which acts like a credit card with a set limit, and can be used for certain covered purchases.

Section 402.82(4), F.S., provides locations and activities for which the EBT card cannot be used. The EBT card cannot be used at “[a]n establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045, or in a bottle club as defined in s. 561.01.”<sup>8</sup> Bottle clubs are defined in part to mean “a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages which are brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises, and which is located in a building or other enclosed permanent structure...”<sup>9</sup>

Therefore the EBT card is not permitted to be used in package stores, where all alcoholic beverages, including distilled spirits are sold.<sup>10</sup> Additionally, the EBT card cannot be used at bars and restaurants that hold quota licenses pursuant to s. 565.02(1)(b)-(f), F.S., where alcoholic beverages including distilled spirits are sold.

### Effect of the Bill

The bill expands the prohibition for the use of the EBT card by amending s. 402.82, F.S., to provide that EBT cards cannot be used to purchase an alcoholic beverage as defined in s. 561.01, F.S., and sold pursuant to the Beverage Law. This would include any alcoholic beverage sold pursuant to chs. 561, 562, 563, 564, 565, 567, and 568, F.S., including all wines, beers, and spirits. Additionally, the bill maintains the provision that prohibits that the EBT card from being used to purchase any items sold at a bottle club as defined in s. 561.01, F.S.

### **Malt Beverage Manufacturer/Vendor Licensure Exceptions**

#### Current Situation

There are a few exceptions to the three-tier regulatory system throughout the nation, where one of the three-tiers (manufacturer, distributor, or vendor) has some ownership or control interest in another tier. Two exceptions in Florida law are referred to as the “tourism exception” and the “brewpub exception.”

#### *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.<sup>11</sup> The language was amended in 1967 to permit wine manufacturers to hold one vendor’s license,<sup>12</sup> and again in 1978 to permit malt beverage and wine manufacturers to hold two vendor’s licenses.<sup>13</sup> At the time, three manufacturers met the criteria to hold a vendor’s license, but only one did.<sup>14</sup> The next amendment came 1979,<sup>15</sup> when the statute was amended to permit malt beverage and wine manufacturers to hold three vendor’s licenses.

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<sup>7</sup> s. 402.82(1), F.S.

<sup>8</sup> s. 402.82(4)(a), F.S.

<sup>9</sup> s. 561.01(15), F.S.

<sup>10</sup> s. 565.04, F.S.

<sup>11</sup> ch. 63-11, Laws of Fla.

<sup>12</sup> ch. 67-511, Laws of Fla.

<sup>13</sup> ch. 78-187, Laws of Fla.

<sup>14</sup> *Senate Staff Analysis and Economic Impact Statement*, SB 758 (1978), May 2, 1978.

<sup>15</sup> ch. 79-54, Laws of Fla.

In 1984,<sup>16</sup> the current exception was adopted into law. Chapter 84-142, Laws of Florida 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 tourism industry. These amendments authorized a malt beverage manufacturer to have unlimited vendor's licenses on a property contiguous to a brewery.<sup>17</sup> 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.<sup>18</sup> 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,"<sup>19</sup> have used the exception to open restaurants or taprooms attached to their breweries in order to build their brand. Between 1995 and February 2014, 90 licenses have been issued in Florida to various entities pursuant to this exception, with 33 being issued in 2012 and 2013 alone.<sup>20</sup> Currently in Florida, approximately 60 breweries are licensed as both manufacturers and vendors pursuant to this exception.<sup>21</sup>

Since 1977, the brewery industry has grown nationwide exponentially, from 89 breweries nationwide in 1977 to 2,538 in June 2013.<sup>22</sup> During 2013, craft brewers saw an 18 percent rise in volume and a 20 percent increase by dollars compared to 15 percent rise in volume and 17 percent increase by dollars in 2012.<sup>23</sup>

### *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),<sup>24</sup> 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:

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<sup>16</sup> ch. 84-142, Laws of Fla.

<sup>17</sup> *Senate Staff Analysis and Economic Impact Statement*, SB 813 (1984), May 9, 1984 (CS/HB 183 was substituted for CS/SB 813).

<sup>18</sup> s. 561.221(2), F.S.

<sup>19</sup> The Brewers Association defines a "craft brewer" 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 a majority of its total beverage alcohol volume in beers whose flavor derives from traditional or innovative brewing ingredients and their fermentation. BREWERS ASSOCIATION, *Craft Brewer Defined*, <http://www.brewersassociation.org/statistics/craft-brewer-defined/> (last visited Feb. 6, 2015).

<sup>20</sup> Email from Dan Olson, Deputy Director 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 (Feb. 4, 2014).

<sup>21</sup> *Id.*

<sup>22</sup> BREWERS ASSOCIATION, *Brewers Association Reports Continued Growth for U.S. Craft Brewers*, (July 29, 2013), <http://www.brewersassociation.org/press-releases/brewers-association-reports-continued-growth-for-u-s-craft-brewers/>.

<sup>23</sup> BREWERS ASSOCIATION, *Craft Brewing Facts*, <http://old.brewersassociation.org/pages/business-tools/craft-brewing-statistics/facts> (last visited on Feb. 6, 2015).

<sup>24</sup> ch. 87-63, Laws of Fla.

- 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.

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. The exception does not include s. 561.221(2), F.S., for beer brewed at a brewery and sold at retail on the manufacturer's premises under the Tourism Exception.

### *Department of Transportation Signage*

Currently, the Department of Transportation implements the Florida Highway Guide Sign Program, which provides for a system of guide signing used to inform and guide motorists to needed signed facilities, improve traffic around intersections near destinations, and establish criteria for the erection of guide signs. Pursuant to Rule 14-51.020(3)(g), F.A.C., Certified Florida Farm Wineries are "eligible for signing pursuant to s. 599.004, F.S." The wineries for which these signs are erected pay for the associated costs based on a fee associated with the signing. Such signs are not currently used to advertise the location of malt beverage manufacturers.

### Effect of the Bill

#### *Manufacturer with Vendor's License Exception*

The bill permits manufacturers to obtain a vendor's license at eight 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 for:
  - For on-premises consumption;
  - For off-premises consumption in authorized containers such as bottles, cans, and kegs;
  - For off-premises consumption in growlers.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

Face-to-face transactions can include ordering the malt beverages online and picking them up in person at the manufacturing premises. The manufacturer maintains responsibility for maintaining records and paying excise taxes for the malt beverages it sells or gives to consumers pursuant to its vendor's license.

A manufacturer with vendor's licenses at other manufacturing premises may transfer beer to one of its licensed facilities from its other licensed facilities, but the total amount received by the receiving manufacturing facility shall not exceed the yearly production amount at the receiving facility.

Manufacturers that are connected may not hold vendor's licenses at more than eight licensed manufacturing premises. Manufacturers are considered to be connected if they directly or indirectly control or are controlled by the other manufacturer, if either has any direct or indirect ownership interest in the other, or if another person or entity has ownership interest in both, or if both have a common officer, director, or manager, operate under the direction of common management, or control assets related to a business for which the malt beverage manufacturer license is issued. Ownership interest of less than 10 percent in the manufacturer, including the purchase of stock, does not constitute ownership interest sufficient to create a connection.

If a manufacturer intends to become connected with one or more manufacturers and, as a result, together they would hold more than eight vendor's licenses, they must provide to the Division a detailed plan for divestment for the businesses for which the excess licenses have been issued, to be completed prior to the manufacturer becoming connected with the other manufacturers. The licenses maybe transferred to the purchasers of the business if the application of the purchasers is approved by the Division. Failure to comply will subject all connected manufacturers to disciplinary action.

### *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., (Manufacturer with Vendor's License Exception 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.

### *Department of Transportation Signage*

The bill provides that the Department of Transportation shall install directional signs for a craft brewery on the rights-of-way of interstate highways and primary and secondary roads if a craft brewery requests for the signs to be posted. The craft brewery is responsible for paying all costs associated with placing the sign it requested.

## **Malt Beverage Tastings**

### **Current Situation**

As part of Florida's "Tied House Evil" laws, there are many restrictions to the business and market activities between the three-tiers. Restrictions include preventing shared promotions, where a manufacturer or distributor may partner with a vendor to promote a specific product at the vendor's location.

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.

Vendors are permitted to provide 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 licenses premises and makes some conforming changes to the subsection.

Additionally, s. 563.09, F.S., is created to permit a manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof to conduct malt beverages tastings at the following locations:

- The licensed premises of a vendor authorized to sell for consumption on premises;
- The licensed premises of a vendor authorized to sell in sealed containers for consumption off the premises if:
  - The vendor's licensed premises consists of at least 10,000 square feet or more interior space; or
  - The vendor is licensed pursuant to s. 565.02(1)(a), F.S.

The tastings may only be conducted as follows:

- Limited to and directed toward members of the general public of the age of legal consumption;
- If the vendor is licensed for on premises consumption, served in a cup, glass, or other open container; and,
- If the vendor is only licensed for off premises consumption, be provided to the consumer in a tasting cup with a capacity of 3.5 ounces or less.

The entity conducting the tasting may purchase the malt beverages from the vendor at no more than retail price.

The entity conducting the tastings shall:

- Provide the malt beverages used in the tasting;
- Not pay a fee or provide any compensation to the vendor;
- Properly dispose of any remaining beverages or return any unconsumed malt beverages to the manufacturer's or distributor's inventory;
- Complete any applicable reports and pay applicable excise taxes, even if the manufacturer or distributor contracts with a third-party agent to conduct the tasting.

More than one tasting may be held on a licensed premises each day, but only one tasting event may be conducted 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.

### Deliveries of Alcoholic Beverages

## Current Situation

A license vendor is permitted to transport alcoholic beverage purchased directly from a distributor's place of business to the vendor's licensed premises or off-premises storage, so long as the vendor or any person disclosed on the application owns or leases the vehicle used for transport and that the vehicle was disclosed to the Division and a permit is issued for the vehicle. The person whose name is included in the permit application must be the person that operates the vehicle during transport.<sup>25</sup>

In order to obtain a vehicle permit for the transport of alcoholic beverages, the licensee must submit an application with a \$5 fee per vehicle to the Division. Permits do not expire unless the licensee disposes of the vehicle, the vendor's license is transferred, canceled, or not renewed, or is revoked. The vendor may request that a permit be canceled.<sup>26</sup>

By accepting a vehicle permit, the vendor or person disclosed on the application agrees the vehicle is subject to inspection and search without a search warrant, to ensure the vendor is complying with the Beverage Law. The inspection may be completed by authorized Division employees, sheriffs, deputy sheriffs, and police officers during business hours or when the vehicle is being used to transport alcoholic beverages. The vehicle permit and invoice or sales ticket for the alcoholic beverage in the vehicle must be carried in the vehicle while the vehicle is being used to transport alcoholic beverages.

Pursuant to s. 562.07, F.S., alcoholic beverages cannot be transported in quantities of more than 12 bottles except by:

- Common Carriers;
- In owned or leased vehicles of licensed vendors or authorized persons transporting the alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage if the vehicle has the required permit;
- Individuals who possess the beverages not for resale;
- Licensed manufacturers, distributors, or vendors delivery of alcoholic beverages away from their place of business in vehicles owned or leased by the licensees; or
- A vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in s. 561.57(5), F.S.

## Effect of the Bill

The bill amends s. 561.57(3) and (4), F.S., to allow a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by the Division without a vehicle permit if the vehicle is owned or leased by the vendor or any person who has been disclosed on the license application.

Additionally, the bill permits the following deliveries of alcoholic beverages without requiring a permit for the vehicle used to conduct the transporting:

- Deliveries by licensees from permitted storage areas;
- Deliveries by a distributor from the manufacturer to his or her licensed premises;
- Transporting pool purchases to the licenses premises of the members of a pool buying agent with the licensee's owned or leased vehicles;
- Deliveries of alcoholic beverages in the vehicle of a licensed sales person of wine and spirits on behalf of the distributor.

The bill removes the requirement of a vendor possess an invoice or sales ticket during the transportation of alcoholic beverages.

Finally, the bill amends s. 562.07, F.S., by amending entities and individuals that can transport alcoholic beverages in quantities of more than 12 bottles to include:

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<sup>25</sup> s. 561.57(3), F.S.

<sup>26</sup> s. 561.57(4), F.S.



- Common carriers;
- Vendors or persons authorized in s. 561.57(3), F.S., in the vendor's or authorized person's owned or leased vehicle, transporting alcoholic beverages from the distributor's place of business to the vendor's licensed premises or off-premises storage;
- Individuals who possess the beverages not for resale;
- Licensed manufacturers, distributors, or vendors transporting alcoholic beverages pursuant to s. 561.57, F.S.

## **Container Sizes and Growlers**

### **Current Situation**

#### *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 nationwide distribution system with the capacity to transport industry standard sized containers.<sup>27</sup>

#### *Growlers*

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of 32 or 64 ounces that the consumer can take to a manufacturer/vendor to be filled with malt beverage for consumption off the licensed premises.<sup>28</sup> The standard size for a growler is 64 ounces.<sup>29</sup> 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**

#### *Container Size*

The bill differentiates between "authorized containers" such as cans and bottles described in s. 563.06(6), F.S., and "growlers" as described in s. 563.06(7), F.S.

#### *Growlers*

Subsection 563.06(7), F.S., is created to describe 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.

The bill defines growlers as a container of 32, 64, and 128 ounces in volume. A growler may be filled or refilled by the following licensees:

- A manufacturer that holds a valid vendor's license pursuant to s. 561.221(2), F.S.;

<sup>27</sup> Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Jan. 9, 2013).

<sup>28</sup> BeerAdvocate, *The Growler: Beer-To-Go!*, (July 31, 2002) <http://www.beeradocate.com/articles/384/>.

<sup>29</sup> Brew-Tek, *What is a Growler?*, <http://www.brew-tek.com/products/growlers/what-is-a-growler/> (last visited Feb. 6, 2015).

- Any vendor that holds a valid quota license pursuant to ss. 561.20(1) and 565.20(1)(a)-(f), F.S.;
- Any vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), unless such license restricts the sale of malt beverages to sale for consumption only on the premises of such vendor.

Growlers must meet the following requirements:

- Have an unbroken seal or be incapable of being immediately consumed;
- Include an imprint or label that provides:
  - Name of the manufacturer
  - Brand
  - Approximate percentage of alcohol by volume

The bill provides for the above requirements to be indicated using an imprint or other form of a label attached to the growler. The bill provides that it is legal to possess and transport full or empty growler containers.

## **Craft Distilleries**

### **Current Situation**

In 2013, s. 565.03, F.S., was amended to create another exception to the three-tier regulatory system regarding the manufacture and sale of distilled spirits. “Distillery” is defined as “a manufacturer of distilled spirits.” “Craft distillery” is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises and notifies the Division of the desire to operate as a craft distillery. A craft distillery is permitted to sell the distilled spirits it produces to consumers for off-premise consumption. Sales of the spirits must be made on “private property” contiguous to the distillery premises at a souvenir gift shop operated by the distillery. Once a craft distillery’s production limitations have been surpassed (75,000 gallons), the craft distillery is required to notify the Division within five days and immediately cease sales to consumers.

The 2013 amendment prohibits craft distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and caps the total sales to each consumer at two or less containers per customer per calendar year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers.

The United States Department of Treasury houses the Alcohol and Tobacco Tax and Trade Bureau (TTB), which sets forth labeling and brand registration requirements for alcoholic beverages sold in the United States. Distillers are not permitted to sell, ship, or deliver for sale or shipment or otherwise introduce into interstate or foreign commerce any distilled spirits in bottles unless the bottles are marked, branded, labeled, or packaged in conformity with ss. 27 C.F.R. 5.31 through 27 C.F.R. 5.42. Those sections set forth what distillers are required to place on the labels, including manufacturer name, brand name, alcohol content, net contents, class and type of alcohol, and other labeling requirements. Distilled spirits and their labels are required to be “approved” by the TTB prior to being bottled or removed from the manufacturing site. When the TTB approves the distilled spirit, they provide a Certificate of Label Approval, which includes a copy of the brand name as provided on the application for approval.

Alcoholic beverages cannot be sold or offered for sale in Florida, or moved within or into Florida without the brand/label first being registered with the Division. A brand or label, as referred to in ch. 565, F.S., is a liquor product that is uniquely identified by label registered according to state and federal law.

Currently, the Department of Transportation implements the Florida Highway Guide Sign Program, as mentioned above. Such signs are not currently used to advertise the location of craft distilleries.

### **Effect of the Bill**

The bill defines the term “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or regulations.” The bill provides that a craft distillery may sell spirits distilled on its premises to consumers at its souvenir gift shop, and expands the limit on direct sales to consumers from two individual containers per person, per calendar year, to no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and one individual container of a second branded product; or
- Four individual containers of one branded product.

Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.10, F.S., per calendar year, for the consumer’s personal use and not for resale.

The bill clarifies that a craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property.

Additionally, the bill provides that the Department of Transportation shall install directional signs for a craft distillery on the rights-of-way of interstate highways and primary and secondary roads if a craft distillery requests for the signs to be posted. The craft distillery is responsible for paying all costs associated with placing the sign it requested.

Finally, the bill clarifies that a craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

#### B. SECTION DIRECTORY:

**Section 1** amends s. 402.82, F.S., prohibiting electronic benefits transfer cards from being used or accepted to purchase an alcoholic beverage.

**Section 2** amends s. 561.221, F.S., modifying an exception to the three-tier system.

**Section 3** amends s. 561.32, F.S., providing procedures for manufacturers to comply with statutory maximum vendor’s license requirements.

**Section 4** amends s. 561.42, F.S., deleting a prohibition against certain entities conducting malt beverage tastings; conforming provisions.

**Section 5** amends s. 561.5101, F.S., conforming a cross-reference.

**Section 6** amends s. 561.57, F.S., deleting permit requirements on the vehicles that are owned or leased by a vendor, for the vendor to transport alcoholic beverages.

**Section 7** amends s. 562.07, F.S., conforming provisions.

**Section 8** amends s. 562.34, F.S., providing that possessing and transporting a growler is lawful.

**Section 9** amends s. 563.06, F.S., conforming provisions and providing requirements for growlers.

**Section 10** creates s. 563.09, F.S., authorizing a licensed distributor or manufacturer of malt beverages to conduct a malt beverage tasting and providing requirements and limitations.

**Section 11** creates 563.10, F.S., requiring the Department of Transportation to install certain directional signs at specified locations upon the request of a craft brewery licensed in this state and requiring the requesting craft brewery to pay specified costs.

**Section 12** amends s. 565.03, F.S., modifying restrictions on the sale of individual containers to consumers in a face-to-face transaction at a craft brewery.

**Section 13** provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

##### Vehicle Permits:

According to the Department, the elimination of the required permit and associated fee will result in a small reduction in revenue collections. The fee is a one-time fee, not an annual fee. In FY 2013-14 total fees collected for vehicle permits were \$675.

#### 2. Expenditures:

There does not appear to be a decrease or increase in expenditures to the state government. Monitoring of compliance by the state government is complaint driven. The Division can likely handle any increase in complaints with existing staff and equipment.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

There does not appear to be a decrease or increase in revenues to local governments.

#### 2. Expenditures:

There does not appear to be a decrease or increase in expenditures to local governments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

##### Growlers:

The bill may help generate additional revenue by authorizing certain licensees to fill and sell the 64 ounce size growler.

##### Craft Distillers:

The bill may cause a minor increase in costs for craft distillers by requiring more complex record keeping, as they will be required to track purchases to consumers to ensure that no consumer purchases more than the permitted amount of branded product per calendar year. This cost will likely be offset by the increased revenue due to an increase in sales of distilled spirits directly to consumers.

### D. FISCAL COMMENTS:

##### Craft Distilleries:

The bill provides that the Department of Transportation shall install directional signs for a craft distillery on the rights-of-way of interstate highways and primary and secondary roads if a craft distillery requests for the signs to be posted. The Department of Transportation may incur initial costs for the installation of the signs. However, the craft distillery is responsible for paying all costs associated with placing the sign it requested.

## 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 Division will likely need to amend applications for licensure, requiring the rule adopting the form to undergo the rulemaking process. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 11 provides for craft breweries to request directional signs from the Department of Transportation. The Beverage Law does not define “craft brewery” and the term is not used elsewhere in the Beverage Law. It is unclear who would be able to utilize the provision of law.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 14, 2015, the Regulatory Affairs Committee considered a proposed committee substitute (PCS) and three amendments to the PCS and reported the bill favorably as a committee substitute. The amended PCS:

- Provides that EBT cards cannot be used to purchase alcoholic beverages and restores the provision that prohibits the use of EBT cards for the purchase of items from bottle clubs.
- Permits a manufacturer to obtain a vendor’s license at eight manufacturing premises; provides for the sale of malt beverages directly to consumers for on-premises and off-premises consumption with some limitations.
- Provides that the Department of Transportation shall install directional signs for a craft brewery on interstate highways and primary and secondary roads if a craft brewery makes a request.
- Provides that a licensed vendor that wishes to transport alcoholic beverages from a distributor’s premises no longer needs a vehicle permit for vehicles owned or leased by the vendor or a person disclosed on the vendor’s license application.
- Specifies growlers to be containers of 32, 64, and 128 ounces; specifies packaging and labeling requirements and the licensees authorized to fill and sell growlers.
- Permits manufacturers or distributors to pay for and conduct tasting of malt beverages on a vendor’s licensed premises, subject to certain requirements.
- Permits craft distilleries to sell two of each branded product, three of one branded product and one additional branded product or up to four of one branded product in face-to-face transactions with consumers making the purchases for personal use.
- Provides that the Department of Transportation shall install directional signs for a craft distillery on interstate highways and primary and secondary roads if a craft distillery makes a request.

The staff analysis is drafted to reflect the committee substitute.