

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 Malt Beverages
SPONSOR(S): Artiles and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 406

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

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 permits manufacturers to package malt beverages that are offered for sale by vendors in individual containers containing 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 bill permits manufacturers to package malt beverages in individual containers of any size. Furthermore, the bill requires that containers include information specifying the manufacturer and brand of the malt beverage it contains, and that it must have an unbroken seal or be incapable of being immediately consumed.

Additionally, 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 is not prohibited from conducting tastings on its licensed premises of malt beverages it has purchased.

The bill authorizes manufacturers, distributors, and vendors to conduct malt beverages tastings upon a vendor's licensed premises, subject to the following requirements:

- The malt beverage tasting must be limited to a vendor's premises authorized to sell alcoholic beverages by package or for consumption on the premises.
- The malt beverage tasting must be limited to patrons 21 years of age or older.

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 is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Alcoholic Beverages Regulation Generally

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 within the state of alcoholic beverages. 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.

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 containing no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type. The industry developed bottles, cans, kegs, half kegs, and other containers based on industry standard sizes, which meet the statutory requirements. Distributors have created a distribution system both state and nationwide with the capacity to transport industry standard sized containers.¹

Growlers

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of between 32 ounces and two liters that the consumer can take to a vendor for a vendor to fill with malt beverage for consumption off the licensed premises.² The standard size for a growler is 64 ounces.³ Florida malt beverage law does not specifically address growlers.

Florida malt beverage law does not permit the use of a 64 ounce containers or any other container size between 32 ounces and one gallon. As a result, growlers are prohibited in any sizes other than 32 ounces or less, and one gallon.

Tied House Evil Gifts and Tastings

¹ Testimony of industry members, Workshop on Craft Brewers Business Development Regulatory Issues, Business and Professional Regulation Subcommittee, January 9, 2014.

² Beeradvocate, *The Growler: Beer-To-Go!* available at <http://beeradvocate.com/articles/384/> (last viewed February 1, 2014).

³ 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).

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.⁴ 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, section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

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

Vendors are not prohibited from providing alcoholic beverages directly to consumers if the alcoholic beverages are paid for by the vendor. Therefore, vendors are currently permitted to conduct malt beverage tastings using malt beverages that the vendor owns.

Effect of the Bill

Container Sizes and Growler Requirements

The bill removes all container size limitations on individual containers. The removal of size limits will permit manufacturers and other authorized licensees to fill any size individual container, including a 64 ounce container used as a growler. In addition, manufacturers will be permitted to package malt beverages in any size container to be sold through the three-tier system.

Furthermore, the bill requires that containers include information specifying the manufacturer and brand of the malt beverage it contains, and that it must have an unbroken seal or be incapable of being immediately consumed.

Tied House Evil Gifts and Tastings

The bill creates s. 563.09, F.S., to permit manufacturers, distributors, and vendors to conduct malt beverages tastings upon a vendor's licensed premises. The language codifies the vendor's ability to conduct malt beverage tastings upon a licensed vendor premises. The tastings are subject to the following requirements:

- The malt beverage tasting must be limited to a vendor's premises authorized to sell alcoholic beverages by package or for consumption on the premises.
- The malt beverage tasting must be limited to patrons 21 years of age or older.

B. SECTION DIRECTORY:

Section 1 amends s. 563.06(6), F.S., to authorize containers of malt beverages to be sold or offered for sale by a vendor at a retail in any size and provides requirements for malt beverage containers.

Section 2 creates s. 563.09, F.S., to authorize manufacturers, distributors, and vendors to conduct malt beverages tastings on certain vendor's licensed premises.

Section 3 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁴ Section 561.42, F.S.
STORAGE NAME: h0283a.BPRS
DATE: 2/12/2014

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The Department of Business and Professional Services 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 permit manufacturers to utilize containers of any size for individual servings of malt beverages. This will permit licensees who fill growlers to use and fill 64 ounce growlers. In addition, this will permit manufacturers to package malt beverages other than growlers in containers of any size for distribution. Distributors and vendors may incur indeterminate expenditures to accommodate the potential changes in container sizes.

Additionally, the bill will permit manufacturers and distributors to hold tastings at a 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not delete s. 561.42(14)(e), F.S., which generally prohibits manufacturers and distributors from conducting sampling activities, including tastings, at a vendor's premises licensed for off-premises sales only.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.