

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 107 Alcoholic Beverages

**SPONSOR(S):** Government Operations Appropriations Subcommittee; Business & Professions Subcommittee; Steube and others

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

| REFERENCE  | ACTION          | ANALYST     | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------------|-------------|---------------------------------------|
| 1) Business & Professions Subcommittee               | 9 Y, 4 N, As CS | Butler      | Luczynski                             |
| 2) Government Operations Appropriations Subcommittee | 7 Y, 4 N, As CS | Topp        | Topp                                  |
| 3) Regulatory Affairs Committee                      | 6 Y, 10 N       | Brown-Blake | Hamon                                 |

### SUMMARY ANALYSIS

The bill sets forth requirements for alcoholic beverage manufacturers, distributors, and vendors in order to support the growth of the malt beverage industry while maintaining the three-tier system.

#### **Package Stores and Electronic Benefits Transfer Program**

- Permits package stores to have an inside entrance connecting the package store to another building or room licensed under the Beverage Law to the same licensee.
- Permits the storage and delivery of distilled spirits in and from the connected business if there is an inside entrance.
- Provides that EBT cards cannot be used to purchase alcoholic beverages.

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

- Manufacturers with Vendor's Licenses:
  - Permits a manufacturer to obtain a vendor's license at two manufacturing premises.
  - Provides for the sale of malt beverages directly to consumers for on-premises and off-premises consumption with some limitations.
- Taprooms:
  - A manufacturer may have a taproom at its licensed premises without a vendor's license to sell malt beverages directly to consumers with some limitations.
- Brewpubs:
  - May sell malt beverages brewed on premises for on-premises or off-premises consumption.
  - May sell malt beverages brewed by other manufacturers as authorized by its vendors license.

#### **Deliveries of Alcoholic Beverages**

- A licensed vendor does not need a vehicle permit for vehicles owned or leased by the vendor to transport alcoholic beverages from a distributor's place of business.

#### **Growlers and Malt Beverage Tastings**

- 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 conduct tasting of malt beverages on a vendor's licensed premises subject to certain requirements.

#### **Limited Malt Beverage Self-Distribution**

- Permits limited self-distribution by malt beverage manufacturers to vendors not within the exclusive sales territory of a contracted distributor.

#### **Craft Distilleries**

- Permits craft distilleries to sell unlimited distilled spirits in face-to-face transactions with consumers making the purchases for personal use.

The bill is not anticipated to have a fiscal impact. 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> and
- 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> Therefore the EBT card is not permitted to be used in package stores, where all alcoholic beverages, including distilled spirits are sold.<sup>9</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.

### Package Stores

#### Current Situation

Section 565.04, F.S., provides that vendors licensed under s. 565.02(1)(a), F.S., are not permitted to sell any merchandise in their store other than alcoholic beverages, bitters, grenadine, nonalcoholic mixers (not including juice from outside of Florida), fruit juice produced in Florida, bar and party supplies and equipment and tobacco products. Section 565.02(1)(a), F.S., creates a state license for “vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content” and “operating a place of business where [alcoholic] beverages are sold only in sealed containers for consumption off the premises.” The result has been the creation of “package stores,” where the vendor sells the above and nothing else in an enclosed space that is separated from any other store by a wall.

The beverage law restricts businesses who sell alcoholic beverages from employing persons under the age of 18, subject to a few exceptions.<sup>10</sup> Package stores are not exempt from this requirement, and may only employ persons age 18 or over. Grocery stores and drug stores licensed to sell malt beverages and wine may employ persons under the age of 18.

### Effect of the Bill

The bill amends s. 565.04, F.S., permitting vendors to have direct access to another building or room that is separately licensed under the Beverage Law to the same licensee, provided that the inside entrance has a door that is opened and closed by patrons and a separate outside entrance is provided.

The bill provides that distilled spirits may be stored and transported through the attached licensed business if it has an inside entrance into a package store licensed to sell distilled spirits. The bill provides that the act of selling items in a package store otherwise not permitted for sale in a package store shall not be a violation of the Beverage Law, provided the items were obtained in the separate connected licensed premises and carried through the inside entrance and the items are not displayed in the package store premises.

Finally, the bill amends s. 562.13, F.S., to clarify that vendors who are allowed to employ persons under the age of 18 must have a person 18 years of age or older personally supervise the sale of any distilled spirits beverage product sold by the vendor.

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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. 565.04, F.S.

<sup>10</sup> s. 562.13, 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 in 1979,<sup>15</sup> when the statute was amended to permit malt beverage and wine manufacturers to hold three vendor’s licenses.

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; and
- 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

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<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.

<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

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:

- 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; and
- 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.

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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.

## *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.

### Effect of the Bill

#### *Manufacturer 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.
- 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.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

The manufacturer maintains responsibility to maintain 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, 2015, 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, 2015, may maintain the licenses previously obtained or received based on the application prior to March 15, 2015, but may not obtain or apply for additional vendor's licenses. However, 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, 2015, or applied for prior to March 15, 2015, 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, 2015.

## *Taprooms*

The bill permits manufacturers to have a taproom at a licensed manufacturing premises 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; and
- 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; and
- 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 record 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 referenced 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)(d), F.S.;
- The brewpub must hold a permanent food service license; and
- The brewpub shall not place malt beverages brewed on the premises into the distribution channel.

The brewpub 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 brewpub:
  - For on-premises consumption; and
  - For off-premises consumption in growlers.
- Malt beverages brewed by another manufacturer:
  - For on-premises consumption; and
  - For off-premises consumption in growlers if the brewpub holds a valid quota license.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

## *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, 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.

### **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 authorize to sell for consumption on premises;
- The licensed premises of a vendor authored 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 manufacturer or distributor may purchase the malt beverages from the vendor at no more than retail price.

The manufacturer or distributor conducting the tastings shall:

- Provide the malt beverages used in the tasting;
- The total volume of the product offered for tasting may not exceed 576 ounces;
- 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; and
- Must 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 licensed 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.

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

<sup>26</sup> s. 561.57(4), 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. However, a vehicle permit shall be required if the vehicle is owned or leased by a person listed on the vendor's license.

Additionally, the bill maintains the requirement to 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:

- Common carriers;
- Individuals who possess the beverages not for resale; and
- 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 provides that authorized containers as defined in s. 563.06(6), F.S., do not include growlers. A new subsection 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

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<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).

specified and may not be used for purposes of distribution or sale outside the manufacturer's or vendor's licensed premises.

### *Growlers*

The bill defines growlers as a container of 32, 64, and 128 ounces in volume, 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.

Licensees may fill or refill growlers with malt beverages as follows:

- Malt beverages brewed by the manufacturer or brewpub at the following locations:
  - A taproom attached to the manufacturer's premises pursuant to s. 561.221(2)(a), F.S.;
  - An attached vendor's premises licensed pursuant to s. 561.221(2)(b), F.S.; and
  - A brewpub licensed pursuant to s. 561.221(3), F.S.
- Malt beverages brewed by any manufacturer if the vendor/manufacturer holds a valid quota license pursuant to ss. 561.20(1) and 565.20(1)(a)-(f), F.S., at the following locations:
  - An attached vendor's premises licensed pursuant to s. 561.221(2)(b), F.S.;
  - A brewpub licensed pursuant to s. 561.221(3), F.S.; and
  - Any vendor's licensed premises.
- Malt beverages brewed by any manufacturer if the vendor filling the growler obtains at least 80 percent of its annual gross revenues from the sale of malt beverages, the sale of wine, or the sale of both malt beverages and wine, and the vendor does not hold a manufacturer's license.

Growlers must meet the following requirements:

- Have an unbroken seal or be incapable of being immediately consumed;
- Be clean prior to filling; and
- Have a label that sufficiently covers an existing identifying mark from another manufacturer to indicate the malt beverage placed in the growler, and indicates:
  - 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.

### **Limited Malt Beverage Self-Distribution**

#### **Current Situation**

Currently, manufacturers may ship malt beverages between manufacturing locations pursuant to an exception in s. 563.022(14)(d), F.S., which permits a manufacturer to ship products between its licensed manufacturing premises without a distributor's license. Further, manufacturers of malt beverages may only sell their product to a distributor except under certain exceptions where they are permitted to sell directly to consumers at its manufacturing premises.

#### **Effect of the Bill**

The bill provides for limited self-distribution by any malt beverage manufacturer. However, a brewpub licensed under s. 561.221(3), F.S., is not a manufacturer for purposes of this provision. Any malt beverage manufacturer may sell and ensure receipt of no more than 2,000 total kegs of malt beverages per year directly to vendors. The manufacturer is required to use its own vehicles to deliver malt beverages to licensed vendors.

In addition, a manufacturer may only self-distribute malt beverages that are packaged in bulk, such as kegs or barrels, and to vendors who are not within the exclusive sales territory of a distributor with whom the manufacturer is under contract.

While this provision will permit any malt beverages manufacturer to make limited sales and delivery of products directly to vendors, it is expected to serve as a mechanism to assist new manufacturers in establishing customers.<sup>30</sup>

The manufacturer is responsible for keeping records and paying excise taxes for the malt beverages it sells or gives to vendors. The reports shall distinguish between malt beverages the manufacturer self-distributed and those sold directly to consumers by the manufacturer pursuant to s. 561.221(2), F.S.

## **Craft Distilleries**

### **Current Situation**

As noted above, there are some exceptions to the three-tier regulatory system. 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.<sup>31</sup> “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.<sup>32</sup> 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.

Craft distilleries are prohibited 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.

### **Effect of the Bill**

The bill amends the definition of “distillery” to mean “a manufacturer that distills ethyl alcohol or ethanol to create distilled spirits. Additionally, the bill permits craft distilleries to sell unlimited distilled spirits in face-to-face transactions with consumers making the purchases for personal use.

#### **B. SECTION DIRECTORY:**

**Section 1** amends s. 402.82, 2 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 exceptions to the three-tier system.

**Section 3** amends s. 561.42, F.S., deleting a prohibition against certain entities conducting malt beverage tastings; conforming provisions.

**Section 4** amends s. 561.5101, F.S., conforming a cross-reference.

**Section 5** amends s. 561.57, F.S., deleting permit requirement on the vehicles that are owned or leased by a vendor, for the vendor to transport alcoholic beverages.

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<sup>30</sup> Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Oct. 9, 2013).

<sup>31</sup> ch. 2013-157, Laws of Fla.

<sup>32</sup> s. 565.03(1)(a), F.S.

**Section 6** amends s. 562.07, F.S., conforming provisions.

**Section 7** amends s. 562.13, F.S., amending employment restrictions for Beverage Law vendors to prevent a person under the age of 18 selling distilled spirits without supervision.

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

**Section 9** amends s. 563.022, F.S., providing limited self-distribution for manufacturers.

**Section 10** amends s. 563.06, F.S., providing requirements for growlers.

**Section 11** 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 12** amends s. 565.03, F.S., deleting restrictions on the sale of individual containers to consumers in a face-to-face transaction at a craft brewery.

**Section 13** repeals s. 565.04, F.S., repealing the provision regulating alcoholic beverage package stores.

**Section 14** provides construction and severability.

**Section 15** provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None anticipated.

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

Growlers: The bill may help generate additional revenue by authorizing taprooms and other licensees to begin selling growlers or to add the 64 ounce size growler.

### D. FISCAL COMMENTS:

### 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 5 amends s. 561.57, F.S., and regulates persons besides the vendor who may transport alcoholic beverages from a distributor's place of business. The phrase "a person who is authorized by a vendor" on lines 412-413 may be ambiguous and may be interpreted broader than intended. The phrase should be revised to clarify specifically who is authorized.

Section 7 amends s. 562.13, F.S., and regulates the age of a person a vendor under the Beverage Law may employ. This language is no longer necessary following the March 24, 2015, amendments.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2015, the Business & Professions Subcommittee adopted eight amendments and reported the bill favorably as a committee substitute. The amendments:

- Amended the title to "relating to alcoholic beverages";
- Removed the ability for non-vendor licensed taprooms to sell malt beverages packaged in bottles or cans;
- Updated the malt beverages tastings language to provide sampling size guidelines, maximum volume of tasting product allowed per tasting, clarification on excise taxes, and other clarifications;
- Restored the vehicle permit requirement for vehicles used to transport alcoholic beverages that are owned or leased by persons on the vendor's license;
- Updated the Beverage Law employment provisions to ensure a person of 18 years of age or older supervises the sale of distilled spirits at a vendor that is permitted to employ persons under the age of 18;
- Revised the guidelines and regulations for limited self-distribution for manufacturers; and
- Limited "growlers" to individual containers of 32, 64, and 128 ounces by volume originally manufactured to hold malt beverages.

On March 24, 2015, the Government Operations Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed the amendments to the statutes regulating franchise agreements between malt beverage manufacturers and distributors, except as to providing for limited self-distribution.

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<sup>33</sup> Department of Business and Professional Regulation e-mail to staff of the Government Operations Subcommittee, on file with the subcommittee.

- Amended provisions regarding package stores by permitting package stores to have direct access to an attached building or room licensed under the Beverage Law to the same licensee through an inside entrance that may be opened or closed by patrons.
- Permitted the storage and transport of distilled spirits in and through a connected building or room to a package store when there is an inside entrance providing direct access to the package store and both the building and package store are owned or operated by the same licensee.
- Provided that the sale of items otherwise not permitted in a package store is not a violation of the Beverage Law if the items are obtained in a connected building or room and carried through the inside entrance to the package store, and the items are not displayed in the package store.

The staff analysis is drafted to reflect the committee substitute.

On April 14, 2015, the Regulatory Affairs Committee adopted a strike-all amendment but failed to report the bill favorably as a committee substitute. The amendment:

- Removed sections referring to:
  - Electronic Benefits Transfer Program card use;
  - Malt beverage manufacturer/vendor licensure three-tier exceptions;
  - Deliveries of alcohol;
  - Permit use;
  - Growlers; and
  - Self-distribution.
- Amended the language referring to package store separation by creating two types of package store licenses. Type A package store liquor license reflects current industry practice. Type B package store liquor license removes restrictions on direct access to distilled spirits in stores that sell items other than alcoholic beverages for a higher license fee.
- Provided that package stores may not permit an employee under the age of 21 to sell distilled spirits.
- Clarified the calculation of excise taxes on liquor sold on passenger ships.
- Revised the definition of the term "distillery."
- Permitted craft distilleries to sell unlimited distilled spirits in face-to-face transactions with consumers making the purchases for personal use.
- Required the Department of Transportation to install certain directional signs at specified locations upon the request of a craft distillery licensed in this state; requiring the requesting craft distillery to pay specified costs.
- Permits manufacturers or distributors to pay for and conduct tasting of malt beverages on a vendor's licensed premises, subject to certain requirements.

The staff analysis has not been updated to reflect the amendment on April 14, 2015. The analysis is drafted to reflect CS/CS/HB107.