

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1451 Malt Beverages
SPONSOR(S): Regulatory Reform Subcommittee, DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, alcoholic beverages are regulated by the Beverage Law, which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law, which requires licenses for businesses in the industry and payment of various associated fees and taxes.

Before doing business in Florida, manufacturers, brewers, bottlers, distributors, and importers of malt beverages must register with the division the brands or labels under which the malt beverages are to be sold or moved. There is a \$30 fee per brand or label.

There are no regulations in the Beverage Law which directly address contract and alternating proprietorship brewing. Contract brewing generally occurs when someone pays a brewing company, the "contract brewer," to brew the beer per a certain beer recipe. Alternating proprietorship brewing generally occurs when the proprietor of an existing brewery, the "host brewery," agrees to rent space and equipment to a "guest brewer."

The bill:

- Provides a definition for "barrel," which means 31 gallons, and conforms related brewpub and license fee provisions in the Beverage Law.
- Provides that the annual registration fee of \$30 for each malt beverage brand and label only applies to a brand or label that is sold to a distributor, not to a brand or label that is kept in-house.
- Provides guidelines for contract brewing and alternating proprietorship brewing.

The bill may have an indeterminate negative fiscal impact on state government, and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beverage Law

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates and licenses the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer. A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.

Generally, Florida has adopted the three-tier system. Exceptions to the three-tier regulatory system permit in-state wineries,⁴ breweries,⁵ and craft distilleries to be licensed as a vendor and sell directly to consumers under certain circumstances.⁶

Brewpub Exception

An 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 permit a vendor to be licensed as a manufacturer of malt beverages at a single location, with the following requirements:⁷

- The brewpub may not brew more than **10,000 kegs** (“keg” means 15.5 gallons) of malt beverages on the premises per year;
- Malt beverages “so brewed” must be sold to consumers for consumption on the vendor’s licensed premises or on contiguous licensed premises owned by the vendor;
- 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.

Craft Brewery Exception

The division is authorized to issue a vendor’s license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery (craft brewery), which may be divided by no more than one public street or highway.⁸

All malt beverages and other alcoholic beverages that are not manufactured by the craft brewery must be obtained through a distributor, an importer, sales agent, or broker.⁹

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

² See s. 561.14, F.S.

³ S. 561.02, F.S.

⁴ See s. 561.221(1), F.S.

⁵ See s. 561.221(2), F.S.

⁶ See s. 565.03, F.S.

⁷ S. 561.221(3), F.S.

⁸ S. 561.221(2), F.S.

⁹ S. 561.221(2)(e), F.S.

Brand and Label Registration Fee

No manufacturer, brewer, bottler, distributor, or importer of malt beverages may sell or offer for sale in Florida, or move or cause to be moved within or into Florida, any malt beverages, without:¹⁰

- qualifying to do business in the state and registering its name and the brands or labels under which the malt beverages are to be sold or moved; and
- furnishing any samples and information as to content, quality, and formula of such malt beverages as the division may require.

Each registrant must pay an annual registration fee of \$30 for a brand or label.¹¹

Plant and Branch License Tax

Each manufacturer engaged in the business of brewing only malt beverages must pay an annual state license tax of \$3,000 for each plant or branch it operates. However, each brewpub engaged in the business of brewing less than **10,000 kegs** of malt beverages annually for consumption on the premises pays a smaller annual state license tax of \$500 for each plant or branch.¹²

Contract and Alternating Proprietorship Brewing

There are no regulations in the Beverage Law which directly address contract and alternating proprietorship brewing, but the federal regulatory agency, the Alcohol and Tobacco Tax and Trade Bureau (TTB), allows the practices under certain circumstances.

Generally, alternating proprietorship brewing occurs when the proprietor of an existing brewery, the "host brewery," agrees to rent space and equipment to a "guest brewer." These arrangements generally allow existing breweries to use excess capacity and give new entrants to the beer business an opportunity to begin on a small scale, without investing in premises and equipment.¹³

Generally, contract brewing occurs when someone pays a brewing company, the "contract brewer," to brew the beer per a certain beer recipe. The TTB considers this arrangement to be an ordinary commercial business relationship.¹⁴

Effect of the Bill

The bill defines "**barrel**," which means 31 gallons. The bill conforms the manufacturing limit in the brewpub exception to the new definition, to **5,000 barrels**, from 10,000 kegs. The bill conforms the manufacturing limit used to determine if a brewpub qualifies for the smaller annual license tax rate of \$500, to **less than 5,000 barrels** of malt beverages, from less than 10,000 kegs.

The bill provides that the annual registration fee of \$30 for each malt beverage brand and label only applies to **a brand or label that is sold to a distributor**, not to a brand or label that is kept in-house. The bill also specifies that no other annual registration fee for a brand or label is authorized under the provision.

The bill provides guidelines for contract and alternating proprietorship brewing. The definitions for that section are:

¹⁰ S. 563.045(1), F.S.

¹¹ S. 563.045(2), F.S.

¹² S. 563.02(2), F.S.

¹³ U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, *Brewery Alternating Proprietorships*, <https://www.ttb.gov/beer/brewery-alternating-proprietorships> (last visited Jan. 24, 2022).

¹⁴ Gina McCreddie, *Contract Brewing v. Alternating Brewery Proprietorship: Which One is Right for You?*, New York State Brewer's Association (Oct. 21, 2015), <https://newyorkcraftbeer.com/2015/10/contract-brewing-vs-alternating-brewery-proprietorship-which-one-is-right-for-you/> (last visited Jan. 24, 2022).

- **"Alternating proprietorship brewing"** means an agreement between a guest brewer and host brewer wherein the guest brewer manufactures malt beverages on the host brewer's licensed premises.
- **"Contract brewer"** means a licensed manufacturer of malt beverages who brews malt beverages on its licensed premises for a contracting brewer.
- **"Contract brewing"** means an agreement wherein a contracting brewer pays a contract brewer to produce malt beverages.
- **"Contracting brewer"** means a licensed manufacturer of malt beverages who contracts for the services of a contract brewer.
- **"Guest brewer"** means a licensed manufacturer of malt beverages who brews malt beverages at a host brewer's licensed premises.
- **"Host brewer"** means a licensed manufacturer of malt beverages who allows a guest brewer to brew malt beverages on the manufacturer's licensed premises.

The bill provides that the contract brewer:

- May enter into multiple contract brewing agreements for the purpose of manufacturing malt beverages.
- Must comply with all applicable federal and state laws, including labeling laws.
- Must pay all federal and state taxes on malt beverages upon removal of the malt beverages from its licensed premises.
- Retains title to malt beverages produced under a contract brewing agreement until such beverages are removed from its licensed premises.
- Must ensure that the contracting brewer's malt beverages remain separate and identifiable from all other malt beverages at all times.
- May transfer malt beverages to the contracting brewer in an amount up to the yearly production amount of the contracting brewer's facility.
- Must report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on its licensed premises under the contract brewing agreement.

The bill provides that the contracting brewer:

- May only engage in the manufacture of malt beverages on its duly licensed premises and on the licensed premises of a contract brewer as disclosed to the division.
- Must report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on the licensed premises of the contract brewer under the contract brewing agreement.

The bill provides that the contract brewer and contracting brewer:

- Must, before engaging in contract brewing, notify the division, on forms provided by the division, of their intent to operate as a contract brewer or contracting brewer and disclose the location of the licensed premises where brewing will occur.
- Must maintain all records required to be kept by manufacturers of malt beverages under the Beverage Law.
- Notwithstanding any other provision of the Beverage Law, must comply with applicable requirements for holders of multiple manufacturing licenses and alcoholic beverages manufactured by another manufacturer.

The bill requires the host brewer to report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on its licensed premises under the alternating proprietorship brewing agreement.

The bill requires the guest brewer to:

- Comply with all applicable federal and state laws, including labeling laws.
- Pay all federal and state taxes on malt beverages manufactured pursuant to this section upon removal of the malt beverages from the host brewer's licensed premises.
- Retain title to malt beverages manufactured under an alternating proprietorship brewing agreement.

- Report to the division by the 10th day of each month the volume of each label of malt beverages manufactured at each licensed premises under each alternating proprietorship brewing agreement.

The bill requires that, before engaging in alternating proprietorship brewing, the host brewer and guest brewer:

- Must each qualify as a brewer with the TTB.
- Must submit to the division, on forms provided by the division, information identifying:
 - The host brewer.
 - The guest brewer.
 - The location where the alternating proprietorship brewing will take place.
 - The location where any product brewed pursuant to the alternating proprietorship brewing agreement will be stored.
 - The amount of malt beverages to be produced under the alternating proprietorship brewing agreement.
 - The timeframe in which the guest brewer will be manufacturing malt beverages on the host brewer's licensed premises.
 - Proof of occupancy rights to the host brewer's licensed premises for the duration of the alternating proprietorship brewing agreement.
 - Any other information reasonably deemed necessary by the division to ensure the health, safety, and welfare of the public or to ensure that all applicable taxes on the malt beverages produced pursuant to an alternating proprietorship brewing agreement are remitted to the state.

The bill requires each entity engaged in contract brewing or alternating proprietorship brewing to maintain records, including:

- Any agreement authorizing the manufacturing and transfer of malt beverages.
- Records of the total volume, in gallons, manufactured as part of the agreement.
- Any other records required by the division to ensure compliance with the provisions of the Beverage Law.

The bill prohibits vendors licensed as a manufacturer pursuant to the brewpub exception from engaging in contract brewing or alternating proprietorship brewing.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1	Amends s. 561.01, F.S., adding a definition.
Section 2	Amends s. 561.221, F.S., conforming measurements related to the brewpub exception.
Section 3	Amends s. 563.042, F.S., authorizing contract and alternating proprietorship brewing.
Section 4	Amends s. 563.045, F.S., revising requirements for brand and label fees.
Section 5	Amends s. 563.02, F.S., conforming measurements related to malt beverage licenses.
Section 6	Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may cause an indeterminate decrease in brand and label fees collected by the division.

2. Expenditures:

The bill may cause an indeterminate increase in workload to the division for implementing new procedures and overseeing contract and alternating proprietor arrangements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on craft brewers and brewpubs, who may pay less in brand and label fees to the division.

The bill will allow alternating proprietorship brewing and contract brewing, which may allow smaller brewers to expand their businesses without a manufacturing facility of their own.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the provisions which:

- Allowed brewpubs to serve their malt beverages on any of their licensed premises,
- Reduced excise taxes in certain circumstances, and
- Reduced license fees for certain craft breweries.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.