



Business & Professional Regulation Subcommittee

**Wednesday, October 9, 2013
4:00 PM
12 HOB**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professional Regulation Subcommittee

Start Date and Time: Wednesday, October 09, 2013 04:00 pm

End Date and Time: Wednesday, October 09, 2013 06:00 pm

Location: 12 HOB

Duration: 2.00 hrs

Workshop on the following:

Craft Brewers Business Development Regulatory Issues:

--Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco

--Florida Sheriffs Association

NOTICE FINALIZED on 10/02/2013 15:06 by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professional Regulation Subcommittee

Will Weatherford
Speaker

Debbie Mayfield
Chair

AGENDA

October 9, 2013
12 House Office Building
4:00 PM – 6:00 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. Workshop on the following:
Craft Brewers Business Development Regulatory Issues
 - Speakers:
 - Michael Martinez, Deputy General Counsel, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco
 - Lieutenant Rick Rietz, Manatee County Sheriff's Office (Florida Sheriffs Association)
- IV. Adjournment



Florida Department of
Business
Professional
Regulation

License efficiently. Regulate fairly.

Ken Lawson
Secretary



Craft Brewers Business Development Regulatory Issues

Michael Martinez
Deputy General Counsel

Tied House Evil

- The name “tied house” comes from a practice in England where a bar is “tied,” by ownership links or contractual obligations, to a specific manufacturer.
- Prior to prohibition, this practice was allowed in America, and it resulted in marketing practices that encouraged intemperance.
- Tied house legislation was intended to prevent vertical integration of ownership and, in turn, prevent intemperate consumption.



History of Alcoholic Beverage Laws

- In the mid 1800's there was a call for temperance (total abstinence from drinking alcohol).
- Some states began to implement prohibition laws; but the laws were declared unconstitutional or vetoed by state governors.
- In January of 1920 Congress enacted the 18th Amendment to the U.S. Constitution: the National Prohibition Act.
- However, as a result of the lack of enforcement of the Prohibition Act and the creation of an illegal industry, an increase in crime transpired.

History cont...

- The crime rate soon skyrocketed to nearly twice that of the pre-prohibition period.
- It can be argued that prohibition destroyed legal jobs, created black-market violence, and diverted resources from enforcement of other laws.
- In 1933 the 21st Amendment was ratified, repealing prohibition.
- Section 2 of the Amendment gives states authority to regulate the production, importation, distribution, retail sale and consumption of alcohol beverages inside their borders.

History cont...

- Federal and state lawmakers realized that prohibition did not work, but they did not want a return of the merchandizing and sales patterns that characterized the pre-prohibition era.
- Consequently, they put together a three-tier system that uses distributors as the insulator between manufacturers and retailers.
- Acting like a safety net, the three-tier system provides for “checks and balances” in the way that alcohol is distributed and sold to retailers as well as consumers.
- Manufacturers sell to licensed beverage distributors, who sell to properly licensed retailers, and those retailers sell alcoholic beverages to the public.

21st Amendment

- Repealed the 18th Amendment ,which mandated nationwide prohibition;
- Established a new system of alcohol distribution;
- Gave states authority to regulate alcohol distribution;
- Created the Federal Alcohol Administration Act (FAA Act)

FAA Act

The Federal Alcohol Administration was a United States government agency created in 1935 (as part of the Department of the Treasury) by the [Federal Alcohol Administration Act](#), title 27 chapter 8 of the United States Code.

Principal provisions:

- Exclusive outlets;
- “Tied House”;
- Commercial bribery;
- Consignment sales;
- Labeling; and
- Advertising.

Florida's Three Tier System

- Manufacturer
- Distributor
- Retailer/Vendor

Advantages of a Three Tier System

When prohibition was repealed, a three tier system was established to eliminate the direct link between the brewers and the retailers and to ensure local control of the distribution process:

- To avoid overly aggressive marketing and sales practices
- To generate tax revenues that can be collected efficiently from the industry
- To facilitate state and local control
- To encourage moderate consumption

Florida Laws and Rules that Implement the Three Tier System

- Chapters 561-568, F.S.
- Tied House Evil - F.S. § 561.42
- Rules (61A-1.010 - 61A-1.0108)

Florida Tied House Evil

561.42(1) No manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, assist 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.

Florida Administrative Rule

61A-1.010(1) Tied House Evil Prohibition Against Vendor Assistance.

(1) Industry members are prohibited from furnishing, supplying, giving, renting, or lending, to a vendor, any equipment, fixtures, furniture, furnishings, signs, supplies, credit, money, compensation, rebates, accumulated rebates, fees of any kind including slotting fees, services, property, or other thing of value of any description not included in the exceptions specified in Chapter 61A-1, F.A.C., or specifically authorized by Florida Statutes, to vendors or their employees or agents acting within their scope of employment. In addition, vendors and their employees or agents acting within the scope of employment are prohibited from accepting such forms of assistance. This prohibition against assisting any vendor includes engaging in cooperative advertising – participating in or paying for any advertising in cooperation with a vendor.

Licensing Overview

Major types, cost, scope of license

Manufacturer

- Beer \$3,000
- Brew Pub \$500
- Wine \$1,000
- Liquor \$4,000

Distributor/Wholesaler

- Beer \$1,250
- Wine \$1,250
- Liquor \$4,000

Vendor

- APS
- COP
- Specialty

Regulatory responsibilities of DBPR

- Licensing
- Auditing
- Enforcement

Brewer-Distributor Franchise Agreements

Malt beverages distributors can only sell product in exclusive sales territories established in a mutually agreed upon written contract with the manufacturer.

Unfair and Prohibited Acts -

The Manufacturer is limited in right to terminate, cancel, fail to renew, or refuse to continue the franchise or selling agreement without “good cause”. The nonrenewal of a franchise or selling agreement without good cause shall constitute an unfair termination or cancellation regardless of the specified time period of such franchise or selling agreement.

- (a) Insolvency of the distributor
- (b) Revocation of the distributor’s license by the division or by the Federal government
- (c) Felony conviction
- (d) Fraudulent conduct in a material matter in dealings with the manufacturer or its products
- (e) The distributor intentionally and willfully sells the manufacturer’s products to a retailer or retailers located outside a distributor’s territory, but only if the manufacturer has assigned exclusive territories to its distributors in Florida
- (f) The distributor fails to pay for the manufacturer’s products
- (g) The distributor sells, transfers, or assigns the franchise or control thereunder without the written consent of the manufacturer
- (h) Failure by the distributor to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the distributor and the manufacturer

Tied House Exceptions Found in Florida Law

Spirits:

Craft distillery - F. S. § 565.03

- Off premises sales only
- Limited to two bottles per customer per year
- No vendors license
- Premises contiguous to manufacturing premises

Wine:

Florida wine manufacturer - F. S. § 561.221

- 3 vendors licenses
- Premises contiguous to manufacturing premises

Certified Florida Farm Winery - F. S. § 561.221, 561.22

- 3 vendors licenses
- Distributor
- Fairs, etc.
- Premises contiguous to manufacturing premises

Tied House

Exceptions Found in Florida Law

Malt:

“Tourist Brewery” - F. S. § 561.221 – Vendors licenses

- Single Complex
- Brewing & other structures
- Promote the brewery & tourist industry of the state

Brew pub - F. S. § 561.221

- Must be on contiguous premises
- On premises sales only
- 10,000 keg per year limit

Trends in tourist brewery/brew pubs

Craft Brewers Business Development Regulatory Overview

- Growler issues:
 - Can a tourist brewery fill a growler with a product they do not manufacture;
 - What vendor license types may fill growlers;
 - When may a growler be filled:
 - In advance of purchase by a tourist brewery
 - At the time of purchase by a tourist brewery
 - In advance of purchase by a vendor
 - At the time of purchase by a vendor
- Are there any limitations on the type of container that may be filled, e.g., manufacturer's glass container, milk container, fountain drink cup with lid, etc.
- What are the labeling requirements, if any, related to:
 - Filling a growler in advance of purchase
 - Filling a growler at the time of purchase











Contact Information

Matilde Miller
Legislative Affairs Director
matilde.miller@myfloridalicense.com
850-717-1580