



Business & Professional Regulation Subcommittee

**Thursday, January 9, 2014
9:00 AM
12 HOB**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professional Regulation Subcommittee

Start Date and Time: Thursday, January 09, 2014 09:00 am
End Date and Time: Thursday, January 09, 2014 11:00 am
Location: 12 HOB
Duration: 2.00 hrs

Consideration of the following proposed committee substitute(s):

PCS for HB 151 -- Security of a Protected Consumer's Information

Workshop on the following:

Craft Brewers Business Development Regulatory Issues

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Wednesday, January 8, 2014.

By request of the Chair, all Business & Professional Regulation Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, January 8, 2014.

NOTICE FINALIZED on 12/20/2013 14:56 by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professional Regulation Subcommittee

Will Weatherford
Speaker

Debbie Mayfield
Chair

AGENDA

January 9, 2014
12 House Office Building
9:00 AM – 11:00 AM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. PCS for HB 151 by *Business & Professional Regulation Subcommittee*
Security of a Protected Consumer's Information
- IV. Workshop on the following:
Craft Brewers Business Development Regulatory Issues
 - Speakers:
 - Beer Industry of Florida
 - Eric Criss, President, Beer Industry of Florida
 - Jay Martin, President, J.J. Taylor Distributing Florida
 - Florida Beer Wholesalers Association
 - Mitch Rubin, Executive Director, Florida Beer Wholesalers Association
 - Eric Levin, President, Gold Coast Beverage Distributors
 - Mark Vroman, President, Coastal Beverage
 - Tim Mitchell, President, Suncoast Beverage Sales
 - Scott Dick, SKD Consulting Group
 - Mr. Scott Dick, SKD Consulting Group
 - Mr. Charles Bailes, Chairman and CEO, ABC Fine Wine & Spirits
 - Rory Eggers, Owner, Foremost Beverage Group; and Chairman of the Retail Beverage Council of the Florida

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Retail Federation and Chairman of the Florida Independent
Spirits Association

- Susan Pitman, Executive Director, Drug Free Duval

V. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 151 Security of a Protected Consumer's Information
SPONSOR(S): Business & Professional Regulation Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Business & Professional Regulation Subcommittee, Brown-Blake, Luczynski.

SUMMARY ANALYSIS

Current law provides consumers with procedures to request "security freezes" on consumer records that may have been compromised as a result of identity theft. Security freezes prohibit consumer reporting agencies (Equifax, Experian, and TransUnion) from releasing a credit report, subject to specified exemptions.

While parents typically apply for a Social Security number for their child shortly after birth, a credit reporting agency does not create a credit report or history until an application for credit is received. An identity thief will typically apply for credit with a child's Social Security number, but with a different name and date of birth.

The bill creates a mechanism to protect the personal information of protected consumers, which is an individual less than sixteen years of age or a person represented by a guardian or other advocate which includes but is not limited to:

- minors with court appointed guardians in child abuse, abandonment, or neglect judicial proceedings;
• persons of any age with developmental disabilities who have been appointed a guardian advocate;
• minors with court appointed guardians;
• minors in a criminal proceeding if the minor is a victim of or witness to certain offenses;
• persons of any age with an intellectual disability who have a court appointed advocate in certain criminal proceedings; and
• certain other protected individuals of any age who are court appointed a guardian.

The newly-created section provides definitions, procedures, requirements, damages, and limitations regarding security freezes on a protected consumer's credit record. The bill also requires consumer reporting agencies to provide consumers with a written summary of rights.

The bill has no fiscal impact on state or local funds. The bill may have a positive impact on the private sector by providing additional safeguards for minors under age sixteen and other persons represented by a guardian or advocate.

CS/CS/HB 493, which contained nearly identical language, was considered during the 2013 legislative session.

The bill has an effective date of September 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Credit reports and credit reporting agencies

Credit reporting agencies (also known as credit bureaus) are entities that collect and disseminate information about consumers to be used for credit evaluation and other permissible purposes, such as employment or background checks for professional licenses. The three major credit reporting companies in the U.S. are Equifax, TransUnion, and Experian.

Current federal law and security freezes

In 1970, Congress enacted the federal Fair Credit Reporting Act (FCRA), which regulates the collection, dissemination, and use of consumer credit information, is enforced by the Federal Trade Commission, and provides a private cause of action for consumers. The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.

Consumer reports are used by financial institutions, insurance companies, employers, and other entities in making eligibility decisions affecting consumers. Information included in consumer reports generally may include consumers' credit history and payment patterns, as well as demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).

In 2003, Congress passed the Fair and Accurate Credit Transactions Act (FACTA) to enhance FCRA and to require credit bureaus to provide one free report every 12 months. FACTA added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs.

FCRA (as amended by FACTA) states that a consumer, or any individual acting on behalf of or as a personal representative of a consumer, may assert a good-faith suspicion that he or she has been a victim of identity theft. This requires the credit bureau to place an "initial fraud alert" on the consumer's credit file for at least 90 days at no charge.¹ According to the FTC, this initial fraud alert makes it harder for identity thieves to open more accounts in a consumer's name, since the existence of a fraud alert requires businesses to verify a consumer's identity before issuing credit.² In addition, FCRA requires credit bureaus to block the reporting of information contained in a credit file resulting from an alleged identity theft.³ Consumers can also file an identity theft report (which consists of an affidavit and a police report) to the three credit bureaus in order to obtain an extended fraud alert placed on the credit report.

Both FCRA and FACTA provide that states may enact laws with respect to the collection, distribution, or use of any information on a consumer, or for the prevention or mitigation of identity theft, so long as these state laws are not inconsistent with the federal acts.⁴ Security freeze legislation is one example of allowable state laws.

¹ 15 U.S.C. § 1681c-1.

² FTC Consumer Information: Place a Fraud Alert, <http://www.consumer.ftc.gov/articles/0275-place-fraud-alert> (last accessed on December 10, 2013).

³ 15 U.S.C. § 1681c-2.

⁴ 15 U.S.C. § 1681t(1).

Forty-nine states (including Florida) and the District of Columbia have enacted laws allowing any consumer to freeze their credit reports, and four states that have laws that will grant security freezes to identify theft victims.⁵ A security freeze restricts a consumer-reporting agency from releasing a credit report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer's name, date of birth, Social Security number, and address—in a consumer report. A security freeze remains on a credit report until the consumer removes it. Generally, a person can "thaw" or temporarily remove the freeze to open a new credit account or a new loan. To do this, a consumer provides the consumer-reporting agency with special personal identifying number (PIN), which is required to verify the consumer's identity. States have created exemptions for specified organizations that still can access credit report information even if a freeze is in place. Typically, these organizations include law enforcement agencies, child support enforcement, insurance, and subsidiaries and affiliates of companies that have existing accounts with the consumer.

Current Florida law

Florida consumers have a statutory right to have security freeze placed on their consumer reports by sending a written request by certified mail to a credit reporting agency.⁶ A "security freeze" is a notice placed in a consumer report that prohibits a consumer reporting agency from releasing the consumer report, credit score, or any information contained in the report to a third party without the express authorization of the consumer.⁷ Any disclosure by a consumer reporting agency to a resident of the state must include a written summary of all rights the consumer has, including the right to place a security freeze on his or her consumer report.⁸ A credit reporting agency may charge a fee, not to exceed \$10, when a consumer elects to place, temporarily lift, or remove a security freeze on his or her credit report. However, the law prohibits a consumer-reporting agency from charging a fee to a consumer age 65 or older or to a victim of identity theft for the placement or removal of a security freeze.

In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of s. 501.005, F.S., may bring a civil action as authorized by s. 501.005(16), F.S. as follows:

- Any person who willfully fails to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than \$100 and not more than \$1,000, plus the cost of the action together with reasonable attorney's fees.
- Any person who is negligent in failing to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer, is liable to that consumer for any actual damages sustained by the consumer because of the failure of not less than \$100 and not more than \$1,000.
- Anyone who obtains a record or report under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for actual damages sustained by the consumer or damages of not less than \$100 and not more than \$1,000, whichever is greater, and 2) the consumer reporting agency for actual damages or \$1,000, whichever is greater.

⁵ Consumers Union, *Consumers Union's Guide to Security Freeze Protection*, available at <http://defendyourdollars.org/document/guide-to-security-freeze-protection> (last visited December 12, 2013).

⁶ Section 501.005, F.S.

⁷ Section 501.005(1), F.S. Additionally, Section 501.005(12), F.S., allows for the release of information that would otherwise be protected by a security freeze to the existing creditors of the consumer, persons who have been granted access to the information according to law, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide credit reports to consumers on their request, to persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

⁸ Section 501.005(17), F.S.

- Section 501.005(16), F.S., allows for the assessment of punitive damages for willful violations of s. 501.005, F.S.
- Upon a finding by the court that an unsuccessful pleading, motion or other paper filed in connection with an action under s. 501.005, F.S., was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.

Identity Theft & Children

A recent study by AllClear ID, based on 27,000 American children, found that more than 10% of children are victims of identity theft, mostly among children ages 5 and younger.⁹ While the current statutory security freeze process is commonly used by adults, it is often not able to be utilized by minor consumers and consumers who are represented by a guardian or other advocate. Unlike the average adult, most minors and consumers represented by a guardian or other advocate do not have existing credit files. While parents typically apply for a Social Security number for their child shortly after birth, credit bureaus do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time. When a credit file is created for a first-time credit applicant, the credit bureaus will verify the Social Security number, but not the name and date of birth assigned to it when issued. An identity thief will typically apply for credit with a child's Social Security number, but with a different name and date of birth. As a result, the identity theft may go undetected for years.¹⁰ In addition, even when parents do detect that their child's identity has been compromised, consumer reporting agencies generally do not administer security freezes for consumers who do not have existing credit files. As a spokesman for TransUnion and Equifax explained, a security freeze "applies to a credit file, not a social security number."¹¹

In addition, s. 817.568, F.S., addresses criminal use of personal identification and includes a provision specifically addressing minors:

(6) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Any person who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, who willfully and fraudulently uses personal identification information of that individual commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Effect of Proposed Changes

The bill creates s. 501.0051, F.S., as the "Keeping I.D. Safe (KIDS) Act" to authorize a representative of a minor consumer younger than sixteen years of age, or a guardian or other advocate of a consumer pursuant to chs. 39, 393, 744, or 914, F.S., to place a security freeze on that consumer's credit report. The bill also directs credit reporting agencies to create a credit record for the protected consumer in the event that the consumer does not yet have a credit report file. The security freeze prohibits consumer reporting agencies from releasing the consumer report or record or any information contained within the report or record without the authorized consent of the protected consumer's representative, except in certain specific circumstances.

⁹ AllClear ID Alert Network, Child Identity Theft: Report 2012, available on <https://www.allclearid.com/child/child-id-theft-statistics-2012> (last accessed December 10, 2013).

¹⁰ *Id.*

¹¹ <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/> (Last accessed on December 10, 2013).

Definitions

The bill defines the terms: “consumer reporting,” “consumer reporting agency,” “protected consumer,” “record,” “representative,” “security freeze,” sufficient proof of authority,” and “sufficient proof of identification.” Except as noted below, the following definitions are identical to the current definitions in s. 501.005, F.S.

- “Consumer report” has the same meaning as provided in 15 U.S.C. 1681a(d), which is defined as any written, oral or other communication by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer’s eligibility for credit or insurance, employment, or any other purpose authorized under 15 U.S.C. 1681(b).
- “Consumer reporting agency” has the same meaning as provided in 15 U.S.C. 1681a(f), which is defined as any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
- “Protected consumer” is defined as a person less than sixteen years of age at the time a security freeze request is made, or a person represented by a guardian or other advocate pursuant to chs. 39, 393, 744, or 914, F.S.
- “Record” is defined as a compilation of information that 1) identifies a protected consumer, and 2) is created by a consumer reporting agency for the purpose of complying with requirements set forth in the bill.
- “Representative” is defined as the parent or legal guardian of a protected consumer, including a guardian ad litem.
- “Security freeze” is defined as a notice placed on either 1) the protected consumer’s consumer report, which prohibits a consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the representative, or 2) the protected consumer’s record, which prohibits the consumer reporting agency from releasing the protected consumer’s record, in the event that a consumer reporting agency does not have an existing consumer report pertaining to the protected consumer.
- “Sufficient proof of authority” is defined as documentation that shows that a representative has authority to act on behalf of a protected consumer, such as a court order, valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of the protected consumer, or for proof of authority for a representative who is a parent, a certified or official copy of a birth certificate of the protected consumer.
- “Sufficient proof of identification” is defined as documentation that identifies a protected consumer or a representative of a protected consumer, such as a social security card, a certified or official copy of a birth certificate, a copy of a valid driver license, or government-issued photo identification.

Creating a Security Freeze

The bill provides the procedure to be used in the event that a representative, guardian or other advocate wants to place a security freeze on a protected consumer’s consumer report or record. Specifically, to place a security freeze on a consumer report or record, the representative must:

- Submit a request to the consumer reporting agency in the manner prescribed by that agency;
- Provide the agency with sufficient proof of authority and identification; and
- Pay the agency a fee.

If a consumer reporting agency doesn't have a consumer report pertaining to a protected consumer when it receives the security freeze request, the agency must create a record for the protected consumer and place a security freeze on that newly-created record. The record may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or eligibility for other financial services.

The security freeze must be placed within thirty days after the consumer reporting agency confirms the authenticity of the security freeze request.

Moreover, within ten business days of the consumer reporting agency placing the security freeze, it is required to send the representative written confirmation of the implementation of the security freeze. It must also provide the representative with a unique personal identifier and instructions for removing the security freeze.

Effects on Credit Score, Credit History, and Credit Rating

The bill provides that a consumer reporting agency may not state or otherwise imply that a security freeze reflects a negative credit score, history, or rating.

Removing a Security Freeze

The bill also provides procedures to be used in the event that a representative wants to remove the security freeze. A consumer reporting agency may only remove a security freeze:

- Upon request of a representative;
- Upon request of a protected consumer; or
- If the security freeze was instituted due to a material misrepresentation of fact; however, the consumer reporting agency must first notify the representative and protected consumer in writing before removing the security freeze.

If the removal of a security freeze is requested by the representative, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification and authority;
- The unique personal identifier; and
- Payment of a fee.

If the removal of a security freeze is requested by the protected consumer, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification; and
- Documentation that the authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid.
- Payment of a fee.

The security freeze must be removed within thirty days after receiving the request for removal.

Exemptions from Section

The bill provides that the provisions of s. 501.0051, F.S., do not apply to the use of consumer credit information by:

- A state agency acting within its lawful investigative or regulatory authority;

- A state or local law enforcement agency investigating a crime or conducting a criminal background check;
- Any person administering a credit file monitoring subscription, to which the protected consumer or representative, on behalf of the protected consumer, has subscribed;
- Any person, for the purpose of providing the protected consumer's consumer report upon the consumer's or representative's request;
- Any person with a court order for the release of consumer credit information;
- An insurance company, for the purpose of settling or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;
- A consumer reporting agency's database or file which consists entirely of information concerning, and is used exclusively for: 1) criminal record information, 2) personal loss history information, 3) fraud prevention or detection, 4) tenant screening, 5) employment screening, 6) personal insurance policy information, or 7) noncredit information used for insurance purposes;
- A check services company that issues authorizations, for the purpose of approving or processing checks, electronic funds transfers, or similar methods of payment;
- A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or other negative information regarding a protected consumer to an inquiring financial institution, for limited purposes;
- A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple agencies, and that does not maintain a permanent database of credit information from which new reports are produced; or
- A fraud prevention services company issuing reports to prevent or investigate fraud.
- A person or entity, its affiliates, or a collection agency acting on behalf of the person or entity and with which the protected consumer has an existing account, requesting information on the protected consumer's consumer report for the purposes of reviewing or collecting the account.

Fees

The bill authorizes consumer reporting agencies to charge a representative who elects to place or remove a security freeze a "reasonable fee," which may not exceed ten dollars. The bill also authorizes consumer reporting agencies to charge a protected consumer who elects to remove a security freeze a "reasonable fee," which may not exceed ten dollars.

Additionally, consumer reporting agencies are granted the ability to charge a representative a "reasonable fee," not to exceed ten dollars, to be imposed if the representative fails to retain the original personal identifier granted when the security freeze was placed, and the agency has to reissue that original personal identifier.

However, the bill does not allow for a consumer reporting agency to charge the representative any fee if the representative submits, at the time the security freeze is requested, a copy of an investigative report, incident report, or other complaint with a law enforcement agency indicating the protected consumer is a victim of identity theft.

Changes to a Protected Consumer's Consumer Record

If a security freeze is in effect, the bill requires a consumer reporting agency to send written confirmation to a protected consumer's representative of a change to the protected consumer's name, address, date of birth, or social security number in his or her consumer record, within thirty days after the change is posted to the consumer record.

However, written confirmation is not required to be made regarding technical corrections of a protected consumer's information. Technical corrections include name and street abbreviations, complete spellings, or transposition of numbers or letters.

In the case of an address change, the written confirmation must be sent to the representative and to the protected consumer's new and former addresses.

Violations of the Security Freeze

In the event that a consumer reporting agency violates the security freeze by releasing credit information without proper authorization, the bill provides that the consumer reporting agency is required to notify the representative, in writing, within five business days after discovering or being notified of the release of information.

Moreover, the bill provides for fines and damages, in certain circumstances. Specifically:

- A credit reporting agency that willfully fails to comply with the security freeze provisions is subject to a \$500 administrative fine, issued pursuant to ch. 120, F.S., by the Department of Agriculture and Consumer Services.
- Anyone who obtains a record or report under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for the greater of \$1,000 or the actual damages sustained by the protected consumer as a result of the failure, and 2) the consumer reporting agency for actual damages or \$1,000, whichever is greater.

Written Summary of Rights

The bill requires consumer reporting agencies to provide consumers with written summary of rights, including the right to sue under the new statute. Additionally, the bill amends the terms of the summary of rights to include that a representative has a right to place a security freeze on the consumer report of person that he or she is legally authorized to care for, pursuant to the provisions in s. 501.0051, F.S. Moreover, the summary of rights must indicate that if no consumer report exists for the protected consumer, that the representative has a right to request that a record be created and that a security freeze be placed on that consumer record.

B. SECTION DIRECTORY:

Section 1: identifies the bill as the "Keeping I.D. Safe (KIDS) Act."

Section 2: creates s. 501.0051, F.S., to provide definitions, procedures, requirements, exemptions enforcement and damages, and limitations regarding security freezes on a protected consumer's credit record; creates written disclosure requirements for consumer reporting agencies pertaining to consumer rights associated with a security freeze, and includes a disclaimer involving protected consumer security freezes.

Section 3: provides an effective date of September 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The Department of Agriculture and Consumer 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 expand consumer protections to individuals under the age of sixteen and certain protected adults and minors as set forth in chs. 39, 393, 744, or 914, F.S., specifically helping to protect these groups from identity theft and fraudulent credit use.

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

1 A bill to be entitled
 2 An act relating to the security of a protected
 3 consumer's information; providing a short title;
 4 creating s. 501.0051, F.S.; providing definitions;
 5 authorizing the representative of a protected consumer
 6 to place a security freeze on a protected consumer's
 7 consumer report or record; specifying the procedure to
 8 request a security freeze; requiring a consumer
 9 reporting agency to establish a record if the
 10 protected consumer does not have an existing consumer
 11 report; prohibiting the use of a consumer record for
 12 certain purposes; requiring a consumer reporting
 13 agency to place, and to provide written confirmation
 14 of, a security freeze within a specified period;
 15 prohibiting a consumer reporting agency from stating
 16 or implying that a security freeze reflects a negative
 17 credit history or rating; requiring a consumer
 18 reporting agency to remove a security freeze under
 19 specified conditions; specifying the procedure to
 20 remove a security freeze; providing applicability;
 21 authorizing a consumer reporting agency to charge a
 22 fee for placing or removing a security freeze and for
 23 reissuing a unique personal identifier; prohibiting a
 24 fee under certain circumstances; requiring written
 25 notification upon the change of specified information
 26 in a protected consumer's consumer report or record;

27 providing exceptions; requiring a consumer reporting
 28 agency to notify a representative and provide
 29 specified information if the consumer reporting agency
 30 violates a security freeze; providing penalties and
 31 civil remedies; providing written disclosure
 32 requirements for consumer reporting agencies relating
 33 to a protected consumer's security freeze; providing
 34 an effective date.

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. This act may be cited as the "Keeping I.D. Safe
 39 (KIDS) Act."

40 Section 2. Section 501.0051, Florida Statutes, is created
 41 to read:

42 501.0051 Protected consumer report security freeze.-

43 (1) As used in this section, the term:

44 (a) "Consumer report" has the same meaning as provided in
 45 15 U.S.C. s. 1681a(d).

46 (b) "Consumer reporting agency" has the same meaning as
 47 provided in 15 U.S.C. s. 1681a(f).

48 (c) "Protected consumer" means a person younger than 16
 49 years of age at the time a security freeze request is made or a
 50 person represented by a guardian or other advocate pursuant to
 51 chapter 39, chapter 393, chapter 744, or chapter 914, Florida
 52 Statutes.

53 (d) "Record" means a compilation of information that:
 54 1. Identifies a protected consumer; and
 55 2. Is created by a consumer reporting agency exclusively
 56 for the purpose of complying with this section.

57 (e) "Representative" means the parent or legal guardian of
 58 a protected consumer, including a guardian appointed pursuant to
 59 s. 914.17.

60 (f) "Security freeze" means:
 61 1. A notice placed on a protected consumer's consumer
 62 report which prohibits a consumer reporting agency from
 63 releasing the consumer report, the credit score, or any
 64 information contained within the consumer report to a third
 65 party without the express authorization of the representative;
 66 or
 67 2. If a consumer reporting agency does not have a consumer
 68 report pertaining to the protected consumer, a notice placed on
 69 the protected consumer's record which prohibits the consumer
 70 reporting agency from releasing the protected consumer's record
 71 except as provided in this section.

72 (g) "Sufficient proof of authority" means documentation
 73 showing that a representative has authority to act on behalf of
 74 a protected consumer. The term includes, but is not limited to,
 75 a court order, a copy of a valid power of attorney, or a written
 76 notarized statement signed by a representative which expressly
 77 describes the authority of the representative to act on behalf
 78 of the protected consumer. For proof of authority for a

79 representative who is a parent, the term also includes, but is
80 not limited to, a certified or official copy of a birth
81 certificate of the protected consumer.

82 (h) "Sufficient proof of identification" means
83 documentation identifying a protected consumer or a
84 representative of a protected consumer. The term includes, but
85 is not limited to, a copy of a social security card, a certified
86 or official copy of a birth certificate, a copy of a valid
87 driver license, or a copy of a government-issued photo
88 identification.

89 (2) A representative may place a security freeze on a
90 protected consumer's consumer report by:

91 (a) Submitting a request to a consumer reporting agency in
92 the manner prescribed by that agency;

93 (b) Providing the agency with sufficient proof of
94 authority and sufficient proof of identification of the
95 representative; and

96 (c) Paying the agency a fee as authorized under this
97 section.

98 (3) If a consumer reporting agency does not have a
99 consumer report pertaining to a protected consumer when the
100 consumer reporting agency receives a request for a security
101 freeze under subsection (2), the consumer reporting agency shall
102 create a record for the protected consumer and place a security
103 freeze on the record. A record may not be created or used to
104 consider the protected consumer's credit worthiness, credit

105 standing, credit capacity, character, general reputation,
 106 personal characteristics, or eligibility for other financial
 107 services.

108 (4) A consumer reporting agency shall place a security
 109 freeze on a consumer report or record within 30 days after
 110 confirming the authenticity of a security freeze request made in
 111 accordance with this section.

112 (5) The consumer reporting agency shall send a written
 113 confirmation of the security freeze to the representative within
 114 10 business days after instituting the security freeze on the
 115 consumer report or record and shall provide the representative
 116 with instructions for removing the security freeze and a unique
 117 personal identifier to be used by the representative when
 118 providing authorization for removal of the security freeze.

119 (6) A consumer reporting agency may not state or imply to
 120 any person that a security freeze reflects a negative credit
 121 score, a negative credit history, or a negative credit rating.

122 (7) A consumer reporting agency shall remove a security
 123 freeze from a protected consumer's consumer report or record
 124 only under either of the following circumstances:

125 (a) Upon the request of a representative or a protected
 126 consumer. A consumer reporting agency shall remove a security
 127 freeze within 30 days after receiving such a request for removal
 128 from a protected consumer or his or her representative.

129 1. A representative submitting a request for removal must
 130 provide all of the following:

131 a. Sufficient proof of identification of the representative
 132 and sufficient proof of authority as determined by the consumer
 133 reporting agency.

134 b. The unique personal identifier provided by the consumer
 135 reporting agency pursuant to subsection (5).

136 c. A fee as authorized under this section.

137 2. A protected consumer submitting a request for removal
 138 must provide all of the following:

139 a. Sufficient proof of identification of the protected
 140 consumer as determined by the consumer reporting agency.

141 b. Documentation that the sufficient proof of authority of
 142 the protected consumer's representative to act on behalf of the
 143 protected consumer is no longer valid.

144 c. A fee as authorized under this section.

145 (b) If the security freeze was instituted due to a
 146 material misrepresentation of fact. A consumer reporting agency
 147 that intends to remove a security freeze under this paragraph
 148 shall notify the representative and protected consumer in
 149 writing before removing the security freeze.

150 (8) This section does not apply to the use of a protected
 151 consumer's consumer report or record by the following persons or
 152 for the following reasons:

153 (a) A state agency acting within its lawful investigative
 154 or regulatory authority.

155 (b) A state or local law enforcement agency investigating
 156 a crime or conducting a criminal background check.

157 (c) A person administering a credit file monitoring
 158 subscription service to which the protected consumer or the
 159 representative, on behalf of the protected consumer, has
 160 subscribed.

161 (d) A person providing the protected consumer's consumer
 162 report or record to the protected consumer or the representative
 163 upon the request of the protected consumer or representative.

164 (e) Pursuant to a court order lawfully entered.

165 (f) An insurance company for use in setting or adjusting a
 166 rate, adjusting a claim, or underwriting for insurance purposes.

167 (g) A consumer reporting agency's database or file that
 168 consists entirely of information concerning, and used
 169 exclusively for, one or more of the following:

- 170 1. Criminal record information.
- 171 2. Personal loss history information.
- 172 3. Fraud prevention or detection.
- 173 4. Tenant screening.
- 174 5. Employment screening.
- 175 6. Personal insurance policy information.
- 176 7. Noncredit information used for insurance purposes.

177 (h) A check services company issuing authorizations for
 178 the purpose of approving or processing negotiable instruments,
 179 electronic funds transfers, or similar methods of payment.

180 (i) A deposit account information service company issuing
 181 reports regarding account closures due to fraud, substantial
 182 overdrafts, automatic teller machine abuse, or similar negative

183 information regarding a protected consumer to an inquiring
 184 financial institution, as defined in s. 655.005 or in federal
 185 law, for use only in reviewing a representative's request for a
 186 deposit account for the protected consumer at the inquiring
 187 financial institution.

188 (j) A consumer reporting agency that acts only as a
 189 reseller of credit information by assembling and merging
 190 information contained in the database of another consumer
 191 reporting agency or multiple consumer reporting agencies and
 192 that does not maintain a permanent database of credit
 193 information from which new consumer reports are produced.
 194 However, such consumer reporting agency shall honor any security
 195 freeze placed or removed by another consumer reporting agency.

196 (k) A fraud prevention services company issuing reports to
 197 prevent or investigate fraud.

198 (l) A person or entity, or its affiliates, or a collection
 199 agency acting on behalf of the person or entity and with which
 200 the protected consumer has an existing account, requesting
 201 information in the protected consumer's consumer report or
 202 record for the purposes of reviewing or collecting the account.
 203 Reviewing the account includes activities related to account
 204 maintenance, monitoring, credit line increases, and account
 205 upgrades and enhancements.

206 (9) (a) A consumer reporting agency may charge a reasonable
 207 fee, not to exceed \$10, to place or remove a security freeze.

208 (b) A consumer reporting agency may charge a reasonable

209 fee, not to exceed \$10, if the representative fails to retain
 210 the original unique personal identifier provided by the consumer
 211 reporting agency and the agency must reissue the unique personal
 212 identifier or provide a new unique personal identifier to the
 213 representative.

214 (c) A consumer reporting agency may not charge a fee under
 215 this section to the representative of a protected consumer who
 216 is a victim of identity theft if the representative submits, at
 217 the time the security freeze is requested, a copy of a valid
 218 investigative report, an incident report, or a complaint with a
 219 law enforcement agency about the unlawful use of the protected
 220 consumer's identifying information by another person.

221 (10) If a security freeze is in effect, a consumer
 222 reporting agency must send written confirmation to a protected
 223 consumer's representative of a change to any of the following
 224 official information in the protected consumer's consumer report
 225 or record within 30 days after the change is posted:

- 226 (a) The protected consumer's name.
- 227 (b) The protected consumer's address.
- 228 (c) The protected consumer's date of birth.
- 229 (d) The protected consumer's social security number.

230
 231 Written confirmation is not required for technical corrections
 232 of a protected consumer's official information, including name
 233 and street abbreviations, complete spellings, or transposition
 234 of numbers or letters. In the case of an address change, the

235 written confirmation must be sent to the representative and to
 236 the protected consumer's new address and former address.

237 (11) If a consumer reporting agency violates a security
 238 freeze placed in accordance with this section by releasing
 239 information subject to a security freeze without proper
 240 authorization, the consumer reporting agency shall, within 5
 241 business days after discovering or being notified of the release
 242 of information, notify the representative of the protected
 243 consumer in writing. The notice shall state the specific
 244 information released and provide the name, address, and other
 245 contact information of the recipient of the information.

246 (12) A consumer reporting agency that willfully fails to
 247 comply with any requirement imposed under this section is
 248 subject to an administrative fine in the amount of \$500, imposed
 249 by the Department of Agriculture and Consumer Services pursuant
 250 to the administrative procedures established in chapter 120.

251 (13) In addition to any other penalties or remedies
 252 provided under law, the following persons who are aggrieved by a
 253 violation of this section may bring a civil action as follows:

254 (a) A person who obtains a protected consumer's consumer
 255 report or record from a consumer reporting agency under false
 256 pretenses or who knowingly obtains a protected consumer's
 257 consumer report or record without a permissible purpose is
 258 liable to the representative and protected consumer for actual
 259 damages sustained by the protected consumer or \$1,000, whichever
 260 is greater.

261 (b) A person who obtains a protected consumer's consumer
 262 report or record from a consumer reporting agency under false
 263 pretenses or who knowingly obtains a protected consumer's
 264 consumer report or record without a permissible purpose is
 265 liable to the consumer reporting agency for actual damages
 266 sustained by the consumer reporting agency or \$1,000, whichever
 267 is greater.

268 (14) A written disclosure by a consumer reporting agency,
 269 pursuant to 15 U.S.C. s. 1681g, to a representative and
 270 protected consumer residing in this state must include a written
 271 summary of all rights that the representative and protected
 272 consumer have under this section and, in the case of a consumer
 273 reporting agency that compiles and maintains records on a
 274 nationwide basis, a toll-free telephone number that the
 275 representative can use to communicate with the consumer
 276 reporting agency. The information provided in paragraph (b) must
 277 be in at least 12-point boldfaced type. The written summary of
 278 rights required under this section is sufficient if it is
 279 substantially in the following form:

280 (a) If you are the parent or legal guardian of a minor
 281 younger than 16 years of age or a guardian or advocate of an
 282 incapacitated, disabled, or protected person under chapter 39,
 283 chapter 393, chapter 744, or chapter 914, Florida Statutes, you
 284 have the right to place a security freeze on the consumer report
 285 of the person you are legally authorized to care for. If no
 286 consumer report exists, you have the right to request that a

287 record be created and a security freeze be placed on the record.
 288 A record with a security freeze is intended to prevent the
 289 opening of credit accounts until the security freeze is removed.

290 (b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO
 291 CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN A
 292 CONSUMER REPORT OR RECORD MAY DELAY, INTERFERE WITH, OR PROHIBIT
 293 THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION
 294 REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT
 295 SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT,
 296 LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET
 297 CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN
 298 EXTENSION OF CREDIT AT POINT OF SALE.

299 (c) To remove the security freeze on the protected
 300 consumer's record or report, you must contact the consumer
 301 reporting agency and provide all of the following:

302 1. Proof of identification as required by the consumer
 303 reporting agency.

304 2. Proof of authority over the protected consumer as
 305 required by the consumer reporting agency.

306 3. The unique personal identifier provided by the consumer
 307 reporting agency.

308 4. Payment of a fee.

309 (d) A consumer reporting agency must, within 30 days after
 310 receiving the above information, authorize the removal of the
 311 security freeze.

312 (e) A security freeze does not apply to a person or

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2014

313 entity, or its affiliates, or a collection agency acting on
314 behalf of the person or entity and with which the protected
315 consumer has an existing account, which requests information in
316 the protected consumer's consumer report or record for the
317 purposes of reviewing or collecting the account. Reviewing the
318 account includes activities related to account maintenance,
319 monitoring, credit line increases, and account upgrades and
320 enhancements.

321 (f) You have the right to bring a civil action as
322 authorized by section 501.0051, Florida Statutes, which governs
323 the security of protected consumer information.

324 Section 3. This act shall take effect September 1, 2014.

**Workshop:
Issues and Questions**

Florida House of Representatives
Business & Professional Regulation Subcommittee
Representative Debbie Mayfield, Chair
Workshop on Craft Brewers Business Development Regulatory Issues
January 9, 2014, 9 am – 11 am, 12 HOB

The Business & Professional Regulation Subcommittee is reviewing malt beverage regulations and seeking input from all affected parties. This workshop is focused on obtaining input from malt beverage distributors and retailers on the following issues and topics that may impact the development of the malt beverage industry in Florida.

1) Growler Issues:

- a) The filling of growlers is arguably related to both the functions of a manufacturer/bottler and a vendor. Existing statutes probably did not contemplate the use of growlers in this hybrid type model. Who should be permitted or prohibited from filling growlers?
 - i) Licensees authorized to fill growlers could include:
 - (1) a manufacturer holding a vendor license (s. 561.221(2), F.S.)
 - (2) a vendor holding a manufacturer license (brewpub, s. 561.221(3), F.S.)
 - (3) a vendor holding a consumption on premises license
 - (4) a vendor holding a consumption off premises only license (package sales) or
 - (5) a vendor holding a quota license
- b) Should growlers be permitted or prohibited from being filled in advance of purchase for sale to a consumer for off-site consumption? Note: under federal law filling in advance is considered bottling, while filling at point of purchase is considered filling a container, like a glass.
- c) Should beer manufacturers, either by holding a vendor license or as a privilege of their manufacturing license, be authorized or restricted in the sale of beer to consumers at the brewery according to one or more of the following options:
 - i) Only beer manufactured by the licensee at the manufacturing location
 - ii) Beer manufactured by the licensee at the manufacturing location or beer manufactured by the licensee at a licensee manufacturing location other than where the retail sale is to be made
 - (1) The above, but with a requirement that some percent (e.g., a majority) of the beer sold at retail must be manufactured at the location where the retail sale is to be made
 - iii) Beer manufactured under contract with another business entity
 - iv) Beer manufactured at the location where the retail sale is to be made and beers not manufactured by the licensee (guest beers)
 - (1) The above, but with a requirement that some percent (e.g., a majority) of the beer sold at retail must be manufactured at the location where the retail sale is to be made
 - v) One or more of the above and beer manufactured in collaboration with another manufacturer
- d) What container sizes should be authorized:
 - i) The existing statutorily authorized sizes
 - ii) The existing statutorily authorized sizes and 64 ounce (or 2 liter) containers
 - iii) Any size
- e) Should containers used as growlers be limited to:
 - i) The original manufacturer's branded/labeled growler
 - ii) Other manufacturer's branded/labeled growler

- iii) Any container regardless of manufactured purpose or material, e.g., glass, stainless, plastic, other
- f) Should there be any cleaning requirements for:
 - i) Quality control
 - ii) Sanitation.
- g) Should there be any requirements related to sealing containers:
 - i) Shrink wrap
 - ii) Other
- h) What labeling should be required:
 - i) Current "Florida" or "FL" requirement (s. 563.06, F.S.)
 - ii) Additional Label Information (TTB requirements apply if prefilling is permitted)
 - (1) Government warning
 - (2) Brewer's name
 - (3) Brand Name
 - (4) Class and Type
 - (5) Alcohol Content
 - (6) Place of production
 - (7) Net contents
 - (8) Other
 - iii) Label type
 - (1) Preprinted
 - (2) Preprinted but with areas for handwritten information
 - (3) Labels completely obscure any preexisting labels on the growler

2) Manufacturer self-distribution discussion topics:

- a) What, if any, health, safety, welfare issues are involved with the following self-distribution schemes:
 - i) Self-distribution always permitted for a specified volume not tied to total annual production
 - ii) Self-distribution permitted with an annual volume limit, for manufacturers with total annual production less than a specified volume
 - iii) No self-distribution limits
- b) Does it serve any role not served by licensed distributors in establishing initial customers for a new manufacturer?

3) Franchise agreement issues:

- a) Statutory restrictions on freedom of contracting were enacted when there were few malt beverage manufacturers who arguably were in a dominant bargaining position. Currently, there are many more small malt beverage manufacturers who arguably are in a weaker bargaining position than distributors. What, if any, health, safety, welfare issue are protected by the current restrictive franchising provisions that favor distributors over small manufacturers?

4) Should the malt beverage exceptions to the 3-Tier System be modified:

- a) Background information on existing exceptions:
 - i) "Tourism" Brewery exception: malt beverage manufacturer holding a vendor license for sale of alcoholic beverages on the brewery property, see s.561.221(2), F.S., for specific requirements.
 - ii) Brewpub exception: vendor licensee (a restaurant with an alcoholic beverages vendor license) holding a malt beverage manufacturer's license for sale of the vendor brewed beer for consumption on premises only, see s.561.221(3), F.S., for specific requirements.
 - iii) Note: under the current implementation of the law there does not appear to be any requirements that would generally preclude a business from operating under either

exception. For example, some licensees operating under the tourism brewery exception are setup like a brewpub without the brewpub limitations.

- b) Potential modifications for discussion:
 - i) Clarify requirements/limitations under tourism brewery exception
 - ii) Permit brewpubs to fill growlers
 - iii) Create one exception that permits an entity to hold malt beverage manufacturing and vendor licenses with appropriate requirements and limitations that would support the brewery/taproom or brewpub business model
 - iv) Require entities holding a manufacturer's and vendor's license to manufacture the malt beverages onsite, i.e., may not contract out manufacturing
 - v) Should malt beverage manufacturers be permitted to purchase any vendor license that fits their business model, e.g.,:
 - (1) beer only for consumption on or off premises;
 - (2) beer and wine for consumption on or off premises;
 - (3) beer, wine, or spirits for consumption on or off premises; or
 - (4) should a malt beverage manufacturer's license authorize the sale of the malt beverages manufactured under that license to be sold directly to consumers at the manufacturing location without purchasing a vendor license
 - vi) Should malt beverage manufacturers be permitted to have a limited number of brewery locations with a manufacturer and vendor license and unlimited number of brewery locations with taproom (no vendor license required) where only malt beverages brewed by the manufacturer could be sold at retail
 - vii) Should malt beverage manufacturers be permitted to only have taprooms (no vendor license required) where only malt beverages brewed by the manufacturer could be sold at retail?
 - (1) If yes, how would you deal with existing businesses that have invested in vendor licenses and facilities?

5) Brewpub Exception

- a) Existing law appears to allow brewpub-type businesses (a restaurant with an onsite brewery) to operate under the brewpub or the tourism brewery exception; consequently, the statutory limitations that apply to a business licensed under the brewpub exception can generally be avoided by obtaining a manufacturer's license and a vendor's license under the tourism brewery exception.
- b) Provide input on the current regulatory limitations for businesses operating under the brewpub exception and potential modifications, such as:
 - i) On-premises consumption only regardless of vendor license type
 - (1) Should brewpub be permitted to sell growlers of all beers or of only what they brew on-site, or maintain current restriction
 - (2) Should brewpub be permitted to sell for off-premises consumption according to general authority of vendor license
 - ii) Are the current production limits appropriate
 - iii) Should the current restriction of access to distribution channel be maintained

**Eric Criss, President
Beer Industry of Florida**

STATE-BASED ALCOHOL REGULATION IN FLORIDA

By Eric Criss, President
Beer Industry of Florida, Inc
January 9, 2014



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About Beer Industry of Florida

- The Beer Industry of Florida, Inc. (BIF) is a trade association including most of Florida's beer distributors headquartered in Tallahassee, Florida.
- Since 1945, BIF has provided advocacy before Florida government on behalf of its members. BIF encourages the responsible consumption of beer and provides information and services that will enhance members' efficiency and effectiveness while abiding by all state laws and regulations.
- Promoting, protecting and defending the three-tier system of alcohol distribution remains a primary and constant goal. We are governed by a six member board of directors representing companies located throughout Florida.
- While BIF primarily represents the beer distributors of Florida, we support each of the 3-tiers – brewer, distributor and retailer. We have joined together with these partners to promote issues such as responsible consumption and the preservation of the three-tier system before Florida's elected and appointed officials.

Board & Distributor Members

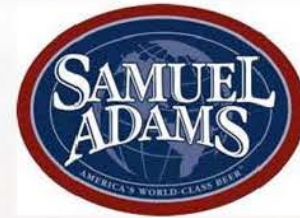
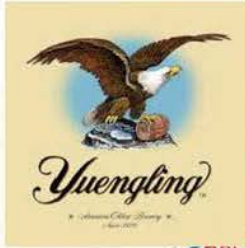


Florida Distributing Company

A Reyes Holdings Company



Sampling of Brands & Suppliers



Industry Partner & Vendors



THE TYGARD CLAW
The One That Works

Why Regulate?

To Reduce Alcohol Harm

- CDC estimates **79,000 deaths** occur due to alcohol annually. That is far more than the the number of brave men and women we lost in Afghanistan and Iraq combined
- Despite progress on underage drinking, it is still unacceptably high. Alcohol is a causal factor in crime, domestic violence and other social problems.
- In 2010, **10,228** people died and **345,000** were injured from drunk driving crashes.
- Any new product that created such an impact would be banned by the FDA.



Key Points

1. Beer distributors and retailers should not and do not compete with brewers, we are their customers and partners. The small brewers' competitors are other brewers, especially large brewers.
2. The biggest problem we hear from small brewers that testified before this committee was that they couldn't make enough beer to keep up with demand. That's a capital problem – not a regulatory or legal problem. That is not your job to fix.
3. It is the existing legal and regulatory framework, for the most part, that has permitted the rapid growth of small brewers. In other words, the current system, including franchise law, helps small brewers. It does not harm them.



Proceed With Caution!

Any law that accords privileges to small brewers that are denied to large brewers and/or out of state brewers may be vulnerable to litigation. Therefore the legislature should:

- Build an appropriate legislative record. In pertinent part, it is important to build a record to the effect that alcohol is a unique product which has detrimental impacts if abused, that accordingly it is important to have a comprehensive, transparent, accountable, and stable system of regulation for the distribution and sale of alcoholic beverages.
- Make clear that the law is crafting a narrow exception to reflect the special circumstances of small producers.
- Understand that the accessibility and competitiveness of your beer market, the percentage of beer sold by small producers, and the number of small breweries are all relevant.
- Always avoid actual or unintentionally benefitting in-state brewers.



Beer Industry of FL Supports:

- Preservation of Florida's State-Based, Three Tier System of alcohol regulation

A "Clean" Growler Bill

- 64 ounce containers only
- Labeling provision
- Sealing provision

Proceeding with Caution

- Unintended Consequences
- Level Playing Field



Beer Industry of FL Opposes:

BIF opposes small brewers serving beers not produced on the premises in their tap rooms.

- Currently small brewers are able to operate the same as an Outback Steakhouse.
- Creates economic disincentive for retailers to carry craft beers that are competing with them or cannot meet retailer demand.
- Potentially destructive of the Three Tier System due to ability of brewers to fully operate in two tiers: manufacturing and retailing. It could also be argued the state is providing preferential treatment to consumers for in-state retailers.



Beer Industry of FL Opposes:

BIF opposes exceptions to Florida Franchise Law.

- Destructive of Three Tier System because such a law could be vulnerable to a dormant commerce clause challenge, particularly if production limits are raised to the point where effectively all in-state brewers are exempt and large out-of-state brewers are not.
- Unfair to Distributors who make millions of dollars in capital investments and assume the risk that brands will succeed.





Promoting Small Business



Small Business Strategies

1. Discounts and promotions to retain and increase **frequency** of use by existing loyal customers, whether flowers, coffee, etc.
2. Market research to gain new customers who have a special **affinity** for your products and services, followed by discounts and promotions.
3. Targeting those who have not yet discovered your product or service with advertising and promotion.



Promoting Alcohol Sales

What happens when coffee, flowers or baked goods are substituted for alcohol?

1. Marketing to heavy drinkers and alcoholics.
2. Use of volume discounts encourage heavy use.
3. Marketing to youth to encourage present and future alcohol use. Estimates of underage market are 11-18%.

Most Current Regulations Prevent This Scenario:

Large Quantities of Cheap Alcohol Widely Available and Heavily Promoted



Current Controls

Credible research from public health officials such as the U.S. Centers for Disease Control and the World Health Organization has confirmed the effectiveness of basic alcohol regulations.

EXAMPLE ▶ **“Alcohol, No Ordinary Commodity,”** Second Edition) promotes **“restrictions on affordability, availability and accessibility, as well as drunk-driving deterrence measures.”**

¹ Florida’s Three Tier System is the most effective and efficient way to implement these measures.

1. T. F. Babor, R. Caetano, S. Casswell, G. Edwards, N. Giesbrecht, K. Graham, J. Grube, P. Gruenewald, L. Hill, H. Holder, R. Homel, E. Osterberg, J. Rehm, R. Room and I. Rossow, “Alcohol: No Ordinary Commodity Research and Public Policy,” Oxford University Press. Accessed at: <http://alcalc.oxfordjournals.org/content/40/2/157.2.full>.



What Were These Women Protesting?



- Tourism Promotion?
- Beach Restoration?
- Golf Course Construction?
- Social, Health and Family Consequences of Overconsumption of Alcohol?



Pre-Prohibition

- Alcohol sold primarily in “Tied House” saloons. Both **Large and Small, In-State and Out-of-State manufacturers** own many retail outlets.
- Most common drink was beer, sold in glasses, **kegs and buckets.**
- Aggressive sales promoted **high volume drinking.**
- **Social problems:** public disorder, intoxication and addiction, domestic violence, family wages squandered, prostitution, gambling.

-
- ▶ Promoting tourism by developing Florida’s small breweries puts the State of Florida in the business of promoting alcohol consumption.



Prohibition: Social and Political – Progressive and Conservative



Case Study Deregulation In The United Kingdom

- Deregulation in the United Kingdom has fostered an alcohol epidemic.
- Today alcohol is available in bars, clubs and grocery stores 24 hours a day, 7 days a week.
- Underage drinking rates are twice ours; hospitalization and disease due to alcohol have doubled in just 10 years.



Case Study *Continued*

Deregulation In The United Kingdom

UK Alcohol Epidemic: Large Grocery Chains

- Blamed by many for epidemic.
- Four large chains control 75% of the market.
- Most use alcohol as a “loss leader”.
- Pre-drinking, before going to bars increased.
- The large chains are locked in price wars.



Case Study *Continued*

Deregulation In The United Kingdom

Is U.K. Alcohol Problem Real?

“We certainly need a strategy to combat the rising tide of alcohol problems in the UK...between 1960 and 2002 alcohol consumption in the UK has doubled, whilst the price of alcohol relative to income has halved over that period (Academy of Medical Sciences, 2004). This has been accompanied by a large increase in alcohol-related harm.”²

2. D. Colon Drummond, “An Alcohol Strategy for England: The Good, the Bad and the Ugly,” Oxford Journals, www.Oxfordjournals.org.



Deregulatory Pressures in U.S.

- Large format retailers such as COSTCO
- Wineries
- Distilleries
- Small breweries seeking exceptions to state laws and regulations
- Litigation
- Illegal direct shipping of Alcohol



Potential Problems In The United States



Potential Problems In The United States *Continued*

- Underage/Illegal Online Sale of Alcohol - 20/20 Sting on Direct Shipping of Spirits
- Supply, age verification, points of access, tax collection all reasons why the three tier system is efficient and effective



Potential Problems In The United States *Continued*

- University of North Carolina Study published in the May issue of the *Archives of Pediatrics and Adolescent Medicine*, found that 45 out of 100 orders attempted by underage buyers were successful, even with underage driver license. 28 percent of orders placed by minors rejected for age.
- Supply, age verification, points of access, tax collection all reasons why the three tier system is efficient and effective.



Potential Problems In The United States *Continued*

- The combined rate of FAS (fetal alcohol syndrome) and ARND (alcohol-related neurodevelopmental disorder) is thus estimated to be at least 9.1/1,000. This conservative rate--nearly one in every 100 live births--confirms the perception of many health professionals that fetal alcohol exposure is a serious problem.³

3. "Incidence of fetal alcohol syndrome and prevalence of alcohol-related neurodevelopmental disorder," Sampson PD, Streissguth AP, Bookstein FL, Little RE, Clarren SK, Dehaene P, Hanson JW, Graham JM Jr. *Teratology*. 1997 Nov; 56(5):317-26, US National Library of Medicine, National Institutes of Health. Accessed on 1/2/2013 at [http://www.ncbi.nlm.nih.gov/pubmed/9451756?log\\$=activity](http://www.ncbi.nlm.nih.gov/pubmed/9451756?log$=activity)



Recommendations

- Gradual approach: slow deliberation to prevent unintended consequences.
- It pays to be careful when considering deregulation as it will be difficult to revert back.





Appendices

Appendix A: Steps to Effective Alcohol Control

Appendix B: Dormant Commerce Clause Litigation and

Appendix C: Threats to State-Based Alcohol Regulation

Appendix D: University of North Carolina Study: Underage Online Sales



Steps Toward Effective Control

- Availability - Limit number, location, types of alcohol products, and hours of outlets.
- No “Bargain Booze” - Regulations balance prices, control price competition; restrict marketing and promotional practices.
- Children and Teens - Age restrictions protect young people from the serious problems of underage drinking.
- Drunk driving - Create and enforce strict measures against drinking and driving—sobriety checks, blood alcohol limits, driver’s license suspension.
- Education and Enforcement – Carrot of education (alcohol awareness programs, “schools” for offenders) and stick of enforcement (fines, community service, jail) when education fails.

Source: Adapted from World Health Organization recommendations.



Litigation and Threats to State-Based Alcohol Regulation

- Small Brewer carve-outs may be vulnerable to a legal challenge under the dormant commerce clause. Pursuant to *Granholm v. Heald*, 544 U.S. 460 (2005), states may not discriminate between in-state and out-of-state suppliers in their liquor laws.
- Discrimination under the Commerce Clause means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter, as opposed to state laws that regulate evenhandedly with only incidental effects on interstate commerce.
- State liquor laws which confer privileges on small brewers but deny those privileges to large brewers may be challenged under the dormant Commerce Clause if it can be shown to have a “discriminatory effect” or a “discriminatory purpose” on out-of-state entities.



Litigation and Threats to State-Based Alcohol Regulation

- State liquor laws sometimes confer privilege based upon whether a business is “physically present” in a state. For instance, in *Granholm v. Heald*, a New York law accorded wineries, which were physically present in the state, the privilege of selling direct to consumers. Out-of-state wineries could sell direct but only if they established a distribution operation (i.e. a branch office and warehouse) in the state.
- The *Granholm* Court held that this law impermissibly discriminated against out-of-state wineries because it granted New York wineries access to the State’s consumers on preferential terms. *Id.* at 474.
- **Permitting brewers unrestricted operations in the retail tier (or vice-versa) and requiring physical presence could make Florida’s alcohol regulatory system vulnerable to dormant commerce clause litigation.**



University of NC Release: Online retailers, shipping companies give minors access to alcohol, study finds

May 07, 2012

Minors can easily purchase alcohol online as a result of poor age verification by Internet alcohol vendors and shipping companies such as FedEx and UPS, according to a new study from University of North Carolina at Chapel Hill researchers.

The study, published in the May issue of the *Archives of Pediatrics and Adolescent Medicine*, found that 45 out of 100 orders attempted by underage buyers were successful, even though they provided their real underage driver license when asked. Only 28 percent of orders placed by minors were rejected because of age verification.

“With just a few clicks on their computer or smartphone, kids can order alcohol delivered to their home,” said Rebecca Williams, Ph.D., research associate at UNC’s Center for Health Promotion and Disease Prevention and lead author of the study. “We were amazed at how easy it was for minors to buy alcohol online. Using their real ID and a prepaid Visa card, they could place an order for alcohol in just a few minutes and often have it delivered to their door in a matter of days without anyone ever trying to verify their age.”

This study, funded by the Robert Wood Johnson Foundation Substance Abuse Policy Research Program, is the first peer-reviewed study to determine if minors can successfully purchase alcohol online and to examine age verification procedures for online alcohol sales. A 2005 U.S. Supreme Court decision allowed wineries to ship to out-of-state consumers. In the ruling, the court said that states showed little evidence that youth access to alcohol online was a problem.

The 225 Internet alcohol vendors included in the 2007 U.S. Economic Census had annual sales exceeding \$2.4 billion. By 2009, the UNC study identified more than 5,000 Internet alcohol vendors.

UNC Release *Continued*

Online retailers, shipping companies give minors access to alcohol, study finds

For the new study, eight underage participants attempted to purchase alcohol online from 100 popular vendors using prepaid Visa debit cards and providing their real identification when asked. There was little use of age verification at the point of order, and less than half of vendors asked that FedEx and UPS verify their customers' age at delivery, the researchers said. Of the 47 orders that arrived labeled as requiring age verification at delivery, only 34 percent were properly rejected by UPS or FedEx delivery staff after verifying the age of the recipient. Thirty-six percent were left at the door, and 30 percent were handed to the underage buyer after examining their underage ID or taking their word that they were 21.

"The fact that there are literally thousands of online outlets selling alcohol, and that purchase attempts by underage persons are successful almost half of the time tells us how insufficient the protections are for our youth," said Dr. David Jernigan, director of Center on Alcohol Marketing and Youth at the Johns Hopkins Bloomberg School of Public Health, who wrote a commentary about the study for the journal.

Williams and Kurt Ribisl, Ph.D, professor in the department of health behavior at the UNC Gillings School of Global Public Health, have led several studies about the sale of cigarettes online to minors, and their research has helped inform six federal laws and agreements and 34 state laws restricting online tobacco sales. Ribisl and Williams' research with Internet cigarette vendors showed similar results to the alcohol study, with as many as 92 percent of Internet cigarette vendors selling to underage buyers in a 2003 study.

"Years of research on Internet tobacco sales supplied the evidence needed to pass state and federal laws restricting these sales, mandating age verification and restricting payment and delivery options," said Williams. "These changes have made it more difficult for online tobacco vendors to reach underage buyers. This study on Internet alcohol vendors will help provide the scientific basis for new regulatory efforts to address Internet alcohol sales and keep alcohol out of the hands of minors."

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Forget Fake IDs Can Kids Buy Alcohol on eBay?

ABCnews

September 21, 2012

The online marketplace eBay is a popular site for bidding on rare finds and selling your own household treasures, but resourceful teens might also find another use for it: scoring booze.

While eBay prohibits the sale of all alcohol with the exception of some wines sold by licensed wine sellers, it does allow for the sale of collectible alcohol containers. The site's alcohol policy states that the seller of the container "will take all appropriate steps to ensure that the buyer is of lawful age in the buyer's and seller's jurisdiction."

But that didn't stop one teen who worked with "20/20" from obtaining alcohol through the site. We asked Xander, 13, to head to the site and try to buy liquor there. One vendor refused to sell his product when Xander and a "20/20" producer declined to send a copy of an ID showing that the buyer was of legal drinking age. But Xander was able to successfully place an order with two other vendors.

"All I had to do was type in vodka on the search bar, click one button and it can send it to my house," Xander told "20/20." (A "20/20" producer paid for the purchases.)

Weeks later, five bottles of vodka arrived at Xander's front door.

Forget Fake IDs *Continued*

Can Kids Buy Alcohol on eBay?

In a statement to "20/20," eBay reiterated its policy that it prohibits the general sale of alcohol and only allows sales of wine by pre-approved, licensed sellers.

The company said it has taken action against the two vendors who sold alcohol to Xander.

Researchers at the University of North Carolina at Chapel Hill have found that many Internet alcohol vendors fail to verify that customers are of legal drinking age. In a report on a study released in May, researchers said that underage study participants successfully ordered alcohol online 45 times from popular vendors, including eBay.

"With just a few clicks on their computer or smartphone, kids can order alcohol delivered to their home," lead study author Rebecca Williams, a research associate at UNC, said after the study's release. "We were amazed at how easy it was for minors to buy alcohol online."

Williams said that researchers found listings on eBay that were not in line with the site's own criteria for what constitutes an alcohol-related collectible.

The site states that the contents of the collectible must not be intended for consumption, that the value of the item is in its container, not its contents, and that the item must not be available in any retail outlet.

Forget Fake IDs *Continued*

Can Kids Buy Alcohol on eBay?

"Our simple searches revealed countless unrestricted listings by the sellers of common liquors that clearly didn't meet any of the criteria, such as varieties of Bacardi rum available at any liquor store," Williams said.

In its statement to "20/20," eBay said "We continue to strengthen our policy enforcement efforts to ensure a trusted marketplace for our customers."

What remains unclear, Williams said, is how often teens today are actually using eBay and other online retailers to purchase alcohol. A 2006 study sponsored by the wine industry found that just 2 percent of teens reported buying alcohol online. Williams said she hopes to do her own study on the subject, through a nationally representative survey, next year.



Beer Industry of Florida

Jay Martin, President
J.J. Taylor Distributing Florida

J. J. Taylor Companies, Inc.

Beverage Law Workshop
January 9, 2014



J. J. Taylor

COMPANIES, Inc.

WE SELL BEER



Mission & Core Values

Our Mission is to be the "First Choice" distributor for...

Employees

Our most important asset is our People

We are an employer that Listens & Cares

Our employees are Valued & Appreciated

We provide a Safe Workplace

Our culture is built on Honesty & Accountability

Customers

We seek to be our customer's Trusted Beer Advisor

We strive to earn our customer's Respect & Add Value

We act with Integrity & Fairness in what we say and do

Suppliers

We Execute

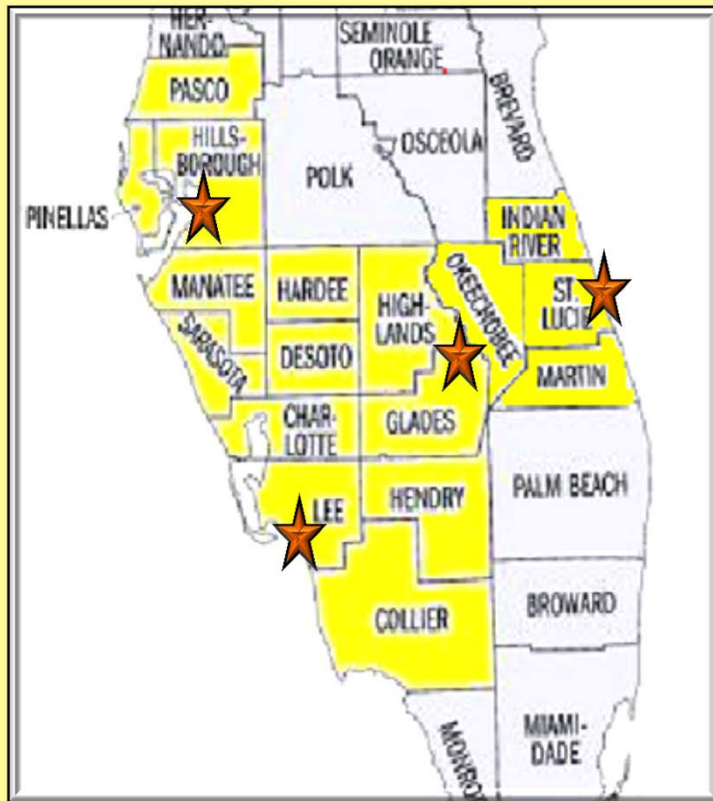
We want a relationship of Mutual Understanding & Respect

We are Innovative

We are a role model for distributor Integrity & Fair Dealing

Warehouses Centrally Located to all Core Markets

J.J. Taylor 17 County Florida Territory



Locations:

Tampa – 330,000 sq ft

Ft Myers – 75,000 sq ft

Ft Pierce – 25,000 sq ft

Sebring – 1,000 sq ft

Jupiter – 15,000 sq ft

13,575 sq miles
5.1 MM population

Economic Impact

- FLORIDA BEER DISTRIBUTORS*
 - Direct Employees – 8,000
 - Federal, State and Local Taxes Paid - \$665 Million
 - Transportation Efficiencies - \$2.1 Billion
 - Local Community Activities – \$11 Million
- *Per University of Delaware Study

- J. J. TAYLOR COMPANIES, INC.:
 - Sales - \$365 Million
 - Direct Employees 680
 - No Minimum wage jobs (Average annual \$48K)
 - Great Health Care Benefits – Company pays 75%
 - 401(k) with Company match of 50%
 - Tuition Reimbursement
 - Florida Excise Taxes - \$23 Million
 - Federal Excise Taxes Paid by Brewers - \$22 Million

Middle Tier

- Brewers Represented – 70 (Including 41 Craft Brewers, 12 based in FL)
 - Over 850 Brands
 - Over 3,500 SKU's (500 active draft, 900 active package)
 - Working with competitive distributors to build brands
- Servicing over 10,000 retail accounts
 - Educating retail staffs
 - Supporting responsible serving (TIPS)
 - Meeting retail time windows
- Maintaining over \$1,000,000 in product inventory
- Maximizing product quality
 - Refrigerated warehousing
 - Refrigerated trucks
 - Warehouse and retail product rotation
- Local market experts
 - Brewers depend on product forecasts
 - Supporting our communities
- Awarded Sunshine State Safety Award

Middle Tier



Sustainability

- March 2007, began recycling stretch wrap
 - Over 50 tons recycled annually
- February 2008, replaced 421 Metal Halide fixtures with Fluorescent fixtures and 260 occupancy sensors in the Tampa Warehouse
 - Reduces KW by 104 KW (219 KW to 115 KW)
 - Annual emission reductions:
 - ✦ Carbon Dioxide – Global Warming – 1,165 Tons
 - ✦ Sulphur Dioxide – Smog and Acid Rain – 8,993 pounds
 - ✦ Nitrous Oxide – Smog and Acid Rain – 17,023 pounds
- We recycle: cardboard, office paper, plastic bottles, vehicle batteries & motor oil
- We distribute business reports in electronic format (e-mail, shared drives)
- Since 2006, improved tractor fuel mileage by 9% through weight reduction, aluminum wheels, right size fuel tanks, “super singles”
- High volume output fans (Big Ass Fans) installed in all facilities for cooling
- Tampa HVAC replaced in 2011 with high efficiency chiller and ammonia system
- January 2013, CNG filling station at Tampa Facility and 43 CNG Vehicles



CNG Station and Tractor



Supporting Our Community

- Step Up for Students
 - Scholarships for low income students –
Taking them out of public schools and placing them in Magnet Programs. JJT redirects taxes each year to provide 4,800 underprivileged children scholarships in all 17 counties. JJT is the largest redirect of taxes in the state totaling over **\$20,000,000** each year!
- Wounded Warriors Project / MacDill Air Force Base
 - Provides assistance to Veterans and Service Members who incurred a physical or mental injury or illness during their military service.
- Lowry Park Zoo
 - Ranked the Number One Zoo in the US by Parents Magazine –
The regions only dedicated zoological garden, was designed to enhance the quality of life in Tampa Bay as a destination and center for education and endangered species conservation.

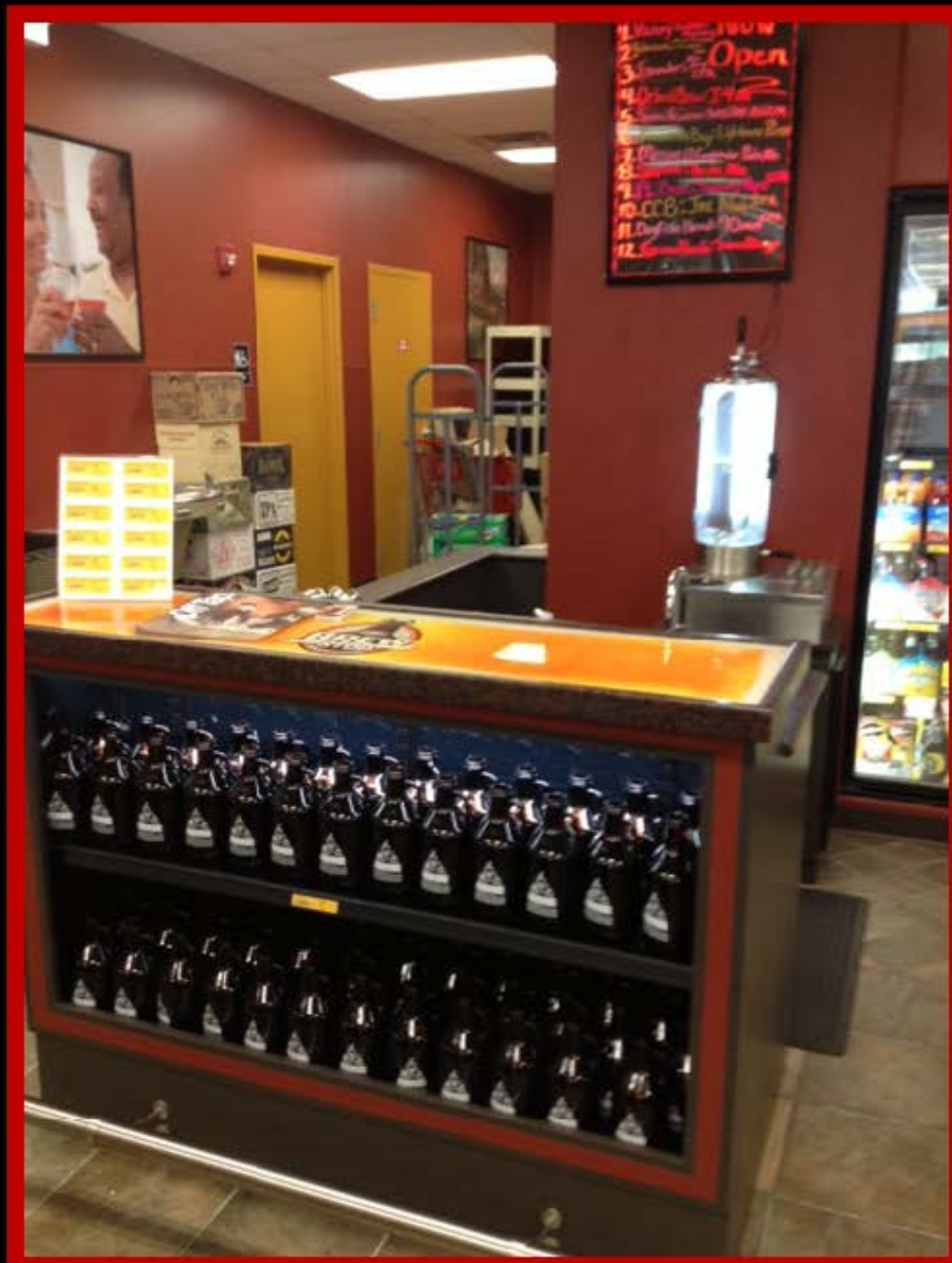


Supporting Our Community

- The ARC of Martin County
 - Provides support, assistance and training that will enhance the abilities for children and adults with disabilities to thrive each day.
- Keep Tampa Bay Beautiful
 - Education and environmental events that cleanup Tampa Bay area parks, neighborhoods & shorelines.
- All Children's Hospital
 - Only hospital on Florida's West Coast devoted entirely to Pediatric Specialty Care. Leaders in Pediatric treatment, education, research and advocacy.
- St. Jude Children's Hospital – West Coast of Florida Family Units
 - Advancing treatment and prevention of catastrophic diseases in children.



Charles Bales, Chair/
CEO-ABC Fine Wine
& Spirits



GROWLER AARDWOLF BELGIAN PALE ALE 1/2KEG

1 For \$59.99 64 For \$201.39



5 59

1/2KG

REQ 01/04/14

509