



Business & Professional Regulation Subcommittee

**Monday, March 24, 2014
3:00 PM
12 HOB**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professional Regulation Subcommittee

Start Date and Time: Monday, March 24, 2014 03:00 pm
End Date and Time: Monday, March 24, 2014 05:00 pm
Location: 12 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 1235 Florida Homeowners' Construction Recovery Fund by Dudley
HB 1329 Malt Beverages by Rodrigues, R.

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., Friday, March 21, 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., Friday, March 21, 2014.

NOTICE FINALIZED on 03/20/2014 16:05 by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professional Regulation Subcommittee

Will Weatherford
Speaker

Debbie Mayfield
Chair

AGENDA

March 24, 2014
12 House Office Building
3:00 PM – 5:00 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. HB 1329 by *Rep. R. Rodrigues*
Malt Beverages
- IV. HB 1235 by *Rep. Dudley*
Florida Homeowners' Construction Recovery Fund
- V. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1235 Florida Homeowners' Construction Recovery Fund
SPONSOR(S): Dudley
TIED BILLS: IDEN./SIM. BILLS: SB 1098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Whittier <i>szw</i>	Luczynski <i>nj</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Homeowners' Construction Recovery Fund (fund) was created in 1993, after Hurricane Andrew, as a fund of last resort to compensate consumers who contracted for construction, repair or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment, or fraudulent statement of the licensed contractor, financially responsible officer, or business organization licensed under ch. 489, F.S. A claimant must be a homeowner and, currently, the damage must have been caused by a Division I contractor, which includes general contractors, building contractors, and residential contractors. The fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who have suffered damages as a result of payments made in violation of the Florida Construction Lien Law.

Each recovery claim is limited to both a per-claim maximum amount and a total life time per-contractor maximum. For contracts entered into prior to July 1, 2004, the fund claims are limited to \$25,000 per claim with a total life time aggregate limit of \$250,000 per licensee. For contracts entered into after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total life time aggregate of \$500,000 per licensee. The fund must be repaid by the contractor in violation or have their license suspended until the repayment is made.

The fund is financed by a 1.5% surcharge on all building permit fees associated with the enforcement of the Florida Building Code. The proceeds from the surcharge are allocated equally to fund the Florida Homeowners' Construction Recovery Fund and the operations of the Building Code Administrators and Inspectors Board.

The bill revises the law to include Division II contractors within the parameters of the Florida Homeowners' Construction Recovery Fund. It revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2015, for any contract entered into after July 1, 2014. The bill limits Division II claims to \$15,000.00 per claim with a \$150,000.00 lifetime maximum per licensee and removes previous language that limited claims based on contracts entered prior to July 1, 2004, to a \$250,000.00 lifetime cap per licensee. The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2014.

The bill revises language for a notice that contractors must give to homeowners informing them of their rights under the recovery fund, to advise that payments from the fund are up to a limited amount.

The bill appears to have no significant fiscal impact on state or local governments.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.
STORAGE NAME: h1235.BPRS.DOCX
DATE: 3/21/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Homeowners' Construction Recovery Fund

The Florida Homeowners' Construction Recovery Fund (fund) is created in s. 489.140, F.S., as a separate account in the Professional Regulation Trust Fund.

According to the Department of Business and Professional Regulation, the fund was created in 1993, after Hurricane Andrew, as a fund of last resort to compensate consumers who contracted for construction, repair, or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment, or fraudulent statement of the licensed contractor,¹ financially responsible officer, or business organization licensed under ch. 489, F.S.²

The fund is financed by a 1.5% surcharge on all building permit fees associated with the enforcement of the Florida Building Code.³ The proceeds from the surcharge are allocated equally to fund the Florida Homeowners' Construction Recovery Fund and the operations of the Building Code Administrators and Inspectors Board.^{4, 5}

A claimant must be a homeowner and the damage must have been caused by a Division I contractor.⁶ The fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

Division I contractors are listed in s. 489.105(3)(a)-(c), F.S., as:

- General contractors,
- Building contractors, and
- Residential contractors.

¹ Department of Business and Professional Regulation, Agency Analysis for SB 1098 (March 11, 2014) (on file with the Business & Professional Regulation Subcommittee).

² Section 489.1402(1)(g), F.S.

³ Section 468.631(1), F.S.

⁴ *Id.*

⁵ In 2013, the Legislature gave the department authority to transfer excess cash to the Florida Homeowners' Construction Recovery Fund if the department determines it is not needed to fund the operation of the Building Code Administrators and Inspectors Board; however, the department may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S. See sect. 2, ch. 2013-187, Laws of Fla.

⁶ Section 489.1402(1)(c), (f), and (d), F.S.

Division II contractors are listed in 489.105(3)(d)-(q), F.S., as:

- Sheet metal contractors,
- Roofing contractors,
- Class A air-conditioning contractors,
- Class B air-conditioning contractors,
- Class C air-conditioning contractors,
- Mechanical contractors,
- Commercial pool/spa contractors,
- Residential pool/spa contractors,
- Swimming pool/spa servicing contractors,
- Plumbing contractors,
- Underground utility and excavation contractors,
- Solar contractors,
- Pollutant storage systems contractors, and
- Specialty contractors.

Decisions regarding the fund are made by the Construction Industry Licensing Board which is housed within the department.

Construction Industry Licensing Board

The Construction Industry Licensing Board (board) consists of 18 members who are responsible for licensing and regulating the construction industry in this state.⁷ The board is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, jurisdiction falling to each division relative to their scope.⁸ Five members constitute a quorum for each division.

The board meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.⁹ It engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.¹⁰

The board, with respect to actions for recovery from the fund, may “intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review” on behalf of the state.¹¹ In accordance with department rules, “The Board shall either authorize payment of the claim in full or in part, or deny the claim in full, by entry of a Final Order in accordance with Section 489.143, F.S. Action by the Board shall be considered final agency action.”¹²

Section 489.129, F.S., grants the board the authority to take actions against any certificate holder or registrant if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of certain acts, including the acts that may qualify a claim to the fund. Specifically, these acts are financial misconduct, abandonment, or fraudulent statement of the contractor¹³ and are described in s. 489.129, F.S.

⁷ Section 489.107, F.S.

⁸ Section 489.107(4)(c), F.S.

⁹ Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, *available at* <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (Last visited March 18, 2014).

¹⁰ Section 489.108, F.S.

¹¹ Section 489.142(1), F.S.

¹² Rule 61G4-21.004(7), F.A.C.

¹³ Department of Business and Professional Regulation, Agency Analysis for SB 1098 (March 11, 2014) (on file with the Business & Professional Regulation Subcommittee).

Financial Misconduct

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or
- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

Abandonment of the Project

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, which is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Fraudulent Statement by the Contractor

Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or
- Falsely indicating that workers' compensation and public liability insurance are provided.

Claims

Section 489.129, F.S., allows the board to take the following actions given the circumstances above:

- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of part 1 of ch. 489, F.S.;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

If the violation is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.¹⁴

The claimant must have obtained a final judgment, arbitration award, or board issued restitution order against the contractor for damages that are a direct result of a compensable violation. A claim for recovery must be made within 1 year after the conclusion of any civil, criminal, administrative action, or award in arbitration based on the act.¹⁵

Completed claim forms must be submitted with:

- A copy of the complaint that initiated action against the contractor, a certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance;
- Certified copies of levy and execution documents, and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the board to determine causation of injury or specific actual damages.¹⁶

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total life time per-contractor maximum. For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000 per claim with a total life time aggregate limit of \$250,000 per licensee.¹⁷ For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total life time aggregate of \$500,000 per licensee.¹⁸

The board will not compensate claimants from the recovery fund for any of the following reasons.

- The claimant is a licensee who acted as the contractor;
- The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;
- The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;
- The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;
- The claimant was associated in a business relationship with the licensee other than the contract at issue;
- When, after notice, the claimant has failed to provide documentation in support of the claims required by rule;
- Where the licensee has reached the aggregate limit; or
- The claimant has contracted for scope of work described in s. 489.105(3)(d)-(q), F.S. [Division II contractors]¹⁹

The fund is also not permitted to compensate consumers who suffered damages as a result of payments made in violation of Florida Construction Lien Law under part I of ch. 713, F.S.

Duty of Contractor to give Notice of Fund

Any agreement or contract for the repair, restoration, improvement, or construction to residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the recovery fund, unless the total contract price is less than \$2,500.²⁰

¹⁵ Rule 61G4-21.003(5), F.A.C.

¹⁶ Rule 61G4-21.003(2), F.A.C.

¹⁷ Section 489.143(2) and (5), F.S.

¹⁸ *Id.*

¹⁹ Rule 61G4-21.004(3), F.A.C.

Effect of Proposed Changes

The bill revises the law to include Division II contractors within the parameters of the Florida Homeowners' Construction Recovery Fund (fund). Specifically, it revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2015, for any contract entered into after July 1, 2014. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee. The amendment removes previous language that limited claims based on contracts entered into prior to July 1, 2004, to a \$250,000 lifetime cap per licensee. See DRAFTING ISSUES OR OTHER COMMENTS section.

The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2014.

The bill revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund, to advise that payments from the fund are up to a limited amount.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.1401, F.S., revising legislative intent.

Section 2. Amends s. 489.1402, F.S., revising definitions.

Section 3. Amends s. 489.141, F.S., revising conditions under which a claimant is eligible to seek recovery from the recovery fund.

Section 4. Amends s. 489.1425, F.S., revising a form required to be provided by a contractor.

Section 5. Amends s. 489.143, F.S., prohibiting fund disbursements from exceeding a specified amount for each Division I claim and each Division II claim and revising requirements providing caps on payment for certain claims against a licensee.

Section 6. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase restitution payments required of licensed Division II contractors against whom a recovery claim is paid. Licensees must repay the Florida Homeowners' Construction Recovery Fund for any amount of recovery paid to a consumer from the fund or have their license suspended until the repayment is made.

D. FISCAL COMMENTS:

According to the Department of Business and Professional Regulation, the Florida Homeowners' Construction Recovery Fund currently has a backlog of 253 claims representing \$5,636,599.43 in anticipated payments, which are awaiting approval by the board.²¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Removal of the language limiting claims to a life time cap of \$250,000 for contracts entered into prior to July 1, 2004, will permit claims to be paid in excess of the \$500,000 lifetime per licensee cap for claims based on contracts entered into prior to July 1, 2004. The bill sponsor has filed an amendment to correct this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²¹ Department of Business and Professional Regulation, Agency Analysis for SB 1098 (March 11, 2014) (on file with the Business & Professional Regulation Subcommittee).

1 A bill to be entitled
 2 An act relating to the Florida Homeowners'
 3 Construction Recovery Fund; amending s. 489.1401,
 4 F.S.; revising legislative intent; amending s.
 5 489.1402, F.S.; revising definitions; amending s.
 6 489.141, F.S.; revising conditions under which a
 7 claimant is eligible to seek recovery from the
 8 recovery fund; amending s. 489.1425, F.S.; revising
 9 the form required to be provided by a contractor which
 10 explains a consumer's rights under the recovery fund;
 11 amending s. 489.143, F.S.; prohibiting fund
 12 disbursements from exceeding a specified amount for
 13 each Division I claim and each Division II claim;
 14 revising requirements providing caps on payment for
 15 certain claims against a licensee; providing an
 16 effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsections (2) and (3) of section 489.1401,
 21 Florida Statutes, are amended to read:

22 489.1401 Legislative intent.—

23 (2) It is the intent of the Legislature that the sole
 24 purpose of the Florida Homeowners' Construction Recovery Fund is
 25 to compensate an ~~any~~ aggrieved claimant who contracted for the
 26 construction or improvement of the homeowner's residence located

27 | within this state and who has obtained a final judgment in any
 28 | court of competent jurisdiction, was awarded restitution by the
 29 | Construction Industry Licensing Board, or received an award in
 30 | arbitration against a licensee on grounds of financial
 31 | mismanagement or misconduct, abandoning a construction project,
 32 | or making a false statement with respect to a project. Such
 33 | grievance must arise ~~and arising~~ directly out of a any
 34 | transaction conducted when the judgment debtor was licensed and
 35 | must involve an act performed ~~any of the activities~~ enumerated
 36 | under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence.~~

37 | (3) It is the intent of the Legislature that Division I
 38 | and Division II contractors set apart funds for the specific
 39 | objective of participating in the fund.

40 | Section 2. Paragraphs (d), (i), (k), and (l) of subsection
 41 | (1) of section 489.1402, Florida Statutes, are amended to read:

42 | 489.1402 Homeowners' Construction Recovery Fund;
 43 | definitions.-

44 | (1) The following definitions apply to ss. 489.140-
 45 | 489.144:

46 | (d) "Contractor" means a Division I or a Division II
 47 | contractor performing his or her respective services described
 48 | in s. 489.105(3)(a)-(g) ~~s. 489.105(3)(a)-(e)~~.

49 | (i) "Residence" means a single-family residence, an
 50 | individual residential condominium or cooperative unit, or a
 51 | residential building containing not more than two residential
 52 | units in which the owner contracting for the improvement is

53 | residing or will reside 6 months or more each calendar year upon
 54 | completion of the improvement.

55 | (k) "Same transaction" means a contract, or a ~~any~~ series
 56 | of contracts, between a claimant and a contractor or qualified
 57 | business, when such contract or contracts involve the same
 58 | property or contiguous properties and are entered into either at
 59 | one time or serially.

60 | (l) "Valid and current license," for the purpose of s.
 61 | 489.141(2)(d), means a ~~any~~ license issued pursuant to this part
 62 | to a licensee, including a license in an active, inactive,
 63 | delinquent, or suspended status.

64 | Section 3. Subsections (1) and (2) of section 489.141,
 65 | Florida Statutes, are amended to read:

66 | 489.141 Conditions for recovery; eligibility.-

67 | (1) A ~~Any~~ claimant is eligible to seek recovery from the
 68 | recovery fund after making ~~having made~~ a claim and exhausting
 69 | the limits of any available bond, cash bond, surety, guarantee,
 70 | warranty, letter of credit, or policy of insurance, if provided
 71 | ~~that~~ each of the following conditions is satisfied:

72 | (a) The claimant has received final judgment in a court of
 73 | competent jurisdiction in this state or has received an award in
 74 | arbitration or the Construction Industry Licensing Board has
 75 | issued a final order directing the licensee to pay restitution
 76 | to the claimant. The board may waive this requirement if:

77 | 1. The claimant is unable to secure a final judgment
 78 | against the licensee due to the death of the licensee; or

79 2. The claimant has sought to have assets involving the
 80 transaction that gave rise to the claim removed from the
 81 bankruptcy proceedings so that the matter might be heard in a
 82 court of competent jurisdiction in this state and, after due
 83 diligence, the claimant is precluded by action of the bankruptcy
 84 court from securing a final judgment against the licensee.

85 (b) The judgment, award, or restitution is based upon a
 86 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

87 (c) The violation was committed by a licensee.

88 (d) The judgment, award, or restitution order specifies
 89 the actual damages suffered as a consequence of such violation.

90 (e) The contract was executed and the violation occurred
 91 on or after July 1, 1993, and provided that:

92 1. The claimant has caused to be issued a writ of
 93 execution upon such judgment, and the officer executing the writ
 94 has made a return showing that no personal or real property of
 95 the judgment debtor or licensee liable to be levied upon in
 96 satisfaction of the judgment can be found or that the amount
 97 realized on the sale of the judgment debtor's or licensee's
 98 property pursuant to such execution was insufficient to satisfy
 99 the judgment;

100 2. If the claimant is unable to comply with subparagraph
 101 1. for a valid reason to be determined by the board, the
 102 claimant has made all reasonable searches and inquiries to
 103 ascertain whether the judgment debtor or licensee is possessed
 104 of real or personal property or other assets subject to being

105 | sold or applied in satisfaction of the judgment and by his or
 106 | her search has discovered no property or assets or has
 107 | discovered property and assets and has taken all necessary
 108 | action and proceedings for the application thereof to the
 109 | judgment but the amount thereby realized was insufficient to
 110 | satisfy the judgment; and

111 | 3. The claimant has made a diligent attempt, as defined by
 112 | board rule, to collect the restitution awarded by the board.

113 | (f) A claim for recovery is made within 1 year after the
 114 | conclusion of any civil, criminal, or administrative action or
 115 | award in arbitration based on the act. This paragraph applies to
 116 | any claim filed with the board after October 1, 1998.

117 | (g) Any amounts recovered by the claimant from the
 118 | judgment debtor or licensee, or from any other source, have been
 119 | applied to the damages awarded by the court or the amount of
 120 | restitution ordered by the board.

121 | (h) The claimant is not a person who is precluded by this
 122 | act from making a claim for recovery.

123 | (2) A claimant is not qualified to make a claim for
 124 | recovery from the recovery fund, if:

125 | (a) The claimant is the spouse of the judgment debtor or
 126 | licensee or a personal representative of such spouse;

127 | (b) The claimant is a licensee who acted as the contractor
 128 | in the transaction that ~~which~~ is the subject of the claim;

129 | (c) The claim is based upon a construction contract in
 130 | which the licensee was acting with respect to the property owned

131 or controlled by the licensee;

132 (d) The claim is based upon a construction contract in
 133 which the contractor did not hold a valid and current license at
 134 the time of the construction contract;

135 (e) The claimant was associated in a business relationship
 136 with the licensee other than the contract at issue;

137 (f) The claimant has suffered damages as the result of
 138 making improper payments to a contractor as defined in part I of
 139 chapter 713 on contracts entered into before July 1, 2014; or

140 (g) The claimant has contracted with a licensee to perform
 141 a scope of work described in s. 489.105(3)(d)-(p) on contracts
 142 entered into before July 1, 2014.

143 Section 4. Subsection (1) of section 489.1425, Florida
 144 Statutes, is amended to read:

145 489.1425 Duty of contractor to notify residential property
 146 owner of recovery fund.—

147 (1) An ~~Any~~ agreement or contract for repair, restoration,
 148 improvement, or construction to residential real property must
 149 contain a written statement explaining the consumer's rights
 150 under the recovery fund, except where the value of all labor and
 151 materials does not exceed \$2,500. The written statement must be
 152 substantially in the following form:

153
 154 FLORIDA HOMEOWNERS' CONSTRUCTION
 155 RECOVERY FUND
 156

157 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM
 158 THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF
 159 YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT,
 160 WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF
 161 FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION
 162 ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT
 163 THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT
 164 THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

166 The statement must ~~shall~~ be immediately followed by the board's
 167 address and telephone number as established by board rule.

168 Section 5. Section 489.143, Florida Statutes, is amended
 169 to read:

170 489.143 Payment from the fund.—

171 (1) The fund shall be disbursed as provided in s. 489.141
 172 on a final order of the board.

173 (2) A ~~Any~~ claimant who meets all of the conditions
 174 prescribed in s. 489.141 may apply to the board to cause payment
 175 to be made to a claimant from the recovery fund in an amount
 176 equal to the judgment, award, or restitution order or \$25,000,
 177 whichever is less, or an amount equal to the unsatisfied portion
 178 of such person's judgment, award, or restitution order, but only
 179 to the extent and amount of actual damages suffered by the
 180 claimant, and only up to the maximum payment allowed for each
 181 respective Division I and Division II claim. Payment from the
 182 fund for other costs related to or pursuant to civil proceedings

183 such as postjudgment interest, attorney ~~attorney's~~ fees, court
 184 costs, medical damages, and punitive damages is prohibited. The
 185 recovery fund is not obligated to pay a ~~any~~ judgment, an award,
 186 or a restitution order, or any portion thereof, which is not
 187 expressly based on one of the grounds for recovery set forth in
 188 s. 489.141.

189 (3) Beginning January 1, 2005, for each Division I
 190 contract entered into after July 1, 2004, payment from the
 191 recovery fund shall be subject to a \$50,000 maximum payment for
 192 each Division I claim. Beginning January 1, 2015, for each
 193 Division II contract entered into on or after July 1, 2014,
 194 payment from the recovery fund shall be subject to a \$15,000
 195 maximum payment for each Division II claim.

196 (4)~~(3)~~ Upon receipt by a claimant under subsection (2) of
 197 payment from the recovery fund, the claimant shall assign his or
 198 her additional right, title, and interest in the judgment,
 199 award, or restitution order, to the extent of such payment, to
 200 the board, and thereupon the board shall be subrogated to the
 201 right, title, and interest of the claimant; and any amount
 202 subsequently recovered on the judgment, award, or restitution
 203 order, to the extent of the right, title, and interest of the
 204 board therein, shall be for the purpose of reimbursing the
 205 recovery fund.

206 (5)~~(4)~~ Payments for claims arising out of the same
 207 transaction shall be limited, in the aggregate, to the lesser of
 208 the judgment, award, or restitution order or the maximum payment

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209 allowed, for a Division I claim or a Division II claim,
210 regardless of the number of claimants involved in the
211 transaction.

212 ~~(6)(5) Payments for claims against any one licensee shall~~
213 ~~not exceed, in the aggregate, \$100,000 annually, up to a total~~
214 ~~aggregate of \$250,000. For any claim approved by the board which~~
215 ~~is in excess of the annual cap, the amount in excess of \$100,000~~
216 ~~up to the total aggregate cap of \$250,000 is eligible for~~
217 ~~payment in the next and succeeding fiscal years, but only after~~
218 ~~all claims for the then-current calendar year have been paid.~~
219 ~~Payments may not exceed the aggregate annual or per claimant~~
220 ~~limits under law. Beginning January 1, 2005, for each Division I~~
221 ~~contract entered into after July 1, 2004, payment from the~~
222 ~~recovery fund is subject only to a total aggregate cap of~~
223 ~~\$500,000 for each Division I licensee. Beginning January 1,~~
224 ~~2015, for each Division II contract entered into on or after~~
225 ~~July 1, 2014, payment from the recovery fund is subject only to~~
226 ~~a total aggregate cap of \$150,000 for each Division II licensee.~~

227 ~~(7)(6) Claims shall be paid in the order filed, up to the~~
228 ~~aggregate limits for each transaction and licensee and to the~~
229 ~~limits of the amount appropriated to pay claims against the fund~~
230 ~~for the fiscal year in which the claims were filed. Payments may~~
231 ~~not exceed the total aggregate cap per licensee or per claimant~~
232 ~~limits under this section.~~

233 ~~(8)(7) If the annual appropriation is exhausted with~~
234 ~~claims pending, such claims shall be carried forward to the next~~

235 | fiscal year. Any moneys in excess of pending claims remaining in
 236 | the recovery fund at the end of the fiscal year shall be paid as
 237 | provided in s. 468.631.

238 | (9)~~(8)~~ Upon the payment of any amount from the recovery
 239 | fund in settlement of a claim in satisfaction of a judgment,
 240 | award, or restitution order against a licensee as described in
 241 | s. 489.141, the license of such licensee shall be automatically
 242 | suspended, without further administrative action, upon the date
 243 | of payment from the fund. The license of such licensee may ~~shall~~
 244 | not be reinstated until he or she has repaid in full, plus
 245 | interest, the amount paid from the fund. A discharge of
 246 | bankruptcy does not relieve a person from the penalties and
 247 | disabilities provided in this section.

248 | (10)~~(9)~~ A Any firm, a corporation, a partnership, or an
 249 | association, or a ~~any~~ person acting in his or her individual
 250 | capacity, who aids, abets, solicits, or conspires with another
 251 | ~~any~~ person to knowingly present or cause to be presented a ~~any~~
 252 | false or fraudulent claim for the payment of a loss under this
 253 | act is guilty of a third-degree felony, punishable as provided
 254 | in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~
 255 | \$30,000~~7~~ unless the value of the fraud exceeds that amount,
 256 | ~~\$30,000~~ in which event the fine may not exceed double the value
 257 | of the fraud.

258 | (11)~~(10)~~ ~~All~~ Payments and disbursements from the recovery
 259 | fund shall be made by the Chief Financial Officer upon a voucher
 260 | signed by the secretary of the department or the secretary's

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261 | designee.

262 | Section 6. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional
 2 Regulation Subcommittee
 3 Representative Dudley offered the following:

Amendment

Remove lines 212-220 and insert:

7 (6)-(5) For contracts entered into before July 1, 2004,
 8 payments ~~Payments~~ for claims against any one licensee may shall
 9 not exceed, in the aggregate, \$100,000 annually, up to a total
 10 aggregate of \$250,000. For any claim approved by the board which
 11 is in excess of the annual cap, the amount in excess of \$100,000
 12 up to the total aggregate cap of \$250,000 is eligible for
 13 payment in the next and succeeding fiscal years, but only after
 14 all claims for the then-current calendar year have been paid.
 15 Payments may not exceed the aggregate annual or per claimant
 16 limits under law. Beginning January 1, 2005, for each Division I

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1329 Malt Beverages
SPONSOR(S): Rodrigues
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Brown-Blake bb	Luczynski nj
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill sets forth requirements for malt beverage manufacturers, distributors, and vendors.

Three-Tier Exceptions:

- Existing Manufacturers that Hold a Vendor's License Prior to July 1, 2014:
 - Permits manufacturers to sell alcoholic beverages under vendor's licenses held prior to July 1, 2014, only if the vendor's license is continuously valid on and after July 1, 2014.
 - Permits manufacturers who possess a vendor's license to maintain the license, but not obtain additional vendor's licenses.
 - Permits manufacturers who possess a vendor's license to sell any manufacturer's malt beverages directly to consumers for on-premises consumption.
 - Permits manufacturers who possess a vendor's license to sell malt beverages manufactured on the premises for off-premises consumption in growlers.
 - Provides certain instances in which a manufacturer that holds a vendor's license prior to July 1, 2014, can lose the ability to sell for consumption on premises only malt beverages brewed by another manufacturer.
- New Manufacturers Applying to Hold a Vendor's License After July 1, 2014:
 - Authorizes the Division to issue a vendor's license to a manufacturer of malt beverages.
 - Permits the manufacturer to sell the malt beverages brewed on premises to consumers in person for consumption on-premises through a tap or spigot as draft beer or off premises in growlers.
 - Prohibits all other alcoholic beverages sales at retail.
 - Prohibits the manufacturer from selling malt beverages brewed on the licensed manufacturing premises in collaboration with another manufacturer.
- Brewpub Exception
 - Permits a brewpub to sell all alcoholic beverages, including malt beverages it brews on premises and those brewed by other manufacturers for on-premises consumption only.

Growlers

- Defines growlers to include containers of 32 ounces or 64 ounces size.
- Permits growlers to be sold by:
 - Certain licensed manufacturers that hold a vendor's license.
 - Licensed vendor's holding a quota license.
- Provides sealing, safety, and labeling requirements.

Malt Beverage Tastings

- Permits a manufacturer with a vendor's license to conduct tastings on the licensed premises of the brewery or a contiguous licensed premises owned by the manufacturer,

The bill is expected to have a minimal fiscal impact on the Department of Business and Professional Regulation which can be absorbed with existing resources and no fiscal impact on local government.

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Three-Tier System

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.¹

In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tiered system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.² Because of the perceived evils, manufacturers and distributors are not permitted to have a financial interest in vendors. The following are some limited exceptions to the three-tier regulatory system:

- A malt beverage manufacturer may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism.³
- A vendor may obtain a manufacturer's license to manufacture malt beverages if the vendor brews malt beverages at a single location in an amount of no more than 10,000 kegs per year and sells the beverages to consumers for consumption on the premises or consumption on contiguous licensed premises owned by the vendor.⁴
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property.⁵
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.⁶

Manufacturer/Vendor Exceptions

As noted above, there are two exceptions to the prohibition against malt beverage manufacturers having financial interests in a vendor.

Tourism Exception

The first exception is sometimes referred to as the Tourism Exception. In this exception, a manufacturer of malt beverages may obtain vendor's licenses for the sale of alcoholic beverages on property that includes a brewery and promotes tourism.

¹ Section 561.02, F.S.

² Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (Last visited February 1, 2014).

³ Section 561.221(2), F.S.

⁴ Section 561.221(3), F.S.

⁵ Section 561.221(1), F.S.

⁶ Section 562.16, F.S.

This exception first became law 1963, when s. 561.221, F.S., was amended to permit malt beverage manufacturers to hold one vendor's license.⁷ The language was amended in 1967 to permit wine manufacturers to hold one vendor's license,⁸ and again in 1978 to permit malt beverage and wine manufacturers to hold two vendor's licenses.⁹ At the time, three manufacturers met the criteria to hold a vendor's license, but only one did.¹⁰ The next amendment came in SB 758 (1979),¹¹ when the statute was amended to permit malt beverage and wine manufacturers to hold three vendor's licenses.

It wasn't until HB 183 (1984),¹² was passed that the current exception was adopted into law. HB 183 amended s. 561.221, F.S., to remove malt beverage manufacturers from the provision permitting malt beverage and wine manufacturers to hold three vendor's licenses and created a new subsection permitting a malt beverage manufacturer to hold vendor's licenses on a property consisting of a single complex, including a brewery, which promotes the brewery and the tourist industry. HB 183 authorized a malt beverage manufacturer to have unlimited vendor's licenses on a property contiguous to a brewery.¹³ At the time, only one manufacturer took advantage of the amendment, Anheuser Busch, at its Busch Gardens location in Tampa, Florida. This provision has not been amended since 1984.

This exception permits manufacturers to obtain vendor's licenses for the sale of malt beverages at a brewery location if the vendor's license will "promote tourism."¹⁴ The phrase "promote tourism" is not defined in statute or in the Division's rules. As interpreted by the Division, this exception permits the restaurant or taproom attached to the manufacturing premises to sell alcoholic beverages subject to the following conditions:

- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for on-premises consumption.
- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for off-premises consumption in authorized containers, including growlers.
- Any other alcoholic beverages may be sold as authorized by the vendor's license.

In Florida, a number of breweries, known as "craft breweries,"¹⁵ have used the exception to open restaurants or taprooms attached to their breweries in order to build their brand. Since 1995, 90 licenses have been issued in Florida to various entities pursuant to this exception, with 33 being issued in 2012 and 2013 alone.¹⁶ Currently in Florida, approximately 60 breweries are licensed as both manufacturers and vendors pursuant to this exception.

Since 1977, the brewery industry has grown exponentially nationwide, growing from 89 breweries nationwide to 2,538 in June of 2013.¹⁷ During 2012, in a year when the total U.S. beer market grew by

⁷ Chapter 63-11, Laws of Fla.

⁸ Chapter 67-511, Laws of Fla.

⁹ Chapter 78-187, Laws of Fla.

¹⁰ *Senate Staff Analysis and Economic Impact Statement*, SB 758 (1978), May 2, 1978.

¹¹ Chapter 79-54, Laws of Fla.

¹² Chapter 84-142, Laws of Fla.

¹³ *Senate Staff Analysis and Economic Impact Statement*, SB 813 (1984), May 9, 1984 (CS/HB 183 was substituted for CS/SB 813).

¹⁴ Section 561.221(2), F.S.

¹⁵ Brewers Association defines a "craft brewery" as a small, independent and traditional brewer, with an annual production of 6 million barrels of beer or less, less than 25% owned or controlled by an alcoholic beverage industry member that is not a craft brewery, and has an all malt flagship beer or at least 50% of its volume in either all malt beers or in beers which use adjuncts to enhance rather than lighten flavor. *Craft Brewery Defined*, available at <http://www.brewersassociation.org/pages/business-tools/craft-brewing-statistics/craft-brewer-defined>, (last viewed February 4, 2014).

¹⁶ Email from Dan Olson, Office of Legislative Affairs, Department of Business and Professional Regulation, Re: CMB licenses with a vendor's license issued pursuant to s. 561.221(2), F.S., by year since 1995, February 4, 2014, (on file with the Business and Professional Regulation Subcommittee).

¹⁷ Brewers Association, *126-Year Brewery Count*, available at

<http://482256.cache1.evolutionhosting.com/attachments/0001/2578/126-Brewery-Count-HR.jpg> (last viewed February 1, 2014).

one percent, craft brewers saw a 15 percent rise in volume and a 17 percent increase by dollars compared to growth in 2011.¹⁸

Brewpub Exception

The second exception where an entity may obtain both a license as a manufacturer of malt beverages and a vendor's license for the sale of alcoholic beverages is often referred to as the Brewpub Exception. This exception was added to s. 561.221, F.S., by SB 1218 (1987),¹⁹ which amended the language to permit a vendor to be licensed as a manufacturer of malt beverages at a single location, with the following requirements:

- The brewpub shall not manufacture more than 10,000 kegs per year.
- The malt beverages manufactured on premises may only be sold for on-premises consumption.

This exception was originally intended for vendors, such as restaurants, that wished to brew malt beverages to sell on site. Due to the requirement that malt beverages be sold for on-premises consumption, brewpubs are not permitted to sell growlers.

Overlap of Exceptions

The statutory language of the Tourism Exception addresses a manufacturer that wishes to hold a vendor's license to permit the sale of malt beverages directly to the public at a brewery. The statutory language of the Brewpub Exception addresses a vendor that wishes to hold a manufacturer's license to permit the brewing of malt beverages for consumption on premises at a retail location. Nevertheless, some "brewpubs" are licensed under the Tourism Exception. In some cases, these restaurants even use the word "brewpub" in the name of the business. At these manufacturers' locations, the public is able to purchase growlers. However a vendor licensed as a brewpub pursuant to the brewpub exception is not able to sell growlers to the public.

Additionally, the Division has permitted licensees originally licensed pursuant to the Brewpub Exception to change their licensure to a manufacturer with a vendor's license under the Tourism Exception. The law created limited exceptions to the three-tier system; however, as more recently implemented, the overlap between the tiers has become more pronounced.

Come to Rest Requirements:

Section 561.5101, F.S., provides that, for purposes of inspection and tax-revenue control, all malt beverages except those brewed in brewpubs pursuant to s. 561.221(3), F.S., must come to rest at the licensed premises of a distributor prior to being sold to a vendor. It may have been an oversight that the exception does not include s. 561.221(2), F.S., for beer brewed at a brewery and sold at retail by the manufacturer under the Tourism Exception.

Brewpub License Fee

Section 563.02(2)(b), F.S., provides that a manufacturer engaged in brewing less than 10,000 kegs of malt beverages annually for consumption on the premises pursuant to s. 561.221(3), F.S., shall pay an annual state license fee of \$500 for each plant or branch. Section 561.221(3), F.S., provides the licensure requirements for a malt beverage manufacturer that operates as a brewpub, but the language of s. 563.02, F.S., does not use the word "brewpub."

¹⁸ Brewers Association, Craft Brewing Facts, available at <http://www.craftbrewingbusiness.com/news/craft-beer-continues-to-brew-growth/> (last viewed on February 1, 2014).

¹⁹ Chapter 87-63, Laws of Fla.

Container Sizes

Standard Containers

Currently, s. 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors be packaged in individual containers of no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type.

Growlers

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of between 32 ounces and two liters that the consumer can take to a manufacturer/vendor to be filled with malt beverages for consumption off the licensed premises.²⁰ The standard size for a growler is 64 ounces.²¹ Florida malt beverage law does not specifically address growlers.

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

Tied House Evil Gifts and Malt Beverage Tastings

Manufacturers and distributors are prohibited from providing malt beverages for tastings at a vendor's licensed premises, as it would be a violation of the Tied-House Evil provisions of the Beverage Law. Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

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

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

Vendors are not prohibited from conducting malt beverage tastings if the malt beverages are paid for by the vendor.

²⁰ Beeradvocate, *The Growler: Beer-To-Go!* available at <http://beeradvocate.com/articles/384/> (last viewed February 1, 2014).

²¹ Brew-Tek, What is a Growler? available at <http://www.brew-tek.com/products/growlers/what-is-a-growler/> (last viewed at February 3, 2014).

Effect of the Bill

Three-Tier System and Manufacturer/Vendor Exceptions

Existing Manufacturers that Hold a Vendor's License Prior to July 1, 2014 (Modified Tourism Exception)

The bill permits malt beverage manufacturers who possess a vendor's license prior to July 1, 2014, pursuant to s. 561.221(2), F.S., to sell malt beverages directly to consumers for on-premises or off-premises consumption subject to the following requirements:

- Manufacturers may sell alcoholic beverages as permitted under vendor's licenses held prior to July 1, 2014, only if such vendor's license is continuously valid on and after July 1, 2014.
- The manufacturer with a vendor's license may maintain and renew both the manufacturers and vendor's license, but may not obtain additional vendor's licenses.
- The manufacturing premises and the vendor's retail premises must be located on the same property, which may be separated by one street or highway.
- The premises must contain a brewery.
- The manufacturer and the vendor retail premises must be included on a sketch provided to the Division at the time of application for licensure, and must verify that the vendor premises operated by the licensed manufacturer is owned or leased by the manufacturer and is on the licensed manufacturing premises.

The bill provides that manufacturers that hold a vendor's license prior to July 1, 2014, may sell alcoholic beverages as authorized by the vendor's license as follows:

- Malt beverages brewed on the manufacturer's licensed premises for on-premises consumption or off-premises consumption in growlers.
- Malt beverages brewed by another manufacturer for on-premises consumption only unless:
 - The ownership or controlling interest of the manufacturer changes.
 - The location of the manufacturing premises changes.
 - The number or type of license of the manufacturer changes or any license held becomes inactive, is revoked, or is not renewed.
 - The brewery is closed for more than 30 days without good cause, or the manufacturer stops brewing malt beverages to put into the distribution channel for 60 days or more, but continued to operate its vendor's license.
- Wine or liquor for on-premises consumption only.

New Manufacturers Applying to Hold a Vendor's License After July 1, 2014 (Modified Taproom Exception)

The bill creates s. 561.221(4), F.S., and authorizes the Division to issue a vendor's license to a manufacturer of malt beverages if the following requirements are met:

- The manufacturer intends to place malt beverages brewed on the premises into the distribution channel.
- The manufacturer intends to sell the malt beverages brewed on premises to consumers in person as follows:
 - For consumption on-premises:
 - At the licensed premises.
 - On a contiguous licensed premises owned by the manufacturer.
 - For consumption off-premises in growlers.
- On-premises consumption sales must be served through tap or spigot as draft beer and not in a sealed container.

- The manufacturer may only sell malt beverages brewed on the licensed manufacturing premises in person to consumers.
- The manufacturer may not sell malt beverages brewed on the licensed manufacturing premises in collaboration with another manufacturer in person to consumers.

The manufacturer may sell growlers to a consumer for off-premises consumption in a face-to-face transaction. A face-to-face transaction requires that the growler be ordered, paid for, and received at the vendor's licensed premises.

Brewpub Exception

The bill permits the Division to issue both a manufacturer's and a vendor's license to a brewpub subject to the following requirements:

- The brewpub may not brew more than 10,000 kegs of malt beverages on the premises per year.
- The brewpub may sell all alcoholic beverages, including malt beverages it brews on premises and those brewed by other manufacturers for on-premises consumption only.

The brewpub maintains its responsibility to keep records and pay excise taxes for the malt beverages it sells or gives to consumers.

Come to Rest Requirements

The bill exempts malt beverages brewed by a manufacturer with a vendor's license pursuant to s. 561.221(2) and (4), F.S., (modified Tourism and Taproom exceptions) from the requirement that all malt beverages come to rest at the licensed premises of a distributor prior to being sold to a vendor by the distributor.

Brewpub License Fee

The bill clarifies that brewpubs pay an annual state license fee of \$500 for each brewpub licensed premises.

Container Sizes and Growler Requirements

Container Size

The bill provides that 563.06(6), F.S., which requires that containers be no more than 32 ounces, does not apply to growlers.

Growlers

The bill defines growlers as a clean, reusable container made of glass, ceramic, stainless steel, or similar leak-proof material with a capacity of 32 ounces or 64 ounces that, in response to an order in person for off-premises consumption, is filled with a malt beverage and sealed on the premises at or immediately before or after the time of sale.

The bill provides that growlers may only be sold by:

- Licensed manufacturers that hold a vendor's license pursuant to s. 561.221(2) and (4), F.S.
- Licensed vendor's holding a quota license pursuant to ss. 561.20(1) and 565.02(1)(a)-(f), F.S.

Growlers must:

- Be sealed with a tamperproof, tamper-evident seal.

- Meet food safety conditions for transferring bulk beer into containers as determined by county or incorporated municipality.
- Have a label containing the following:
 - Language clearly indicating the growler contains alcoholic beverage.
 - The percentage of alcohol.
 - The required label information pursuant to 27 C.F.R. s. 16.21.
 - Manufacturer.
 - Brand.
 - Type of malt beverage.
 - Volume.

Malt Beverage Tastings

The bill permits a manufacturer with a vendor's license that obtained its vendor's license after July 1, 2014, to conduct tastings on the licensed premises of the brewery or a contiguous licensed premises owned by the manufacturer, as follows:

- The tastings is conducted without charge.
- The tasting is directed towards persons 21 years old and older.
- The malt beverages provided are manufactured by the licensed manufacturer, regardless of where it is brewed.

B. SECTION DIRECTORY:

Section 1 amends s. 561.01, F.S., defining the term "growler."

Section 2 amends s. 561.221, F.S., revising requirements relating to manufacturers that also hold a vendor's license and the circumstances in which a manufacturer with a vendor's license may sell malt beverages directly to consumers.

Section 3 amends s. 561.5101, F.S., updating a cross-reference.

Section 4 amends s. 563.02, F.S., conforming provisions to changes made by the act.

Section 5 amends s. 563.022, F.S., conforming provisions to changes made by the act.

Section 6 creates s. 563.035, F.S., restricting the sale of growlers by certain vendors and providing requirements for growlers.

Section 7 amends s. 563.06, F.S., conforming provisions to changes made by the act.

Section 8 provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
None. The Department of Business and Professional Regulation 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:

The bill places restrictions on the vendor's licenses held by malt beverage manufacturers prior to July 1, 2014, and appears to create a new limited vendor's license that may be held by manufacturers who wish to acquire a vendor's license on or after July 1, 2014. The new vendor's license only permits the malt beverage manufacturer to sell malt beverages brewed on the licensed manufacturing premises in person to consumers for on-premises consumption or off-premises consumption in growlers. These restrictions and limitations should reduce the potential revenue of such businesses.

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:

The Division is authorized to adopt rules to determine "another like cause" that would equate to "good cause" for a brewery to be closed for more than 30 days. The rulemaking authority may be overly broad.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 77-78 define growlers to mean "a clean, reusable container made of glass, ceramic, stainless steel, or similar leak-proof material..." The bill does not define what "similar leak-proof material" means. The language is broad and could include many containers including milk jugs and plastic soda bottles.

Lines 155-157 provide that a manufacturer may sell malt beverages brewed by other manufacturers for on-premises consumption except when certain conditions apply. The bill appears to place a permanent limitation on the vendor's license related to malt beverages, but does not restrict the license as to the sale of wine or spirits.

Lines 168-169 provide that a manufacturer may sell malt beverages brewed by other manufacturers for on-premises consumption unless the brewery is closed for more than 30 days "without good cause." The Division is provided rulemaking authority to determine "another like cause" that would qualify as good cause. The language appears to provide unbridled discretion to the Division to make the determination without guidelines set forth for the Division to use to determine what qualifies as "good cause." As such, it may be a violation of the nondelegation doctrine.

Line 262 removes s. 561.221(3), F.S., from the come-to-rest requirement exemption which provides that all malt beverages, except those specifically exempted, must come to rest at the licensed premises of a distributor. Current law provides that s. 561.221(3), F.S., referencing manufacturers operating as brewpubs, are exempt from the come-to-rest requirement. The bill removes s. 561.221(3), F.S., from the exemption and adds s. 561.221(2) and (4), F.S., to the exemption. Sections 561.221(2) and (4), F.S., should be added to the exemption as they are manufacturers selling malt beverages directly to

consumers rather than going through a distributor. But, brewpubs should be kept in the exemption as they also sell malt beverages brewed on the manufacturing premises directly to consumers without going through a distributor.

The effective date is October 1, 2014, but the manufacturers that hold a vendors license prior to July 1, 2014, are held to different standards than those that obtain a license following July 1, 2014. The date should be changed to correspond with the effective date of the bill rather than having a retroactive effect.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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27 provisions to changes made by the act; creating s.
28 563.035, F.S.; restricting the sale of growlers to
29 sale by certain vendors; providing requirements for
30 the sale of a growler; providing a penalty; amending
31 s. 563.06, F.S.; conforming provisions; providing an
32 effective date.

33
34 WHEREAS, pursuant to the authority of the state under the
35 provisions of the Twenty-First Amendment to the United States
36 Constitution, this act promotes the public's interest in a
37 viable and effective three-tier system of regulation of the
38 manufacture, distribution, and retail sale of alcoholic
39 beverages, and

40 WHEREAS, an alcoholic beverage is a unique product that can
41 have detrimental effects if abused; therefore, it is important
42 to have comprehensive, transparent, and effective regulation of
43 alcoholic beverages in this state, and

44 WHEREAS, few exceptions to this regulatory system should be
45 permitted, and only under special circumstances, and

46 WHEREAS, the public health and welfare, the proper
47 enforcement of tax laws, and the collection of tax revenues with
48 respect to the sale and consumption of alcoholic beverages are
49 promoted and enhanced by a three-tier system of regulation, and

50 WHEREAS, the purpose of this act is to authorize a very
51 limited exception to the three-tier system of regulation by
52 allowing manufacturers of malt beverages in this state to sell

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53 beer in "growlers," which are rapidly becoming a nationwide
 54 industry standard, and

55 WHEREAS, the Legislature hopes that by providing such
 56 targeted local support, the private sector will be encouraged to
 57 develop and promote a Florida Brewery Trail to entice residents
 58 and tourists to visit the many fine breweries across the state
 59 to sample their beers and in the process explore and enjoy other
 60 aspects of the communities within which those breweries are
 61 located, and

62 WHEREAS, the Legislature believes that the limited retail
 63 option for manufacturers of malt beverages in the state would
 64 provide an economic boost to the local communities supporting
 65 those breweries, would not compete unfairly with distributors
 66 and retailers of malt beverages in those communities, and would
 67 continue to maintain the overall viability of the three-tier
 68 system of regulation that has served the state so well since its
 69 initial adoption pursuant to the Twenty-First Amendment to the
 70 United States Constitution, NOW, THEREFORE,

71
 72 Be It Enacted by the Legislature of the State of Florida:

73
 74 Section 1. Subsection (22) is added to section 561.01,
 75 Florida Statutes, to read:

76 561.01 Definitions.—As used in the Beverage Law:

77 (22) "Growler" means a clean, reusable container made of
 78 glass, ceramic, stainless steel, or similar leak-proof material

79 with a capacity of 32 ounces or 64 ounces that, in response to
 80 an order in person for off-premises consumption, is filled with
 81 a malt beverage and sealed on the premises at or immediately
 82 before or after the time of sale.

83 Section 2. Section 561.221, Florida Statutes, is amended
 84 to read:

85 561.221 Licensing of manufacturers and distributors as
 86 vendors and of vendors as manufacturers; conditions and
 87 limitations; brewery sales.-

88 (1)(a) Nothing contained in s. 561.22, s. 561.42, or any
 89 other provision of the Beverage Law prohibits the ownership,
 90 management, operation, or control of not more than three
 91 vendor's licenses for the sale of alcoholic beverages by a
 92 manufacturer of wine who is licensed and engaged in the
 93 manufacture of wine in this state, even if the ~~such~~ manufacturer
 94 is also licensed as a distributor. However, ~~provided that no~~
 95 such a vendor's license may not ~~shall~~ be owned, managed,
 96 operated, or controlled by a ~~any~~ licensed manufacturer of wine
 97 unless the licensed premises of the vendor are situated on
 98 property contiguous to the manufacturing premises of the
 99 licensed manufacturer of wine.

100 (b) The division ~~of Alcoholic Beverages and Tobacco~~ shall
 101 issue permits to a certified Florida Farm Winery to conduct
 102 tasting and sales of wine produced by certified Florida Farm
 103 Wineries at Florida fairs, trade shows, expositions, and
 104 festivals. The certified Florida Farm Winery must ~~shall~~ pay all

105 | entry fees and ~~shall~~ have a winery representative present during
 106 | the event. The permit is limited to the length of the event.

107 | (2) Notwithstanding s. 561.22, s. 561.42, or any other
 108 | provision of the Beverage Law, a manufacturer of malt beverages
 109 | may sell alcoholic beverages authorized under an existing
 110 | vendor's license issued to the manufacturer before, and valid on
 111 | and continuously after, July 1, 2014, directly to consumers for
 112 | on-premises or off-premises consumption as follows: ~~The division~~
 113 | ~~is authorized to issue vendor's licenses to a manufacturer of~~
 114 | ~~malt beverages, even if such manufacturer is also licensed as a~~
 115 | ~~distributor, for the sale of alcoholic beverages on property~~
 116 | ~~consisting of a single complex, which property shall include a~~
 117 | ~~brewery and such other structures which promote the brewery and~~
 118 | ~~the tourist industry of the state. However, such property may be~~
 119 | ~~divided by no more than one public street or highway.~~

120 | (a) A manufacturer that was issued a manufacturer's
 121 | license and a vendor's license at a manufacturing premises
 122 | pursuant to this subsection before July 1, 2014, may maintain
 123 | and renew such licenses that were active and valid on July 1,
 124 | 2014, and continuously maintained since, but may not obtain an
 125 | additional vendor's license under this subsection. A vendor's
 126 | license held by a manufacturer of malt beverages pursuant to
 127 | this subsection is subject to the requirements of this
 128 | subsection.

129 | (b) A manufacturing premises for which the manufacturer
 130 | has a direct or indirect interest in an additional license may

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131 operate a vendor's license pursuant to subsection (4).

132 (c) A vendor's license shall be located on the
133 manufacturing premises consisting of a single complex that
134 includes a brewery. Such premises may be divided by no more than
135 one public street or highway. The vendor-licensed premises must
136 be included on the sketch or diagram defining the licensed
137 premises submitted with the manufacturer's license application
138 pursuant to s. 561.01(11). All sketch or diagram revisions by
139 the manufacturer must be approved by the division, verifying
140 that the vendor premises operated by the licensed manufacturer
141 is owned or leased by the manufacturer and on the licensed
142 manufacturing premises.

143 (d) The manufacturer may sell alcoholic beverages
144 authorized under its vendor's license as follows:

145 1. Malt beverages manufactured on the licensed premises
146 for on-premises consumption or off-premises consumption in
147 growlers pursuant to paragraph (4)(d) and s. 563.035.

148 2. Other malt beverages for on-premises consumption only,
149 except for when:

150 a. The ownership or controlling interest of the
151 manufacturer changes, whether by sale, acquisition, transfer,
152 combination, consolidation, merger, share exchange, corporate
153 restructuring, takeover, or other means;

154 b. The location of the manufacturing premises changes;

155 c. The number or type of licenses held by the manufacturer
156 for that premises changes, or any of the licenses held becomes

157 inactive, is revoked, or is not renewed; or
 158 d. The brewery or vendor premises fails to open or closes
 159 for more than 30 days without good cause; or the manufacturer
 160 ceases to manufacture malt beverages for the purpose of
 161 supplying its distributors and exporters for 60 days or more,
 162 but continues to operate under its vendor's license. For
 163 purposes of this sub-subparagraph, the term "good cause" means
 164 extraordinary circumstances such as a natural disaster, fire, or
 165 other casualty; an act of war, terrorism, or civil unrest;
 166 ongoing brewery construction begun under a license application
 167 submitted and pending or a temporary license issued before July
 168 1, 2014; or another like cause specified by rule of the
 169 division.

170 3. Wine or liquor for on-premises consumption only.

171 (e) This subsection does not exempt an industry member,
 172 other than a manufacturer, that owns the vendor premises
 173 licensed under this subsection, from s. 561.42.

174 (3) (a) Notwithstanding s. 561.22, s. 561.42, or any other
 175 provision provisions of the Beverage Law, a any vendor licensed
 176 in this state may be licensed as a manufacturer of malt
 177 beverages upon a finding by the division that:

178 1. The vendor will be engaged in brewing malt beverages at
 179 a single location and in an amount that ~~which~~ will not exceed
 180 10,000 kegs per year. For purposes of this subsection, the term
 181 "keg" means 15.5 gallons.

182 2. All alcoholic beverages, including the malt beverages

183 so brewed and other malt beverages, will be sold to consumers
 184 for consumption on the vendor's licensed premises or on
 185 contiguous licensed premises owned by the vendor.

186 (b) A ~~Any~~ vendor that ~~which~~ is also licensed as a
 187 manufacturer of malt beverages under ~~pursuant to~~ this subsection
 188 is ~~shall be~~ responsible for applicable reports pursuant to ss.
 189 561.50 and 561.55 with respect to the amount of beverage
 190 manufactured each month and shall pay applicable excise taxes
 191 thereon to the division by the 10th day of each month for the
 192 previous month.

193 (c) It is ~~shall be~~ unlawful for a any licensed distributor
 194 of malt beverages or an ~~any~~ officer, agent, or other
 195 representative thereof to discourage or prohibit a any vendor
 196 licensed as a manufacturer under this subsection from offering
 197 malt beverages brewed for consumption on the licensed premises
 198 of the vendor.

199 (d) It is ~~shall be~~ unlawful for any manufacturer of malt
 200 beverages or an ~~any~~ officer, agent, or other representative
 201 thereof to take any action to discourage or prohibit a any
 202 distributor of the manufacturer's product from distributing such
 203 product to a licensed vendor that ~~which~~ is also licensed as a
 204 manufacturer of malt beverages under ~~pursuant to~~ this
 205 subsection.

206 (4)(a) Notwithstanding s. 561.22, s. 561.42, or any other
 207 provision of the Beverage Law, the division may issue a vendor's
 208 license to a licensed manufacturer of malt beverages in this

209 state that intends to manufacture and package malt beverages for
 210 distribution to distributors and exporters and to sell its malt
 211 beverages brewed on the licensed premises to consumers in person
 212 for consumption on premises, on contiguous licensed premises
 213 owned by the manufacturer, or to such consumers in growlers for
 214 off-premises consumption pursuant to s. 563.035. All sales for
 215 consumption on premises shall be served through a tap or spigot
 216 as draft beer and may not be served in a sealed container
 217 otherwise destined for sale to a distributor or exporter. All
 218 sales in growlers for off-premises consumption are for personal
 219 consumption only and not for resale.

220 (b) A manufacturer of malt beverages licensed as a vendor
 221 under this subsection may not sell malt beverages at the
 222 licensed premises, except those that are manufactured, wholly
 223 owned, and otherwise packaged at the same facility for sale by
 224 the manufacturer to licensed distributors and exporters. A malt
 225 beverage that is produced at the licensed premises for or in
 226 collaboration with another manufacturer under a contract or
 227 other agreement is not a wholly owned malt beverage of the
 228 manufacturer for purposes of qualifying as a vendor under this
 229 subsection and may not be sold to consumers at such premises.

230 (c) A manufacturer of malt beverages licensed as a vendor
 231 under this subsection may also conduct beer tastings on the
 232 licensed premises of the brewery or on contiguous licensed
 233 premises owned by the manufacturer, if the beer tasting is
 234 conducted without charge and limited to and directed toward the

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235 general public of the age of legal consumption. At such
236 tastings, the manufacturer may offer a malt beverage that it
237 wholly owns, regardless of where the malt beverage was
238 manufactured or packaged.

239 (d) A manufacturer of malt beverages licensed as a vendor
240 under this subsection may sell a growler to a consumer for off-
241 premises consumption only in a face-to-face transaction with the
242 consumer at the vendor's licensed premises where the consumer
243 must order, pay for, and receive the growler purchased.
244 Notwithstanding s. 561.57(1), the delivery off premises of a
245 growler from a vendor licensed under this subsection, or the
246 arrangement of such delivery by or to the consumer, whether by
247 common carrier or premises carrier or by an operator of a
248 privately owned car, truck, bus, or other conveyance, is
249 prohibited. This paragraph does not prohibit a consumer from
250 taking a growler purchased by the consumer under this subsection
251 from the vendor's licensed premises to another location by a
252 privately owned car, truck, bus, or other conveyance.

253 (e) Except as otherwise provided in subsection (2), a
254 manufacturer of malt beverages may be licensed as a vendor only
255 under this subsection and may have only those retail privileges
256 authorized under this subsection for such license.

257 Section 3. Subsection (1) of section 561.5101, Florida
258 Statutes, is amended to read:

259 561.5101 Come-to-rest requirement; exceptions; penalties.—

260 (1) For purposes of inspection and tax-revenue control,

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261 all malt beverages, except those manufactured and sold pursuant
262 to s. 561.221(2) or (4) ~~561.221(3)~~, must come to rest at the
263 licensed premises of an alcoholic beverage wholesaler in this
264 state before being sold to a vendor by the wholesaler. The
265 prohibition contained in this subsection does not apply to the
266 shipment of malt beverages commonly known as private labels. The
267 prohibition contained in this subsection does ~~shall~~ not prevent
268 a manufacturer from shipping malt beverages for storage at a
269 bonded warehouse facility, if ~~provided that~~ such malt beverages
270 are distributed as provided in this subsection or to an out-of-
271 state entity.

272 Section 4. Subsection (2) of section 563.02, Florida
273 Statutes, is amended to read:

274 563.02 License fees; vendors; manufacturers and
275 distributors.-

276 (2) (a) Each manufacturer engaged in the business of
277 brewing only malt beverages must ~~shall~~ pay an annual state
278 license tax of \$3,000 for each plant or branch the manufacturer
279 operates ~~he or she may operate~~.

280 (b) ~~However,~~ Each manufacturer engaged in the business of
281 brewing less than 10,000 kegs of malt beverages annually for
282 consumption on the premises pursuant to s. 561.221(3), commonly
283 known as a brewpub manufacturer, must ~~shall~~ pay an annual state
284 license tax of \$500 for each plant or branch.

285 Section 5. Paragraph (b) of subsection (14) of section
286 563.022, Florida Statutes, is amended to read:

287 563.022 Relations between beer distributors and
 288 manufacturers.-

289 (14) MANUFACTURER; PROHIBITED INTERESTS.-

290 (b) Except as provided in paragraph (c), an ~~no~~ entity or
 291 person specified in paragraph (a) may not have an interest in
 292 the license, business, assets, or corporate stock of a licensed
 293 distributor and may not ~~nor shall such entity~~ sell directly to a
 294 ~~any~~ vendor in this state other than to a vendor ~~vendors who are~~
 295 licensed pursuant to s. 561.221(2).

296 Section 6. Section 563.035, Florida Statutes, is created
 297 to read:

298 563.035 Regulation of growlers.-

299 (1) Only a vendor licensed under s. 561.221(2) or (4) or
 300 holding a valid quota license pursuant to ss. 561.20(1) and
 301 565.02(1)(a)-(f) may sell a growler.

302 (2) A person may not sell a growler in violation of this
 303 section or sell as a growler any container of malt beverages
 304 that is not a growler as defined in s. 561.01(22).

305 (3) Each growler sold must:

306 (a) Be sealed with a tamperproof, tamper-evident seal.

307 (b) Meet food safety conditions for transferring bulk beer
 308 into containers as determined by a county or incorporated
 309 municipality.

310 (c) Be clearly marked as containing an alcoholic beverage
 311 and provide the percentage of alcohol by volume.

312 (d) Include the required label information for alcoholic
 313 beverages under 27 C.F.R. s. 16.21.

314 (e) Have a label that specifies the manufacturer, brand,
 315 type of malt beverage, and volume.

316 (4) A violation of this section is a misdemeanor of the
 317 second degree, punishable as provided in s. 775.082 or s.
 318 775.083.

319 Section 7. Subsections (6) and (7) of section 563.06,
 320 Florida Statutes, are amended to read:

321 563.06 Malt beverages; imprint on individual container;
 322 size of containers; exemptions.-

323 (6) All malt beverages packaged in individual containers
 324 sold or offered for sale by vendors at retail in this state,
 325 except for malt beverages authorized to be sold in growlers
 326 pursuant to s. 563.035, must ~~shall~~ be in individual containers
 327 containing no more than 32 ounces of such malt beverages. ~~†~~
 328 ~~provided, however, that nothing contained in~~

329 (7) This section does not ~~shall~~ affect malt beverages
 330 packaged in bulk, ~~or~~ in kegs or in barrels, or in any individual
 331 container containing 1 gallon or more of such malt beverage
 332 regardless of individual container type.

333 (8)(7) Any person, firm, or corporation, or any of its
 334 agents, officers, or employees, that violates ~~violating any of~~
 335 ~~the provisions of~~ this section commits, ~~shall be guilty of a~~
 336 misdemeanor of the first degree, punishable as provided in s.
 337 775.082 or s. 775.083; and the license, if any, is ~~shall be~~

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338 | subject to revocation or suspension by the division..

339 | Section 8. This act shall take effect October 1, 2014.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional
 2 Regulation Subcommittee

3 Representative Steube offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (2) and (3) of section 561.221,

8 Florida Statutes, are amended to read:

9 561.221 Retail exceptions to manufacturing licenses;
 10 brewing exceptions to vendor licenses ~~Licensing of manufacturers~~
 11 ~~and distributors as vendors and of vendors as manufacturers;~~
 12 conditions and limitations.-

13 (2) A manufacturer of malt beverages that is licensed and
 14 engaged in the manufacture of malt beverages in this state may
 15 sell directly to consumers in face-to-face transactions, which,
 16 notwithstanding s. 561.57(1), requires the physical presence of
 17 the consumer to make payment for and take receipt of the



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18 beverages on the licensed manufacturing premises, as follows:

19 (a) At a taproom, a manufacturer may sell malt beverages
20 brewed by the manufacturer to consumers for on-premises or off-
21 premises consumption without obtaining a vendor's license. A
22 manufacturer of malt beverages shall comply with the following
23 requirements related to its taproom:

24 1. The taproom must be a room or rooms located on the
25 licensed manufacturing premises consisting of a single complex,
26 which shall include a brewery. Such premises may be divided by
27 no more than one public street or highway. The taproom shall be
28 included on the sketch or diagram defining the licensed premises
29 submitted with the manufacturer's license application pursuant
30 to s. 561.01(11). All sketch or diagram revisions by the
31 manufacturer must be approved by the division, verifying that
32 the taproom operated by the licensed manufacturer is owned or
33 leased by the manufacturer and is located on the licensed
34 manufacturing premises.

35 2. At least 70 percent by volume of the malt beverages
36 sold or given to consumers per calendar year in the taproom must
37 be brewed on the licensed manufacturing premises. No more than
38 30 percent by volume of the malt beverages sold or given to
39 consumers per calendar year in the taproom may be brewed by the
40 manufacturer at other manufacturing premises and shipped to the
41 licensed manufacturing premises pursuant to s. 563.022(14)(d).

42 3. Malt beverages may be sold to consumers in the taproom
43 for off-premises consumption in authorized containers pursuant



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44 to s. 563.06(6) and (7).

45 4. A manufacturer of malt beverages is responsible for
46 applicable reports pursuant to ss. 561.50 and 561.55 with
47 respect to the amount of malt beverage sold or given to
48 consumers in the taproom each month and shall pay applicable
49 excise taxes thereon to the division by the 10th day of each
50 month for the previous month.

51 5. This paragraph does not preclude a licensed
52 manufacturer of malt beverages that operates a taproom from
53 holding a permanent public food service establishment license
54 under chapter 509 at the taproom.

55 6. A manufacturer may not hold a vendor's license at a
56 licensed manufacturing premises that operates a taproom pursuant
57 to this paragraph.

58 (b) In lieu of a taproom, on or after July 1, 2014, the
59 division may ~~is authorized to~~ issue vendor's licenses to a
60 manufacturer of malt beverages at no more than two licensed
61 manufacturing premises for which the manufacturer has an
62 interest, directly or indirectly, in the license if the
63 manufacturer meets the following requirements:

64 1. A licensed manufacturer may obtain one vendor's license
65 at no more than two of the licensed manufacturing premises for
66 which the manufacturer has an interest, directly or indirectly,
67 in the license. Any additional licensed manufacturing premises
68 for which the manufacturer has an interest, directly or
69 indirectly, in the license may operate a taproom without a



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70 vendor's license pursuant to paragraph (a).

71 2. The vendor's license shall be located on the licensed
72 manufacturing premises consisting of a single complex, which
73 shall include a brewery. Such premises may be divided by no more
74 than one public street or highway. The licensed vendor premises
75 shall be included on the sketch or diagram defining the licensed
76 premises submitted with the manufacturer's license application
77 pursuant to s. 561.01(11). All sketch or diagram revisions by
78 the manufacturer must be approved by the division, verifying
79 that the vendor premises operated by the licensed manufacturer
80 is owned or leased by the manufacturer and is located on the
81 licensed manufacturing premises.

82 3. The manufacturer may sell alcoholic beverages under its
83 vendor's license as follows:

84 a. Malt beverages manufactured on the licensed
85 manufacturing premises or at another licensed manufacturing
86 premises for which the manufacturer has an interest, directly or
87 indirectly, in the license for:

88 (I) On-premises consumption.

89 (II) Off-premises consumption in authorized containers
90 pursuant to s. 563.06(6).

91 (III) Off-premises consumption in growlers pursuant to s.
92 563.06(7).

93 b. Malt beverages manufactured exclusively by other
94 manufacturers for:

95 (I) On-premises consumption.



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96 (II) Off-premises consumption in authorized containers
97 pursuant to s. 563.06(6).

98 (III) Off-premises consumption in growlers pursuant to s.
99 563.06(7) by holders of a quota license.

100 c. Any wine or liquor for on-premises or off-premises
101 consumption as authorized under its vendor's license.

102 4. A manufacturer of malt beverages pursuant to this
103 subsection is responsible for applicable reports pursuant to ss.
104 561.50 and 561.55 with respect to the amount of malt beverages
105 manufactured and sold pursuant to its vendor's license, or given
106 to consumers each month, and shall pay applicable excise taxes
107 thereon to the division by the 10th day of each month for the
108 previous month.

109 5. This paragraph does not preclude a licensed
110 manufacturer of malt beverages with a vendor's license from
111 holding a permanent public food service establishment license
112 under chapter 509 on the licensed manufacturing premises.

113 6. An entity that has applied for a manufacturer's and
114 vendor's license at more than two licensed manufacturing
115 premises pursuant to this paragraph before March 15, 2014, or
116 has been issued a manufacturer's and vendor's license at more
117 than two licensed manufacturing premises pursuant to this
118 paragraph before July 1, 2014, may maintain the licenses
119 previously obtained or received based on the application prior
120 to March 15, 2014, but may not obtain or apply for additional
121 vendor's licenses. However, except as to the allowance for

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122 manufacturers holding a vendor's license at more than two
123 licensed manufacturing premises before July 1, 2014, a vendor's
124 license held by a manufacturer of malt beverages pursuant to
125 this paragraph, regardless of when first obtained, is subject to
126 the requirements of subparagraphs 1.-5.

127 7. An entity with direct or indirect interests in vendor
128 licenses issued to not more than two licensed manufacturing
129 premises under this paragraph may not be related, directly or
130 indirectly, to any other entities having interests, directly or
131 indirectly, in other vendor licenses issued to other separate
132 manufacturing premises. This subparagraph prohibits the creation
133 of a chain of more than two vendor licensed manufacturing
134 premises under common control of entities having direct or
135 indirect interests in such vendor licensed manufacturing
136 premises. This subparagraph does not prohibit the purchase or
137 ownership of stock in a publicly traded corporation where the
138 licensee does not have and does not obtain a controlling
139 interest in the corporation. For entities lawfully operating
140 with more than two licensed manufacturing premises with vendor
141 licenses pursuant to subparagraph 6, the limit of two is
142 replaced with the actual number of manufacturing premises with
143 vendor licenses the entity operates, even if such manufacturer
144 is also licensed as a distributor, for the sale of alcoholic
145 beverages on property consisting of a single complex, which
146 property shall include a brewery and such other structures which
147 promote the brewery and the tourist industry of the state.

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148 ~~However, such property may be divided by no more than one public~~
149 ~~street or highway.~~

150 (3) The division may issue a manufacturer's license and a
151 vendor's license to a brewpub. To operate as a brewpub, the
152 following requirements must be met:

153 ~~(a) Notwithstanding other provisions of the Beverage Law,~~
154 ~~any vendor licensed in this state may be licensed as a~~
155 ~~manufacturer of malt beverages upon a finding by the division~~
156 ~~that:~~

157 ~~1. The brewpub vendor must will be engaged in brewing malt~~
158 ~~beverages at a single licensed brewpub premises location and in~~
159 ~~an amount that does which will not exceed 10,000 kegs per~~
160 ~~calendar year. For purposes of this paragraph subsection, the~~
161 ~~term "keg" means 15.5 gallons.~~

162 (b) A brewpub may sell alcoholic beverages in a face-to-
163 face transaction with a consumer as follows:

164 1. Malt beverages manufactured on the licensed brewpub
165 premises for on-premises consumption.

166 2. Malt beverages manufactured exclusively by other
167 manufacturers for on-premises consumption as authorized under
168 its vendor's license.

169 3. Any wine or liquor for on-premises consumption as
170 authorized under its vendor's license.

171 (c) A brewpub may not ship malt beverages to or between
172 licensed brewpub premises owned by the licensed entity. A
173 brewpub is not a manufacturer for the purposes of s.



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174 563.022(14) (d).175 (d) A brewpub may not distribute or sell malt beverages
176 outside of the licensed brewpub premises.177 (e) A brewpub must hold a permanent public food service
178 establishment license under chapter 509.179 ~~2. The malt beverages so brewed will be sold to consumers~~
180 ~~for consumption on the vendor's licensed premises or on~~
181 ~~contiguous licensed premises owned by the vendor.~~182 ~~(f)(b) A brewpub is Any vendor which is also licensed as a~~
183 ~~manufacturer of malt beverages pursuant to this subsection shall~~
184 ~~be responsible for applicable reports pursuant to ss. 561.50 and~~
185 ~~561.55 with respect to the amount of beverage manufactured each~~
186 ~~month and shall pay applicable excise taxes thereon to the~~
187 ~~division by the 10th day of each month for the previous month.~~188 ~~(g)(e) A It shall be unlawful for any licensed distributor~~
189 ~~of malt beverages or any officer, agent, or other representative~~
190 ~~thereof may not to discourage or prohibit a brewpub any vendor~~
191 ~~licensed as a manufacturer under this subsection from offering~~
192 ~~malt beverages brewed for consumption on the licensed premises~~
193 ~~of the brewpub vendor.~~194 ~~(h)(d) A It shall be unlawful for any manufacturer of malt~~
195 ~~beverages or any officer, agent, or other representative thereof~~
196 ~~may not to take any action to discourage or prohibit a any~~
197 ~~distributor of the manufacturer's product from distributing such~~
198 ~~product to a brewpub licensed vendor which is also licensed as a~~
199 ~~manufacturer of malt beverages pursuant to this subsection.~~



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200 Section 2. Subsection (1) of section 561.5101, Florida
201 Statutes, is amended to read:

202 561.5101 Come-to-rest requirement; exceptions; penalties.—

203 (1) For purposes of inspection and tax-revenue control,
204 all malt beverages, except those manufactured and sold pursuant
205 to s. 561.221(2) or (3) 561.221(3), must come to rest at the
206 licensed premises of an alcoholic beverage wholesaler in this
207 state before being sold to a vendor by the wholesaler. The
208 prohibition contained in this subsection does not apply to the
209 shipment of malt beverages commonly known as private labels. The
210 prohibition contained in this subsection shall not prevent a
211 manufacturer from shipping malt beverages for storage at a
212 bonded warehouse facility, provided that such malt beverages are
213 distributed as provided in this subsection or to an out-of-state
214 entity.

215 Section 3. Subsection (6) of section 561.57, Florida
216 Statutes, is amended to read:

217 561.57 Deliveries by licensees.—

218 (6) Common carriers are not required to have vehicle
219 permits to transport alcoholic beverages. Common carriers may
220 not make deliveries of malt beverages directly to a consumer.

221 Section 4. Subsections (1) and (3) of section 562.34,
222 Florida Statutes, are amended to read:

223 562.34 Containers; seizure and forfeiture.—

224 (1) ~~A It shall be unlawful for any person~~ may not ~~to~~ have
225 in her or his possession, custody, or control any cans, jugs,



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226 jars, bottles, vessels, or any other type of containers which
227 are being used, are intended to be used, or are known by the
228 possessor to have been used to bottle or package alcoholic
229 beverages; however, this subsection does ~~provision shall~~ not
230 apply to a any person properly licensed to bottle or package
231 such alcoholic beverages, a or to any person intending to
232 dispose of such containers to a person, firm, or corporation
233 properly licensed to bottle or package such alcoholic beverages,
234 or a person who has in her or his possession, custody, or
235 control a growler as defined in s. 563.06(7).

236 (3) ~~A It shall be unlawful for any person may not to~~
237 transport any cans, jugs, jars, bottles, vessels, or any other
238 type of containers intended to be used to bottle or package
239 alcoholic beverages; however, this subsection does ~~section shall~~
240 not apply to a any firm or corporation holding a license to
241 manufacture or distribute such alcoholic beverages, a and shall
242 ~~not apply to any~~ person transporting such containers to a any
243 person, firm, or corporation holding a license to manufacture or
244 distribute such alcoholic beverages, or a person transporting a
245 growler as defined in s. 563.06(7).

246 Section 5. Subsections (1) and (6) of section 563.06,
247 Florida Statutes, are amended, present subsection (7) is
248 renumbered as subsection (8) and amended, and a new subsection
249 (7) is added to that section, to read:

250 563.06 Malt beverages; imprint on individual container;
251 size of containers; growlers; exemptions.-



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252 (1) ~~On and after October 1, 1959,~~ All taxable malt
253 beverages packaged in individual containers possessed by any
254 person in the state for the purpose of sale or resale in the
255 state, except operators of railroads, sleeping cars, steamships,
256 buses, and airplanes engaged in interstate commerce and licensed
257 under this section, shall have imprinted thereon in clearly
258 legible fashion by any permanent method the word "Florida" or
259 "FL" and no other state name or abbreviation of any state name
260 in not less than 8-point type. The word "Florida" or "FL" shall
261 appear first or last, if imprinted in conjunction with any
262 manufacturer's code. A facsimile of the imprinting and its
263 location as it will appear on the individual container shall be
264 submitted to the division for approval.

265 (6) With the exception of growlers as defined in
266 subsection (7), all malt beverages packaged in individual
267 containers sold or offered for sale by vendors at retail in this
268 state shall be in individual containers containing no more than
269 32 ounces of such malt beverages; ~~provided,~~ however, ~~that~~
270 nothing contained in this section shall affect malt beverages
271 packaged in bulk, ~~or~~ in kegs, or in barrels or in any individual
272 container containing 1 gallon or more of such malt beverage
273 regardless of individual container type.

274 (7) (a) As used in the Beverage Law, the term "growler"
275 means any container between 32 ounces and 128 ounces in size,
276 that was originally manufactured to hold malt beverages.

277 (b) A growler may be filled or refilled with:



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278 1. A malt beverage manufactured by a manufacturer that
279 holds a valid manufacturer's license and operates a taproom
280 pursuant to s. 561.221(2)(a).

281 2. A malt beverage manufactured by a manufacturer that
282 holds a valid manufacturer's license and a valid vendor's
283 license pursuant to s. 561.221(2)(b).

284 3. Malt beverages manufactured by any manufacturer, if the
285 manufacturer filling the growler that holds a valid
286 manufacturer's license pursuant to s. 561.221(2)(b) and a valid
287 quota license at that location pursuant to ss. 561.20(1) and
288 565.02(1)(a)-(f).

289 4. A malt beverage sold by a vendor who holds a valid
290 quota license pursuant to ss. 561.20(1) and 565.02(1)(a)-(f).

291 (c) A growler must have an unbroken seal or be incapable
292 of being immediately consumed.

293 (d) A growler must be clearly labeled as containing an
294 alcoholic beverage and provide the name of the manufacturer, the
295 brand, the volume, the percentage of alcohol by volume, and the
296 required label information for alcoholic beverages under 27
297 C.F.R. s. 16.21. If a growler being refilled has an existing
298 label or other identifying mark from a manufacturer or brand,
299 that label shall be covered sufficiently to indicate the
300 manufacturer and brand of the malt beverage placed in the
301 growler.

302 (e) A growler must be clean before being filled.

303 (f) A licensee authorized to fill growlers may not use



Amendment No. 1

304 growlers for purposes of distribution or sale outside the
305 licensed manufacturing premises or licensed vendor premises.

306 (8)(7) A Any person, firm, or corporation or an agent,
307 officer, or employee thereof who violates, its agents, officers,
308 or employees, violating any of the provisions of this section
309 commits, shall be guilty of a misdemeanor of the first degree,
310 punishable as provided in s. 775.082 or s. 775.083, and the
311 license, if any, shall be subject to revocation or suspension by
312 the division.

313 Section 6. If a provision of s. 561.221(2), Florida
314 Statutes, as amended by this act, is held invalid, or if the
315 application of that subsection to any person or circumstance is
316 held invalid, the invalidity does not affect other provisions or
317 applications of this act which can be given effect without the
318 invalid provision or application, and to this end s. 561.221(2),
319 Florida Statutes, is severable.

320 Section 7. This act shall take effect July 1, 2014.

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323 -----

324 **T I T L E A M E N D M E N T**

325 Remove everything before the enacting clause and insert:

326 A bill to be entitled

327 An act relating to malt beverages; amending s. 561.221, F.S.;
328 providing requirements for a licensed manufacturer of malt
329 beverages to sell such beverages directly to consumers;



Amendment No. 1

330 providing requirements for a taproom; prohibiting a manufacturer
331 from holding a vendor's license at specified premises; providing
332 requirements for a licensed manufacturer to obtain a vendor's
333 license; specifying under what circumstances a manufacturer may
334 sell alcoholic beverages under its vendor's license; requiring a
335 manufacturer to complete certain reports; providing
336 applicability; providing requirements for a brewpub to be
337 licensed as a manufacturer or vendor; providing requirements for
338 a brewpub to sell alcoholic beverages to consumers; amending s.
339 561.5101, F.S.; conforming a cross-reference; amending s.
340 561.57, F.S.; prohibiting common carriers from making deliveries
341 of malt beverages to consumers; amending s. 562.34, F.S.;
342 providing that possessing and transporting a growler is lawful;
343 amending s. 563.06, F.S.; defining the term "growler"; providing
344 requirements for growlers; providing construction and
345 severability; providing an effective date.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Business & Professional
 2 Regulation Subcommittee

3 Representative Young offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (6) of section 563.06, Florida
 8 Statutes, is amended to read:

9 563.06 Malt beverages; imprint on individual container;
 10 size of containers; exemptions.-

11 (6) All malt beverages packaged in individual containers
 12 sold or offered for sale by vendors at retail in this state
 13 shall be in individual containers containing no more than 64 ~~32~~
 14 ounces of such malt beverages; provided, however, that nothing
 15 contained in this section shall affect malt beverages packaged
 16 in bulk or in kegs or in barrels or in any individual container



Amendment No. 2

17 containing 1 gallon or more of such malt beverage regardless of
18 individual container type.

19 Section 2. This act shall take effect July 1, 2014.

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T I T L E A M E N D M E N T

23

Remove everything before the enacting clause and insert:

24

A bill to be entitled

25

An act relating to malt beverages; amending s. 563.06,

26

F.S.; revising the maximum container size in which

27

malt beverages are required to be packaged for sale at

28

retail; providing an effective date.