
# Government Operations Appropriations Subcommittee

# Meeting Packet

**March 24, 2015**
**3:30 p.m. – 5:30 p.m.**
**Morris Hall**

Steve Crisafulli
Speaker

Jeanette Nuñez
Chair

# The Florida House of Representatives

**Appropriations Committee**

**Government Operations Appropriations Subcommittee**

**Steve Crisafulli**
**Speaker**

**Jeanette Nuñez**
**Chair**

**March 24, 2015**

**AGENDA**
**3:30 p.m. – 5:30 p.m.**
**Morris Hall**

I. **Call to Order/Roll Call**

II. **Consideration of Bills**

CS/HB 107 Alcoholic Beverages by Business & Professions Subcommittee, Rep. Steube

HB 301 Malt Beverages, Rep. Sprowls

CS/HB 401 Public Lodging & Public Food Service Establishments by Business & Professions Subcommittee, Rep. Magar

CS/HB 927 Title Insurance by Insurance & Banking Subcommittee, Rep. Hagar

CS/HB 985 Maintenance of Agency Final Orders by Rulemaking Oversight & Repeal Subcommittee, Rep. Eisnaugle

III. **Closing Remarks/Adjourn**

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4813 Fax: (850) 488-9633

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 107 Alcoholic Beverages
**SPONSOR(S):** Business & Professions Subcommittee; Steube
**TIED BILLS:** **IDEN./SIM. BILLS:**

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

### SUMMARY ANALYSIS

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

**Package Stores and Electronic Benefits Transfer Program**

- Repeals the provisions that limits the items a package store may sell and that prohibits direct access to other buildings or rooms.
- Provides that EBT cards cannot be used to purchase alcoholic beverages.

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

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

**Deliveries of Alcoholic Beverages**

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

**Growlers and Malt Beverage Tastings**

- Specifies growlers to be containers of 32, 64, and 128 ounces; specifies packaging and labeling requirements and the licensees authorized to fill and sell growlers.
- Permits manufacturers or distributors to conduct tasting of malt beverages on a vendor's licensed premises subject to certain requirements.

**Malt Beverage Franchise Agreements**

- Revises regulation of contract agreements between malt beverages manufacturers and distributors.

**Limited Malt Beverage Self-Distribution**

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

**Craft Distilleries**

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

The bill is expected to result in a reduction of revenues to the Department of Business and Professional Regulation. However, the fiscal impact has been addressed in the House fiscal plan for FY 2015-16.

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**General Beverage Law**

Three-Tier System

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[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 are generally collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tiered system is deeply rooted in the concept of the perceived "tied house evil," in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[2] Activities between manufacturers, distributors, and vendors are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those regulations, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

The following are some limited exceptions to the three-tier regulatory system:

- A manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism;[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]

**Electronic Benefits Transfer Program**

Current Situation

Currently, the Florida Department of Children and Families (DCF) uses the electronic benefits transfer (EBT) cards to assist in the dissemination of the food assistance benefits and temporary cash

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[1] s. 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,* (June 2004), http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf .
[3] s. 561.221(2), F.S.
[4] s. 561.221(3), F.S.
[5] s. 561.221(1), F.S.
[6] s. 562.16, F.S.

assistance payments provided by federal and state government programs such as SNAP (Supplemental Nutrition Assistance Program) and TANF (Temporary Assistance for Needy Families).[7] The benefits are placed on an EBT card, which acts like a credit card with a set limit, and can be used for certain covered purchases.

Section 402.82(4), F.S., provides locations and activities for which the EBT card cannot be used. The EBT card cannot be used at "[a]n establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045, or in a bottle club as defined in s. 561.01."[8] Therefore the EBT card is not permitted to be used in package stores, where all alcoholic beverages, including distilled spirits are sold.[9] Additionally, the EBT card cannot be used at bars and restaurants that hold quota licenses pursuant to s. 565.02(1)(b)-(f), F.S., where alcoholic beverages including distilled spirits are sold.

Effect of the Bill

The bill expands the prohibition for the use of the EBT card by amending s. 402.82, F.S., to provide that EBT cards cannot be used to purchase an alcoholic beverage as defined in s. 561.01, F.S., and sold pursuant to the Beverage Law. This would include any alcoholic beverage sold pursuant to chs. 561, 562, 563, 564, 565, 567, and 568 F.S., including all wines, beers, and spirits.

**Package Stores**

Current Situation

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

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

Effect of the Bill

The bill repeals s. 565.04, F.S., permitting vendors licensed under s. 565.02(1)(a), F.S., to sell alcoholic beverages in stores without restrictions on other items that may be sold in the store. This will permit grocery stores and big box chain stores to put spirits in their main store rather than building or renting a separate building to sell the higher alcoholic content beverages. Additionally, the repeal of this section will remove the restriction on the type of products that may be sold in a package store.

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

[7] s. 402.82(1), F.S.
[8] s. 402.82(4)(a), F.S.
[9] s. 565.04, F.S.
[10] s. 562.13, F.S.

## Malt Beverage Manufacturer/Vendor Licensure Exceptions

Current Situation

There are a few exceptions to the three-tier regulatory system throughout the nation, where one of the three-tiers (manufacturer, distributor, or vendor) has some ownership or control interest in another tier. Two exceptions in Florida law are referred to as the "tourism exception" and the "brewpub exception."

*Tourism Exception*

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

This exception first became law 1963, when s. 561.221, F.S., was amended to permit malt beverage manufacturers to hold one vendor's license.[11] The language was amended in 1967 to permit wine manufacturers to hold one vendor's license,[12] and again in 1978 to permit malt beverage and wine manufacturers to hold two vendor's licenses.[13] At the time, three manufacturers met the criteria to hold a vendor's license, but only one did.[14] The next amendment came 1979,[15] when the statute was amended to permit malt beverage and wine manufacturers to hold three vendor's licenses.

In 1984,[16] the current exception was adopted into law. Chapter 84-142, Laws of Florida amended s. 561.221, F.S., to remove malt beverage manufacturers from the provision permitting malt beverage and wine manufacturers to hold three vendor's licenses and created a new subsection permitting a malt beverage manufacturer to hold vendor's licenses on a property consisting of a single complex, including a brewery, which promotes the brewery and the tourism industry. These amendments authorized a malt beverage manufacturer to have unlimited vendor's licenses on a property contiguous to a brewery.[17] 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.[18] 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,"[19] have used the exception to open restaurants or taprooms attached to their breweries in order to build their brand. Between 1995 and

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[11] ch. 63-11, Laws of Fla.
[12] ch. 67-511, Laws of Fla.
[13] ch. 78-187, Laws of Fla.
[14] *Senate Staff Analysis and Economic Impact Statement*, SB 758 (1978), May 2, 1978.
[15] ch. 79-54, Laws of Fla.
[16] ch. 84-142, Laws of Fla.
[17] *Senate Staff Analysis and Economic Impact Statement*, SB 813 (1984), May 9, 1984 (CS/HB 183 was substituted for CS/SB 813).
[18] s. 561.221(2), F.S.
[19] The Brewers Association defines a "craft brewer" as a small, independent and traditional brewer, with an annual production of 6 million barrels of beer or less, less than 25% owned or controlled by an alcoholic beverage industry member that is not a craft brewery, and has a majority of its total beverage alcohol volume in beers whose flavor derives from traditional or innovative brewing

February 2014, 90 licenses have been issued in Florida to various entities pursuant to this exception, with 33 being issued in 2012 and 2013 alone.[20] Currently in Florida, approximately 60 breweries are licensed as both manufacturers and vendors pursuant to this exception.[21]

Since 1977, the brewery industry has grown nationwide exponentially, from 89 breweries nationwide in 1977 to 2,538 in June 2013.[22] During 2013, craft brewers saw an 18 percent rise in volume and a 20 percent increase by dollars compared to 15 percent rise in volume and 17 percent increase by dollars in 2012.[23]

*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),[24] which amended the language to permit a vendor to be licensed as a manufacturer of malt beverages at a single location, with the following requirements:

- The brewpub may not brew more than 10,000 kegs of malt beverages on the premises per year;
- Malt beverages manufactured on premises must be sold for on-premises consumption;
- Malt beverages brewed by other manufacturers, as well as wine or liquor may be sold for on-premises consumption as authorized by its vendor's license;
- The brewpub must keep records and pay excise taxes for the malt beverages it sells or gives to consumers.

Due to the requirement that malt beverages be sold for on-premises consumption, brewpubs are not permitted to sell growlers.

*Overlap of Exceptions*

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

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

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ingredients and their fermentation. BREWERS ASSOCIATION, *Craft Brewer Defined*, http://www.brewersassociation.org/statistics/craft-brewer-defined/ (last visited Feb. 6, 2015).

[20] Email from Dan Olson, Deputy Director of Legislative Affairs, Department of Business and Professional Regulation, Re: CMB licenses with a vendor's license issued pursuant to s. 561.221(2), F.S., by year since 1995 (Feb. 4, 2014).

[21] *Id.*

[22] BREWERS ASSOCIATION, *Brewers Association Reports Continued Growth for U.S. Craft Brewers*, (July 29, 2013), http://www.brewersassociation.org/press-releases/brewers-association-reports-continued-growth-for-u-s-craft-brewers/.

[23] BREWERS ASSOCIATION, *Craft Brewing Facts*, http://old.brewersassociation.org/pages/business-tools/craft-brewing-statistics/facts (last visited on Feb. 6, 2015).

[24] ch. 87-63, Laws of Fla.

*Come to Rest Requirements*

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

Effect of the Bill

*Manufacturer with Vendor's License Exception*

The bill permits manufacturers to obtain a vendor's license at two manufacturing premises licensed by the manufacturer, pursuant to the following requirements:

- The manufacturing premises and the vendor's retail premises must be located on the same property, which may be separated by one street or highway.
- The premises must contain a brewery.
- The manufacturer and the vendor retail premises must be included on a sketch provided to the Division at the time of application for licensure.

The manufacturer is permitted to sell alcoholic beverages to consumers pursuant to their vendor's license in face-to-face transactions subject to the following requirements:

- Malt beverages brewed at the licensed manufacturing premises or at another manufacturing premises owned by the manufacturer to consumers:
  - For on-premises consumption.
  - For off-premises consumption in authorized containers such as cans or bottles.
  - For off-premises consumption in growlers.
- Malt beverages brewed by another manufacturer:
  - For on-premises consumption.
  - For off-premises consumption in authorized containers such as cans or bottles.
  - For off-premises consumption in growlers.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

The manufacturer maintains responsibility to maintain records and pay excise taxes for the malt beverages it sells or gives to consumers pursuant to its vendor's license.

An entity that has applied for a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before March 15, 2015, or has been issued a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before July 1, 2015, may maintain the licenses previously obtained or received based on the application prior to March 15, 2015, but may not obtain or apply for additional vendor's licenses. But manufacturers that hold both a vendor's license and a manufacturer's license must comply with the above listed requirements.

Manufacturers with vendor's licenses are prohibited from creating a chain of more than two vendor licensed manufacturing premises under common control of one entity, either directly or indirectly. However, manufacturers are not prohibited to purchase or own stock in a publicly traded corporation where the licensee does not have and does not obtain a controlling interest. For manufacturers that hold vendor's licenses at more than two licensed manufacturing premises prior to July 1, 2015, or applied for prior to March 15, 2015, the limit of two is replaced with the actual number of manufacturing premises with vendor licenses the entity operates or obtains as a result of the application prior to March 15, 2015.

*Taprooms*

The bill permits manufacturers to have a taproom at a licensed manufacturing premises without obtaining a vendor's license. Manufacturers who already have two premises with both a manufacturer and vendor's license pursuant to the above exception may have a taproom at any additional manufacturing premises or at any manufacturing premises in lieu of obtaining a vendor license. Manufacturers may only have a taproom pursuant to the following requirements:

- Taprooms must be attached to the licensed manufacturing premises, which may be separated by a street or highway;
- The manufacturing premises and taproom must be included on a sketch provided to the Division at the time of application for licensure.

The manufacturer is authorized to sell only malt beverages it brews, in a taproom through face-to-face transactions with consumers according to the following requirements:

- For on-premises consumption;
- For off-premises consumption in growlers.

Of the malt beverages sold in the taproom, at least 70 percent must have been brewed on the licensed manufacturing premises. No more than 30 percent of the malt beverages sold in the taproom may be brewed by the manufacturer at other licensed manufacturing premises and shipped to the taproom pursuant to s. 563.022(14)(d), F.S.

The manufacturer maintains its responsibility to record and pay excise taxes for the malt beverages it sells or gives to consumers in the taproom. Furthermore, manufacturers are permitted to obtain a permanent food service license in the taproom.

*Severability of the Brewery with Vendor's License Exception and Taprooms Exception*

The bill provides that, if a provision of s. 561.221(2), F.S., regarding the breweries with a vendor's license exception or taprooms, as referenced above, is held invalid, or if the application of the section is held invalid, that the invalidity of the section does not affect other provisions or applications of the act.

*Brewpub Exception*

The bill maintains the Division's authority to issue both a manufacturer's and a vendor's license to a brewpub subject to the following requirements, in addition to the existing requirements listed above:

- The brewpub may not ship malt beverages to or between licensed brewpub premises owned by the same licensed entity pursuant to s. 563.022(14)(d), F.S.;
- The brewpub must hold a permanent food service license;
- The brewpub shall not place malt beverages brewed on the premises into the distribution channel.

The brewpub is permitted to sell alcoholic beverages to consumers pursuant to their vendor's license in face-to-face transactions subject to the following requirements:

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

*Come to Rest Requirements*

The bill exempts malt beverages brewed by a manufacturer with a vendor's license pursuant to s. 561.221(2) or (3), F.S., (Tourist Exception, Taprooms, and Brewpubs) from the requirement that all malt beverages come to rest at the licensed premises of a distributor prior to being sold to a vendor by the distributor.

**Malt Beverage Tastings**

Current Situation

As part of Florida's "Tied House Evil" laws, there are many restrictions to the business and market activities between the three-tiers. Restrictions include preventing shared promotions, where a manufacturer or distributor may partner with a vendor to promote a specific product at the vendor's location.

Manufacturers and distributors are prohibited from providing malt beverages for tastings at a vendor's licensed premises, as it would be a violation of the Tied-House Evil provisions of the Beverage Law. Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. Additionally, s. 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

Vendors are permitted to provide alcoholic beverages directly to consumers if the alcoholic beverages are paid for by the vendor. Therefore, vendors are currently permitted to conduct malt beverage tastings using malt beverages that the vendor owns.

Effect of the Bill

The bill deletes language in s. 561.42(14)(e), F.S., prohibiting manufacturers or distributors from conducting sampling of malt beverages on a vendor's licenses premises and makes some conforming changes to the subsection.

Additionally, s. 563.09, F.S., is created to permit a manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof to conduct malt beverages tastings on a vendor's licensed premises if the vendor is licensed for on-premises consumption or the vendor is licensed for off premises consumption and:

- The vendor's licensed premises consists of at least 10,000 square feet or more interior space; or,
- The vendor is licensed pursuant to s. 565.02(1)(a), F.S.;

The tastings may only be conducted as follows:

- Limited to and directed toward members of the general public of the age of legal consumption;
- If the vendor is licensed for on premises consumption, served in a cup, glass, or other open container; and,
- If the vendor is only licensed for off premises consumption, be provided to the consumer in a tasting cup with a capacity of 3.5 ounces or less.

The manufacturer or distributor may purchase the malt beverages from the vendor at no more than retail price.

The manufacturer or distributor conducting the tastings shall:

- Provide the malt beverages used in the tasting;
- The total volume of the product offered for tasting may not exceed 576 ounces.
- Not pay a fee or provide any compensation to the vendor;
- Properly dispose of any remaining beverages or return any unconsumed malt beverages to the manufacturer's or distributor's inventory;
- Must complete any applicable reports and pay applicable excise taxes, even if the manufacturer or distributor contracts with a third-party agent to conduct the tasting.

More than one tasting may be held on a licensed premises each day, but only one tasting event may be conducted at any one time.

The bill does not alter a vendor's rights to conduct tastings under the current law, and is supplemental to any special act or ordinance. The bill provides rulemaking authority for the division to adopt rules to implement the tastings provision.

**Deliveries of Alcoholic Beverages**

Current Situation

A license vendor is permitted to transport alcoholic beverage purchased directly from a distributor's place of business to the vendor's licensed premises or off-premises storage, so long as the vendor or any person disclosed on the application owns or leases the vehicle used for transport and that the vehicle was disclosed to the Division and a permit is issued for the vehicle. The person whose name is included in the permit application must be the person that operates the vehicle during transport.[25]

In order to obtain a vehicle permit for the transport of alcoholic beverages, the licensee must submit an application with a $5 fee per vehicle to the Division. Permits do not expire unless the licensee disposes of the vehicle, the vendor's license is transferred, canceled, or not renewed, or is revoked. The vendor may request that a permit be canceled.[26]

By accepting a vehicle permit, the vendor or person disclosed on the application agrees the vehicle is subject to inspection and search without a search warrant, to ensure the vendor is complying with the Beverage Law. The inspection may be completed by authorized Division employees, sheriffs, deputy sheriffs, and police officers during business hours or when the vehicle is being used to transport alcoholic beverages. The vehicle permit and invoice or sales ticket for the alcoholic beverage in the vehicle must be carried in the vehicle while the vehicle is being used to transport alcoholic beverages.

Pursuant to s. 562.07, F.S., alcoholic beverages cannot be transported in quantities of more than 12 bottles except by:

- Common Carriers;
- In owned or leased vehicles of licensed vendors or authorized persons transporting the alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage if the vehicle has the required permit;
- Individuals who possess the beverages not for resale;
- Licensed manufacturers, distributors, or vendors delivery of alcoholic beverages away from their place of business in vehicles owned or leased by the licensees; or
- A vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in s. 561.57(5), F.S.

[25] s. 561.57(3), F.S.
[26] s. 561.57(4), F.S

Effect of the Bill

The bill amends s. 561.57(3) and (4), F.S., to allow a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by the Division without a vehicle permit if the vehicle is owned or leased by the vendor. However, a vehicle permit shall be required if the vehicle is owned or leased by a person listed on the vendor's license.

Additionally, the bill maintains the requirement to possess an invoice or sales ticket during the transportation of alcoholic beverages.

Finally, the bill amends s. 562.07, F.S., by amending entities and individuals that can transport alcoholic beverages in quantities of more than 12 bottles to include:

- Common carriers;
- Individuals who possess the beverages not for resale;
- Licensed manufacturers, distributors, or vendors transporting alcoholic beverages pursuant to s. 561.57, F.S.

**Container Sizes and Growlers**

Current Situation

*Standard Containers*

Currently, s. 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors be packaged in individual containers of no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type. The industry developed bottles, cans, kegs, and other containers, as well as the shipping equipment to protect and distribute bottles, cans, and kegs based on industry standard sizes. Distributors have created a nationwide distribution system with the capacity to transport industry standard sized containers.[27]

*Growlers*

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of 32 or 64 ounces that the consumer can take to a manufacturer/vendor to be filled with malt beverage for consumption off the licensed premises.[28] The standard size for a growler is 64 ounces.[29] Florida malt beverage law does not specifically address growlers.

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

Effect of the Bill

*Container Size*

The bill provides that authorized containers as defined in s. 563.06(6), F.S., do not include growlers. A new subsection is created to define growlers, set requirements for growlers, and indicate license types

[27] Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Jan. 9, 2013).
[28] BeerAdvocate, *The Growler: Beer-To-Go!*,(July 31, 2002) http://www.beeradvocate.com/articles/384/.
[29] Brew-Tek, *What is a Growler?*, http://www.brew-tek.com/products/growlers/what-is-a-growler/ (last visited Feb. 6, 2015).

authorized to fill growlers. The new container sizes authorized for use as growlers are limited to use as specified and may not be used for purposes of distribution or sale outside the manufacturer's or vendor's licensed premises.

*Growlers*

The bill defines growlers as a container of 32, 64, and 128 ounces in volume, originally manufactured to hold malt beverages. The requirement that the container be originally manufactured to hold malt beverages insures the exclusion of containers such as empty soda bottles, milk jugs, or other containers not manufactured strictly to hold malt beverages.

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

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

Growlers must meet the following requirements:

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

The bill provides that it is legal to possess and transport empty growler containers.

**Malt Beverage Franchise Agreements**

Current Situation

Section 563.022, F.S., sets forth requirements for franchise agreements between distributors and manufacturers of malt beverages. Most states have a law that requires manufacturers to sign a franchise agreement with distributors in the state in order to preserve the three-tier system. This model was enacted in the 1970s. At the time, fewer than 50 manufacturers existed in America and nearly 5,000 distributors. Many distributors carried beer only from a single large manufacturer. Franchise laws were drafted to protect the distributors in case the manufacturer decided not to renew the franchise agreement.[30] Therefore the franchise laws that were written at the time were written in a way that would protect distributors from being forced out of business if a manufacturer decided to go with another distributor. The protectionism was based on the theory that a distributor that had only contracted with

[30] Steve Hindy, *Free Craft Beer!*, NEW YORK TIMES, (Mar. 30, 2014), at SR12.

one large manufacturer would be forced out of business if that manufacturer decided to not renew the contract at the end of the contract term, since the distributor would have all its capital and equipment wrapped up in the distribution and marketing of that one manufacturer's brands.

Section 563.022(2)(c), F.S., defines "franchise" to mean "a contract or agreement, either express or implied whether oral or written, for a definite or indefinite period of time in which a manufacturer grants to a beer distributor the right to purchase, resell, and distribute any brand or brands offered by the manufacturer." The statute does not provide any requirements setting forth the required provisions of a franchise agreement.

The statute prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of manufacturing, importing, distributing, and selling of malt beverages, and provides that any person who violates any provision of the franchise requirements is not subject to criminal penalties in the Beverage Law on account of the violation. Subsection (5) lists various acts that can constitute unfair or prohibited acts. It also provides that it is unlawful for any manufacturer or representative of a manufacturer "to terminate, cancel, ***fail to renew, or refuse to continue*** the franchise or selling agreement of any...distributor without good cause..."[31] "The nonrenewal of a franchise or selling agreement without good cause shall constitute an unfair termination or cancellation regardless of the specified time period of such franchise or selling agreement."[32] This language negates any language in the contract placing a term limit on the contract, thus making the contract essentially perpetual. Additionally, distributors and manufacturers are not required to renegotiate a contract for different terms at any point. This means that a manufacturer entering into a contract would be held to the terms of the agreement perpetually, even if the market or industry changed in a significant manner or if another distributor was able to compete with the terms of the contract at a later date, thus lessening the manufacturer's free contract rights or competitive pricing in distribution of malt beverages.

Once a franchise contract is established, there is no requirement in law for either the manufacturer or distributor to renegotiate the terms of the contract based on outside factors which may have changed the relative market or bargaining positions of the parties. Because these contracts are unlikely to be revisited, manufacturers whose bargaining and market position may rise may not be able to leverage their success and as readily control their brand, as distribution contracts are virtually perpetual under the current law.

In order to terminate, cancel, fail to renew, or refuse to continue a franchise agreement, the manufacturer must give notice at least 90 days prior of their intend termination action to the distributor, act in good faith, and have good cause for their intended termination action.[33]

The manufacturer's required notice must make a statement of their intended termination action, make a statement of the reason for their termination action, and provide the effective date of their termination action.[34]

Under current law, good cause will be found to exist when:

- The distributor fails to comply with a reasonable and material provision of the franchise agreement;
- The manufacturer knew of the distributor's failure not more than 18 months before the date of notification is given;
- The distributor is given written notice by the manufacturer of failure to comply with the agreement;
- The distributor is given reasonable opportunity to cure the noncompliance. The distributor must provide a plan of corrective action within 30 days and be given an additional 90 days to cure the noncompliance or sell the distributorship.[35]

[31] s. 563.022(5)(b)4., F.S. (emphasis added).
[32] s. 563.022(5)(b)4., F.S.
[33] s. 563.022(6), (9), and (10), F.S.
[34] s. 563.022(9), F.S.

The manufacturer carries the burden of proof that he/she acted in good faith, that the notice requirements were met, and that there was good cause for the termination. Further, under current law, the distributor must provide written consent prior to the expiration of the manufacturers 90 day notice period. Should a distributor not provide this consent, the distribution contract will continue unless the contract is voided by court order or an elevated termination condition occurs, described in s. 563.022(10), F.S., to void the distribution contact.

Under s. 563.022(10), F.S., a manufacturer may terminate a distribution contract with only 15 days written notice, if any of the following occurs:

- The distributor becomes insolvent;
- The distributor's license is revoked for more than 60 days;
- The distributor or a partner or individual with 10 percent or more ownership of the distributor has been convicted of a felony unless the convicted individual sells his interest within 15 days of the conviction;
- The distributor acted fraudulently relating to a material matter in dealings with the manufacturer or its products;
- The principle of the distributor intentionally and willfully sells the manufacturer's products outside his exclusive territories in Florida;
- The distributor fails to pay and continues to fail to pay within 15 days after receipt of notice of delinquency and demand for payment;
- The distributor sells, transfers, or assigns the franchise or control without written consent of the manufacturer.[36]

At any point during the 90 day notice period or during the 15 day period provided in case of malpractice on the part of the distributor, either party may bring action in the appropriate circuit court to shorten the notice period or extend it pending a final determination of proceedings on the merits. The court has the authority to grant temporary, preliminary, and final injunctive relief.[37]

Finally, a manufacturer may terminate, cancel, not renew, or discontinue a franchise agreement with not less than 30 days written notice if the manufacturer discontinues production or distribution in Florida of all brands sold by the manufacturer to the distributor. This doesn't prohibit the manufacturer from doing test marketing of new brands of beer, provided the manufacturer has notified the Division in writing of the test marketing.[38]

Distributors are required to "devote such efforts and resources, as required in the [franchise] agreement..., to sales and distribution of all the manufacturer's products which the distributor has been granted the right and has agreed to sell and distribute..."[39]

Currently, a manufacturer who terminates, cancels, fails to renew or discontinues a franchise agreement without good cause, or who unreasonably withholds consent to any assignment, transfer, or sale of a distributor's business assets or voting stock or other equity securities, must pay the distributor "reasonable compensation" for the diminished value of the distributor's business. If the manufacturer and distributor cannot agree to the "reasonable compensation," the matter may be submitted to an arbitrator selected by the parties and the claim settled in accordance with rules provided by the American Arbitration Association. Arbitration costs are to be shared.[40]

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[35] s. 563.022(7), F.S.
[36] s. 563.022(10), F.S.
[37] s. 563.022(18)(a) and (b), F.S.
[38] s. 563.022(11), F.S.
[39] s. 563.022(12), F.S.
[40] s. 563.022(17), F.S.

Any person who is injured by a violation of s. 563.022, F.S., may bring action in circuit court and, if successful, shall recover damages sustained and may bring an action to obtain a declaratory judgment that the act violates the section to enjoin a manufacturer or distributor who has violated the section. [41]

When a distributor maintains an inventory because of a franchise agreement, and that agreement is terminated, the manufacturer is required to repurchase inventory of the manufacturer's product possessed by the distributor within 60 days and pay the actual distributor cost, including freight and reasonable storage and handling cost, during repurchase. [42] The manufacturer is not required to repurchase any inventory which the distributor desires to keep, provided the distributor has a contractual right to do so, any inventory ordered after notification of a manufacturer's termination action, or any inventory acquired by the distributor from a source other than the manufacturer.[43]

Current law provides stability in the malt beverage distribution system by helping to ensure long term contractual relationships between manufacturers and distributors. These regulations appear to have been designed to protect distributors and the distribution system from disruption that could result from the untimely termination of a contract with a large manufacturer.

Today there are more than 2,700 manufacturers and fewer than 1,000 distributors in the United States. A significant number of manufacturers are considered "craft breweries," smaller breweries that specialize in brewing craft beer, who produce 6 million barrels of beer or less and who are generally independently owned from an alcoholic beverage industry member.[44]

There are currently 98 malt beverage manufacturers located within Florida and 383 malt beverage distributors licensed in Florida.[45] Nearly all of the 383 distributors have diversified the manufacturers they distribute for. Consequently, the loss of a single manufacturer contract, in most cases, would not have a significant impact on the distributor.

Effect of the Bill

The bill changes the definition of "franchise" to "franchise agreement" and requires that the contract be written for a definite period of time. The references to a franchise agreement are corrected throughout the bill language. Additionally, the term "primary manufacturer" is added to the definitions. "Primary manufacturer" means a manufacturer that provides more than 50 percent by volume of the malt beverages purchased by and delivered to a distributor per calendar year.

The bill provides that each franchise agreement shall:

- Be negotiated and executed in good faith by both parties;
- Include exclusive territorial assignments;
- Provide a maximum term of 5 years for non-primary manufacturers, and provide that agreements made before July 1, 2015 expire on June 30, 2015;
- Be substantially similar in terms with other franchise agreements of the manufacturer;
- Include provisions for recovery of actual damages by the distributor if the manufacturer terminates or cancels the agreement before expiration of the term of the agreement without good cause. Damages are not available for failure to renew an agreement by a non-primary manufacturer;
- State that the manufacturer's trademarks are the manufacturer's exclusive property to be used in accordance with the manufacturer's standards and direction;

[41] s. 563.022(18), F.S.
[42] s. 563.022(20)(e), F.S.
[43] s. 563.022(20)(d), F.S.
[44] BREWERS ASSOCIATION, *Craft Brewer Defined*, http://www.brewersassociation.org/statistics/craft-brewer-defined/ (last visited Feb. 6, 2015).
[45] Email from Dan Olson, Director of Legislative Affairs, Department of Business and Professional Regulation, RE: number of licensed manufacturers and distributors (Jan. 14, 2015).

- Permit modification of the agreement during the term of the agreement with both party's consent.

The bill repeals language providing that a person who violates a provision of s. 563.022, F.S., is not subject to criminal penalties set forth in the Beverage Law.

The bill removes the prohibition against non-primary manufacturers failing to renew or discontinue a franchise agreement. The bill reduces the notice requirement of s. 563.022(9), F.S., for a manufacturer to terminate or cancel an agreement to 30 days, from 90 days in current law.

The bill provides that a primary manufacturer is still prohibited from terminating, canceling, failing to renew, or discontinuing a franchise agreement upon the expiration of the term of the franchise agreement.

The bill provides that nonrenewal of a franchise agreement by a primary manufacturer without good cause constitutes an unfair termination or cancellation for any time period specified in the agreement.

The requirements for good cause are not amended other than to modify a reference. However the burden of proof for each good faith termination or cancellation by a manufacturer, or termination, cancellation, failure to renew or discontinuance by a primary manufacturer has been amended to require that the manufacturer provide prima facie evidence that it has acted in good faith, that the notice requirements have been met, and there was good cause for the termination, cancellation, nonrenewal, or discontinuance. After the manufacturer provides such prima facie evidence, the burden of proof shifts to the distributor to prove the manufacturer has not met statutory and contractual requirements.

The bill removes the 15 day notice requirement for the elevated termination provisions of a franchise agreement by a manufacturer in s. 563.022, F.S., and allows a manufacturer to immediately terminate a franchise agreement under the circumstances provided.

The bill amends the amount of compensation required by a manufacturer to a distributor for termination or cancellation by a manufacturer without good cause, or termination, cancellation, failure to renew, or discontinuance by a primary manufacturer without good cause from "reasonable compensation" for the diminished value of the distributor's business to actual damages incurred by the distributor because of the termination action.

Additionally, the bill repeals the ability of any person injured by a violation of s. 563.022, F.S., to bring action in circuit court to obtain a declaratory judgment that an act violates the section and enjoin a manufacturer or distributor who has violated the section.

The bill requires that manufacturers repurchase inventory following a termination, cancellation, failure to renew, or discontinuance of the agreement by paying fair market value for the inventory being repurchased and 100 percent of the actual distributor cost, including freight and reasonable storage and handling costs, for all unsold beer. The manufacturer is not required to repurchase any inventory the distributor desires to keep, any inventory ordered after receipt of the notification of a termination action, any inventory acquired from a source other than the manufacturer, or any expired inventory.

**Limited Malt Beverage Self-Distribution**

Current Situation

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

Effect of the Bill

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

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

While this provision will permit any malt beverages manufacturer to make limited sales and delivery of products directly to vendors, it is expected to serve as a mechanism to assist new manufacturers in establishing customers.[46]

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

**Craft Distilleries**

Current Situation

As noted above, there are some exceptions to the three-tier regulatory system. In 2013, s. 565.03, F.S., was amended to create another exception to the three-tier regulatory system regarding the manufacture and sale of distilled spirits.[47] "Distillery" is defined as "a manufacturer of distilled spirits." "Craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises and notifies the Division of the desire to operate as a craft distillery.[48] A craft distillery is permitted to sell the distilled spirits it produces to consumers for off-premise consumption. Sales of the spirits must be made on "private property" contiguous to the distillery premises at a souvenir gift shop operated by the distillery. Once a craft distillery's production limitations have been surpassed (75,000 gallons), the craft distillery is required to notify the Division within five days and immediately cease sales to consumers.

Craft distilleries are prohibited from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and caps the total sales to each consumer at two or less containers per customer per calendar year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers.

Effect of the Bill

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

B. SECTION DIRECTORY:

**Section 1** amends s. 402.82, 2 F.S., prohibiting electronic benefits transfer cards from being used or accepted to purchase an alcoholic beverage.

[46] Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Oct. 9, 2013).
[47] ch. 2013-157, Laws of Fla.
[48] s. 565.03(1)(a), F.S.

**Section 2** amends s. 561.221, F.S., modifying exceptions to the three-tier system.

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

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

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

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

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

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

**Section 9** amends s. 563.022, F.S., revising requirements for franchise agreements between malt beverage manufacturer and distributors and providing limited self-distribution for manufacturers.

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

**Section 11** creates s. 563.09, F.S., authorizing a licensed distributor or manufacturer of malt beverages to conduct a malt beverage tasting and providing requirements and limitations.

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

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

**Section 14** provides construction and severability.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Vehicle Permits:
According to the Department, the elimination of the required permit and associated fee will result in a small reduction in revenue collections. The fee is a one-time fee, not an annual fee. In FY 2013-14 total fees collected for vehicle permits were $675.

Package Stores:
According to the Department, it is possible that 645 licenses will no longer be needed by large retailers for package stores. The Department estimates the bill will reduce revenue licensing collections by $252,840 (645 licenses x $392 maximum license fee = $252,840). The state's share of the revenue loss would be approximately $108,620 ($144,219 of the revenue loss would be less revenues transferred to the cities and counties).

The fiscal impact of the bill has been addressed in the House fiscal plan for FY 2015-16.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Package Stores:
It is possible that 645 licenses will no longer be needed by large retailers. Due to the reduction in licenses and associated fees, cities and counties could lose up to $88,393 and $55,827, respectively, for a total annual loss of $144,219 recurring.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

Package Stores: Some alcoholic beverage licensees may be able to increase profits by selling additional merchandise, or smaller licensees may have a decrease in sales. The price of quota licenses may increase. Additionally, some businesses currently required to obtain multiple licenses for multiple stores will be able to save money by obtaining one license to conduct business rather than multiple licenses by combining their package store with a larger store location.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division will likely need to amend applications for licensure, requiring the rule adopting the form to undergo the rulemaking process. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

Section 7 amends s. 562.13, F.S., regulates the age of a person a vendor under the Beverage Law may employ. A vendor who is licensed under s. 565.02(1)(a), F.S., and whose gross monthly sales of alcoholic beverages do not exceed 30 percent of its total gross sales of products and services may employ a person under the age of 18. A record keeping requirement for vendors who are licensed under s. 565.02(1)(a), F.S., and who wish to employ persons under the age of 18 may be required to enforce this section.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to alcoholic beverages; amending s. 402.82, F.S.; conforming provisions; prohibiting electronic benefits transfer cards from being used or accepted to purchase an alcoholic beverage; amending s. 561.221, F.S.; providing requirements for a licensed manufacturer of malt beverages to sell such beverages directly to consumers; providing operation requirements for a taproom; prohibiting a manufacturer from holding a vendor's license at specified premises; providing requirements for a licensed manufacturer to obtain a vendor's license; specifying circumstances under which a manufacturer may sell alcoholic beverages under its vendor's license; requiring a manufacturer to complete certain reports; providing applicability; providing requirements for a brewpub to be licensed as a manufacturer or vendor; providing requirements for a brewpub to sell alcoholic beverages to consumers; amending s. 561.42, F.S.; deleting a prohibition against certain entities conducting tastings; revising requirements for promotional displays and advertising; amending s. 561.5101, F.S.; conforming a cross-reference; amending s. 561.57, F.S.; revising restrictions on the vehicle required for use by a vendor who transports alcoholic beverages; modifying provisions related to vehicle

permits for vendors; requiring a vendor or authorized person who transports alcoholic beverages to possess a specified invoice or sales ticket; amending s. 562.07, F.S.; conforming provisions; amending s. 562.13, F.S.; providing exceptions and requirements for a minor employed by a specified vendor to sell alcoholic beverages; amending s. 562.34, F.S.; providing that possessing and transporting a growler is lawful; amending s. 563.022, F.S.; revising the definition of the term "franchise agreement"; defining the term "primary manufacturer"; requiring a franchise agreement to include specified terms and provisions; providing standards by which manufacturers may not renew franchise agreements; prohibiting a primary manufacturer from discontinuing or failing to renew a franchise agreement without meeting certain requirements; revising requirements for the burden of proof during an action related to certain terminations, cancellations, nonrenewals, or discontinuances of franchise agreements; providing notice requirements for certain terminations, cancellations, nonrenewals, or discontinuances of a franchise agreement; authorizing limited self-distribution for specified manufacturers; providing requirements for such self-distribution; requiring a manufacturer to pay compensation after cancellation or

termination of an agreement; deleting the remedy of declaratory judgment for an action brought under s. 563.022; revising provisions related to the repurchase of inventory upon termination of an agreement; amending s. 563.06, F.S.; defining the term "growler"; providing requirements for growlers; creating s. 563.09, F.S.; authorizing a licensed manufacturer, distributor, or importer of malt beverages to conduct a malt beverage tasting; providing requirements and limitations; amending s. 565.03, F.S.; revising the definition of the term "distillery"; deleting restrictions on the sale of individual containers to consumers in a face-to-face transaction; repealing s. 565.04, F.S., relating to restrictions on the sale by certain licensed alcoholic beverage vendors of merchandise other than specifically authorized types of merchandise and restrictions on direct access to such a vendor's place of business; providing construction and severability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 402.82, Florida Statutes, is amended to read:

402.82 Electronic benefits transfer program.—

(4) Use or acceptance of an electronic benefits transfer card is prohibited at the following locations or for the following activities:

(a) The purchase of an alcoholic beverage as defined in s. 561.01 and sold pursuant to the Beverage Law ~~An establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045 or a bottle club as defined in s. 561.01~~.

Section 2. Subsections (2) and (3) of section 561.221, Florida Statutes, are amended to read:

561.221 Retail exceptions to manufacturing licenses; brewing exceptions to vendor licenses ~~Licensing of manufacturers and distributors as vendors and of vendors as manufacturers~~; conditions and limitations.—

(2) A manufacturer of malt beverages that is licensed and engaged in the manufacture of malt beverages in this state may sell directly to consumers in face-to-face transactions, which, notwithstanding s. 561.57(1), requires the physical presence of the consumer to make payment for and take receipt of the beverages on the licensed manufacturing premises, as follows:

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

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

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

3. Malt beverages may be sold to consumers in the taproom for off-premises consumption in authorized containers pursuant to s. 563.06(7).

4. A manufacturer of malt beverages is responsible for paying applicable excise taxes to the division and submitting applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages sold or given to consumers in the taproom each month.

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

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

(b) In lieu of a taproom, on or after July 1, 2015, the division may ~~is authorized to~~ issue vendor's licenses to a manufacturer of malt beverages at no more than two licensed manufacturing premises for which the manufacturer has an interest, directly or indirectly, in the license if the manufacturer meets the following requirements:

1. A licensed manufacturer may obtain one vendor's license at no more than two of the licensed manufacturing premises for which the manufacturer has an interest, directly or indirectly, in the license. Any additional licensed manufacturing premises, for which the manufacturer has an interest, directly or indirectly, in the license, may operate a taproom without a vendor's license pursuant to paragraph (a).

2. The vendor's license must be located on the licensed manufacturing premises consisting of a single complex that includes a brewery. Such premises may be divided by no more than one public street or highway. The licensed vendor premises shall be included on the sketch or diagram defining the licensed premises submitted with the manufacturer's license application

pursuant to s. 561.01(11). All sketch or diagram revisions by the manufacturer must be approved by the division, verifying that the vendor premises operated by the licensed manufacturer is owned or leased by the manufacturer and is located on the licensed manufacturing premises.

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

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

(I) On-premises consumption.

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

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

b. Malt beverages manufactured exclusively by other manufacturers for:

(I) On-premises consumption.

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

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

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

4. A manufacturer of malt beverages pursuant to this

paragraph is responsible for paying applicable excise taxes to the division and submitting applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages manufactured and sold pursuant to its vendor's license or given to consumers.

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

6. An entity that applies for a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before March 15, 2015, or that is issued a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before July 1, 2015, may maintain the licenses previously obtained or received based on such application, but may not obtain or apply for an additional vendor's license. However, except as to the allowance for manufacturers holding a vendor's license at more than two licensed manufacturing premises before July 1, 2015, a vendor's license held by a manufacturer of malt beverages pursuant to this paragraph, regardless of when first obtained, is subject to subparagraphs 1.-5.

7. An entity with direct or indirect interests in vendor licenses issued to not more than two licensed manufacturing premises under this paragraph may not be related, directly or

indirectly, to any other entity with direct or indirect interest in other vendor licenses issued to other separate manufacturing premises. This subparagraph prohibits the creation of a chain of more than two vendor licensed manufacturing premises under common control of entities with direct or indirect interests in such vendor licensed manufacturing premises. This subparagraph does not prohibit the purchase or ownership of stock in a publicly traded corporation where the licensee does not have and does not obtain a controlling interest in the corporation. An entity lawfully operating more than two licensed manufacturing premises with vendor licenses pursuant to subparagraph 6. may exceed the limit of two licenses with the actual number of manufacturing premises with vendor licenses operated by the entity~~, even if such manufacturer is also licensed as a distributor, for the sale of alcoholic beverages on property consisting of a single complex, which property shall include a brewery and such other structures which promote the brewery and the tourist industry of the state. However, such property may be divided by no more than one public street or highway~~.

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

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

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

(b) A brewpub may sell the following alcoholic beverages in a face-to-face transaction with a consumer:

1. Malt beverages manufactured on the licensed brewpub premises for:

a. On-premises consumption.

b. Off premises consumption in growlers, pursuant to s. 563.06(7).

2. Malt beverages manufactured by other manufacturers for:

a. On-premises consumption.

b. Off premises consumption in growlers if the brewpub holds a valid quota license pursuant to s. 563.06(7).

3. Wine or liquor for on-premises consumption as authorized under its vendor's license.

(c) A brewpub may not ship malt beverages to or between licensed brewpub premises owned by the licensed entity. A brewpub is not a manufacturer for the purposes of s. 563.022(14)(d).

(d) A brewpub may not distribute malt beverages.

(e) A brewpub must hold a permanent public food service establishment license under chapter 509.

~~2. The malt beverages so brewed will be sold to consumers~~

~~for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor.~~

(f) ~~(b)~~ As a manufacturer, a brewpub is ~~Any vendor which is also licensed as a manufacturer of malt beverages pursuant to this subsection shall be~~ responsible for payment of applicable excise taxes to the division and applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages ~~beverage~~ manufactured each month ~~and shall pay applicable excise taxes thereon to the division by the 10th day of each month for the previous month~~.

(g) ~~(c)~~ A ~~It shall be unlawful for any~~ licensed distributor of malt beverages or any officer, agent, or other representative thereof may not ~~to~~ discourage or prohibit a brewpub ~~any vendor~~ licensed ~~as a manufacturer~~ under this subsection from offering malt beverages brewed for consumption on the licensed premises of the brewpub ~~vendor~~.

(h) ~~(d)~~ A ~~It shall be unlawful for any~~ manufacturer of malt beverages or any officer, agent, or other representative thereof may not ~~to~~ take any action to discourage or prohibit a ~~any~~ distributor of the manufacturer's product from distributing such product to a brewpub ~~licensed vendor which is also~~ licensed ~~as a manufacturer of malt beverages~~ pursuant to this subsection.

Section 3. Subsection (14) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American

source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(14) The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any ~~broker,~~ sales agent~~,~~ or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table

lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, and ~~but~~ may be sold without limitation in total value of such items sold to a vendor.

(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

~~(e) Manufacturers, distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, shall not conduct any sampling activities that include tasting of their product at a vendor's premises licensed for off-premises sales only.~~

(e)~~(f)~~ A manufacturer ~~Manufacturers~~, distributor ~~distributors~~, importer ~~importers~~, brand owner ~~owners~~, or brand registrant ~~registrants~~ of malt beverages ~~beer~~, and any ~~broker,~~ sales agent~~,~~ or sales person thereof or contracted third-party, may ~~shall~~ not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage

tasting authorized under s. 563.09 ~~vendors~~.

(f)~~(g)~~ A distributor ~~Distributors~~ of malt beverages ~~beer~~ may sell to a vendor ~~vendors~~ draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and the ~~a~~ distributor may exchange any parts that ~~which~~ are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of malt beverages ~~beer~~ may furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 4. Subsection (1) of section 561.5101, Florida Statutes, is amended to read:

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

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

to an out-of-state entity.

Section 5. Subsections (3) and (4) of section 561.57, Florida Statutes, are amended to read:

561.57 Deliveries by licensees.—

(3) A licensed vendor may transport alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage. A vendor may transport alcoholic beverage purchases in a vehicle~~, if the vehicle used to transport the alcoholic beverages is~~ owned or leased by the vendor ~~or any~~ without a permit. A person who has been disclosed on a license application filed by the vendor may use a vehicle not owned or leased by the vendor to transport alcoholic beverages ~~and approved by the division and~~ if a valid vehicle permit has been issued for such vehicle. A vehicle owned or leased by a person disclosed on a license application filed by the vendor and approved by the division under this section ~~subsection~~ must be operated by such person when transporting alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage.

(4) A vehicle permit may be obtained for a vehicle not owned or leased by the vendor by ~~a licensed vendor or~~ any person authorized in subsection (3) upon application and payment of a fee of $5 per vehicle to the division. The signature of the person authorized in subsection (3) must be included on the vehicle permit application. Such permit remains valid and does

not expire unless the vendor or any person authorized in subsection (3) disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. ~~The division shall cancel a vehicle permit issued to a vendor upon request from the vendor.~~ The division shall cancel a vehicle permit issued to any person authorized in subsection (3) upon request from that person or the vendor. By acceptance of a vehicle permit, the ~~vendor or any~~ person authorized in subsection (3), who intends to use a vehicle not owned or leased by the vendor, agrees that such vehicle is always subject to inspection and search without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times that the vehicle is being used to transport ~~or deliver~~ alcoholic beverages. A vehicle permit issued under this subsection ~~and invoices or sales tickets for alcoholic beverages purchased and transported~~ must be carried in the vehicle used by the ~~vendor or any~~ person authorized in subsection (3) when the vendor's alcoholic beverages are being transported ~~or delivered~~. A vendor or a person who is authorized by a vendor to transport or deliver alcoholic beverages under this section must possess an invoice or sales ticket when possessing such beverages in a vehicle and transporting the alcoholic beverages.

Section 6. Section 562.07, Florida Statutes, is amended to read:

562.07 Illegal transportation of beverages.—It is unlawful for alcoholic beverages to be transported in quantities of more than 12 bottles except as follows:

(1) By common carriers;

~~(2) In the owned or leased vehicles of licensed vendors or any persons authorized in s. 561.57(3) transporting alcoholic beverage purchases from the distributor's place of business to the vendor's licensed place of business or off-premises storage and to which said vehicles are carrying a permit and invoices or sales tickets for alcoholic beverages purchased and transported as provided for in the alcoholic beverage law;~~

(2)~~(3)~~ By individuals who possess such beverages not for resale within the state;

(3)~~(4)~~ By licensed manufacturers, distributors, or vendors transporting ~~delivering~~ alcoholic beverages under s. 561.57 ~~away from their place of business in vehicles which are owned or leased by such licensees~~; and

(4)~~(5)~~ By a vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in s. 561.57(5).

Section 7. Paragraph (c) of subsection (2) of section 562.13, Florida Statutes, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

(2) This section shall not apply to:

(c) Persons under the age of 18 years who are employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations licensed under ss. 563.02(1)(a) and 564.02(1)(a). This exception also includes a vendor licensed under s. 565.02(1)(a) whose gross monthly sales of alcoholic beverages do not exceed 30 percent of its total gross sales of products and services. A person 18 years of age or older must personally supervise the sale of a distilled spirits beverage product by verifying the age of the purchaser to be 21 years of age or older and approving the sale ~~which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises~~.

However, a minor to whom this subsection otherwise applies may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity, as defined in s. 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment.

Section 8. Subsections (1) and (3) of section 562.34, Florida Statutes, are amended to read:

562.34 Containers; seizure and forfeiture.—

(1) A ~~It shall be unlawful for any~~ person may not ~~to~~ have in her or his possession, custody, or control any cans, jugs, jars, bottles, vessels, or any other type of containers which are being used, are intended to be used, or are known by the possessor to have been used to bottle or package alcoholic

beverages; however, this subsection does ~~provision shall~~ not apply to a ~~any~~ person properly licensed to bottle or package such alcoholic beverages, a ~~or to any~~ person intending to dispose of such containers to a person, firm, or corporation properly licensed to bottle or package such alcoholic beverages, or a person who has in her or his possession, custody, or control one or more growlers as defined in s. 563.06(7).

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

Section 9. Section 563.022, Florida Statutes, is amended to read:

563.022 Relations between beer distributors and manufacturers.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) Regulation of business relations between beer distributors and manufacturers is necessary and appropriate in the public interest.

(b) This section is enacted pursuant to authority of the

state under the provisions of the Twenty-First Amendment to the United States Constitution to promote the public's interest in fair, efficient, and competitive distribution of malt beverage products by regulation and encouragement of manufacturers and distributors to conduct their business relations toward these ends by:

1. Assuring that the beer distributor is free to manage its business enterprise, including the distributor's right to independently establish its selling prices;

2. Assuring the manufacturer and the public of service from a distributor who will devote reasonable efforts and resources to sales and distribution of the manufacturer's products, which distributor has been granted the right to sell and distribute and to maintain a satisfactory sales level; and

3. Establishing and maintaining an orderly system of distribution of beer to the public.

(c) This section shall govern all relations between manufacturers and their distributors to the full extent consistent with the constitutions and laws of this state and the United States.

(d) In order to promote the intention and policies announced herein, the provisions of this section shall be liberally construed.

(2) DEFINITIONS.—In construing this section, unless the context otherwise requires, the word, phrase, or term:

(a) "Designated member" means the spouse, child,

grandchild, parent, brother, or sister of a deceased individual who owned an interest in a distributor, who is entitled to inherit the deceased individual's ownership interest in the distributor under the terms of the deceased individual's will or other testamentary device, or who is entitled to inherit such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a distributor, the term means the person appointed by a court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a distributor.

(b) "Distributor" or "wholesaler" means any person, firm, association, corporation, or company which is a distributor licensed to sell and distribute beer at wholesale to persons who are licensed to sell beer.

(c) "Franchise agreement" or "agreement" means a written contract or agreement~~, either expressed or implied, whether oral or written,~~ for a definite ~~or indefinite~~ period of time in which a manufacturer grants to a beer distributor the right to purchase, resell, and distribute a specified ~~any~~ brand or brands offered by the manufacturer.

(d) "Franchisee" means a beer distributor to whom a franchise is offered or granted.

(e) "Franchisor" means a beer manufacturer who grants a

franchise to a beer distributor.

(f) "Fraud" includes actual fraud or constructive fraud as normally defined, in addition to the following:

1. A misrepresentation in any manner, whether intentionally false or arising from gross negligence, of a material fact.

2. A promise or representation not made honestly and in good faith.

3. An intentional failure to disclose a material fact.

4. Any artifice employed to deceive another.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned as defined and interpreted under s. 671.201(20).

(h) "Manufacturer" means any person who manufactures or imports beer for distribution to distributors licensed in Florida.

(i) "Person" means a natural person, corporation, association, partnership, trust, or other business entity and, in case of a business entity, shall include any other entity in which it has a majority interest or it effectively controls, as well as the individual officers, directors, and other persons in active control of the activities of each such entity. The term also includes heirs, assigns, personal representatives, and guardians.

(j) "Primary manufacturer" means a manufacturer that provides more than 50 percent by volume of the malt beverages

purchased by and delivered to a distributor per calendar year.

(k) ~~(j)~~ "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective manufacturer for Florida distributors that entered into, continued, or renewed an agreement with the manufacturer during a period of 24 months prior to the proposed transfer of the distributor's business, or for Florida distributors that have changed managers or designated managers during a period of 24 months prior to the proposed change in manager or successor manager of the distributor's business.

(l) ~~(k)~~ "Retaliatory action" includes, but is not limited to, the refusal of a primary manufacturer to continue an agreement or a material reduction in the quality of service or quantity of products available to a distributor under an agreement which refusal or reduction is not made in good faith.

(m) ~~(l)~~ "Sale" includes the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, or mortgage in any manner or form, whether by transfer in trust or otherwise, of beer or of any franchise related thereto for a consideration and any option, subscription, or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether in oral or written form, for a consideration.

(n) ~~(m)~~ "Transfer of a distributor's business" means the voluntary sale, assignment, or other transfer of the business or control of the business of the distributor, including the sale or other transfer of stock or assets by merger, consolidation,

or dissolution.

(3) FRANCHISE REQUIREMENTS.—Each franchise agreement entered into between a manufacturer and distributor shall:

(a) Be negotiated and executed in good faith by both parties such that obligations and considerations are met during the term of the agreement. The agreement shall provide that the distributor and manufacturer agree with respect to all aspects of the agreement, that both parties will act in good faith during the course of the agreement, and that the distributor agrees to not unfairly allocate its resources and efforts to a competitor brand.

(b) Include all territorial assignments.

(c) Have a term of no more than 5 years if the manufacturer is not the primary manufacturer for the distributor. An agreement entered into before July 1, 2015, that has no definite term shall expire on June 30, 2020.

(d) Be substantially similar with regard to terms and conditions to all other franchise agreements between the manufacturer and its other distributors.

(e) Include provisions for the recovery of actual damages by the distributor pursuant to subsection (18), if the manufacturer terminates or cancels the agreement before expiration of the term of the agreement without good cause as defined in subsections (8) and (11). Damages shall not be awarded for failure to renew an agreement upon completion of the term of the previous agreement if the manufacturer is not a

primary manufacturer.

(f) Explicitly state that the manufacturer's trademarks are the manufacturer's exclusive property and shall be used in accordance with the manufacturer's standards and under the manufacturer's direction, and that the use of such a trademark by the distributor provides no rights beyond those expressly provided in the agreement.

(g) Permit modification of the agreement at any time during the term of the agreement if both the manufacturer and distributor agree, provide such modification in writing, and sign the modified agreement.

(4) ~~(3)~~ APPLICATION.—A ~~Any~~ person who engages directly or indirectly in purposeful franchise agreements ~~or contracts~~ in connection with the sale of beer to beer distributors within this state shall be subject to the provisions of this section and shall be subject to the jurisdiction of the courts of this state for violations of this section in accordance with the provisions of the laws of this state.

(5) ~~(4)~~ UNLAWFUL ACTS AND PRACTICES.—Unfair methods of competition and unfair or deceptive acts or practices in the conduct of the manufacturing, importing, distribution, sale, wholesaling, and franchising of beer, as defined in subsection (6) ~~(5)~~, are declared to be unlawful. ~~Any person who violates any provision of this section shall not be subject to the criminal penalties set forth in the Beverage Law on account of such violation.~~

(6)~~(5)~~ UNFAIR AND PROHIBITED ACTS.—

(a) It shall be deemed a violation of subsection (5) ~~(4)~~ for any manufacturer or distributor to engage in any action which is in bad faith or unconscionable and which causes damage in terms of law or equity to any of the parties or to the public.

(b) It shall be deemed a violation of subsection (5) ~~(4)~~ for a manufacturer or officer, agent, or other representative thereof:

1. To coerce or compel, or attempt to coerce or compel, any beer distributor to order or accept delivery of any beer or any other commodity or commodities which such beer distributor has not voluntarily ordered.

2. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of the distributor's order to any distributor having a franchise ~~or contractual~~ agreement for the distribution and sale of beer sold by such manufacturer, beer covered by such franchise agreement ~~or contract~~. However, the failure to deliver any such beer shall not be considered a violation of this section if such failure is due to prudent and reasonable restriction on extension of credit by the manufacturer to the distributor, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the manufacturer, or any agent thereof, shall have no control whatsoever.

3. To coerce or compel, or attempt to coerce or compel, a beer distributor to enter into any agreement~~, whether written or oral,~~ supplementary to an existing franchise with such manufacturer or officer, agent, or other representative thereof, or to do any other act prejudicial to such distributor, by threatening to cancel any franchise ~~or any contractual~~ agreement existing between such manufacturer and such distributor. However, notice in good faith to a beer distributor of such distributor's violation or breach of any terms or provisions of such franchise ~~or contractual~~ agreement shall not constitute a violation of this section if such notice is in writing, is mailed by registered or certified mail to such distributor at his or her current business address, and contains the specific facts as to the distributor's violation or breach of such franchise ~~or contractual~~ agreement.

4. To terminate or~~,~~ cancel~~, fail to renew, or refuse to continue~~ the franchise ~~or selling~~ agreement of any such distributor without good cause as defined in subsections (8) ~~(7)~~ and (11) ~~(10)~~. ~~The nonrenewal of a franchise or selling agreement without good cause shall constitute an unfair termination or cancellation regardless of the specified time period of such franchise or selling agreement.~~

5. If the manufacturer is a primary manufacturer for the distributor, to fail to renew, or refuse to continue the franchise agreement of any such distributor, without good cause as defined in subsections (8) and (11). Such nonrenewal of a

franchise agreement constitutes an unfair termination or cancellation for any time period specified in such franchise agreement. If the manufacturer is not a primary manufacturer for the distributor, the manufacturer is not required to renew or continue the franchise agreement following the term of the franchise agreement.

6.~~5.~~ To willfully discriminate, either directly or indirectly, in price offered to franchisees where the effect of such discrimination is likely to substantially lessen competition.

7.~~6.~~ To prevent or attempt to prevent, by agreement ~~contract~~ or otherwise, any beer distributor from changing the capital structure of his or her distributorship or the means by or through which he or she finances the operation of his or her distributorship, provided that the distributor at all times meets capital standards which are reasonable in light of generally accepted capital standards within the manufacturer's beer distribution system. Nothing in this subparagraph diminishes the right of a manufacturer to prohibit public ownership of its franchises.

8.~~7.~~ To prevent or attempt to prevent, by agreement ~~contract~~ or otherwise, any beer distributor or any officer, member partner, or stockholder of any beer distributor from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no distributor, officer, partner, or stockholder shall have the

right to sell, transfer, or assign the franchise or power of management or control thereunder without the written consent of the manufacturer, distributor, or wholesaler, except that such consent shall not be unreasonably withheld.

a. No manufacturer shall unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock of a distributor or of all or any portion of a distributor's assets, a distributor's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling a distributor, including the distributor's rights and obligations under the terms of an agreement, whenever the person or persons to be substituted meet reasonable qualifications. Upon the death of one of the partners of a partnership operating the business of a distributor, no manufacturer shall deny the surviving partner or partners of such partnership the right to become a successor-in-interest to the agreement between the manufacturer and such partnership, provided that the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership, and provided further that such right is consistent with the rights and desires of the heirs or devises of the deceased partner.

b. Notwithstanding the provisions of subparagraph a., upon the death of a distributor, no manufacturer shall deny approval for any transfer of ownership to a designated member of the family of an owner of a distributor; provided, however, that any

subsequent transfer of such ownership by such designated member shall thereafter be subject to the provisions of subparagraph a.

9.~~8.~~ To obtain money, goods, services, anything of value, or any other benefit from any person in exchange for having coerced or compelled a beer distributor to do business with such other person.

10.~~9.~~ To require a beer distributor to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this section.

11.~~10.~~ To restrict or inhibit, directly or indirectly, the right of free association among manufacturers or distributors of beer for any lawful purpose.

12.~~11.~~ To fix or maintain the price at which a distributor may resell beer.

13.~~12.~~ To coerce or attempt to coerce any distributor to accept delivery of any beer or other commodity ordered by a distributor if the order was properly canceled by the distributor.

14.~~13.~~ To change a distributor's quota of a brand or brands if the change is not made in good faith.

15.~~14.~~ To require a distributor, by any means, to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a manufacturer.

16.~~15.~~ To take any retaliatory action against a distributor that files a complaint regarding an alleged

violation by the manufacturer of state or federal law or an administrative rule.

17.~~16.~~ To require or prohibit, without good cause provided in writing, any change in the manager or successor manager of any distributor who has been approved by the manufacturer as of June 4, 1987. Should a distributor change an approved manager or successor manager, a manufacturer shall not require or prohibit the change unless the person fails to meet the reasonable written standards for Florida distributors of the manufacturer which standards have been provided to the distributor.

(7)~~(6)~~ MANUFACTURER'S GOOD FAITH ~~DISTRIBUTOR'S RESIGNATION,~~ CANCELLATION, TERMINATION, FAILURE TO RENEW, OR REFUSAL TO CONTINUE.—

(a) ~~Notwithstanding any agreement and except as otherwise provided for in this section,~~ A manufacturer shall not ~~cause a distributor to resign from an agreement, or~~ cancel or~~,~~ terminate~~, fail to renew, or refuse to continue under~~ an agreement unless the manufacturer has ~~complied with all of the following~~:

1.~~(a)~~ ~~Has~~ Satisfied the applicable notice requirements of subsection (10); ~~(9).~~

2.~~(b)~~ ~~Has~~ Acted in good faith; and~~.~~

3.~~(c)~~ ~~Has~~ Good cause for the cancellation or~~,~~ termination~~, nonrenewal, discontinuance, or forced resignation~~.

(b) If a manufacturer is a primary manufacturer for the distributor, the manufacturer shall not discontinue or fail to

renew an agreement with the distributor unless the manufacturer has:

1. Satisfied the applicable notice requirements of subsection (10);

2. Acted in good faith; and

3. Good cause for the discontinuance or nonrenewal.

(8) ~~(7)~~ GOOD CAUSE.—Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (7) ~~paragraph (6)(c)~~ when all of the following occur:

(a) There is a failure by the distributor to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the distributor and the manufacturer.

(b) The manufacturer first acquired knowledge of the failure described in paragraph (a) not more than 18 months before the date notification was given pursuant to subsection (10) ~~(6)~~.

(c) The distributor was given written notice by the manufacturer of failure to comply with the agreement.

(d) The distributor was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits provided for in paragraph (e).

(e) The distributor has been afforded 15 ~~30~~ days in which to submit a plan of corrective action to comply with the agreement and an additional 30 ~~90~~ days to cure such

noncompliance in accordance with the plan or to sell his or her distributorship consistent with the provisions of this section.

(9)~~(8)~~ BURDEN OF PROOF.—For each good faith termination or~~,~~ cancellation by a manufacturer, or nonrenewal~~,~~ or discontinuance by a primary manufacturer of the distributor, the manufacturer shall provide prima facie evidence ~~have the burden of~~ showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance. After the manufacturer provides such prima facie evidence, the burden of proof is shifted to the distributor to prove that the manufacturer has not met statutory and contractual requirements.

(10)~~(9)~~ NOTICE.—Notwithstanding any agreement and except as otherwise provided in this section, for each good faith termination or cancellation by a manufacturer, or nonrenewal or discontinuance by a primary manufacturer of the distributor, the manufacturer shall furnish written notice ~~of the termination, cancellation, nonrenewal, or discontinuance of an agreement~~ to the distributor at least 30 ~~not less than 90~~ days before the effective date of the termination, cancellation, nonrenewal, or discontinuance; in no event shall the contractual term of any such franchise ~~or selling~~ agreement expire without the written consent of the beer distributor involved before ~~prior to the~~ expiration of at least 30 ~~90~~ days after ~~following~~ such written notice. The notice shall be by certified mail and shall contain

all of the following:

(a) A statement of intention to terminate, cancel, not renew, or discontinue the agreement.

(b) A statement of the reason for the termination, cancellation, nonrenewal, or discontinuance.

(c) The date on which the termination, cancellation, nonrenewal, or discontinuance takes effect.

(11) ~~(10)~~ CONDITIONS AND NOTICE REQUIRED.—Notwithstanding subsections (7) ~~(6)~~ and (10) ~~(9)~~, a manufacturer may terminate, cancel, fail to renew, or discontinue an agreement for good cause immediately without notice ~~after not less than 15 days' written notice given in the manner and containing the information required by subsection (9),~~ if any of the following occur:

(a) Insolvency of the distributor, the filing of any petition by or against the distributor under any bankruptcy or receivership law, or the dissolution or liquidation of the wholesaler which materially affects the distributor's ability to remain in business.

(b) Suspension or revocation of the distributor's license by the division or by the Federal Bureau of Alcohol, Tobacco and Firearms whereby the distributor cannot distribute beer for more than 60 days.

(c) The distributor, or a partner or an individual who owns 10 percent or more of the partnership or stock of a corporate distributor, has been convicted of a felony under the

United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the distributor or manufacturer. However, an existing stockholder or stockholders, partner or partners, a designated member or members, or the distributor itself, if incorporated, shall have, subject to the provisions of this section, the right to purchase the partnership interest or the stock of the offending partner or stockholder, and if the sale is completed within 15 days of the conviction of the offending partner or stockholder, the right of termination, cancellation, nonrenewal, or discontinuance of the distributorship agreement shall not apply.

(d) There was fraudulent conduct on the part of the distributor relating to a material matter in dealings with the manufacturer or its products.

(e) The principal of the distributor intentionally and willfully sells the manufacturer's products to a retailer or retailers located outside a distributor's territory, but only if the manufacturer has assigned exclusive territories to its distributors in Florida.

(f) The distributor fails to pay for the manufacturer's products ordered and delivered in accordance with terms established with the manufacturer and has continued to fail to make payment within 15 business days after receipt of notice of the delinquency and demand for immediate payment.

(g) The distributor sells, transfers, or assigns the franchise or control thereunder without the written consent of

the manufacturer.

(12)~~(11)~~ DISCONTINUANCE OF PRODUCTION OR DISTRIBUTION.—Notwithstanding subsections (7), (10), and (11) ~~(6), (9), and (10)~~, a manufacturer may terminate, cancel, not renew, or discontinue an agreement upon not less than 30 days' prior written notice if the supplier discontinues production or discontinues distribution throughout this state of all the brands sold by the manufacturer to the distributor. Nothing in this section shall prohibit a manufacturer, upon not less than 30 days' notice, to completely discontinue the distribution throughout this state of any particular brand or package of beer. This subsection does not prohibit a manufacturer from conducting test marketing of a new brand of beer or from conducting the test marketing of a brand of beer which is not currently being sold in this state, provided that the manufacturer has notified the division in writing of its plans to test market. The notice shall describe the market area in which the test shall be conducted, the name or names of the distributor or distributors who will be selling the beer, the name or names of the brand of beer being tested, and the period of time during which the testing will take place. A market testing period shall not exceed 18 months.

(13)~~(12)~~ REASONABLE EFFORT REQUIRED.—The distributor shall devote such efforts and resources, as required in the agreement between the distributor and the manufacturer, to sales and distribution of all the manufacturer's products which the

distributor has been granted the right and has agreed to sell and distribute so long as such requirements are reasonable. In the absence of such an agreement, the distributor shall devote reasonable efforts and resources.

(14) ~~(13)~~ WAIVER PROHIBITED.—A distributor shall not waive any of the rights granted in any provision of this section. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(15) ~~(14)~~ MANUFACTURER; PROHIBITED INTERESTS.—

(a) This subsection applies to:

1. A manufacturer;

2. Any officer, director, agent, or employee of a manufacturer; or

3. An affiliate of any manufacturer, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) Except as provided in paragraph (c), no entity or person specified in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor nor shall such entity sell directly to any vendor in this state other than to vendors who are licensed pursuant to s. 561.221(2).

(c) Any entity described in paragraph (a) may financially assist a proposed distributor in acquiring ownership of the distributorship through participation in a limited partnership

arrangement in which the entity described in paragraph (a) is a limited partner and the proposed distributor seeking to acquire ownership of the distributorship is the general partner. Such limited partnership arrangements may exist for no longer than 8 years from their creation and shall not be extended or renewed by means of a transfer of full ownership to an entity described in paragraph (a) followed by the creation of a new limited partnership or by any other means. In any such arrangement for financial assistance, the federal basic permit and distributor's license issued by the division shall be issued in the name of the distributor and not in the name of an entity described in paragraph (a). If, after the creation of a limited partnership pursuant to this paragraph, an entity described in paragraph (a) acquires title to the distributorship which was the subject of the limited partnership, the entity described in paragraph (a) shall divest itself of the distributorship within 180 days, and the distributorship shall be ineligible for limited partnership financing for 20 years thereafter. No entity described in paragraph (a) shall enter into a limited partnership arrangement with a licensed distributor whose distributorship existed and was operated prior to the creation of such limited partnership arrangement.

(d) Nothing in the Beverage Law shall be construed to prohibit a manufacturer from shipping products to or between the licensed premises of its breweries without a distributor's license. A manufacturer that holds a valid manufacturer's

license may deliver, directly to any licensed vendor, up to 2,000 total kegs per calendar year of malt beverages manufactured by the manufacturer and to which it owns the brand rights, subject to the following requirements:

1. Vehicles used to deliver malt beverages to a licensed vendor must be owned or leased by the manufacturer.

2. A manufacturer of malt beverages that is permitted limited self-distribution pursuant to this paragraph is responsible for payment of applicable excise taxes to the division and applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages manufactured and sold to vendors. The reports shall clearly distinguish between malt beverages self-distributed by the manufacturer and malt beverages sold directly to consumers by the manufacturer pursuant to s. 561.221(2).

3. A manufacturer of malt beverages that is permitted limited self-distribution pursuant to this paragraph may not provide malt beverages to a vendor that is within the exclusive sales territory of a distributor with whom the manufacturer is under contract.

4. A manufacturer of malt beverages that is permitted limited self-distribution pursuant to this paragraph may only distribute malt beverages brewed by the licensed manufacturer which have not been shipped between manufacturing premises owned by the manufacturer packaged in kegs or barrels containing 1 gallon or more to be sold or offered for sale by vendors at

retail.

(e) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor for a maximum of 180 consecutive days as the result of a judgment of foreclosure against the distributor or for 180 consecutive days after acquiring title pursuant to the written request of the licensed distributor. Under either of these circumstances, manufacturer ownership of an interest in the license, business, assets, or corporate stock of a licensed distributor shall only be for 180 days and only for the purpose of facilitating an orderly transfer of the distributorship to an owner not affiliated with a manufacturer.

(f) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have a security interest in the inventory or property of its licensed distributors to secure payment for said inventory or other loans for other purposes.

(16)~~(15)~~ AGREEMENTS SUBJECT TO SECTION.—The provisions of this section shall apply to all written or oral agreements between a manufacturer and beer distributor in existence on July 1, 2015 ~~June 4, 1987~~, as well as agreements entered into or renewed after July 1, 2015 ~~June 4, 1987~~.

(17)~~(16)~~ AGREEMENTS BINDING ON SUCCESSOR.—A successor to a manufacturer that continues in business as a manufacturer shall be bound by all terms and conditions of each agreement of the manufacturer in effect on the date of succession.

(18)~~(17) REASONABLE~~ COMPENSATION FOR TERMINATION OR CANCELLATION WITHOUT GOOD CAUSE.—Upon termination or cancellation of the agreement without good cause:

(a) Any manufacturer which, without good cause, cancels or~~,~~ terminates~~, or fails to renew~~ any agreement, or lawfully denies approval of, or unreasonably withholds consent to, any assignment, transfer, or sale of a distributor's business assets or voting stock or other equity securities, shall pay compensation for actual damages to such distributor with whom it has an agreement, and other injured parties. A primary manufacturer that fails to renew an agreement pursuant to subparagraph (6)(b)5. shall pay compensation for actual damages to a distributor with whom it has such agreement, and other injured parties. Actual damages shall reflect damages suffered by the distributor or injured party, including: ~~a written contract~~

1. Lost profits anticipated from prior sales.

2. Incidental and consequential damages.

3. Costs expended and not previously recovered during the duration of the agreement before cancellation or termination.

~~reasonable compensation for the diminished value of the distributor's business or of any ancillary business or both which has been negatively affected by the act of the manufacturer. "Ancillary business" means a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, the assets of which are~~

~~primarily used in transporting, storing, or marketing the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler which recycles returnable beverage containers; or any other business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, which business is primarily operated to benefit the wholesaler's ability to handle the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement. "Controlling stockholder" or "controlling partner" shall mean a person with an ownership interest in the wholesaler of 50 percent or more. The value of the distributor's business or ancillary business shall include, but not be limited to, its goodwill.~~

(b) In the event the manufacturer and the beer distributor are unable to mutually agree on the ~~reasonable~~ compensation to be paid for the actual damages ~~value of the distributor's business, as defined herein~~, the matter may, by agreement of the parties, be submitted to a neutral arbitrator to be selected by the parties and the claim settled in accordance with the rules provided by the American Arbitration Association. Arbitration costs shall be paid one-half by the distributor and one-half by the manufacturer. The award of the arbitrator shall be final and binding on the parties.

(19) ~~(18)~~ REMEDIES.—

(a) During the 30 ~~90~~-day period provided in subsection (10) ~~(9) or during the 15-day period provided in subsection (10)~~, either party, in appropriate circumstances, may bring action in the appropriate circuit court of this state to shorten the notice period so provided or to extend it pending a final determination of such proceedings on the merits.

(b) In any action brought under this section, the court shall have authority to grant temporary, preliminary, and final injunctive relief. If the court grants injunctive relief, bond shall not be required to be posted.

(c) In addition to temporary, preliminary, or final injunctive relief, any person who shall be aggrieved or injured in his or her business or property by reason of anything forbidden in this section may bring an action therefor in the appropriate circuit court of this state and, if successful shall recover the damages sustained and the costs of such action, including a reasonable attorney's fee.

~~(d) Without regard and in addition to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this section may bring an action to obtain a declaratory judgment that an act, action, or practice violates this section and to enjoin a manufacturer or distributor who has violated, is violating, or is otherwise likely to violate this section.~~

(d) ~~(e)~~ When such action is one of common or general interest to many persons or when the parties are numerous and it

is impracticable to bring them all before the court, one or more persons may bring a class action for the benefit of the whole, including actions for injunctive relief.

(e)~~(f)~~ In an action for money damages, only if a judge or jury finds that the defendant acted maliciously, the judge or jury may award punitive damages as permitted by Florida law.

(f)~~(g)~~ The remedies provided in this subsection shall be in addition to any other civil remedies provided by law or in equity. Nothing contained in this subsection shall give rise to or foreclose any claim which would otherwise exist against the manufacturer or distributor by any proposed purchaser of the distributor's business.

(20)~~(19)~~ CONTRACTS AND THE VALIDITY THEREOF.—No manufacturer shall effect any sale to a distributor in Florida except pursuant to a written agreement ~~contract~~ between the manufacturer and the distributor which agreement ~~contract~~ is consistent with the provisions of this section.

(21)~~(20)~~ REPURCHASE OF INVENTORY UPON TERMINATION.—

(a) Whenever any beer distributor enters into a franchise agreement with a manufacturer wherein the distributor agrees to maintain an inventory of beer and the franchise is subsequently terminated in accordance with this section and any circuit court injunction requested by the distributor has been denied or dissolved, the manufacturer shall repurchase the inventory as provided in this section. If the distributor has any outstanding debts to the manufacturer, then the repurchase amount may be

credited to the distributor's account.

(b) The manufacturer shall repurchase that inventory previously purchased from him or her and held by the distributor on the date of termination of the agreement ~~contract~~. The manufacturer shall pay fair market value for the inventory being repurchased and 100 percent of the actual distributor cost, including freight and reasonable storage and handling costs, of all unsold beer. For the purposes of this paragraph, the term "fair market value" means the amount a willing manufacturer, under no compulsion to sell, would be willing to accept, and a willing distributor, under no compulsion to purchase, would be willing to pay for the malt beverages.

(c) Upon payment within a reasonable time of the repurchase amount to the distributor, the title and right of possession to the repurchased inventory shall be transferred to the manufacturer.

(d) The provisions of this section shall not require the repurchase from a distributor of:

1. Any inventory which the distributor desires to keep, provided the distributor has a contractual right to do so.

2. Any inventory which was ordered by the distributor on or after the date of receipt of the notification of termination of the franchise ~~or contractual~~ agreement.

3. Any inventory which was acquired by the distributor from any source other than the manufacturer.

4. Any inventory which the distributor failed to sell by

the "best by" date.

(e) If any manufacturer shall fail or refuse to repurchase any inventory covered under the provisions of this section within 60 days after termination of an agreement ~~a distributor's contract~~, he or she shall be civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the distributor, the distributor's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.

(22)~~(21)~~ INDEMNIFICATION.—A manufacturer shall fully indemnify and hold harmless its distributor against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the manufacturer which are beyond the control of the distributor. The distributor must mail written notice to the manufacturer on a prompt and timely basis after receipt of notice of a complaint, claim, or lawsuit in order for the manufacturer to be liable under this subsection with respect to such complaint, claim, or lawsuit.

Section 10. Subsections (1) and (6) of section 563.06, Florida Statutes, are amended, present subsection (7) is

renumbered as subsection (8) and amended, and a new subsection (7) is added to that section, to read:

563.06 Malt beverages; imprint on individual container; size of containers; growlers; exemptions.—

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

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

(7)(a) As used in the Beverage Law, the term "growler" means a container that holds 32, 64, or 128 ounces in volume that was originally manufactured to hold malt beverages.

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

1. A malt beverage manufactured by a manufacturer that holds a valid manufacturer's license and operates a taproom pursuant to s. 561.221(2)(a), if the manufacturer filling the growler is the same manufacturer that brewed the malt beverage and is filling the growler in the taproom.

2. A malt beverage manufactured by a manufacturer that holds a valid manufacturer's license and a valid vendor's license pursuant to s. 561.221(2)(b) or (3), if the manufacturer filling the growler is the same manufacturer that brewed the malt beverage and is filling the growler pursuant to its vendor's license.

3. A malt beverage manufactured by a manufacturer, if the manufacturer filling the growler holds a valid manufacturer's license pursuant to s. 561.221(2)(b) or (3) and a valid quota license at that location pursuant to ss. 561.20(1) and 565.02(1)(a)-(f).

4. A malt beverage manufactured by a manufacturer and sold by a vendor if:

a. The vendor filling the growler holds a valid quota license at that location pursuant to ss. 561.20(1) and 565.02(1)(a)-(f); or

b. The vendor filling the growler holds a vendor license

under s. 563.02(1)(a)-(f) or s. 564.02(1)(a)-(f), obtains at least 80 percent of its annual gross revenue from the sale of malt beverages or wine or both, and does not also hold a manufacturer's license. Such a vendor is required to maintain records that demonstrate compliance with this provision for 3 calendar years.

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

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

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

(f) A licensee authorized to fill growlers may not use growlers for purposes of distribution or sale outside of the licensed manufacturing premises or licensed vendor premises.

(8)~~(7)~~ A ~~Any~~ person, firm, or corporation or an agent, officer, or employee thereof who violates~~, its agents, officers or employees, violating any of the provisions of~~ this section commits~~, shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083,~~.~~ and the

license, if any, shall be subject to revocation or suspension by the division.

Section 11. Section 563.09, Florida Statutes, is created to read:

563.09 Malt beverage tastings by distributors and manufacturers.—

(1) A manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof, may conduct sampling activities that include the tasting of malt beverage products on:

(a) The licensed premises of a vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or

(b) The licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:

1. The licensed premises is at an establishment with at least 10,000 square feet of interior floor space exclusive of storage space not open to the general public; or

2. The licensed premises is a package store licensed under s. 565.02(1)(a).

(2) A malt beverage tasting conducted under this section must be limited to and directed toward the general public of the age of legal consumption.

(3) For a malt beverage tasting conducted under this section on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption on premises, each serving of

a malt beverage to be tasted must be provided to the consumer by the drink in a tasting cup, glass, or other open container and may not be provided by the package in an unopened can or bottle or in any other sealed container.

(4) For a malt beverage tasting conducted under this section on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises, the tasting must be conducted in the interior of the building constituting the vendor's licensed premises and each serving of a malt beverage to be tasted must be provided to the consumer in a tasting cup having a capacity of 3.5 ounces or less.

(5) A manufacturer, distributor, or importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind, including the provision of a malt beverage at no cost or at a reduced cost, to authorize the conduct of a malt beverage tasting under this section.

(6)(a) A manufacturer, distributor, or importer, or any contracted third-party agent thereof, conducting a malt beverage tasting under this section, must provide all of the beverages to be tasted, the total volume of which per tasting may not exceed 576 ounces; must have paid all excise taxes on those beverages which are required of the manufacturer or distributor; and must return to the manufacturer's or distributor's inventory all of the malt beverages provided for the tasting that remain

unconsumed after the tasting. More than one tasting may be held on the licensed premises each day, but only one manufacturer, distributor, importer, or contracted third-party agent thereof, may conduct a tasting on the premises at any one time.

(b) Any samples of malt beverages provided to a vendor by a manufacturer, distributor, or importer, or any contracted third-party agent thereof, in conjunction with or at the time of a tasting conducted under this section on the licensed premises of such vendor are subject to the volume limit for such premises set forth under paragraph (a).

(c) This subsection does not preclude a manufacturer, distributor, or importer, or any contracted third-party agent thereof, from buying the malt beverages that it provides for the tasting from a vendor at no more than the retail price, but all of the malt beverages so purchased and provided for the tasting which remain unconsumed after the tasting must be removed from the premises of the tasting and properly disposed of.

(7) A manufacturer, distributor, or importer of malt beverages that contracts with a third-party agent to conduct a malt beverage tasting under this section on its behalf is responsible for any violation of this section by such agent.

(8) This section does not preclude a vendor from conducting a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

(9) This section is supplemental to and does not supersede any special act or ordinance.

(10) The division may, pursuant to ss. 561.08 and 561.11, adopt rules to implement, administer, and enforce this section.

Section 12. Subsections (1) and (2) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

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

(a) "Craft distillery" means a licensed distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises and has notified the division in writing of its decision to qualify as a craft distillery.

(b) "Distillery" means a manufacturer that distills ethyl alcohol or ethanol to create ~~of~~ distilled spirits.

(2)(a) A distillery authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch operating in the state, as follows:

1. If engaged in the business of manufacturing distilled spirits, a state license tax of $4,000.

2. If engaged in the business of rectifying and blending spirituous liquors and nothing else, a state license tax of $4,000.

(b) Persons licensed under this section who are in the business of distilling spirituous liquors may also engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, spirits distilled on its premises in this state in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state. A craft distillery or licensed distillery may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with consumers who are making a purchase of ~~two or fewer~~ individual containers, that comply with the container limits in s. 565.10, ~~per calendar year~~ for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.

1. A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(a). Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

2. A craft distillery may only ship, arrange to ship, or

deliver any of its distilled spirits to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

3. Except as provided in subparagraph 4., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

4. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises.

Section 13. Section 565.04, Florida Statutes, is repealed.

Section 14. If any provision of s. 561.221(2), Florida Statutes, as amended by this act, is held invalid, or if the application of that subsection to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end s. 561.221(2),

Florida Statutes, is severable.

Section 15. This act shall take effect July 1, 2015.

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 | ____ |

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Van Zant offered the following:

**Amendment (with title amendment)**

Remove line 1424

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

Remove lines 65-70 and insert:

consumers in a face-to-face transaction; providing

Amendment No. sa1

| 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 | _____ |

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee
Representative Steube offered the following:

**Substitute Amendment for Amendment (325841) by Representative Van Zant (with title amendment)**

Remove line 1424 and insert:

Section 1. Section 565.04, Florida Statutes, is amended and section 565.04(2) is created to read:

565.04 Package store restrictions.—

(1) Vendors licensed under s. 565.02(1)(a) shall not ~~in said place of business~~ sell, offer, or expose for sale any merchandise other than such beverages, in the licensed premises, and the licensed premises ~~such places of business~~ shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices

produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. The licensed premises ~~Such places of business~~ shall have no more than one inside entrance ~~openings~~ permitting direct access to any other building or room, that is separately licensed under the Beverage Law to the same licensee, provided the inside entrance has a door that is opened and closed by patrons and a separate outside entrance is provided ~~except to a private office or storage room of the place of business from which patrons are excluded~~. The licensed premises may also have a private office or storage room from which patrons are excluded.

(2) Notwithstanding any other provision of law, when distilled spirits are delivered to any area of any licensed vendor's place of business such distilled spirits may be stored by the vendor and transported by either a distributor or the vendor through any licensed premises that has an inside entrance into a package store licensed to sell distilled spirits.

(3) The act of selling items in a package store otherwise not permitted for sale pursuant to subsection (1) shall not be a violation of subsection (1) provided the items are obtained at the connected separately licensed premises through the inside entrance and are not displayed in the licensed package store premises as defined on the diagram defining the licensed premises of such package store.

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

Remove lines 65-70 and insert:

consumers in a face-to-face transaction; amending s. 565.04, F.S.; permitting package stores to have direct access to another building licensed under the Beverage Law to the same licensee; providing for the delivery of distilled spirits to a licensed premises that has an inside entrance to a package store; permitting the sale of items obtained in the connected separately licensed premises with payment in the package store; providing

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 | _____ |

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Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Steube offered the following:

**Amendment (with title amendment)**

Remove lines 486-984 and insert:

Section 9. Paragraph (d) of subsection (14) of section 563.022, Florida Statutes, is amended to read:

563.022 Relations between beer distributors and manufacturers.—

(14) MANUFACTURER; PROHIBITED INTERESTS.—

Remove lines 1016-1194

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

Remove lines 35-56 and insert:

amending s. 563.022, F.S.; providing limited self-distribution for manufacturers of malt beverages;

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 301 Malt Beverages
**SPONSOR(S):** Sprowls and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 186

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Business & Professions Subcommittee | 13 Y, 0 N | Butler | Luczynski |
| 2) Government Operations Appropriations Subcommittee | | Topp | Topp BDT |
| 3) Regulatory Affairs Committee | | | |

### SUMMARY ANALYSIS

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor, and vendor. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation is responsible for enforcing the provisions of the Beverage Law.

Current law permits manufacturers to package malt beverages that are offered for sale by vendors in individual containers containing no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type.

The bill permits certain vendors and manufacturers to package malt beverages at the point of sale in containers of 32, 64, or 128 ounces by volume. Furthermore, the bill requires that containers include information specifying the manufacturer and brand of the malt beverage it contains, and that it must have an unbroken seal or be incapable of being immediately consumed.

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

The bill is effective upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

Alcoholic Beverages Regulation Generally

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

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.

Container Size

Currently, s. 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors be packaged in individual containers of no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type. The industry developed bottles, cans, kegs, and other containers, as well as the shipping equipment to protect and distribute bottles, cans, and kegs based on industry standard sizes. Distributors have created a nationwide distribution system with the capacity to transport industry standard sized containers.[1]

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 (67.628 ounces) that the consumer can take to a manufacturer/vendor to be filled with malt beverage for consumption off the licensed premises.[2] The standard size for a growler is 64 ounces.[3] Florida malt beverage law does not specifically address growlers.

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

**Effect of the Bill**

Container Size

The bill provides that notwithstanding s. 563.06(6), F.S., or any other provision of the Beverage Law, a malt beverage may be packaged in an individual container that holds 32, 64, or 128 ounces by volume, if filled at the point of sale by an allowed vendor or manufacturer.

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[1] Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Jan. 9, 2013).

[2] BeerAdvocate, *The Growler: Beer-To-Go!,*(July 31, 2002) http://www.beeradvocate.com/articles/384/.

[3] Brew-Tek, *What is a Growler?*, http://www.brew-tek.com/products/growlers/what-is-a-growler/ (last visited Feb. 6, 2015).

The bill allows manufacturers and vendors with the following licenses to fill individual containers (growlers):

- A manufacturer with any vendor's license;[4]
- A vendor with a quota license that is restricted to package sales only;
- A vendor with a license that permits the sale of malt beverages only for consumption on premises or package sales;
- A vendor with a license that permits the sale of malt beverages and wine for consumption on premises or package sales;
- A vendor with a quota license for consumption on premises or package sales.

The new container sizes authorized for use as growlers are limited to use as specified and may not be used for purposes of distribution or sale outside the manufacturer's or vendor's licensed premises.

Growlers

Growlers must meet the following requirements to be considered an appropriate individual container as allowed by this bill. Each growler, before being sold to the consumer must:

- Include an imprint or label that provides information specifying the manufacturer and the brand of the malt beverage;
- Have an unbroken seal or be incapable of being immediately consumed.

Sale of growlers is restricted by the bill to only licensees authorized to fill growlers. The bill establishes a first degree misdemeanor penalty for any person, firm, or corporation, including its agents, officers, or employees, who sells a growler without one of the authorized license types. In addition, it authorizes the division to suspend or revoke the license and impose a fine up to $250 for authorized licensees who violate the label or seal requirements for the specified container types.

B. SECTION DIRECTORY:

**Section 1** amends s. 563.06, F.S., allowing individual containers containing malt beverages of 32, 64, and 128 ounces by volume to be sold, under certain conditions.

**Section 2** provides that the bill will become effective upon becoming law.

[4] The bill authorizes a manufacturer with a vendor license under s. 561.221(2), F.S., referred to as the "tourist exception" but not a vendor with a manufacturer license under s. 561.221(3), F.S., also called a brewpub license.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   DBPR estimates that the bill may result in a minimal increase in revenues as a result of authorizing the sale of 64 ounce growler containers.[5]

2. Expenditures:

   Authorizing the individual 64 ounce malt beverage containers will add one step to the DBPR inspection process to verify that vendors are selling authorized containers and correctly listing the manufacturer and the brand on the malt beverage containers.

   DBPR indicates that all workload associated with implementing the provisions of the bill are minimal and can be addressed within existing resources.[6]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may help generate additional revenue by authorizing certain licensees to sell 64 ounce growlers.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[5] Department of Business and Professional Regulation – Bill Analysis, page 5, January 8, 2015.
[6] Department of Business and Professional Regulation – Bill Analysis, page 2, January 8, 2015.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to malt beverages; amending s. 563.06, F.S.; authorizing the sale of malt beverages packaged in individual containers of certain sizes if they are filled at the point of sale by certain licenseholders; requiring a container to be imprinted or labeled with certain information; requiring a container to be sealed or incapable of being immediately consumed; providing penalties; providing an effective date.

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

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

563.06 Malt beverages; imprint on individual container; size of containers; exemptions.—

(6) All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers containing no more than 32 ounces of such malt beverages; provided, however, that nothing contained in this section shall affect malt beverages packaged in bulk or in kegs or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

(a) Notwithstanding any other provision of the Beverage Law, a malt beverage may be packaged in an individual container



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

that holds 32, 64, or 128 ounces of such malt beverage if it is filled at the point of sale by any of the following:

1. A licensed manufacturer of malt beverages holding a vendor's license under s. 561.221(2).

2. A vendor holding a quota license under s. 561.20(1) or s. 565.02(1)(a) that authorizes the sale of malt beverages.

3. A vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), unless such license restricts the sale of malt beverages to sale for consumption only on the premises of such vendor.

(b) A container specified in paragraph (a) must include an imprint or label that provides information specifying the manufacturer and the brand of the malt beverage. The container must have an unbroken seal or be incapable of being immediately consumed.

(c) A person, firm, or corporation, including its agents, officers, or employees, which violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and the license held by the person, firm, or corporation, if any, is subject to revocation or suspension by the division. A person, firm, or corporation, including its agents, officers, or employees, which violates paragraph (b) may be subject to a fine by the division of up to $250.

Section 2. This act shall take effect upon becoming a law.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 401 Public Lodging & Public Food Service Establishments
**SPONSOR(S):** Business & Professions Subcommittee; Magar
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 558

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Business & Professions Subcommittee | 11 Y, 0 N, As CS | Gonzalez | Luczynski |
| 2) Government Operations Appropriations Subcommittee | | Topp | Topp BDT |
| 3) Regulatory Affairs Committee | | | |

## SUMMARY ANALYSIS

The Division of Hotels and Restaurants ("Division") within the Department of Business and Professional Regulation ("Department"), enforces the provisions of chapter 509, F.S., and all other applicable laws relating to the license, inspection and regulation of public lodging establishments and public food service establishments.

Under current law, public food service establishments are inspected one to four times per year, based on a risk-based inspection frequency. Establishments' inspection frequency is determined annually. This bill enables the Division to reassess a public food service establishment's inspection frequency more than once annually.

Currently, the Department is required to provide each inspected establishment operator and event sponsor of proposed temporary food service events with the food-recovery brochure. The bill requires the Department only to notify the inspected establishment or temporary event sponsor of the food-recovery brochure.

Public food service establishments holding current licenses from the Division may operate at temporary food service events without obtaining a separate license only if the event is three days or less in duration. The bill allows public food service establishments holding current licenses to operate at all temporary food service events without a separate license, regardless of the duration of the event.

The bill allows the Division to deliver electronic copies of lodging and food service establishment inspection reports to operators. Also, the bill requires operators to make copies of inspection reports available to the Division at the time of inspection. Thus, according to the Department, the bill allows operators to maintain the inspection report in any format, including electronic, on the premises, so long as the inspection report can be readily retrieved upon public request or inspection by the Division.

The bill sets a flat rate delinquent license renewal fee of $50 for all license renewals within 60 days after expiration.

The bill has a negative fiscal impact to the State. The estimated reduction in annual revenue to the Department's Hotels and Restaurants Trust Fund (Trust Fund) is $461,420. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 401) will maintain a surplus positive cash balance of: $13.9 million in FY 2015-16, $17.2 million in FY 2016-17, and $20.6 million in FY 2017-18.

This bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation - Public Food Service Establishment Inspections

The Division of Hotels and Restaurants ("Division") within the Department of Business and Professional Regulation ("Department"), is charged with enforcing the provisions of chapter 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The Division licenses public food service establishments within the state, and is responsible for inspections and quality assurance.[1]

Public food service establishments do not include eating places maintained by schools for student and faculty use; eating places maintained by a church or religious organization, eating places on airplanes, trains, buses, or watercrafts; places certified or licensed by the Agency for Health Care Administration or the Department of Agriculture and Consumer Services; or movie theatre concession stands, and other places which serve beverages, popcorn, and other prepackaged food without additions or preparation.

The Division conducted 108,248 public food services inspections in fiscal year 2013-2014.[2]

In 2008, OPPAGA reviewed Florida's food safety programs and recommended that "the Legislature direct the agencies to adopt a consistent methodology for measuring performance and authorize DBPR to use a risk-based approach to target its resources to restaurants that pose the greatest threat to public health."[3] In a 2010 follow-up report, OPPAGA restated its recommendation and noted that "Risk-based inspection frequency models consider the risk posed by different types of facilities, and enable regulators to target limited resources to the highest risk facilities."[4]

Effective, January 1, 2013, the Division adopted provisions of the 2009 Food and Drug Administration ("FDA") Food Code, which establishes provisions for reducing risk factors known to cause or contribute to foodborne illness. The new risk designations for Food Code provisions establish a three-tiered system which replaces the designations of "critical" or "non-critical" violations. The new designations include "High Priority," "Intermediate," and "Basic."

Currently, public food service establishments are inspected between one to four times per year, based on a risk-based inspection frequency classification. Establishments' risk-based inspection frequency is determined annually based on the risk presented by the establishment's type of food and food preparation processes, type of service, and compliance history.

The classification guidelines for determining the minimum number of annual inspections are presented in the following table:[5]

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[1] s. 509.032, F.S.
[2] Division of Hotels and Restaurants, Annual Report: FY 2013-2014, pg. 14.
[3] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 08-67, December 2008.
[4] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 10-44, December 2010.
[5] Rule 61C-1.002, F.A.C.

| Classification | Public Food Service Establishment Classification Guidelines | Minimum Annual Inspections |
|---|---|---|
| Level 1 | Establishments licensed as annual temporary public food service establishments or vending machines; or<br>Establishments that:<br>• Do not cook raw animal food; or<br>• Cook raw animal food, but do not cool any cooked or heated foods. | 1 |
| Level 2 | Establishments that:<br>• Cook raw animal food and cool any cooked or heated foods; or<br>• Conduct a special process as described in 3-502.11 or 3-502.12, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C.; or<br>• Serve a raw or undercooked animal food that requires a consumer advisory under 3-603.11, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C. or Rule 61C-4.010, F.A.C. | 2 |
| Level 3 | Establishments with a history of non-compliance resulting in three or more disciplinary Final Orders filed with the Agency Clerk within the previous two annual inspection cycles; or Establishments that serve a highly susceptible population as defined in the Food Code, as adopted by reference in Rule 61C-1.001, F.A.C. | 3 |
| Level 4 | Establishments with a confirmed foodborne illness within the previous calendar year as reported by the Florida Department of Health. | 4 |

Effect of the Bill

The bill enables the Division to reassess a public food service establishment's inspection frequency in real-time upon identifying a change in the risk level, rather than waiting for the next annual reassessment. Such risk-based frequency categories and minimum annual reassessment are designed to support the development of data to classify establishments within the correct frequency category in real-time based upon public health risk and to allow the Division to focus its resources on establishments that pose higher risks.

The bill does not change the Division's authority to perform inspections at such other times as the Division determines is necessary to ensure the public's health, safety, and welfare, as well as to investigate complaints.

Present Situation - Food-Recovery Brochure

The food-recovery brochure was developed pursuant to s. 595.420(7), F.S., for public information purposes. The brochure is required to be updated annually and details the need for food recovery programs, the benefit of food recovery programs, the manner in which organizations may become involved in food recovery programs, the protection afforded to such programs, and the food recovery entities or food banks that exist in the state.

In inspecting public food service establishments, the Department is required to provide each inspected establishment with the food-recovery brochure.[6] The Department is also required to provide the brochure along with other educational materials to event sponsors of proposed temporary food service events.[7]

[6] s. 509.032(2)(g), F.S.
[7] s. 509.032(3)(c)2., F.S.

The Florida Department of Agriculture and Consumer Services ("DACS") develops and prints the food-recovery brochure, but prints a limited number of copies and does not provide brochures to the Division for dissemination. The food-recovery brochure is available on the DACS website in a PDF format.

Effect of the Bill

The bill revises the duties with respect to distribution of the food-recovery brochure. Rather than requiring the Department to provide each inspected establishment or temporary food service event sponsor with the food-recovery brochure, the Department is only required to notify the inspected establishments and event sponsors of the brochure.

Present Situation - Temporary Food Service Events

The Division licenses and inspects public food service establishments and food vendors at temporary food service events, defined as "any event of 30 or fewer consecutive days in duration ... where food is prepared, served or sold to the general public."[8] In FY 2013-2014, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events.

Public food service establishments and other food service vendors are required to obtain an individual or annual license from the Division for temporary food service events.[9] There are two types of individual event licenses for temporary food service events: 1-3 day event licenses at a cost of $91 and 4-30 day event licenses at a cost of $105, per event. A temporary food service event annual license, which entitles the licensee to participate in an unlimited number of food service events during the license period, can also be purchased for $456.[10]

Currently, public food service establishments holding current licenses from the Division may operate under the regulations of such a license at temporary food service events if the event is of three days or less in duration.[11] The licensees may operate at a temporary food service event without having to obtain a separate temporary food service event license, but are still subject to inspections at the event.

Effect of the Bill

The bill allows public food service establishments holding current licenses to operate at temporary food service events without a separate license, regardless of the duration of the temporary food service event. This bill does not change the definition of temporary food service event, which is limited to 30 days or fewer.

Present Situation - Public Food Service Establishment Inspection Reports

Notices served by the Division are required to be in writing and delivered personally to the operator of the public lodging establishment or public food service establishment.[12] If the operator of an establishment refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the Division may post such notice in a conspicuous place at the establishment.

[8] Rule 61C-1.001(31), F.A.C.
[9] s. 509.032(3), F.S
[10] Rule 61C-1.008, F.A.C.
[11] s. 509.032(3)(c)3.b., F.S.
[12] s. 509.091, F.S.

Division inspectors record inspection results electronically on personal digital assistants (PDAs) or manually on paper inspection forms. Inspection results are uploaded to DBPR's Single Licensing System and made available for public review on DBPR's website.

Public food service establishment and public lodging establishment operators are required to maintain the latest inspection report or a copy on the premises of the establishment.[13] Operators are required to make such reports or copies available to the public upon request.

Effect of the Bill

The bill provides the Division the option to deliver electronic inspection reports to licensees. The Division may continue to provide hard copies of inspection reports upon request of the licensee. The bill requires operators of establishments to make copies of inspection reports available to the Division at the time of inspection of the establishment.

Present Situation - Delinquent Fees for License Renewal of Public Lodging Establishments

Public food service establishments and public lodging establishments are required to renew their licenses annually.[14] If the license is not renewed by the expiration date, the licensee is assessed a delinquent fee.[15] The Division is required to adopt delinquent fees by rule. Statute prescribes a maximum late fee of $50 for licenses renewed within 30 days of the expiration date and a maximum of $100 for licenses renewed more than 30 days, but less than 60 days, after the expiration date.

Effect of the Bill

The bill reduces the license renewal fee for delinquent licenses by setting a flat rate of $50 instead of two separate rates. The maximum fee of $100 for licenses more than 30 days late is removed, and a flat rate of $50 is set for any late renewal from 1-60 days. Licensed expired more than 60 days will still be subject to an administrative complaint as prescribed in rule.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 509.032, F.S., relating to inspections for licensed public food service establishments and the food-recovery brochure.

**Section 2:** Amends s. 509.091, F.S., relating to electronic lodging inspection reports and food service inspection reports.

**Section 3:** Amends s. 509.101, F.S., relating to copies of food service inspection reports to be maintained by operators of food service establishments.

**Section 4:** Amends s. 509.251, F.S., relating to delinquent fees for license renewal.

**Section 5:** Provides an effective date of July 1, 2015.

[13] s. 509.101, F.S.
[14] s. 509.241, F.S.
[15] s. 509.251, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will reduce the Department's annual revenue to the Hotels and Restaurants Trust Fund by approximately $461,420 per year. Section 1 reduces revenue by eliminating separate licenses for temporary food service events for licensed public food service establishments, which accounts for a reduction of $130,620. Section 4 reduces revenue by reducing the delinquent fee, from $100 to $50, for licenses expired 30-60 days, which accounts for a reduction of $330,880.

The Department's forecast of the Hotels and Restaurants Trust Fund with the revenue impact of HB 401 included for FY 2015-16 and thereafter:[16]

**Hotels and Restaurants Trust Fund**

| | FY 2014-15 | FY 2015-16 | FY 2016-17 | FY 2017-18 |
|---|---|---|---|---|
| July 1 Beginning Fund Balance | 10,006,359 | 13,202,787 | 13,983,727 | 17,277,993 |
| Estimated Revenues | 30,988,150 | 30,574,676 | 30,586,391 | 30,635,805 |
| Estimated Expenditures | (27,791,722) | (29,793,737) | (27,292,124) | (27,293,528) |
| June 30 Year-End Balance | 13,202,787 | 13,983,727 | 17,277,993 | 20,620,269 |

The Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 401) will maintain a surplus positive cash balance of: $13.9 million in FY 2015-16, $17.2 million in FY 2016-17, and $20.6 million in FY 2017-18.

The reduction in revenue will reduce the Service Charge to General Revenue by approximately $36,914 annually.[17]

2. Expenditures:

The bill will reduce the Department's expenditures by reducing the amount of thermal paper used per year as a result of electronic transmittal of inspection reports. A 1% reduction of thermal paper use would result in savings of $509.87, 5% reduction will lead to $2,549.34 in savings, 10% reduction will lead to $5,098.68 in savings, and 15% reduction will lead to $7,648.02 in savings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

[16] Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

[17] Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce expenditures for licensed public food service establishments that operate at temporary food service events by eliminating the cost of obtaining a separate license. Per establishment savings depend upon the type of license obtained, ranging from $105 per 4-30 day event to $456 for an annual license. Also, any establishment with a license expired more than 30 days would pay a reduced delinquent fee, saving $50 per establishment. Total private sector expenditure reductions would be equivalent to the Division's revenue reduction.

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 would be required to adopt procedures for electronic transmittal of the inspection reports and rules relating to how often the Division reassesses public food service establishment inspection frequencies. Also, the Division would need to amend the rules adopting the delinquent fee and disciplinary guidelines relating to operating on an expired license.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Performance Measures

Currently, the Division measures performance based on the percentage of statutorily required inspections completed each year. The Division may want to establish a performance measure that determines the effectiveness of the inspection process based on its ability to increase compliance with food service establishments.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Business & Professions Subcommittee adopted one amendment which amends the portion of the bill that removes the minimum and maximum inspections required per year. The bill preserves the current risk-based inspection frequency for public food service establishments requiring one to four inspections per establishment annually.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to public lodging and public food service establishments; amending s. 509.032, F.S.; revising the frequency at which the Division of Hotels and Restaurants of the Department of Business and Professional Regulation must reassess the inspection frequency of public food service establishments; revising the department's duties with respect to distribution of a specified food-recovery brochure; deleting a restriction on the length of time that a licensed public food service establishment may operate at a temporary food service event; amending s. 509.091, F.S.; authorizing the division to deliver lodging inspection reports and food service inspection reports electronically; amending s. 509.101, F.S.; requiring operators of public food service establishments to maintain copies of food service inspection reports and make them available to the division; amending s. 509.251, F.S.; revising certain delinquent fees for license renewal; providing an effective date.

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

Section 1. Paragraphs (a) and (g) of subsection (2) and paragraph (c) of subsection (3) of section 509.032, Florida

Statutes, are amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has jurisdiction and is responsible for all inspections required by this chapter. The division is responsible for quality assurance. The division shall inspect each licensed public lodging establishment at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually. Each establishment licensed by the division shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall~~, by no later than July 1, 2014,~~ adopt by rule a risk-based inspection frequency for each licensed public food service establishment. The rule must require at least one, but not more than four, routine inspections that must be performed annually, and may include guidelines that consider the inspection and compliance history of a public food service establishment, the type of food and food preparation, and the type of service. The division shall ~~annually~~ reassess the inspection frequency of all licensed public food service establishments at least annually. Public lodging units classified as vacation rentals or timeshare projects are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector

identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan that improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

(g) In inspecting public food service establishments, the department shall notify ~~provide~~ each inspected establishment of the availability of ~~with~~ the food-recovery brochure developed under s. 595.420.

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in

the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of~~, including~~ the food-recovery brochure developed under s. 595.420.

3.a. A public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of

such a license at temporary food service events ~~of 3 days or less in duration~~.

Section 2. Section 509.091, Florida Statutes, is amended to read:

509.091 Notices; form and service.—

(1) Each notice served by the division pursuant to this chapter must be in writing and must be delivered personally by an agent of the division or by registered letter to the operator of the public lodging establishment or public food service establishment. If the operator refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the division may post such notice in a conspicuous place at the establishment.

(2) Notwithstanding subsection (1), the division may deliver lodging inspection reports and food service inspection reports to the operator of the public lodging establishment or public food service establishment by electronic means.

Section 3. Subsection (1) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(1) Any operator of a public lodging establishment or a public food service establishment may establish reasonable rules and regulations for the management of the establishment and its guests and employees; and each guest or employee staying,

sojourning, eating, or employed in the establishment shall conform to and abide by such rules and regulations so long as the guest or employee remains in or at the establishment. Such rules and regulations shall be deemed to be a special contract between the operator and each guest or employee using the services or facilities of the operator. Such rules and regulations shall control the liabilities, responsibilities, and obligations of all parties. Any rules or regulations established pursuant to this section shall be printed in the English language and posted in a prominent place within such public lodging establishment or public food service establishment. In addition, any operator of a public food service establishment shall maintain a copy of the latest food service inspection report ~~or a duplicate copy on premises~~ and shall make it available to the division at the time of any division inspection of the establishment and to the public, upon request.

Section 4. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment may ~~shall~~ not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be

included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before ~~prior to~~ the next such renewal period and one-half of the fee if application is made 6 months or less before ~~prior to~~ such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division ~~within 30 days~~ after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. ~~A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied~~

~~by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.~~

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before ~~prior to~~ the next such renewal period and one-half of the fee if application is made 6 months or less before ~~prior to~~ such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division ~~within 30 days~~ after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. ~~A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.~~

Section 5. This act shall take effect July 1, 2015.

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# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 927 Title Insurance
**SPONSOR(S):** Insurance & Banking Subcommittee; Hager
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1136

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | 12 Y, 0 N, As CS | Lloyd | Cooper |
| 2) Government Operations Appropriations Subcommittee | | Keith AK | Topp BDT |
| 3) Regulatory Affairs Committee | | | |

## SUMMARY ANALYSIS

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title. Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Title insurers are regulated by the Office of Insurance Regulation (OIR), as to licensing and rates, and the Department of Financial Services in its role as "receiver," either through liquidation or rehabilitation. Because liquidation requires cancellation of policies and unforeseen costs to property owners and lenders, title insurer insolvencies are handled through rehabilitation. Claim costs and expenses are funded through assessments on active title insurers (three assessments to date) and recovered through surcharges on title insurance policies issued in the state. A $3.28 surcharge per policy is currently in force. Surcharges are retained by the insurer until they recover their assessment payments. Excess surcharges are paid to the Insurance Regulatory Trust Fund; to date, none have occurred. Excess surcharge collections do not reduce future assessments or assist insurers that are slow to recover their assessment payments.

Once all insurers recover their assessment payment, surcharges will cease. Because the insurer's share of the assessment is based on market share as determined by direct written premium and some insurers have low policy counts but high premium written, and are therefore slow to recover their assessment, and others may go inactive before recovering their assessment payment, it is unclear when, if ever, the surcharges will end.

The bill changes the administration process regarding assessment recovery surcharges. Specifically, the bill:

- removes language limiting the surcharge to one per insolvent company, permitting the receiver to adjust the surcharge amount related to a particular company;
- requires transaction settlement statements to specify that the surcharge amount is a "surcharge" and provide that the surcharge is not premium;
- requires any insurer that was not subject to a given assessment, regardless of their activity in the previous calendar year, to collect and remit the surcharge to the receiver as an excess surcharge for use as provided in the bill;
- establishes an excess surcharge account for use as specified in the bill;
- allows the OIR to end surcharges after all actively writing title insurers have recovered the assessment;
- rolls unused excess surcharges held by the receiver into the Insurance Regulatory Trust Fund after certain conditions are met, rather than immediately upon receipt; and
- grants specific rulemaking authority.

The bill has an indeterminate fiscal impact on state revenues and a potential positive fiscal impact on state expenditures. To date, no excess surcharges have been remitted for deposit into the Insurance Regulatory Trust Fund (IRTF) within the Department of Financial Services (DFS). However, given the approximate amount of 1,000,000 title insurance policies written each year, and the current $3.28 surcharge which began in September of 2014, the surcharge will generate approximately $3,280,000 per year. Total assessments to date equal $2,536,348. These figures lead to an approximate amount of excess surcharges of $743,652 that could soon be deposited into the IRTF. The bill would reduce this expected revenue to the IRTF by redirecting the funds into an excess surcharge account retained by the DFS, as receiver, to exclusively service the needs of insolvent title insurer estates, potential estates, and title insurers that have yet to recover their assessment payments. This excess surcharge account will maintain the funds until there are either no active title insurer receiverships for twelve consecutive months, or there are no payable claims for 60 consecutive months, at which time the excess surcharge funds will be deposited into the IRTF within the DFS.

The bill is effective July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

### Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

### Regulation in Florida

Two entities provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS or receiver), which regulates title insurance agents and acts as receiver of insolvent title insurer estates; and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[3] and premium rates charged by title insurers are specified by rule by the Financial Services Commission (FSC).[4] Title insurers may petition the OIR for an order authorizing a specific deviation from the adopted premium.[5]

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[6] Eighteen title insurers are authorized and actively writing title insurance in the state.[7]

Pursuant to s. 627.782, F.S., the FSC is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years.

Title insurers and title insurance agencies are required to submit to the OIR, on or before May 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

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[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

[2] See, e.g., the website of the American Land Title Association (ALTA), http://www.alta.org (Last accessed: March 12, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

[3] Section 627.777, F.S.

[4] Section 627.782, F.S.

[5] Section 627.783, F.S.

[6] Section 627.786, F.S.

[7] Florida Office of Insurance Regulation, http://www.floir.com/CompanySearch/ (last accessed March 12, 2015). Search for "Title Insurance" under "Company Type."

## Insurer Insolvency: Rehabilitation and Liquidation

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[8] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the DFS is responsible for rehabilitating or liquidating insurance companies as the "receiver."[9] This process involves the initiation of a delinquency proceeding and the placement of an insurer under the control of the department as the receiver. Insolvencies are handled before the Circuit Court of Leon County, i.e., the 2nd Judicial Circuit.[10]

## Foreign Title Insurers in Receivership[11]

When a foreign title insurer with policies in Florida is placed in receivership by its domiciliary state, the DFS may apply to the court for an order appointing it as ancillary receiver for the purpose of making assessments. The proceeds of such assessments may be used for the payment of claims, to acquire reinsurance, or otherwise provide for the assumption of Florida policy obligations by another insurer. If the assets in Florida are insufficient to pay the administrative costs of the ancillary receivership, the receiver may request additional funds from the Insurance Regulatory Trust Fund.

## Liquidation

When the DFS determines that a Florida-domiciled insurer is insolvent or is operating in a financially hazardous manner, it petitions the court for an order requiring the insurer to show cause why it should not be placed into liquidation.[12] If the insurer's board of directors either joins in the petition or consents, a liquidation order is issued appointing the DFS as receiver to liquidate the insurer; otherwise, a hearing is held to determine whether the petition should be granted.

Under the court's supervision, the receiver as liquidator is charged with gathering (marshaling) the company's assets, converting them into cash, and distributing the cash to the insurer's claimants in accordance with the priority for claims payment established by statute.

After issuance of the liquidation order, the DFS takes possession of the insurer's offices, equipment, records and assets, and notice of the liquidation is sent to all potential claimants advising them of the liquidation and the process to follow to perfect their claim against the insurer's estate. All property and casualty insurance policies are cancelled within 30 days of the liquidation order.

After all assets have been converted to cash, claims prioritized and valued, and any objections to the valuation of claims resolved, the receiver will file a petition with the court asking for authority to distribute the cash according to the priorities set in statute.[13]

Liquidation of title insurers is disfavored because it results in the cancellation of the insurer's policies. This would eliminate the insurance covering the lender's interest in the title and require the owner to obtain new title insurance or refinance the mortgage at unexpected additional cost. According to the DFS, they have never liquidated a title insurer in the state.

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[8] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

[9] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[10] Section 631.021, F.S.

[11] "Foreign insurer" is defined in s. 624.06, F.S., as an insurer formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.

[12] The grounds for liquidation are set forth in s. 631.061, F.S.

[13] Section 631.271, F.S.

## Rehabilitation

The receiver of an impaired insurer, as the rehabilitator, prepares a plan to assist an insurer to resolve its difficulties and is responsible for taking actions necessary to correct the conditions that necessitated the receivership, as the court may direct. Generally, the receiver suspends all powers of the company's directors, officers, and managers.

By statute and court order, for insurers generally, the receiver:

- Is authorized to conduct all business of the insurer.
- Directs, manages, hires, and discharges employees.
- Is authorized to manage the property and assets of the insurer as it deems necessary.
- Files for release of the company from receivership if rehabilitation efforts are successful and grounds for receivership no longer exist.

By statute, for title insurers, the receiver reviews the insurer's condition and files a rehabilitation plan, subject to court approval, that provides for the following:[14]

- Title insurance policies covering real property in Florida are to remain in force, unless assessments on other title insurers would be insufficient to pay the insurer's claims in the ordinary course of business.
- Title insurance policies covering real property in other states ("out-of-state policies") that do not statutorily provide for payment of future losses of title insurers in receivership may be cancelled as of a date proposed by the receiver (if approved by the court); with a claims filing deadline proposed for out-of-state policies that are cancelled.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies have been cancelled, with any unused funds returned to the general assets of the insurer's estate.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- That funds allocated to pay claims on out-of-state policies are to be based on the pro-rata share of premiums written in each state over each of the 5 calendar years preceding the date of the order of rehabilitation.

If the receiver determines that further attempts to rehabilitate the insurer are futile or if continued rehabilitation would increase the risk of loss to policyholders, the receiver may file for liquidation of the insurer. However, as noted above, liquidation of title insurance companies is disfavored.

## Title Insurers in Rehabilitation

There are two title insurers in rehabilitation: National Title Insurance Company (National) and K.E.L. Title Insurance Group, Inc. (K.E.L.).[15] According to the DFS, these two are the only title insurers to go into receivership in the state. Both cases resulted in assessments[16] and the collection of surcharges.

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[14] Section 631.400, F.S.

[15] See State of Florida, ex rel., the Department of Financial Services of the State of Florida v. National Title Insurance Company, Case No. 2009-CA-2577 (Fla. Cir. Ct.), and State of Florida, ex rel., the Department of Financial Services of the State of Florida v. K.E.L. Title Insurance Group, Inc., Case No. 2012-CA-3514 (Fla. Cir. Ct.). Detailed information can be obtained from the Department of Financial Services at http://www.myfloridacfo.com/Division/Receiver/Companies/CompaniesinRehabilitation.htm#.VQGU1qPD_cv . (Last accessed on March 12, 2015.)

[16] See 2012 Title Insurance Assessment for National Title Insurance Company Rehabilitation, Office of Insurance Regulation Case No. 127302-12, 2014 Title Insurance Assessment for National Title Insurance Company Rehabilitation, Office of Insurance Regulation Case No. 162723-14, and 2014 Title Insurance Assessment for K.E.L. Title Insurance Group Rehabilitation, Office of Insurance Regulation Case No. 150289-14.

## Assessments[17]

As a condition of doing business in the state, title insurers are liable for an assessment to pay all unpaid title insurance claims on policies covering real property in Florida, and the expenses of administering and settling such claims, of a title insurer ordered into rehabilitation. The OIR, upon request of the receiver, is required to order an annual assessment in an amount the receiver considers sufficient to pay known claims, loss adjustment expenses, and the cost of administration of rehabilitation expenses. In requesting an assessment, the receiver is required to consider the remaining assets of the insurer in receivership. Annual assessments may be made until the insurer in rehabilitation does not have any policies in force or the potential for future liability has been satisfied. Assessments are to be based on each title insurer's pro-rata share of direct title insurance premiums written in Florida in the previous calendar year as reported to the OIR.

The assessment levied against a title insurer cannot exceed three percent of an insurer's surplus to policyholders at the end of the previous calendar year or ten percent of an insurer's surplus to policyholders over any consecutive five-year period. The ten percent limitation is to be calculated as the sum of the percentages of surplus to policyholders assessed in each of those five years. An emergency assessment may also be ordered, if requested by the receiver. However, the total of the emergency assessment and any annual assessment to be paid by a title insurer in a single calendar year cannot exceed the cap applicable to the annual assessment alone. The OIR may exempt a title insurer from, or limit payment of, the assessment when such payment would reduce the insurer's surplus to policyholders below the minimum required for the insurer to maintain its certificate of authority in another state. Assessments are payable within 90 days or under a quarterly installment plan approved by the receiver, accompanied by applicable finance charges.

Proceeds of assessments may be used by the receiver in an effort to keep in force title policies on Florida real property, including purchasing reinsurance or otherwise providing for the assumption of policy obligations by another insurer. When an assessment has been ordered, the insurer in rehabilitation is barred from issuing new title insurance policies until it is released from rehabilitation. An insurer may not be released from rehabilitation until all title insurers have received full reimbursement for assessments paid. However, because an insurer may become inactive in the interim, it may be impossible to meet this condition.

## Surcharges

To reimburse title insurers for assessments paid, the OIR is required to order a surcharge on all subsequently issued title insurance policies on Florida real property. The surcharge cannot exceed $25 per transaction for each impaired title insurer and the surcharge must be in an amount estimated to be sufficient to recover all amounts assessed within 7 years. The surcharge is to be paid by the party responsible for payment of the title insurance premium, unless otherwise agreed between the parties.

If additional title insurers become impaired, the OIR is required to order an increase in the surcharge amount to reflect the aggregate surcharge. However, the statute does not permit the OIR to alter the surcharge related to a particular insolvency. The OIR may authorize one surcharge per insolvency, but a particular surcharge cannot be adjusted as additional claim and expenses develop. Because of the nature of title insurance, it is very difficult to estimate the development of claims and expenses over the long term.

Title insurance agents and agencies are required to collect and remit the surcharges to the title insurer upon which a policy is written within 60 days. No surcharge is due or owing as to any policy of insurance issued at the simultaneous issue rate. The surcharge is to be considered a separate governmental assessment to be separately stated on any settlement statement, and is not subject to premium tax or reserve requirements. Title insurers are required to provide the OIR with an accounting, by March 1st of each year, of assessments paid and surcharges collected during the previous calendar

[17] Section 631.400, F.S.

year. Any surcharges collected by an insurer in excess of the assessment paid are payable to the Insurance Regulatory Trust Fund.

The OIR may only order the collection of surcharges ceased after all title insurers that paid the assessment fully recover the amount of the assessment.[18] Because the assessment is set as a pro rata share of direct written premium, but the surcharge is collected on a per policy basis, title insurers with a high average premium but a low policy volume may require an exceptionally long period of time to fully recover their assessment payment. Additionally, title insurers that paid the assessment may become inactive prior to recovering their assessment payments. So, the condition precedent to ceasing the surcharge may be impossible to meet.

**Current Assessments and Surcharges**

To date, the OIR, at the request of the receiver, has ordered three assessments.[19] Two have been ordered related to National ($212,478.00 in 2012 and $300,000.00 in 2014) and one related to K.E.L. ($2,023,870.00 in 2014). Seventeen title insurers were ordered to pay the 2012 assessment. Fifteen title insurers were ordered to pay the 2014 assessments. There is a difference between the number assessed because K.E.L. became insolvent and another company became inactive prior to the 2014 assessments. The OIR reports that the first two assessments have been fully paid and that compliance on the last is ongoing.

Together, the total authorized surcharge on all title insurance policies written in the state is $3.28 ($0.28 related to National and $3.00 related to K.E.L.). Title insurers began collecting surcharges in September 2014. Excess surcharge collections have not yet occurred.

## Effect of the Bill

The bill removes language limiting the surcharge to one per insolvent company. This permits the receiver to adjust the surcharge amount related to a particular company as claims and expenses develop. Currently, the surcharge related to National is set at $0.28 per policy. To date, there has been only $512,478.00 in claims and expenses converted into assessments in the matter. If higher claim activity occurs, the surcharge related to National cannot be adjusted in response. When one considers that the assessment related to K.E.L., which only held 0.27 percent of the Florida market in 2011, was over $2,000,000.00, it becomes apparent that far higher claim activity could occur in the National case. The bill allows the flexibility to react to actual claim development, as it occurs.

Currently, the amount of the surcharge is required to be listed on title transaction settlement statements. The bill requires the settlement statement to specify that the amount is a "surcharge." Also, the surcharge is not subject to the insurance premium tax. The bill specifically states that the surcharge does not qualify as premium.

Title insurers who did not write title insurance policies in the previous calendar year are required to collect and remit surcharges if they begin writing policies. The bill clarifies this provision to require any insurer that was not subject to a given assessment, when issued, to collect and remit the surcharge for any policies it writes while the assessment is in effect. These surcharge collections are entirely excess surcharges (because these companies did not pay the assessment) and are remitted to the excess surcharge account maintained by the receiver, as established by the bill.

While no excess surcharges have been collected and remitted, statute requires excess surcharges to be paid into the Insurance Regulatory Trust Fund. The bill establishes an excess surcharge account under the receiver (i.e., the Department of Financial Services). The receiver is allowed to use the excess surcharge funds only to:

- Reduce or eliminate the amount of a future assessment related to a title insurer in receivership at the time of the assessment or one that later enters receivership, or

[18] Section 627.401(6), F.S.
[19] See footnote 16, above.

- Reduce the amount of time that a surcharge for the recovery of assessment is in effect, by transferring excess surcharge collections to title insurers that have not yet recovered the amount of assessment the paid.

The OIR shall order the end of surcharge collections once all title insurers that paid the assessment have recovered their payment. The bill allows the OIR to order title insurers to stop collecting the surcharges once all title insurers that wrote policies in the previous year have fully recovered their assessment payment. This allows the collection of surcharges, including excess surcharges, to end at the earliest opportunity. If any title insurers are unable to recover their assessment payment, they will be able to claim recovery against the excess surcharge account provided for in the bill.

The bill rolls over excess surcharges held in the account to the Insurance Regulatory Trust Fund if there are no active title insurer receiverships for twelve consecutive months or there are no payable claims for 60 consecutive months. This allows the receiver to continue to use the excess surcharge collections to fund the claims and expenses of title insurers in receivership as long as at least one title insurer is in receivership with ongoing payable claims activity. This avoids sending excess surcharges to the Insurance Regulatory Trust Fund while those funds could be used for ongoing or developing title insurer insolvencies. This is expected to minimize the value of additional assessments and the value and term of the aggregate surcharges.

The Financial Services Commission, as the agency head for the OIR, is given specific rulemaking authority to adopt rules governing the collection, use, and transfer of surcharges, including excess surcharges. Specific rulemaking authority is also given to the DFS, Division of Rehabilitation and Liquidation, to oversee the claiming and distribution of funds from the excess surcharge account.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 631.401, F.S., relating to recovery of assessments and assumed policy obligations.

**Section 2:** Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminate fiscal impact on revenues that could be deposited into the Insurance Regulatory Trust Fund (IRTF) within the Department of Financial Services (DFS). Currently, no excess surcharges have been remitted for deposit into the IRTF. However, the OIR has stated that there are approximately 1,000,000 title insurance policies written each year[20]. Given the approximate amount of 1,000,000 title insurance policies written each year, and the current $3.28 surcharge which began in September of 2014, the surcharge will generate approximately $3,280,000 per year. Total assessments to date equal $2,536,348. These figures lead to an approximate amount of excess surcharges of $743,652 that could soon be deposited into the IRTF. The bill would reduce this expected revenue to the IRTF by redirecting the funds into an excess surcharge account retained by the DFS, as receiver, to exclusively service the needs of insolvent title insurer estates, potential estates, and title insurers that have yet to recover their assessment payments. This excess surcharge account will maintain the funds until there are either no active title insurer receiverships for twelve consecutive months, or there are no payable claims for 60 consecutive months, at which time the excess surcharge funds will be deposited into the IRTF within the DFS.

[20] Email correspondence with the Office of Insurance Regulation (March 12, 2015) on file with the Government Operations Appropriations Subcommittee.

2. Expenditures:

   The bill potentially has a positive impact on state government expenditures to the extent that the state is a purchaser of title insurance and the value and term of surcharges will be minimized as a result of this legislation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill potentially has a positive impact on local government expenditures to the extent that they are purchasers of title insurance and the value and term of surcharges will be minimized as a result of this legislation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to have an indeterminate but positive impact on the private sector. It will minimize the value of assessments and value and duration of surcharges to recover assessments that fund the claims and expenses of insolvent title insurers.

D. FISCAL COMMENTS:

The bill authorizes the receiver to expend excess surcharges remitted under the statute and bill for purposes specified by the bill. This includes distributing funds to title insurers that are not claimants to receivership estates. These expenditures are outside of and are not the asset of any insolvent estate. It is unclear if this activity is subject court order, or solely within the discretion of the receiver to expend.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill grants specific rulemaking authority to the Financial Services Commission, as agency head of the OIR, to establish the processes for collecting, using, and transferring surcharges, including excess surcharges. It also grants specific rulemaking authority to the DFS, Division of Rehabilitation and Liquidation, to establish a process to claim and distribute funds from the excess surcharge account established by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Insurance & Banking Subcommittee considered the bill, adopted three amendments and reported the bill favorably with a committee substitute. The amendments made the following changes:

- Revised a provision of the bill to allow the Office of Insurance Regulation to end the collection of assessment recovery surcharges once all active title insurers have recovered their assessment payment, rather than continuing the surcharges until all title insurers that paid the assessment have recovered their payment.

- Restructured a provision to clarify that excess surcharges can only be used to fund the claims and expenses of insolvent title insurers or to fund the unpaid assessment recovery balance of title insurers that are slow to recover their assessment payments due to the nature of their business.

- Corrected the entity receiving rulemaking authority under the bill to reflect the Financial Services Commission as the agency head of the Office of Insurance Regulation; added rulemaking authority for the Department of Financial Services, Division of Rehabilitation and Liquidation to allow it to create a process to claim against and distribute funds from the excess surcharge account created by the bill; and revised the condition precedent to paying the excess surcharges held by the receiver (DFS) into the Insurance Regulatory Trust Fund and clarifies rulemaking authority granted by the bill.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to title insurance; amending s. 631.401, F.S.; revising procedures and requirements relating to the recovery of assessments from title insurers through surcharges assessed on policies; revising provisions relating to surcharges collected in excess of the assessments paid by title insurers; revising requirements for the payment of excess surcharges to the Insurance Regulatory Trust Fund; authorizing the Financial Services Commission to adopt rules for certain purposes; authorizing the Division of Rehabilitation and Liquidation to adopt rules for certain purposes; providing an effective date.

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

Section 1. Section 631.401, Florida Statutes, is amended to read:

631.401 Recovery of assessments and assumed policy obligations.—

(1) Upon the making of any assessment allowed by s. 631.400, the office shall order a surcharge <u>or, if a surcharge is currently in effect, an additional surcharge amount</u> on each title insurance policy thereafter issued insuring an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate

sufficient funds to recover the amount assessed over a period of not more than 7 years. The amount of the surcharge ordered under this section may not exceed $25 per transaction for each impaired title insurer. ~~If additional surcharges are occasioned by additional title insurers becoming impaired, the office shall order an increase in the amount of the surcharge to reflect the aggregate surcharge.~~

(2) The party responsible for the payment of title insurance premium, unless otherwise agreed between the parties, shall be responsible for the payment of the surcharge. No surcharge will be due or owing as to any policy of title insurance subject to ~~issued at~~ the simultaneous issue premium ~~rate~~. ~~For all other purposes,~~ The surcharge will be considered a governmental assessment to be separately stated on any settlement statement as a surcharge. The surcharge is not premium and is not subject to premium tax or reserve requirements under chapter 625.

(3) Title insurers doing business in this state which are not subject to a given assessment ~~writing no premiums in the prior calendar year~~ shall collect the same per transaction surcharge as provided by this section. Such surcharge collected shall be paid to the receiver within 60 days after receipt to be maintained in an excess surcharge account and used only as provided in subsection (6) ~~from the title agent or agency~~.

(4) Each title insurance agent, agency, or direct title operation shall collect the surcharge as to each title insurance

policy written and remit those surcharges ~~along with the policies and premiums~~ within 60 days to the title insurer on which ~~whom~~ the policy was written.

(5) A title insurer may not retain more in surcharges ~~for an ordered assessment~~ than the amount of aggregate assessments paid by the ~~assessment that~~ title insurer ~~paid~~. Any surcharges collected in excess of the amount of the aggregate assessments paid by a title insurer shall be paid as provided in subsection (6). As used in this section, the term "aggregate assessments" means the total amount of assessments ordered by the office under s. 631.400.

(6) Each title insurer collecting surcharges shall promptly notify the office when it has collected surcharges equal to the amount of the aggregate assessments ~~assessment~~ paid pursuant to s. 631.400. The office shall notify all companies, including those collecting surcharges as required by subsection (3), to cease collecting surcharges when notified that all aggregate assessments have been recovered by the title insurers that wrote policies in the state during the previous calendar year. Any surcharges collected by a title insurer in excess of the total amount it was assessed for aggregate assessments shall be paid quarterly to the receiver to be maintained in the excess surcharge account by the receiver. Excess surcharges may be used by the receiver for the following purposes only:

(a) To reduce or eliminate the amount of a future assessment for a title insurer in receivership at the time of

the assessment or that later enters receivership; or

(b) To reduce the amount of time that consumers in the state are subject to surcharges by transferring excess surcharges to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments paid by title insurers pursuant to s. 631.400.

(7) In conjunction with the filing of each quarterly financial statement, each title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period.

(8) If the receiver has no active title insurer receiverships for 12 consecutive months, or there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver under this section ~~Any surcharges collected in excess of the amount assessed~~ shall be paid into ~~to~~ the Insurance Regulatory Trust Fund.

(9) The Financial Services Commission may adopt rules specifying procedures for the collection, use, and transfer of surcharges, including excess surcharges.

(10) The Division of Rehabilitation and Liquidation may adopt rules specifying procedures for claiming, distributing, and using excess surcharge account funds held by the receiver under this section and for the purposes specified in subsection (6).

Section 2. This act shall take effect July 1, 2015.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 985 Maintenance of Agency Final Orders
**SPONSOR(S):** Eisnaugle
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1284

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Rulemaking Oversight & Repeal Subcommittee | 12 Y, 0 N, As CS | Rubottom | Rubottom |
| 2) Government Operations Appropriations Subcommittee | | White CCW | Topp BDT |
| 3) State Affairs Committee | | | |

## SUMMARY ANALYSIS

All agencies covered by Florida's Administrative Procedures Act (APA) must maintain most final agency orders and a subject matter index thereof, allowing orders to be publically accessed for research or copying, or else maintain an electronic database of final orders allowing public users to research and retrieve full texts using common logical search terms. If an electronic database is not used, an agency may satisfy its public access requirement by designating an official reporter to index and publish its final orders. Thus, agency final orders in Florida may be indexed and maintained for retrieval on microfilm in agency offices or published by a reporter or else available online in a searchable electronic database.

Such orders must be maintained as permanent agency records. Implicitly, public access is required indefinitely.

Since 2008, agencies have been permitted to satisfy the requirement for public access by electronically transmitting a copy of its final orders to the Division of Administrative Hearings (DOAH) for access through DOAH's website. A number of large agencies have used the DOAH alternative with satisfaction. DOAH has no legal obligation to maintain its website.

HB 985 requires all agencies to use the DOAH website for publication of the future orders that must be maintained for public access. Other methods of maintaining and accessing pre-existing orders will continue indefinitely. The bill also provides expanded rulemaking authority to the Department of State to coordinate and set standards on transmittal of certified copies of final orders and to assure integrity of the online documents and satisfactory operation of storage and retrieval functions assigned to DOAH.

The bill will ensure that all final agency orders entered after implementation of the bill will be available online in an easily searchable database.

The bill may have a minimal negative fiscal impact on some state agencies that do not presently create a searchable electronic copy of orders. The bill should reduce some agency costs associated with reporting or indexing and maintaining final orders for public access. It is not anticipated that the bill will have any impact on local government funds.

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

***Present situation***

*Agency Final Orders*

The APA regulates administrative rulemaking, administrative enforcement and administrative resolution of disputes arising out of administrative actions of most state agencies and some subdivisions of state government. Administrative actions authorized by law and regulated by the APA include adoption of a rule, granting or denying a permit or license, an order enforcing a law or rule that assesses a fine or other discipline and final decisions in administrative disputes or other matters resulting in an agency decision. Such disputes include challenges to the validity of a rule or proposed rule or challenges to agency reliance on unadopted rules,[1] as well as challenges to other proposed agency actions which affect substantial interests of any party.[2] In addition to disputes, agency action occurs when the agency acts on a petition for a declaratory statement,[3] or settles a dispute through mediation.[4] A final order is the written final decision of an agency or, in particular matters, an administrative law judge, resulting from any such dispute, declaratory statement petition or mediation. In other words, a final order is the written form of any agency action other than adoption of a rule[5] or an agency policy exempted from the definition of a rule under the APA.[6]

The 1974 Administrative Procedures Act (APA) required agencies to "maintain" all final orders (with certain exceptions) and a subject matter index thereof, allowing orders to be located and publicly accessed for research or copying.[7] One purpose of the requirement was to enhance public notice of agency policy expressed in precedents.[8] In 1979, the law was amended to allow agencies to satisfy the requirement to maintain all agency orders by designating an official reporter to index and publish its orders.[9] Under this provision, agencies may use a third party such as the Florida Administrative Law Reports to index final orders. In practice, the commercial reporters published only select orders.[10] In 1992, amendments authorized agencies to satisfy the requirement by maintaining an electronic database of final orders allowing public users to research and retrieve the full text of final orders using common logical search terms.[11]

Today, agency final orders in Florida may be maintained in hard copy in agency files, published by a reporter or made available online in an electronic database. These varied methods make finding agency orders difficult at times. The Ad Hoc Orders Access Committee of the Florida Bar's Administrative Law Section recently surveyed state agencies to gather information on how agencies index final orders and where final orders may be accessed.[12] The survey revealed that some agencies still require a public records request to access their index and copies of final orders, or they simply identify a particular agency employee to contact for access. Such methods are not always in keeping

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[1] Section 120.56, F.S.
[2] Section 120.569, F.S.
[3] Section 120.565, F.S.
[4] Section120.573, F.S.
[5] Rule is defined in s. 120.52(16), F.S., and includes most policies apart from statutes that purport to be legally binding. The definition lists a number of express exclusions.
[6] Section 120.52(8), F.S.
[7] Section 120.53(1)(a), F.S.
[8] See, *McDonald v. Department of Banking and Finance*, 346 So. 2d 569, 582 (1st DCA 1977).
[9] Section 120.53(2)(a), F.S.
[10] F. Scott Boyd, "From the Chair: 'Order, Order!'", Admin. Law Sec. Newsletter, Vol. XXXIV, No. 2, p. 2 (Jan. 2013).
[11] Section 120.53(1)(a), F.S.
[12] A copy of the survey results is available in the Rulemaking Oversight & Repeal Subcommittee offices.

with the information age. Because such orders must be maintained as permanent agency records, public access of final orders is required indefinitely.

In 2013, the Administrative Law Section of the Florida Bar sponsored a survey of agencies to catalogue how final orders are indexed and listed or maintained and how public access is provided. Eleven agencies specifically require a public records request to obtain or inspect a copy of a final order, others indicated a less formal request process, five had agency specific online databases, and seven agencies identified the DOAH website as their compilation for public access.[13]

*Preservation of records*

In addition to the maintenance, indexing and access requirements in the APA, Florida's public records laws require agencies to permanently maintain records of agency final orders.[14]

*Coordination by Department of State*

In addition to its supervisory role in the archiving of state records, beginning in 1991, the Department of State (DOS) has exercised power to coordinate the indexing, management, preservation, and accessibility of agency final orders that must be indexed. The DOS has rulemaking authority over the system of indexing that agencies may use, and the storage and retrieval systems used to provide access. Authorized storage and retrieval systems include reporters, microfilm, automated systems or any other system considered appropriate by the DOS. The DOS also has authority to regulate which final orders agencies must index.[15]

*DOAH*

The Division of Administrative Hearings (DOAH) is a state agency providing Administrative Law Judges (ALJs) to preside over many disputes under the APA and other state laws. DOAH is placed administratively under the Department of Management Services. However, DOAH is not subject to any control, supervision, or direction by that Department. The director of DOAH, who also serves as chief administrative law judge, has effective administrative control over DOAH, its resources and operations.[16]

Since 2008, agencies have been permitted to satisfy the final order index and maintenance requirement by electronically transmitting a copy of its final orders to DOAH for posting on DOAH's website.[17] A number of large agencies use the DOAH alternative.[18] There does not appear to be any law requiring DOAH to maintain a database accessible for searching orders or other records. However, the DOS has adopted a rule governing the use of a database for maintaining final orders.[19] The rule provides:

> If an electronic database is used by an agency, it shall allow users to research and retrieve agency orders by searching the text of the order and descriptive information about the order, which shall contain, at a minimum, major subject headings. To promote consistent, reliable

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[13] Jowanna N. Oates, *Access to Agency Final Orders*, Vol. 34, Admin. Law Sec. Newsletter, No. 4, p. 4 (June 2013). The Oates article contains a chart summarizing responses of about 40 agencies to inquiries about maintenance and access. A copy of the article is available in the offices of the Rulemaking Oversight & Repeal Subcommittee.

[14] Section 119.021(3), F.S.

[15] Section 120.533, F.S. The rules adopted under this section are found in ch. 1B-32, Florida Administrative Code.

[16] Section 120.65, F.S.

[17] Section 120.53(2)(a), F.S. (The relevant DOAH website address, accessed 3/7/15, is: https://www.doah.state.fl.us/FLAIO/.)

[18] The DOAH website lists the following agencies having orders accessible through DOAH: Department of Agriculture and Consumer Services, Agency for Persons with Disabilities, Department of Children and Family Services, Department of Corrections, Department of Community Affairs, Department of Economic Opportunity, Department of Environmental Protection, Department of Health, Department of Education, Department of State, Department of Business and Professional Regulation, Florida Housing Finance Corporation, Office of the Governor, Agency for Health Care Administration, Department of Highway Safety and Motor Vehicles

[19] Rule 1B-32.002(2)(e), F.A.C.

indexing, the indexing system for an electronic database shall have fixed fields to ensure common usage of search terms by anyone that uses the system.

Presently, it appears that an agency may not lawfully use DOAH's system unless it can be assured that these requirements are satisfied.

The quoted rule, however, does not appear to directly regulate the DOAH. The DOAH does not enter final orders on its own behalf, so the DOAH is not governed by the requirement to maintain final orders or implementing rules. Final orders entered by ALJs are, as a matter of law, rendered by the agency on whose behalf the ALJ adjudicates a matter.

***Effect of Proposed Changes***

HB 985 requires all agencies to transmit certified electronic copies of future final orders to the DOAH for compilation in its searchable database. Agencies must transmit copies within 90 days of the order's rendering. The bill makes the DOAH database the official compilation of administrative final orders rendered after July 1, 2015.

The bill also deletes language that will be obsolete if final orders are all maintained by the DOAH, and other language that may be outdated or duplicative of other law or rules governing such records.

The changes in accessibility only affect agency final orders rendered on or after July 1, 2015. Orders indexed and listed through other means, rendered prior to that date will have to be retained as required under present law. Required indexes and lists will remain available through the prior means of access.

The bill expands the rulemaking authority of the Department of State to provide for coordination of and standards and guidelines for transmitting, certifying and maintaining final agency orders in the DOAH database to assure the validity and integrity of the information. The Department's authority is specifically extended to the DOAH's administration of the official compiling function, notwithstanding the administrative independence of the DOAH.[20] The Department may also provide for an alternate official compiler to operate and manage the database in the event that the Administration Commission determines that the performance of the DOAH is unsatisfactory.

The bill creates the expectation that, after implementation, all final agency orders rendered will be available online in an easily searchable database.

B. SECTION DIRECTORY:

SECTION 1. amends s. 119.021(3), F.S., to conform the public records custodial requirements relating to agency final orders to the other changes in the bill.

SECTION 2. amends s. 120.53, F.S., to require all agencies to transmit certified electronic copies of final orders to DOAH for publication online in an electronic database.

SECTION 3. amends s. 120.533, F.S., to conform to changes in Section 2 and to expand rulemaking authority of the Department of State.

SECTION 4. amends s. 213.22, F.S., to correct a cross-reference to conform to changes in Section 2.

SECTION 5. provides an effective date of July 1, 2015.

[20] Section 120.65(1), F.S. provides that DOAH is administrative under the Department of Management Services but not subject to control, supervision or direction of the Department. This administrative independence reflects the independent judgment expected of ALJ's employed by DOAH. Acting in the new role of official compiler of agency orders is a ministerial function.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The agency does not appear to impact state revenues.

2. Expenditures:

   The bill may have a minimal negative fiscal impact on some state agencies that do not presently create a searchable electronic copy of orders; however, this impact is very minimal and will be absorbed within agency resources. The bill should reduce some agency costs associated with reporting or indexing and maintaining final orders for public access.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Not applicable.

2. Expenditures:

   Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have a slight positive economic impact on the private sector by offering easy internet access to agency orders that may only be accessible in person under current law.

D. FISCAL COMMENTS:

The DOAH indicates that it can maintain all agency final orders on its website and host full public access with current resources, personnel and equipment. The Department of Management Services states that this bill benefits the department by reducing the administrative burdens of maintaining the final orders and indexes.[21]

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not affect local mandates.

2. Other:

B. RULE-MAKING AUTHORITY:

The bill expands and revises the rulemaking authority of the Department of State respecting the coordination of maintenance and public access to agency final orders, as well as certification and transmission of final orders to the DOAH. It also expands the authority of Department of State rules over DOAH in the operation of the online database and the integrity of information maintained.

C. DRAFTING ISSUES OR OTHER COMMENTS:

[21] *See* Department of Management Services, Legislative Bill Analysis for HB 985, p. 6 (Feb. 25, 2015).

Amendments adopted by the Rulemaking Oversight & Repeal Subcommittee addressed drafting concerns noted previously.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Rulemaking Oversight & Repeal Subcommittee adopted three amendments to HB 985 at its meeting on March 11, 2015. One amendment amended Section 1 to clarify which final orders must be retained for public records purposes. A second amendment clarified that certified copies of orders are to be transmitted to DOAH. The third amendment expanded and revised Department of State rulemaking authority. This Staff Analysis is drafted to the bill as amended by the Subcommittee.

A bill to be entitled

An act relating to the maintenance of agency final orders; amending s. 119.021, F.S.; conforming a provision to changes made by the act; amending s. 120.53, F.S.; requiring agencies to electronically transmit certain agency final orders to a centralized electronic database maintained by the Division of Administrative Hearings; providing the methods by which such final orders can be searched; requiring each agency to maintain a list of final orders that are not required to be electronically transmitted to the database; providing a timeframe for electronically transmitting or listing the final orders; authorizing agencies to maintain subject matter indexes of final orders issued before a specified date or to electronically transmit such orders to the database; providing that the centralized electronic database is the official compilation of administrative final orders issued on or after a specified date for each agency; deleting obsolete provisions regarding filing, indexing, and publishing final orders; amending s. 120.533, F.S.; requiring the Department of State to provide standards and guidelines for the certification and electronic transmittal and the secure transmittal and maintenance of agency final orders; authorizing the department to adopt rules; authorizing the

department to provide for an alternative official compiler of agency final orders under certain circumstances; conforming provisions to changes made by the act; amending s. 213.22, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (3) of section 119.021, Florida Statutes, is amended to read:

119.021 Custodial requirements; maintenance, preservation, and retention of public records.—

(3) Agency final orders rendered before July 1, 2015, that were indexed or listed pursuant to s. 120.53, and agency final orders rendered on or after July 1, 2015, that must be listed or copies of which must be transmitted to the Division of Administrative Hearings ~~orders that comprise final agency action and that must be indexed or listed~~ pursuant to s. 120.53, have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Department of State.

Section 2. Section 120.53, Florida Statutes, is amended to read:

120.53 Maintenance of agency final orders~~; indexing; listing; organizational information~~.—

(1) In addition to maintaining records contained in s. 119.021(3), each agency shall also electronically transmit a certified text-searchable copy of each agency final order listed in subsection (2) rendered on or after July 1, 2015, to a centralized electronic database of agency final orders maintained by the division. The database must allow users to research and retrieve the full texts of agency final orders by:

(a) The name of the agency that issued the final order.

(b) The date the final order was issued.

(c) The type of final order.

(d) The subject of the final order.

(e) Terms contained in the text of the final order.

~~(a) Each agency shall maintain:~~

~~1. All agency final orders.~~

~~2.a. A current hierarchical subject-matter index, identifying for the public any rule or order as specified in this subparagraph.~~

~~b. In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of its orders, an agency may maintain and make available for public use an electronic database of its orders that allows users to research and retrieve the full texts of agency orders by devising an ad hoc indexing system employing any logical search terms in common usage which are composed by the user and which are contained in the orders of the agency or by descriptive information about the order which may not be~~

~~specifically contained in the order.~~

(2)~~c.~~ The agency final orders that must be electronically transmitted to the centralized electronic database ~~indexed, unless excluded under paragraph (c) or paragraph (d),~~ include:

(a)~~(I)~~ Each final ~~agency~~ order resulting from a proceeding under s. 120.57 or s. 120.573.

(b)~~(II)~~ Each final ~~agency~~ order rendered pursuant to s. 120.57(4) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.

(c)~~(III)~~ Each declaratory statement issued by an agency.

(d)~~(IV)~~ Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

(3)~~3.~~ Each agency shall maintain a list of all final orders rendered pursuant to s. 120.57(4) that are not required to be electronically transmitted to the centralized electronic database ~~which have been excluded from the indexing requirement of this section, with the approval of the Department of State,~~ because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.

~~4. All final orders listed pursuant to subparagraph 3.~~

(4)~~(b)~~ Each ~~An agency~~ final order, whether rendered by the agency or the division, that must be electronically transmitted to the centralized electronic database or maintained on a list

pursuant to subsection (3) must be electronically transmitted to the database or added to the list within 90 days after the final ~~indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the~~ order is rendered. Each final order that must be electronically transmitted to the database or added to the list ~~indexed or listed pursuant to paragraph (a)~~ must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the final order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference. ~~The Department of State shall establish by rule procedures for indexing final orders, and procedures of agencies for indexing orders must be approved by the department.~~

(5) Nothing in this section relieves an agency from its responsibility for maintaining a subject matter index of final orders rendered before July 1, 2015, and identifying the location of the subject matter index on the agency's website. In addition, an agency may electronically transmit to the centralized electronic database certified copies of all of the final orders that were rendered before July 1, 2015, which were required to be in the subject matter index. The centralized electronic database constitutes the official compilation of administrative final orders rendered on or after July 1, 2015,

for each agency.

~~(c) Each agency must receive approval in writing from the Department of State for:~~

~~1. The specific types and categories of agency final orders that may be excluded from the indexing and public inspection requirements, as determined by the department pursuant to paragraph (d).~~

~~2. The method for maintaining indexes, lists, and final orders that must be indexed or listed and made available to the public.~~

~~3. The method by which the public may inspect or obtain copies of indexes, lists, and final orders.~~

~~4. A sequential numbering system which numbers all final orders required to be indexed or listed pursuant to paragraph (a), in the order rendered.~~

~~5. Proposed rules for implementing the requirements of this section for indexing and making final orders available for public inspection.~~

~~(d) In determining which final orders may be excluded from the indexing and public inspection requirements, the Department of State may consider all factors specified by an agency, including precedential value, legal significance, and purpose. Only agency final orders that are of limited or no precedential value, that are of limited or no legal significance, or that are ministerial in nature may be excluded.~~

~~(e) Each agency shall specify the specific types or~~

~~categories of agency final orders that are excluded from the indexing and public inspection requirements.~~

~~(f) Each agency shall specify the location or locations where agency indexes, lists, and final orders that are required to be indexed or listed are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and final orders.~~

~~(g) Each agency shall specify all systems in use by the agency to search and locate agency final orders that are required to be indexed or listed, including, but not limited to, any automated system. An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided by s. 119.07. The agency shall specify how assistance and information pertaining to final orders may be obtained.~~

~~(h) Each agency shall specify the numbering system used to identify agency final orders.~~

~~(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public, or by electronically transmitting to the division a copy of such orders for posting on the division's website. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each~~

~~listed order and makes it available for public inspection and copying.~~

~~(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative final orders for that agency.~~

~~(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.~~

~~(d) An agency that designates an official reporter need not publish the full text of an agency final order that is rendered pursuant to s. 120.57(4) and that must be indexed~~

~~pursuant to paragraph (1)(a), if the final order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the final order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.~~

~~(3) Agency orders that must be indexed or listed are documents of continuing legal value and must be permanently preserved and made available to the public. Each agency to which this chapter applies shall provide, under the direction of the Department of State, for the preservation of orders as required by this chapter and for maintaining an index to those orders.~~

~~(4) Each agency must provide any person who makes a request with a written description of its organization and the general course of its operations.~~

Section 3. Section 120.533, Florida Statutes, is amended to read:

120.533 Coordination of the transmittal, indexing, and listing of agency final orders by Department of State.—The Department of State shall:

(1) Coordinate ~~Administer the coordination of~~ the transmittal, indexing, management, preservation, and availability of agency final orders that must be transmitted, indexed, or listed pursuant to s. 120.53 ~~s. 120.53(1)~~.

(2) Provide~~, by rule,~~ guidelines for ~~the~~ indexing ~~of~~ agency final orders. More than one system for indexing may be approved by the Department of State, including systems or methods in use, or proposed for use, by an agency. More than one system may be approved for use by a single agency as best serves the needs of that agency and the public.

(3) Provide~~, by rule,~~ for storage and retrieval systems to be maintained by agencies pursuant to s. 120.53(5) for indexing, and making available~~,~~ agency final orders by subject matter. The Department of State may authorize ~~approve~~ more than one system, including systems in use~~, or proposed for use,~~ by an agency. Storage and retrieval systems that may be used by an agency include, without limitation, a designated reporter or reporters, a microfilming system, an automated system, or any other system considered appropriate by the Department of State.

(4) Provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to the division, as required under s. 120.53, and, to protect the integrity and authenticity of information publicly accessible through the electronic database, coordinate and provide standards and guidelines to ensure the security of copies of agency final orders transmitted and maintained in the electronic database by the division under s. 120.53(1).

(5)~~(4)~~ For each agency, determine which final orders must be indexed or transmitted ~~for each agency~~.

(6)~~(5)~~ Require each agency to report to the department

concerning which types or categories of agency orders establish precedent for each agency.

(7) Adopt rules as necessary to administer its responsibilities under this section, which shall be binding on all agencies including the division acting in the capacity of official compiler of administrative final orders under s. 120.53, notwithstanding s. 120.65. The Department of State may provide for an alternative official compiler to manage and operate the division's database and related services if the Administration Commission determines that the performance of the division as official compiler is unsatisfactory.

Section 4. Subsection (1) of section 213.22, Florida Statutes, is amended to read:

213.22 Technical assistance advisements.—

(1) The department may issue informal technical assistance advisements to persons, upon written request, as to the position of the department on the tax consequences of a stated transaction or event, under existing statutes, rules, or policies. After the issuance of an assessment, a technical assistance advisement may not be issued to a taxpayer who requests an advisement relating to the tax or liability for tax in respect to which the assessment has been made, except that a technical assistance advisement may be issued to a taxpayer who requests an advisement relating to the exemptions in s. 212.08(1) or (2) at any time. Technical assistance advisements shall have no precedential value except to the taxpayer who

requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement. Any modification of an advisement shall be prospective only. A technical assistance advisement is not an order issued pursuant to s. 120.565 or s. 120.569 or a rule or policy of general applicability under s. 120.54. The provisions of s. 120.53 ~~s. 120.53(1)~~ are not applicable to technical assistance advisements.

Section 5. This act shall take effect July 1, 2015.