

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: SB 658

INTRODUCER: Senator Burgess

SUBJECT: Registration Fees for Malt Beverage Brands and Labels

DATE: April 19, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|------------|------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | <u>Davis</u> | <u>Betta</u> | <u>AEG</u> | Favorable |
| 3. | <u>Oxamendi</u> | <u>Yeatman</u> | <u>FP</u> | Favorable |

I. Summary:

SB 658 limits the application of the annual malt beverage brand and label registration fee of \$30 to brands and labels for malt beverages sold to a distributor. Current law requires manufacturers, brewers, bottlers, distributors, and importers of malt beverages, whether licensed under Florida’s laws or not, to register their name and the brands and labels of their malt beverages with the Division of Alcoholic Beverages and Tobacco (division), within the Department of Business and Professional Regulation before the malt beverages may be sold or offered for sale in Florida, or move or cause to be moved within or into Florida.

Under the bill, the malt beverage manufactures would not be required to register a brand or label for a malt beverage and pay the \$30 registration fee if the malt beverage is not sold to a distributor and is sold directly to the consumer at the manufacturer’s licensed premises.

The bill will have an indeterminate negative fiscal impact on state revenues related to the decrease in brand and label fees collected by the division.

The bill takes effect July 1, 2023.

II. Present Situation:

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

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

² See s. 561.14, F.S.

³ Section 561.02, F.S.

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴ The term “beer” means a brewed beverage that meets the federal definition of beer in 27 C.F.R. s. 25.11, and contains less than six percent alcohol by volume. The terms “beer” and “malt beverage” have the same meaning under the Beverage Law. The terms “beer” and “malt beverage” do not include alcoholic beverages that require a certificate of label approval by the federal government as wine or as distilled spirits.

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law:

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”⁵
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁶
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state, provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.⁷
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and who may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Three-Tier System

In the United States, the regulation of alcohol, since the repeal of Prohibition, has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and retail sale of alcoholic beverages by vendors. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹⁰

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.¹² Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹³

⁴ Section 563.01, F.S.

⁵ Section 561.14(1), F.S.

⁶ Section 561.14(2), F.S.

⁷ Section 561.01(5), F.S.

⁸ Section 561.14(3), F.S.

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

¹¹ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

¹² Section 561.22, F.S.

¹³ Sections 563.022(14) and 561.14(1), F.S.

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,¹⁴ breweries,¹⁵ and craft distilleries to sell directly to consumers.¹⁶ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of the restaurant.¹⁷

A winery, even if licensed as a distributor,¹⁸ may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.¹⁹

Malt Beverage Brand and Label Registration

Section 563.045(1), F.S., requires manufacturers, brewers, bottlers, distributors, and importers of malt beverages (registrants), whether licensed under Florida's laws or not, to be qualified under Florida's Beverage Law and to register their name and brands or labels with the division before they sell or offer for sale in this state, or move or cause to be moved within this state or into this state, any malt beverage. Registrants must furnish the division with any samples and information as to content, quality, and formula of such malt beverages as the division may require.

Section 563.045(2), F.S., requires each registrant to pay an annual registration fee of \$30 for a brand or label. The division may suspend or revoke a registration in same manner as a beverage license for any violation of the Beverage Law.²⁰ The division provides an electronic form for registering brands and labels.²¹

Section 563.045(3), F.S., prohibits licensed wholesalers from purchasing any malt beverages from any manufacturer, brewer, bottler, distributor, or importer who has not complied with the registration requirement.

Section 563.045(4), F.S., requires the division to promulgate rules to carry out the purpose of this section.²²

¹⁴ See s. 561.221(1), F.S.

¹⁵ See s. 561.221(2), F.S.

¹⁶ See ss. 565.02(12) and 565.03, F.S.

¹⁷ See s. 561.221(3), F.S.

¹⁸ Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

¹⁹ See s. 561.221(1), F.S.

²⁰ See s. 561.29, F.S., relating to the suspension or revocation of alcoholic beverages licenses.

²¹ See DBPR, *Brand Registrant and Brand/Label*,

<https://www.myfloridalicense.com/intentions2.asp?chBoard=true&SID=&boardid=400&professionid=4011> (last visited Mar. 11, 2023).

²² The division has not adopted a rule to implement s. 563.045, F.S.

III. Effect of Proposed Changes:

The bill amends s. 563.045(2), F.S., to limit the application of the malt beverage annual brand and label registration fee of \$30 to brands and labels for malt beverages sold to a distributor. Under the bill, the malt beverage manufacturers would not be required to register a brand or label for a malt beverage and pay the \$30 registration fee if the malt beverage is not sold to a distributor and is sold directly to the consumer at the manufacturer's licensed premises.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under the bill, manufacturers of malt beverages would not have to pay the \$30 brand and label registration fee for a malt beverage that is not sold to a distributor.

C. Government Sector Impact:

The division anticipates a fiscal impact of \$16,000 to update its online brand registration to conform to the requirements of this bill.²³ The division also anticipates an

²³ Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for SB 658* (Feb. 13, 2023) (on file with the Senate Regulated Industries Committee).

indeterminate decrease of revenue attributable to the bill exempting brand and label registration requirements for malt beverages that are not sold to a distributor. Currently, there are 11,846 malt brand licenses.²⁴ The table below shows the last three fiscal years of revenue collected for brand/label registrations.²⁵

| | 2020 | 2021 | 2022 |
|--------------------------------|-------------|-------------|-------------|
| Initial Malt Beverage Licenses | \$206,280 | \$239,730 | \$255,930 |
| Malt Beverage License Renewals | \$98,580 | \$130,020 | \$131,820 |

These revenues include brand and label fees for all beverages. The reduction in revenue will be determined by the number of beverages that are kept in house, which is not currently tracked.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 563.045 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁴ *Id.*

²⁵ *Id.*