

Alcohol Regulation (FL): Overview

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A Practice Note providing guidance for parties considering entering the alcohol beverage business in Florida, particularly at the retail level. This Note provides an overview of the regulatory structure for the manufacturing, distribution, and retail sale of alcohol beverages in Florida; Florida's three-tier system including manufacturers, distributors, and retailers; the control versus non-control models states use to regulate alcohol beverages; Florida's tied-house rules including issues and exceptions; Florida's licensing process including types of licenses, qualification and disclosure requirements, ongoing maintenance requirements, and license transfers; and an overview of advertising and marketing for alcohol beverages in Florida and at the federal level.

The production, distribution, and sale of alcohol beverages is heavily regulated in Florida. The laws, regulations, rules, and potential issues that must be considered before entering the alcohol business can be difficult to understand. This Note provides parties considering entering the alcohol beverage business, particularly at the retail level, with an overview and a basic understanding of certain key areas related to alcohol regulation in Florida, including:

- The regulatory structure of alcohol regulation in Florida.
- Florida's three-tier system.
- Where Florida fits within the non-control versus control model of alcohol regulation.
- Tied-house rules and potential issues.

- The Florida licensing process and how to maintain a license.
- Advertising and marketing of alcohol beverages in Florida.

For purposes of this Note, "alcohol" or "alcohol beverages" (often referred to as "alcoholic beverages" under Florida law) includes beverages containing at least one-half of 1% of alcohol by volume, such as distilled spirits, wine, beer, and other malt beverage products (§ 561.01(4), Fla. Stat.). It does not include alcohol when it is used for non-beverage purposes, such as when ethyl alcohol is used for industrial purposes, like ethanol fuel.

REGULATORY STRUCTURE AND AGENCIES

In most states, alcohol is regulated at each of the following levels:

- The federal level for manufacturers and distributors (more commonly referred to as "producers" and "wholesalers", respectively, at the federal level) (see Federal Regulation).
- The state level (see State Regulation).
- The local level (see Local Regulation).

FEDERAL REGULATION

The Federal Alcohol Administration Act (FAA Act) (27 U.S.C. §§ 201 to 219a):

- Requires manufacturers, importers, and distributors of alcohol beverages, including distilled spirits, wine, and malt beverages (such as beer), to obtain a permit from the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) before engaging in business.
- Provides authority to the TTB to regulate labeling and advertising of alcohol beverages.
- Prohibits certain trade practices that could give manufacturers and distributors of alcohol beverages undue influence over alcohol beverage retailers.

The FAA Act created what is now commonly referred to as the "three-tier system." This system provides for three independent levels for alcohol distribution: the manufacturer tier, the distributor tier, and the retailer tier. This system is used in a variety of forms in most states, including Florida (see Three-Tier System; Practice Note,

Alcohol Regulation: Overview: Three-Tier System ([W-019-9723](#))).

The intended purpose of the three-tier system is to eliminate “tied-houses” (see Tied-House Rules and Exceptions; Practice Note, Alcohol Regulation: Overview: Tied-House Regulation ([W-019-9723](#))).

STATE REGULATION

Division of Alcoholic Beverages and Tobacco

In Florida, the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (DABT), is the agency charged with issuing alcohol beverage licenses and regulating state alcohol beverage laws (§§ 561.02 and 561.08, Fla. Stat.).

The DABT is broken out into three bureaus:

- **The Bureau of Licensing**, which is responsible for:
 - processing alcohol beverage license applications;
 - issuing and renewing licenses; and
 - maintaining records relating to licenses, including documenting ownership and licensed location changes.
- **The Bureau of Auditing**, which is responsible for:
 - ensuring that licensees comply with reporting and tax payment requirements; and
 - collecting and auditing taxes, surcharges, and fees paid by licensees.
- **The Bureau of Law Enforcement**, which is responsible for:
 - enforcing the laws and regulations governing alcohol and tobacco sales set out in Chapters 210, 561 through 565, 567, and 568, Fla. Stat.; and
 - inspecting locations during the initial licensing process.

The DABT controls licensing and maintains enforcement authority over all tiers:

- Manufacturers (including importers).
- Distributors.
- Retailers.

FLORIDA BEVERAGE LAW

Florida Beverage Law regulates the manufacturing, distribution, and sale of alcohol beverages within the state (Chapters 561 through 565, 567, and 568, Fla. Stat.).

LOCAL REGULATION

Florida counties and municipalities are preempted from regulating many aspects of alcohol beverage establishments. In Florida, local regulation is limited to the regulation of:

- **Hours of sale.** Florida counties and incorporated municipalities may enact hours of sale ordinances (§ 562.45(2)(a), Fla. Stat.). If local law does not provide hours of sale, the default hours for sale, consumption, or service of alcohol are limited to 7:00 a.m. to midnight each day (§ 562.14(1), Fla. Stat. (railroads, however, are exempted from these hours)).
- **Zoning.** Florida counties and incorporated municipalities may enact ordinances regulating the location of alcohol beverage businesses, including requiring a certain minimum distance separation between:

- alcohol licenses of similar types; or
- alcohol establishments and places of worship, schools, municipal buildings, or parks.
- (§ 562.45(2)(a), Fla. Stat.)
- Unless otherwise regulated by local law, no on-premise alcohol establishment can be located within 500 feet of the real property comprising a public or private elementary school, middle school, or secondary school (§ 562.45(2)(a), Fla. Stat.).
- **Sanitary conditions** (§ 562.45(2)(a), Fla. Stat.).
- **Types of entertainment and conduct** allowed in an on-premise alcohol establishment (§ 562.45(2)(b), Fla. Stat.).

Florida local law:

- Cannot prohibit activities or business transactions of a licensee that are already regulated under Florida Beverage Law.
- Must treat businesses with alcohol licenses:
 - in a nondiscriminatory manner; and
 - consistent with the treatment of any other lawful business in the state.

(§ 562.45(2)(c), Fla. Stat.)

THREE-TIER SYSTEM

Florida Beverage Law classifies licensees in three distinct categories, in line with the three-tier system in place in most states across the country and under federal law. The three tiers (or categories) are:

- Manufacturers (see Manufacturers).
- Distributors (see Distributors).
- Retailers (see Retailers).

The intended purpose of the three-tier system is to eliminate “tied-houses” (see Tied-House Rules and Exceptions; Practice Note, Alcohol Regulation: Overview: Tied-House Regulation ([W-019-9723](#))).

For more information on the background and history of the three-tier system, see Practice Note, Alcohol Regulation: Overview: Three-Tier System ([W-019-9723](#)).

MANUFACTURERS

Manufacturers (also sometimes referred to as “producers”) include:

- Breweries.
- Wineries.
- Distilleries.

Manufacturers must both:

- Produce, rectify, or blend alcohol products.
- Sell those products to either:
 - other manufacturers; or
 - licensed distributors.

(§ 561.14(1), Fla. Stat.)

Certain licensees may sell alcohol beverages to licensed manufacturers in Florida. These include certain resident and non-resident:

- Sales agents. These licensees may also sell to distributors in Florida on behalf of out-of-state manufacturers (§ 561.14(4), Fla. Stat.).
- Importers. These licensees may also sell to licensed distributors (§ 561.14(5), Fla. Stat.).

DISTRIBUTORS

Distributors (sometimes referred to as “wholesalers”):

- Purchase alcohol beverage products from manufacturers.
- Sell those products to licensed retailers in the state or to other distributors where allowed.

(§ 561.14(2), Fla. Stat.)

RETAILERS

Retailers (more often referred to as “vendors” in Florida) sell alcohol beverages only at retail (§ 561.14(3), Fla. Stat.). Retailers are further classified in the industry as either:

- **On-premise retailers.** On-premise retailers sell beer, wine, or spirits, or some combination of all three for patrons to consume on the licensed premises. Examples of on-premise retail establishments include:
 - bars;
 - restaurants; and
 - nightclubs.
- **Off-premise retailers.** Off-premise retailers sell alcohol in sealed containers for off-premise consumption only. Examples of off-premise retail establishments include:
 - liquor stores; and
 - grocery stores.

Florida retailers are required to buy alcohol inventory from licensed Florida distributors. They can sell only to end-consumers and may not sell for resale. The only time a retailer can sell to another retailer is when the sale is being done through a licensed pool buying group (§ 561.14(3), Fla. Stat.). These groups are a mechanism for smaller retailers to gain economies of scale and volume discounts through collective alcohol purchases from distributors. For example, groups of small, independent liquor stores may consider pooling together to form a pool buying group through which they purchase alcohol products from distributors. Because the group pools individual orders and places one larger order with a distributor, they may benefit from volume discounts.

AVOIDING ISSUES

Parties should be aware of certain nuances in Florida’s three-tier system that may affect or cause issues with contracts between the tiers. These nuances include:

- Florida’s beer franchise law (see Beer Franchise Law).
- Rules relating to the delivery of alcohol beverages (see Deliveries).

Beer Franchise Law

Florida’s beer franchise law provides certain franchise protections to manufacturers and distributors of beer and other malt beverages (§ 563.022, Fla. Stat.). These protections do not apply to manufacturers and distributors of wine and spirits. Under the beer franchise law, distributors of beer and other malt beverages are

considered franchisees. The beer franchise law is extremely nuanced. Beer and malt beverage manufacturers, importers, and distributors should review the law carefully before entering into any type of distribution agreement.

Florida’s beer franchise law requires, among other things, that all agreements between manufacturers or importers and distributors be in writing. The agreement must specify the distributor’s exclusive sales territory by both:

- County.
 - Brand.
- (§ 563.021, Fla. Stat.)

The law also provides rules for terminating distribution agreements. These rules generally provide that manufacturers and importers can only terminate or fail to renew distribution agreements with distributors under certain specified circumstances. A manufacturer or importer can only terminate or fail to renew a distribution agreement if:

- At least **90 days written notice** is provided to the distributor **and** the termination is for good cause and made in good faith (§ 563.022(9), Fla. Stat.). For these purposes:
 - “**good cause**” includes the distributor’s failure to comply with reasonable and material terms of the agreement, that the manufacturer acquired knowledge of within 18 months of giving written notice to the distributor (§ 563.022(7)); and
 - “**good faith**” is defined and interpreted under § 671.201(20), Fla. Stat. as honesty in fact in the conduct or transaction concerned (§ 563.022(2)(g), Fla. Stat.).
 - The manufacturer or importer has the burden of proving good cause and good faith (§ 563.022(8), Fla. Stat.). In this situation, the manufacturer or importer must give the distributor 30 days to submit a plan of corrective action and an additional 90 days to cure (§ 563.022(7), Fla. Stat.).
 - At least **15 days written notice** is provided to the distributor **and** the termination is for good cause under certain limited circumstances, including the distributor’s:
 - insolvency;
 - license revocation;
 - felony conviction;
 - fraudulent conduct;
 - failure to pay within 15 days of a notice of delinquency and demand for payment; and
 - sale or transfer of its business without consent.
- (§ 563.022(10), Fla. Stat.)

Deliveries

Florida Beverage law generally permits retailers of alcohol beverages to make deliveries away from their licensed premises to end-consumers. This means that if a consumer places an online order or phones in an order to a retailer that has off-premise privileges, the retailer can deliver that order to the buyer. Deliveries of alcohol beverages by retailers can only be made:

- In vehicles that are owned or leased by the retailer.
 - By a contracted third-party in its own vehicle.
- (§ 561.57(1), Fla. Stat.)

On delivery, drivers are required to verify:

- The identity of the consumer.
- The age of the consumer.

(§ 561.57(6), Fla. Stat.)

Breweries holding retail licenses are not allowed to make deliveries to consumers (§§ 561.57(1) and 561.221(2)(d), Fla. Stat.).

NON-CONTROL VERSUS CONTROL STATES

Since the repeal of Prohibition in 1933, alcohol beverage control went from being a federal matter to a matter for each of the individual states. The 21st Amendment gives each state the right to establish laws to govern the manufacture, distribution, and sale of alcohol beverages within the state border. However, the federal government still maintains some degree of control over the production, distribution, labeling, and advertising of alcohol beverages through its administration of the FAA Act (see Practice Note, Alcohol Beverage Marketing and Advertising ([W-018-8644](#))).

In governing, each state operates under one of the following models:

- Non-Control (see Non-Control States).
- Control (see Control States).

NON-CONTROL STATES

The majority of states in the US, including Florida, operate under a non-control model. Under this model, private businesses apply for licenses to manufacture, distribute, and sell alcohol beverages to consumers. Individual state laws regulate these private businesses.

Florida has enacted the Beverage Law to regulate the manufacturing, distribution, and the sale of alcohol within the state (see Florida Beverage Law).

CONTROL STATES

The minority of states operate under the control model. In these states, the state government controls the sale of distilled spirits (and in some cases, wine and beer) through government agencies at the distribution level. In most of these states, the government also exercises control over retail sales for off-premises consumption, either through government-operated package stores or designated agents.

TIED-HOUSE RULES AND EXCEPTIONS

A “tied-house” is where there is some sort of tie between two of the three tiers that leads to impermissible control by one tier (typically a manufacturer or distributor) over another (typically a retailer). These ties include overlapping ownership between the tiers, one tier providing something of value to another tier, or otherwise controlling another tier’s purchasing decisions.

Tied-house laws at both the federal and the state level are designed to outlaw tied-houses and activity that may lead to manufacturer or distributor control over retailers. For additional background and information on tied-houses and the laws to prevent them, see Practice Note, Alcohol Regulation: Overview: Tied House Regulation ([W-019-9723](#)).

Florida tied-house laws generally prohibit:

- Overlapping ownership or control between the three tiers (see Cross-Tier Ownership and Exceptions).
- Gifts or things of value from being given by a manufacturer or distributor to a retailer, whether directly or indirectly (see Things of Value and Exceptions).

(§ 561.42, Fla. Stat.; Fla. Admin. Code R. 61A-1.010.)

CROSS-TIER OWNERSHIP AND EXCEPTIONS

Florida Beverage Law generally prohibits:

- Manufacturers, distributors, and exporters from becoming licensed as retailers (§ 561.22, Fla. Stat.).
- Existing licensed Florida retailers from becoming licensed as manufacturers, distributors, or exporters (§ 561.22, Fla. Stat.).
- Spirits and wine manufacturers, rectifiers, and brewers from holding distributor licenses, and vice versa (§ 561.24, Fla. Stat.).
- Manufacturers and distributors from having overlapping ownership or management (§ 561.24, Fla. Stat.).

There are some notable exceptions to these general rules, including those for:

- **Wineries.** Florida wineries can hold three retail licenses if the retail premises are on property contiguous to the manufacturing premises (§ 561.221(1), Fla. Stat.).
- **Breweries with taprooms.** Florida breweries can hold retail licenses on the same complex as the brewery. The property, however, cannot be divided by more than one public street or highway. (§ 561.221(2), Fla. Stat.)
- **Brewpubs.** A separate tied-house exception exists to allow Florida retailers holding certain licenses to brew up to 10,000 kegs (each keg being 15.5 gallons) of beer per year. This beer can only be consumed at the brewpub. (§ 561.221(3), Fla. Stat.)

THINGS OF VALUE AND EXCEPTIONS

Florida Beverage law generally prohibits:

- Upper-tier industry members (generally manufacturers or importers and distributors) from giving any things of value to retailers, including:
 - gifts;
 - loans;
 - property; or
 - rebates.
- Retailers from accepting any things of value from manufacturers or importers and distributors. (§ 561.42(1), Fla. Stat.)

Statutory exceptions allow manufacturers or importers and distributors to provide certain things of value to retailers. These laws are extremely nuanced. All industry members should carefully review the applicable law to determine:

- Who can provide the item or service (manufacturer, importer, or distributor).
- If advertising is being provided, what type of product can be advertised (beer, wine, or spirits).
- Whether dollar limitations apply.

The general categories of allowable tied-house exceptions relate to:

- **Signage** (see Advertising and Marketing: State Regulation).
- **Branded product displays** used to display sealed alcohol products. Under this exception:
 - displays cannot have a secondary function other than advertising (Fla. Admin. Code R. 61A-1.0101(1)). For example, displays cannot be refrigerated (like a keg cooler) or act as furniture or fixtures;
 - the value of displays for each brand in each licensed retail premises cannot exceed \$300 (excluding transportation, installation, and assembly costs) (Fla. Admin. Code R. 61A-1.0101(3)); and
 - manufacturers and distributors may not pay retailers a slotting fee to secure favorable placement of a particular product (Fla. Admin. Code R. 61A-1.0101(5)).
- **Consumer tastings and samplings**, including tastings and samplings of:
 - beer (§ 563.09, Fla. Stat.);
 - wine (§ 564.08, Fla. Stat.); and
 - spirits (§ 565.17, Fla. Stat.).
- **Retail specialties**. Under this exception, both expendable and durable items to be used directly by the retailer (for example, branded bar mats, napkins, glassware, menu cards, pool table lights, and clocks) can be sold, loaned indefinitely, or given (with allowances depending on the product being advertised) to retailers (§§ 561.42(14)(a) and 561.42(14)(b), Fla. Stat.; Fla. Admin. Code R. 61A-1.01010 and 61A-1.01011).
- **Consumer specialties**. Under this exception, branded items intended to be used by consumers (for example, keychains and t-shirts) can be given:
 - to retailers for use by consumers for wine and spirits; or
 - directly to consumers for beer manufacturers or distributors.
- (§ 561.42(14)(d), Fla. Stat.; Fla. Admin. Code R. 61A-1.01012.)
- **Consumer sweepstakes or contests**, under limited circumstances (Fla. Admin. Code R. 61A-1.0104 and 61A-1.0105).
- **Educational seminars** for retailers and retail employees, with limitations. This exception does not include payment for lodging or transportation to or from any such seminar. (Fla. Admin. Code R. 61A-1.01017.)
- **Participation in retailer trade shows and conventions**, with limitations (Fla. Admin. Code R. 61A-1.01018).

TIED-HOUSE ENFORCEMENT

Since 2017, the DABT has taken a more active approach to investigating tied-house violations in Florida, including joint investigations with the TTB. Licensees subject to investigation must substantiate activity that falls within a tied-house exception by providing required documentation. The required documentation is included in the Florida Beverage Law for each applicable tied-house exception.

Recordkeeping documenting tied-house exceptions generally must be maintained by licensees for a period of three years and must include:

- The date of the activity.
 - The persons involved.
 - The number of items provided.
 - The value of items provided.
 - Detailed receipts.
- (Fla. Admin. Code R. 61A-1.01028.)

LICENSING

All parties that plan to engage in the alcohol beverage business in Florida must first obtain a license from the DABT (§ 561.17(1), Fla. Stat.).

In Florida, alcohol beverage license privileges correspond to both:

- The various tiers of the three-tier system (see Three-Tier System). In addition to manufacturers, distributors, and retailers, each of the following require alcohol beverage licenses in Florida:
 - brokers and sales agents;
 - importers of alcohol beverages;
 - exporters of alcohol beverages; and
 - bottle clubs.
- (§ 561.14, Fla. Stat.)
- The category of alcohol beverage (malt beverages, wine, or spirits) that the licensee can produce, distribute, or sell under the applicable license, specifically:
 - beer (and other malt beverages);
 - wine; or
 - spirits.

For a list of all types of alcohol beverage licenses available in Florida, see Florida Division of Alcoholic Beverages and Tobacco Licenses and Permits for Alcoholic Beverages.

RETAIL LICENSES

In Florida, the most common types of alcohol beverage retail licenses include:

- 2COP license (see 2COP License).
- 2APS license (see 2APS License).
- Quota license (see Quota License).
- Restaurant license (see Restaurant License (“SFS” License)).
- Hotel license (see Hotel License (“S” License)).
- 13CT catering license (see Catering License (“13CT” License)).

2COP License

A 2COP license allows for the sale of beer and wine for consumption both:

- On-premise, by the drink.
- Off-premise, in sealed containers.

This is the type of license that is typically held by smaller restaurants, wine bars, and cafeterias. 2COP license holders are also allowed to sell sealed bottles of beer or wine for off-premise consumption, provided that the local zoning authority allows package sales at the licensed location.

2APS License

A 2APS license allows for the sale of beer and wine in sealed containers for off-premise consumption only. This is the type of license that is typically held by supermarkets and convenience stores.

Quota License

Quota licenses are limited by population, with one license issued per 7,500 residents in a particular county. A quota license can be used only within the county for which it was issued and cannot be moved to another county. (§ 561.20(1), Fla. Stat.)

Quota licenses can be obtained in one of two ways:

- **Purchasing the license** from existing license holder on the open market through a purchase transaction similar to the purchase of real property. The price of a license obtained this way varies depending on current market supply and demand.
- Winning the license through a yearly **lottery** conducted by the DABT Bureau of Licensing, involving a double-random selection drawing (§ 561.19, Fla. Stat.). The entry period for this lottery runs from the third Monday in August and remains open for a period of 45 days. The filing fee for a lottery application is \$100 and lottery winners must pay a fee of \$10,750 for the issuance of a new quota license. (§ 561.19(2)(e), (5), Fla. Stat.). For more information for businesses considering entering the lottery, see Quota Beverage License Drawing Entry Form - Business Entry, which includes a link to the application.

Once a quota license is obtained, the license must be activated by the DABT. To activate the license, the license holder must submit a licensing application and qualify (see License Maintenance: Retail Licenses, which includes a discussion about conducting business in an active manner).

There are several types of quota licenses, including:

- **3-series quota license.** This type of quota license allows for package sales of beer, wine, and spirits for off-premise consumption only.
- **Series 4 through 8 quota licenses.** These types of quota licenses allow for the sale of beer, wine, and spirits for either on or off-premise consumption. The series number corresponds to certain county population thresholds with less populated counties corresponding to smaller series numbers.

Restaurant License ("SFS" License)

A restaurant or "SFS" license allows for the sale of beer, wine, and spirits for on-premise consumption only in connection with a restaurant operation. An establishment must meet certain minimum thresholds to qualify for this type of license. Unless there is a local law on the books to the contrary, the establishment must:

- Have 2,500 square feet of service area.
- Be equipped to serve meals to 150 people at one time. Applicants should be aware that the DABT's initial licensing inspection checklist covers fire occupancy loads for the licensed premises. It is important to verify that the licensed premises has a fire occupancy load of at least 150.

- Derive at least 51% of food and beverage revenue from food and non-alcoholic beverages during the first 60-day operating period and every 12-month period thereafter.

- Stop alcohol sales when food service or consumption stops.

(§ 561.20(2)(a)(4), Fla. Stat.)

Unlike a quota license, an SFS license is not purchased from an existing license holder on the open market. An SFS license is applied for directly with the DABT. Because the cost of this license is significantly less than a quota license, applicants may be tempted to apply for it even if they anticipate that they will not meet SFS requirements. Applicants, however, should be aware that the DABT diligently audits these requirements by requesting detailed sales records and invoices approximately 60 days after the temporary liquor license is issued. The DABT can also pursue administrative action for noncompliance.

An SFS license cannot be transferred to a new location (§ 561.20(2)(a), Fla. Stat.).

Hotel License ("S" License)

Hotels and motels can apply for a hotel or "S" license which allows for the sale of beer, wine, and spirits for on-premise and off-premise consumption. To qualify for an S license, applicants must have a minimum number of guest rooms, which varies based on county size, from 80 to 100 rooms. Certain exceptions apply to historic structures and to condominium accommodations used wholly for rental to transients. (§ 561.20(2)(a)(1), (2), and (3), Fla. Stat.)

A hotel license cannot be transferred to a new location (§ 561.20(2)(a), Fla. Stat.).

Catering License ("13CT" License)

A catering or "13CT" license allows for the sale of beer, wine, and spirits at catered events, provided that 51% of the caterer's gross food and beverage revenue at each catered event comes from the sale of food and non-alcoholic beverage. To qualify for this type of license, the caterer must also hold a catering license through the Division of Hotels and Restaurants under Florida Statutes Chapter 509, which covers food service catering. (§ 561.20(2)(a)(5), Fla. Stat.)

13CT licensees must purchase the alcohol used at catered events from retail stores (not from distributors) (§ 561.20(2)(a)(5), Fla. Stat.).

MANUFACTURER AND DISTRIBUTOR LICENSES

There are several types of alcohol beverage licenses for manufacturers and distributors in Florida (see Florida Division of Alcoholic Beverages and Tobacco Licenses and Permits for Alcoholic Beverages).

Licenses for manufacturers vary based on the type of alcohol beverage being produced, including:

- Beer.
- Distilled spirits.
- Wine.

Licenses for distributors vary based on the type of alcohol beverages being distributed and where the beverages will be distributed.

To apply for a license in Florida, in-state manufacturers (breweries, distilleries, and wineries) and distributors are required to both:

- Submit a license application.
- File a surety bond with the application. The bond is used to secure the payment of applicable excise taxes. Surety bond amounts vary from \$25,000 to \$100,000, but the DABT can raise or lower these bond amounts at its discretion. (§§ 561.37 and 561.371, Fla. Stat.)

The DABT will not issue manufacturer or distributor licenses until the applicant has provided proof of federal permitting (see Federal Regulation).

LICENSE QUALIFICATION CONSIDERATIONS

In Florida, alcohol beverage licenses can only be issued to persons of good moral character, who are over the age of 21. For corporate applicants, all corporate officers must be of good moral character and must be over the age of 21. (§ 561.15(1), Fla. Stat.)

Licenses generally will not be issued to anyone who has:

- Been convicted of any of the following beverage law-related offenses anywhere in the US within five years of the time of application:
 - soliciting prostitution;
 - pandering;
 - letting premises for prostitution;
 - keeping a disorderly place; or
 - controlled substance-related violations.
- Been convicted of any felony in Florida or in any other state in the US within the past 15 years.

(§ 561.15(2), Fla. Stat.)

For license qualification purposes, Florida Beverage Law defines “conviction” to include both:

- An adjudication of guilt on a plea of guilty or *nolo contendere*.
- The forfeiture of a bond when charged with a crime.

(§ 561.15(2), Fla. Stat.)

DISCLOSURE REQUIREMENTS

When applying for an alcohol beverage license in Florida, certain individuals are considered interested individuals, and they must be disclosed on the application. “Interested individuals” generally include all persons, officers, shareholders, and directors of all legal or business entities who have a direct or indirect interest in the applicant’s business. The determination of who is an interested individual is based on the corporate structure of the entity applying for the license. Interested individuals must be qualified to hold an alcohol beverage license. (§ 561.17(1), Fla. Stat.; see License Qualification Considerations.)

In many instances, officers of corporate applicants and managers of limited liability companies must be both disclosed and fingerprinted. If those managers are also business entities, the DABT typically requires applicants to provide upstream ownership and management information until the individuals with managerial control over the applicant’s business are identified.

Florida law does not require interested individuals to undergo fingerprinting when applying for a license. The law does, however, permit the DABT to require such fingerprinting during the licensing process. (§ 561.17(1), Fla. Stat.) The fingerprinting process can be done either:

- By an approved vendor if the individual is in-state.
- Through paper fingerprint cards if the individual is out-of-state. Prints taken on paper cards must be submitted to a processing service prior to application.

For more information, see Florida Department of Business and Professional Regulation, Frequently Asked Questions, Electronic Fingerprinting.

Applicants for retail alcohol beverage licenses who are leasing the location to be licensed must disclose whether their lease entitles the landlord to rental payment equal to a percent of alcohol beverage revenue. However, shopping centers with five or more stores, at least one of which has a retail beverage license, are not considered interested if the tenant holding the liquor license pays no more than ten percent of the gross proceeds of its business to the shopping center. (§ 561.15(3), Fla. Stat.)

DABT LICENSING PROCESS

Application

The form that must be completed to obtain a new alcohol beverage license is DBPR ABT-6001 (Application for New Alcoholic Beverage License). Paper applications are generally required to obtain an alcohol beverage license. Completed applications must be submitted by either:

- Hand-delivery or mail to the applicable DABT **district office**. Note that some district offices accept walk-ins, and others allow applicants to schedule appointments with Bureau of Licensing staff.
- Mail to the DABT’s **central licensing office**.

The addresses for the central licensing office and each of the district offices can be found on the DABT’s contact page.

The same form application covers all types of new retail alcohol beverage licenses but does not cover transfers (see License Transfer).

When applying for a license:

- Personal questionnaires and fingerprints are required for certain individuals (see Disclosure Requirements).
- A copy of the applicant’s right of occupancy (lease or deed) and floor plan must accompany the application.

Most new applications require approval by the following agencies prior to submitting:

- The corresponding municipal or county zoning authority (§ 562.45(2)(a), Fla. Stat.).
- The Florida Department of Revenue.
- In some instances, the applicable health agency (Florida Division of Hotels and Restaurants, Florida Department of Agriculture, or the applicable County Health Department) (§ 561.17(2), Fla. Stat.).

The Florida Department of Business and Professional Regulation provides a checklist of alcohol beverage application requirements on its website. This checklist includes a link to the license application. The DABT also has an FAQ Page that includes answers to many licensing-related questions.

After a completed application is submitted to the DABT, the agency's Bureau of Licensing conducts an initial review of the application to determine that essential information is correct and that applicable agency approvals have been granted (§ 561.18, Fla. Stat.).

Temporary License

Applicants can request a temporary license while their application is under review. A temporary license may be issued by the DABT if both:

- The application is, on its face, complete.
- The temporary license fee has been paid (see License Fees).

(§ 561.181(1)(a), Fla. Stat.)

A temporary license provides the applicant with nearly all the same privileges as a permanent license. However, if the applicant does not hold any other beverage licenses of the same type, it can only use cash to purchase from its distributors (credit terms are not allowed) (§ 561.181(1)(b), Fla. Stat.). This means that the applicant must make payment to its distributors on the day of delivery.

Issuance and Renewal

The DABT conducts a thorough review of each application before issuing a permanent license. This includes reviewing background check and fingerprint results from interested individuals that were disclosed on the application (§ 561.17, Fla. Stat.; see Disclosure Requirements). The Bureau of Enforcement conducts application site-inspections for some, but not all, license types. Once a completed application is submitted, processing time by the DABT typically ranges from seven to 90 days.

All types of alcohol beverage licenses generally must be renewed on an annual basis in accordance with the renewal schedule set by the DABT. When renewing, the licensee must:

- Pay the annual license fee (see License Fees).
- Give any bond that may be required for the particular license.

(§ 561.27(1), Fla. Stat.)

License Fees

License fees vary based on license type and the county (see DABT Annual License Fees). License fees generally range from \$140 to \$4000.

Temporary license fees are the greater of either:

- \$100.
- One-quarter of the annual license fee.

(§ 561.181(3), Fla. Stat.; see also Alcoholic Beverage Temporary License/Permit Fees.)

LICENSE TRANSFER

In Florida, alcohol beverage licenses are not transferrable except as provided by statute (§ 561.32(1), Fla. Stat.). Florida Beverage Law provides that a license can generally be transferred from:

- One entity to another, for example, with the sale of a business (§ 561.32(1)(a), Fla. Stat.).
- Location to location, with exceptions including both:
 - "S" hotel licenses (see Hotel License ("S" License)); and
 - "SFS" restaurant licenses (see Restaurant License ("SFS" License)).
- (§ 561.20(2)(a), Fla. Stat.)

All license transfers require the applicant to submit Form DBPR ABT-6002 (Application for Transfer of Ownership of An Alcoholic Beverage License) to the DABT for approval. This form is similar in all material respects to the initial licensing application but requires additional signatures by the transferor.

When a license is transferred from location to location, the applicant is required to obtain zoning approval from the local municipality or county. This can be a long and complicated process. However, zoning approval is **not** required when a license is transferred from one entity to another (for example, when one entity purchases another entity) and the new licensee (the purchasing entity) operates at the same location as the original licensee (the purchased entity) (§ 562.45(2)(a), Fla. Stat. (requiring zoning approval only for change in series of a license or change in location)).

Each transfer application (whether the transfer is from one location to another or from one entity to another) requires approval by the Florida Department of Revenue and the applicable health agency. The only exception is where the underlying license type does not require health agency approval (for example, a 2APS license).

The fee for a transfer application due to a change in ownership is the same as for an original license application. However, if the transfer application seeks only to change a license from one location to another with no change in ownership, then there is no transfer fee.

Transfer of Quota Licenses

Quota licenses can only be transferred to locations within the county for which they are issued (§ 561.33(3), Fla. Stat.). The purchase and sale of a quota license is similar in many respects to the purchase of real property. The purchaser's counsel should conduct proper due diligence to ensure that:

- There are no pending violations or enforcement actions associated with the license.
- There are no liens on the license. Requests for lien searches can be submitted to the DABT through paper request by completing a DBPR ABT Form 6023 (Request for Alcoholic Beverage License Lien Search). The results are generally returned within a few business days. The fee for a lien search is \$20.

Counsel for the purchaser of a quota license should also consider including representations and warranties in any purchase agreement stating that:

- The license is free and clear of any liens or encumbrances.
- The seller will cooperate in executing any documents necessary to effectuate the transfer of the license (including signatures on transfer applications) prior to and post-closing.

LICENSE MAINTENANCE

Retail Licenses

Florida retail license holders must meet many ongoing requirements set forth in the Florida Beverage Law in order to maintain their license. These requirements include:

- Posting the license on-site in a conspicuous location (§ 561.23, Fla. Stat.).
- Paying distributors within ten days of purchase (see Distributor Licenses).

Those establishments that hold quota licenses issued after September 30, 1988 must also maintain their licensed premises in an active manner in order to maintain the license. "Active manner" means that the establishment must be open for bona fide beverage sales at least eight hours per day for at least 210 days during any 12-month period. This activation period starts six months after the licensee acquires the license. Licenses can be placed in inactive status for a period not to exceed 12 months with extensions allowed under certain circumstances (for example, if the premises have been damaged or undergoing construction). (§ 561.29(1)(i), Fla. Stat.)

Under the **Florida Responsible Vendor Act**, holders of all types of Florida retail licenses are entitled to certain benefits if they meet certain training and vending requirements (§§ 561.701 to 561.706, Fla. Stat.). These benefits include reduced penalties for retail sales made to minors, in certain circumstances. To qualify as a responsible vendor, the licensee is required to:

- Provide a course for employees on various responsible vending topics, as set forth in § 561.705 Fla. Stat. This course must be completed within:
 - 30 days of starting employment in the case of non-managerial employees who serve alcohol beverages (§ 561.705(3), Fla. Stat.); and
 - 15 days of starting employment in the case of managerial employees (§ 561.705(4), Fla. Stat.).
- Refresher training sessions for these courses must be held every four months (§ 561.705(5), Fla. Stat.).
- Have all employees complete a detailed background questionnaire mirroring the disclosure information included on an initial license application, Form DBPR ABT-6001. (§ 561.705(6), Fla. Stat.). 1APS and 2APS licensees are exempt from this questionnaire requirement.
- Have a set policy stating that any employee who engages in illegal use of controlled substances on the licensed premises will be immediately dismissed from employment. Each employee must acknowledge the policy by signing a document to that effect. (§ 561.705(7), Fla. Stat.)
- Post certain notices on the licensed premises regarding both:
 - sales to minors; and
 - use or trafficking of controlled substances.
- (§ 561.705(9), Fla. Stat.)

Distributor Licenses

Several Florida laws are aimed at ensuring that in-state alcohol beverage distributors are bona-fide distributors and not established as mere pass-throughs between manufacturers and retailers. This

is an attempt to protect the integrity of Florida's three-tier system (see Three-Tier System). Some notable requirements for distributor license holders include:

- **Physical warehouse requirements.** Distributors are required to have a physical warehouse in the state, owned or leased by the distributor or dedicated to the distributor's use in a public warehouse. The warehouse must:
 - be capable of storing an inventory of alcohol beverages equal to at least 10% of the distributor's annual case sales to retailers within the state or within a beer distributor's exclusive territory **or** store inventory with an acquisition cost of at least \$100,000 (§ 561.411(1), Fla. Stat.); and
 - actually maintain, at all times, inventory equal to 5% of annual sales **or** inventory with an acquisition cost of at least \$100,000 (§561.411(2), Fla. Stat.).
- The requirement that distributors must **sell to licensed retailers generally**, rather than a selected few (§561.411(3), Fla. Stat.). This presumption is met if:
 - the distributor sells to at least 25% of retailers in the county where the warehouse is located or in the beer distributor's exclusive territory (§ 561.411(3)(a), Fla. Stat.); or
 - at least 50% of the distributor's total sales volume to retailers in the state or within the beer distributor's territory during any 12-month period is individual sales of ten cases or less (§ 561.411(3)(b), Fla. Stat.).
- **No-Sale List.** Florida tied-house laws prohibit distributors from issuing credit to its retail customers beyond the time period permitted by Florida Beverage Law (§ 561.42(1), Fla. Stat.; Fla. Admin. Code R. 61A-3.035). To reinforce this requirement, the law imposes an affirmative reporting obligation requiring distributors to report any retail customer that does not pay within ten days after the calendar week within which the sale was made (§ 561.42(3), Fla. Stat.). After a retailer is reported, the DABT puts the retailer on a no-sale list. This list puts all distributors on notice that the retailer cannot purchase any alcohol beverages until it has paid its distributor the outstanding balance.

DABT NOTIFICATION REQUIREMENTS

Ownership and Management Changes

The following changes generally require pre-approval from the DABT:

- Transfers of 10% or more of any financial interest in a business holding any type of alcohol beverage retail license. This includes any divestiture of any such interest.
- Any change to the officers or directors of any business holding any type of alcohol beverage retail license. This includes any resignation of any such position. (§ 561.17(3), Fla. Stat.)

There is no fee to change the officers, stockholders, or corporate name of a licensee.

Criminal Activity

Licensees must immediately notify the DABT if any person interested in any type of alcohol beverage license (see Disclosure Requirements) has been arrested, charged, indicted, or convicted,

or has appealed the conviction of any crime that is disqualifying (§ 561.32(2)(a)(2), Fla. Stat.; see License Qualification Considerations, discussing good moral character).

ADVERTISING AND MARKETING

The regulation of alcohol beverage advertising and marketing is done at both:

- The federal level (see Federal Regulation).
- The state level (see State Regulation).

FEDERAL REGULATION

Most regulation of alcohol beverage advertising and marketing is at the federal level. The FAA Act authorizes the TTB to regulate advertising and marketing of alcohol beverages, including distilled spirits, wine, and malt beverages.

The TTB defines alcohol beverage advertising broadly to include any statement, illustration, or depiction either:

- Made in commerce.
- Aimed at inducing sales in commerce.

The Federal Trade Commission (FTC) makes efforts to limit advertising of alcohol beverages to people under 21. It encourages alcohol advertisers to adopt and comply with self-regulatory standards limiting advertising to teens. For more information about the regulation of alcohol beverage marketing and advertising at the federal level, see Practice Note, Alcohol Beverage Marketing and Advertising ([W-018-8644](#)).

STATE REGULATION

Unlike many other jurisdictions, Florida does not have consumer protection type advertising restrictions for alcohol beverages, such as happy-hour laws or content-based restrictions. The law in Florida with respect to alcohol beverage advertising and marketing is focused more on permissible and impermissible advertising and marketing under the tied-house rules and exceptions (see Tied-House Rules and Exceptions).

Florida Beverage Law generally prohibits a manufacturer or distributor from paying for or otherwise giving advertising value to a retailer (§ 561.42, Fla. Stat.). For example, breweries and beer distributors are expressly prohibited from mentioning in an advertisement that a beer tasting is going to take place at a particular retail account (§ 561.42(14)(e), Fla. Stat.). This is viewed as impermissible cooperative advertising.

Certain exceptions are provided for in the law, but the amount of advertising that can be given by a manufacturer or distributor to a retailer varies by product category. Beer manufacturers and distributors generally do not have as many advertising rights as their spirits or wine counterparts. Among other things, manufacturers and distributors are permitted to:

- Give interior signage to retailers, (including interior windows signage, like neon signs) even if the sign can be seen from the exterior. Neon signs are limited to one sign per manufacturer at any retail premises. (§ 561.42(11), Fla. Stat.; Fla. Admin. Code R. 61A-1.01013.)

- Mention two or more unaffiliated retailers in their ads, so long as:
 - the ad identifies the retailers in a relatively inconspicuous way in relation to the whole ad; and
 - no retailer pays for part of the cost of the ad.
- (Fla. Admin. Code R. 61A-1.01015.) These ads should be used to identify where the brands can be purchased, but not to showcase a particular retailer or reference any retailer in a laudatory way (Fla. Admin. Code R. 61A-1.01015).

Outdoor signage advertising an alcohol brand on the exterior portions of a retailer's property is not permitted in Florida.

Florida Beverage Law is antiquated in many respects with respect to advertising and marketing. It does not expressly address many of the issues facing alcohol advertisers in the social media and digital space. Counsel should caution clients that the DABT interprets advertising broadly, and the same restrictions set out for general advertising related to alcohol beverages are likely to apply in the digital context as well.

PENALTIES

In many instances, penalties for non-compliance with Florida Beverage Law are specified in the statute covering the offense. These penalties range, depending on the severity of the violation, and include:

- Civil penalties of not more than \$1,000 per violation arising out of a single transaction (§ 561.29(3), Fla. Stat.).
- Felony conviction (for example, § 562.45(1) Fla. Stat.).
- License suspension or revocation (§ 561.29(1), Fla. Stat.). Florida courts have upheld license suspensions and revocations by the DABT in situations, for example, where:
 - corporate officers of the licensee were convicted of felonies (see, *McCoy Restaurants, Inc. v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 616 So. 2d 545, 545-46 (Fla. 1st DCA 1993)); and
 - recurring illegal activities were taking place at the licensee's premises (see *Pinacoteca Corp. v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 580 So. 2d 881, 882 (Fla. 4th DCA 1991)).

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