

# Coming to a

By Amy Keller

As craft breweries have gained a foothold in Florida, they're pushing for legal changes that irk big, established beer distributors.

**I**n 2011, there were 42 small, "craft" breweries in Florida. Last year, there were at least 76.

While Tampa Bay — home to longtime brewery Dunedin Brewery and Cigar City Brewing — is regarded as the hub of craft beer in Florida, independent local breweries have popped up from Pensacola Bay Brewery to Mile Marker Brewing in St. Augustine and the Gravity Brew Lab in the Wynwood section of Miami. Some small breweries, like Intuition Ale Works and Bold City Brewing in Jacksonville, have become catalysts for revitalizing neighborhoods by attracting restaurants and other businesses.

"It has helped spruce up the area and bring new growth," notes Josh Aubuchon, an attorney with Holland & Knight and executive director of the Florida Brewers Guild, an association of micro-brewers.

While the craft brewers still collectively account for only about 5% of annual beer sales in Florida, the industry has grown enough to begin asserting its legal interests in Tallahassee — and to generate friction with the Florida Beer Wholesalers Association, a politically powerful trade group that represents 25 beer distributors. Twenty-two of those distributors handle Anheuser-Busch brands and about 20 other brewers.

The distributors, say the craft brewers, are worried about protecting regional monopolies and profits created by the laws that ended Prohibition. Those measures



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prohibit manufacturers from selling alcohol directly to consumers or retailers. Instead, brewers must first sell to state-licensed distributors who in turn sell the beer to retailers like bars and grocery stores.

The small brewers say many of the laws hamper their ability to compete and have engaged the distributors on a range of issues involving how and where they can sell their products. One issue: The state's ban on 64-ounce "growlers" — essentially, takeout containers of beer — that they say makes no sense ["Growler Law a Groaner for Some," page 89].

Another issue involves an exception to the requirement that brewers sell through distributors. The legal loophole dates to 1963, when the state Legislature began allowing Anheuser-Busch to offer beer to consumers at a brewery it operated at the Busch Gardens amusement park. The exception created a limited license for manufacturers to operate as vendors and came to apply to all beer makers who "promote the brewery and the tourist industry of the state."

Small brewers in Florida have taken advantage of the loophole to sell their beer directly to consumers in tasting rooms — a move that the beer distributors eye warily. Mitch Rubin, executive director and lobbyist for the Florida Beer Wholesalers Association, which represents Florida's Anheuser-Busch/InBev

distributors, believes some of the craft breweries are pushing the envelope.

"The problem that arises," says Rubin, "is when they want to sell other brewers' beers at their tasting rooms. Then they start to look more like a retailer than brewers."

Eventually, the craft brewers would like to loosen the laws so that they could distribute their products to bars and stores on a limited basis themselves — without going through a distributor. In Colorado, for instance, brewers can sell directly to retailers if they produce fewer than 300,000 barrels of beer per year. Allowing limited self-distribution in Florida, Aubuchon argues, would help new craft brewers market their products.

Aubuchon also envisions changes in the franchise laws that would make it easier for small brewers to terminate contracts with wholesalers if the relationship is not working out. While the franchise laws were developed to protect wholesalers from arbitrary termination by big beer suppliers, today it's generally the wholesalers who have the advantage over small manufacturers.

Limited self-distribution, says Aubuchon, is "going to be contentious. It's going to be a big fight, but it's some-



More than 70 craft beer makers now operate in Florida from Pensacola to Miami, producing hundreds of beers and ales sold either on-site or at retail outlets.



"We believe that a rising tide lifts all boats and that our legislation would have a very positive impact for all tiers in the beer industry."

— Josh Aubuchon, attorney, Holland & Knight; executive director, Florida Brewers Guild

## Growler Law a Groaner for Some

For micro-brewers, Florida restrictions on container sizes that can't be sold are overdue for change.

Takeout beer has been a staple in American bars since the 1800s, when patrons carried fresh beer home in small, galvanized pails.

Yesterday's "bucket" now generally is called a "growler" and is made of glass, plastic or aluminum. Growlers come in many sizes, most commonly 32-ounce, 64-ounce and 128-ounce with the 64-ounce containers the most popular among craft beer fanciers, says Mike Halker, owner of Due South Brewing in Boynton Beach. The 64-ouncers are, he says, "exactly the right size growler for two or three people to sit down and drink."

Florida law, however, forbids the sale of any bottle of beer, including growlers, that are larger than 32 ounces and smaller than a gallon (128 ounces). For example, customers who visit Due South Brewing can take home a 32-ounce growler of the craft brewer's Caramel Cream Ale, Coastalicious Apricot Pale Ale or other selections for \$7. For \$23, they can get a 128-ounce growler. But when it comes to a 64-ounce growler, the industry standard in most states, Florida patrons are out of luck.

The restriction is rooted in a 1965 law that limits malt beverage containers to 8, 12, 16 and 32 ounces. The commonly told story is that the move was seen as retaliation against Miller Brewing for locating a brewery in Georgia instead of Florida that manufactured 7-ounce "pony" bottles that were popular at the time. The Legislature eased those restrictions in 2001 but still prohibited the sale of beer containers larger than 32 ounces, unless they are gallon size.

The restriction on 64-ounce growlers makes no sense to small brewers like Halker, who opened Due South Brewing in 2012 and serves as president of the Florida Brewers Guild. He and other craft brewers are pushing to legalize 64-ounce growlers, which are permitted in 47 other states. "It's



kind of ridiculous," he says. "We can sell two 32-ounce containers of beer to the same person, but if I take all of that beer and put it into one container, I'm not allowed to sell that."

Mitch Rubin, a lobbyist and executive director for the Florida Beer Wholesalers Association, says breweries are operating in a "gray zone" of the law and asserts that there's "really no basis in law for selling a growler of any size in the first place." Florida beverage law, he says, is built around two premises — on-premises consumption in a bar or restaurant or the retail sale of a packaged or sealed container. "Now you have this in-between thing. Is it a sealed container? It didn't come from the manufacturer sealed and also it's not really an open container because someone's sealing it, so what is this thing?"

That said, Rubin says the beer distributors he represents aren't necessarily opposed to 64-ounce growlers but would like the law to clarify requirements for labels and proper seals "so law enforcement can tell when the seal has been broken —

Can you guess which size beer bottle is illegal in Florida — 32 ounces, 64 ounces or 128 ounces?

Find the answer in this story.

like a bottle of mouthwash or aspirin."

A related issue is whether retail establishments ought to be able to sell growlers. ABC Fine Wine and Spirits, which operates nearly 150 stores in Florida, recently added growler stations that it calls "brew stops" in stores in Tampa, Lake Mary and Jacksonville. The retailer plans to open another station later this month in a Lakeland store as well as in a new store being built in Winter Park. Spokeswoman Lorena Streeter says the company favors having the 64-ounce growler available.

"The 64-ounce size seems to be very popular with craft beer aficionados," she says. "That's what they are in the market for."



## { Beer Laws }

thing that we'd love to see."

Joey Redner, founder and owner of Cigar City Brewing in Tampa, says Florida's small brewers would also like the state to allow for beer to be sampled at retail outlets. Under current law, retailers like Publix can offer customers taste samples of wine and liquor. Beer, however, is off-limits unless an establishment has a license to serve.

That puts smaller beer manufacturers at a disadvantage, Redner says, particularly because the public isn't as familiar with the kind of beer he produces. "For me to be able to say, 'Here, try a sample of it and see if you like it and if you do, then you can make your purchase'... that goes a long way and it's something that we currently can't do."

For their part, some distributors see the push for 64-ounce growlers and other changes as a potential threat to the three-tier system that's regulated alcohol distribution since the end of Prohibition.

"Some accommodations have to be made, but you still can't lose sight of the history, because one thing that hasn't changed is human nature or the competitive spirit for brewers to dominate retail and for consumers to want all their alcohol at the absolute lowest price," says Rubin.

Alcohol, like cigarettes, Rubin says, should not be available at the absolute, lowest rock-bottom price. "It's an intoxicating beverage, and there are public policies that treat it differently. That's why the tax rates are so high, and that's why there's a mandatory three-tier system along with age requirements and all kinds



of other laws regulating the product."

Aubuchon says the laws that govern alcohol sales today were meant to keep the production, distribution and sales of alcohol as three distinct business sectors. After Prohibition ended, he explains, the government wanted to keep big breweries from becoming distributors and then buying local bars — monopolizing the entire industry.

Today, says Aubuchon, those worries are unfounded, and the laws only serve to stifle competition from the craft brewers. "The mandatory three-tier system itself is antiquated and the purposes for which it was enacted after Prohibition are no longer necessary. If you've got a brewery with a tasting room, it's basically one bar. Is that going to put anybody out of business? No."

"Craft beer is 5% of the market, and for me to be able to say, 'Here, try a sample of it and see if you like it and if you do, then you can make your purchase'... that goes a long way and it's something that we currently can't do."

— Joey Redner, founder/owner, Cigar City Brewing, Tampa

# Micro-Distillers Toast a New Law

### The change allows liquor makers to sell some of what they make.

Since he began distilling his own rum in 2007, Troy Roberts has welcomed the public to tour his Sarasota facility and learn how he makes his Siesta Key rum. Until recently, however, the law allowed visitors only to see, smell and sample the freshly distilled rum. "It was frustrating because we'd have a lot of people come out and everyone would just assume they could buy the rum. But we couldn't sell it to them, so there was some missed revenue there," Roberts says.

In July, a new law took effect allowing Roberts and other micro-distillers — those that produce 75,000 gallons a year or less — to sell no more than two bottles a year to each customer directly.

Roberts — who launched his rum-making enterprise after selling off several sports car enthusiast websites he co-founded in 1999 — welcomes the walk-in sales, but says the new law is more important in terms of marketing than the \$20 he gets from each bottle he sells.

"The retailers should be happy because now they're going to have people going in looking for Siesta Key rum in their shops. It gives people the opportunity to try it and hopefully turns them into buyers."

Jason Unger and Richard



"It was frustrating because everyone would just assume they could buy the rum. But we couldn't sell it to them, so there was some missed revenue there."

— Troy Roberts, owner Drum Circle Brewery

Blau, lawyers and lobbyists with GrayRobinson who represented the Florida Craft Distillers Guild in amending the Prohibition-era laws, say the change will foster growth in Florida's nascent craft distilling industry. The number of craft distillers has grown from about 12 in 2012, when they first began working on

the issue, to more than 20 today, ranging from the Palm Ridge Reserve Distillery in Umatilla, which has been producing whiskey since 2009, to Alchemist Distillery in Miami, Wicked Dolphin Rum in Cape Coral and the St. Augustine Distillery, which plans to produce rum, whiskey, gin and vodka when it opens this month. **F**

## Beeronomics

Because of the expense involved in bottling and canning beer, most small brewers produce beer sold as draft. Here's a breakdown of what it typically costs to produce a keg of beer and how that price inflates as a keg moves through Florida's distribution system:



### The Local Brewery

Figuring in raw materials such as grain, hops, yeast, as well as labor and other production costs, a typical brewery can produce a 15.5-gallon **KEG OF BEER** for about **\$60**. That keg could typically be sold to a distributor for about \$90, giving the brewery a **\$30 PROFIT**.



### Distributor

Depending on the beer, the distributor will **RESELL THAT KEG** to retail establishments at anywhere from \$130 to \$200, yielding the distributor a **44% TO 122% PROFIT**.



### Restaurant

If a bar or restaurant pays **\$200 FOR A KEG**, which contains 120 pints, and sells each pint for \$5, it has made a **PROFIT OF ABOUT \$400**.

