HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 665 w/CS Beverage Law
SPONSOR(S): Representative Garcia
TIED BILLS: **IDEN./SIM. BILLS:** SB 1692

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Trades, Professions & Reg. Business [Sub]	7 Y, 0 N	Morris	Liepshutz
2) Business Regulation	27 Y, 5 N w/CS	Morris	Liepshutz
3) Finance and Tax			
4)			
5)			

SUMMARY ANALYSIS

The Beverage Law imposes significant transfer fees on the transfer of quota liquor licenses within three years of initial issuance. The Beverage Law also allows the Division of Alcoholic Beverages and Tobacco to waive the transfer fees when a license transfer occurs by operation of law because of a death, judicial proceeding, court appointment of fiduciary, foreclosure or forced judicial sale, bankruptcy proceeding, or a seizure of a license by a government agency.

This bill prohibits the waiver of transfer fees when a quota license is transferred within three years of initial issuance due to a foreclosure or forced judicial sale.

Florida, along with five other states [New York, Virginia, Indiana, North Carolina and Texas] is defending its state's direct shipping law in federal court. At issue is the states' requirement that all sales of alcoholic beverages to Florida consumers be from in-state licensees. Legally, sales made to Florida consumers by persons or businesses outside of the state's boundaries are beyond the state's jurisdiction for purposes of enforcement and compliance unless that person or business has established some physical presence in the state. The constitutionality of Florida's alcoholic beverage licensing and taxation framework will turn on the court's balancing of two conflicting parts of the U. S. Constitution: the Commerce Clause which requires unrestricted trade between the states balanced against the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The federal district court in Florida's case, *Bainbridge v. Turner,* upheld the constitutionality of current Florida law based on the 21st Amendment. The judgment of the district court, however, was vacated and the case was remanded from the 11th Circuit Court of Appeals back to the Middle District Court for additional fact-finding by the lower court. One of the issues of concern to the Court is the perceived disparity of treatment between in-state wineries with out-of-state wineries. This bill makes several changes to the Beverage Law to address the concerns expressed by the Federal Court.

Among those changes, the bill prohibits a Florida Farm Winery from making deliveries directly to consumers; allows a Florida Farm Winery to lease a portion of its premises to a vendor who is authorized to make deliveries; and restricts sales to the premises of the Florida Farm Winery.

The amendments affecting the operation of Florida Farm Wineries are not anticipated to directly impact state revenue collections or expenditures.

The bill provides that the act will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Chapters 561-565 and 567 and 568, Florida Statutes, comprise Florida's Beverage Law. The Beverage Law requires a person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages. The sale of alcoholic beverages is generally considered to be a privilege and as such, licensees are held to a high standard of accountability. The Division of Alcoholic Beverages and Tobacco [division], Department of Business and Professional Regulation is the state agency given responsibility for enforcement of the Beverage Law.

The Beverage Law requires the division to conduct background investigations on potential licensees and requires that licensees meet prescribed standards of moral character. Further, the Beverage Law provides a structured three-tiered distribution system: manufacturer to wholesale distributor to retail vendor and prohibits certain business practices and relationships within that system.[1] Section 561.24, F.S., provides that no manufacturer, rectifier or distiller of spirituous liquors or wine can be licensed as a distributor or registered as an exporter. Section 561.22, F.S., provides that no manufacturer, distributor or exporter may be licensed as a vendor [retailer]. This statute further provides that no vendor may also be licensed as a manufacturer, distributor or exporter. Alcoholic beverage licenses are subject to fine, suspension and/or revocation for violations of the Beverage Law.

<u>Alcoholic Beverage "Quota" Licenses</u>

Florida's retail alcoholic beverage licensing system is generally built around the "quota" license structure with all other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. Unlike retail beer and wine licenses, s. 561.20(1), Florida Statutes, provides for a quota or limitation on the number of liquor licenses which may be issued in a county based on population: one license for each 7,500 residents. Quota limitations were initially enacted in the interest of promoting temperance by limiting the number of retail outlets and, therefore, the availability of alcoholic beverages. A quota liquor license allows the sale of all legal alcoholic beverages, beer, wine and liquor, regardless of alcoholic content. Quota licenses also allow the sale of alcoholic beverages by the package as well as by the drink.

To assure impartiality in granting these liquor licenses, the law provides for a double random lottery drawing procedure to establish the order of selection to apply for a license. Since there is limited availability, quota licenses often sell on the private market for thousands of dollars. Bars/nightclubs and liquor package stores typically operate under the authority of a quota license; whereas, restaurants typically operate under a special restaurant license [SRX license] which is an exception to the quota license law.

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[1] This distribution system is commonly referred to as the "Tied House Evil" law.

Section 561.32(3)(a), F.S., assesses a transfer fee on the average annual value of gross sales of alcoholic beverages for the three years immediately preceding the transfer of a quota license and levied at the rate of four mills, except that the transfer fee may not exceed $5,000. In addition to that transfer fee, if a quota license is transferred within three years of initial issuance, an additional transfer fee in an amount equal to 15 times the annual license fee is assessed.

Section 561.32(5), F.S., allows the division to waive transfer fees when a license transfer occurs by operation of law because of a death, judicial proceeding, court appointment of fiduciary, foreclosure or forced judicial sale, bankruptcy proceeding, or a seizure of a license by a government agency.

This bill prohibits the waiver of transfer fees for transfers made within the 3-year period set forth in subsection (4) when the transfer is made due to a foreclosure or forced judicial sale.

Alcoholic Beverage Excise Tax

Excise taxes on alcoholic beverages are collected at both the state and federal levels. Sections 563.05, 564.06 and 565.12, F.S., provide for a state excise tax on malt beverages, wine, and spirits, respectively, according to classification and percent of alcohol by volume.

Excise taxes are collected from alcoholic beverage wholesale distributors and are paid monthly based on the wholesaler's inventory depletions. For FY 2001-02, Florida excise taxes in Florida generated: over $240 million from malt beverages, over $97 million from wines and over $166 million from distilled spirits. Additionally, over $315,000 was collected from excise tax audits for a combined collection of over $505 million. The Department of Revenue does not collect *sales tax* data on alcoholic beverages by category; therefore, specific collection data are not available. However, the Legislative Office of Economic and Demographic Research estimates[2] that over $292 million in sales tax was collected from off-premise sales of alcoholic beverages and over $212 million in sales tax was collected from on-premise sales of alcoholic beverages for 2001.

Direct Shipment of Alcoholic Beverages

The issue of direct sales has been the subject of much discussion and debate during the past few years. In recent years there has been an expansion of solicitations and advertisements for alcoholic beverage sales via magazines, specialty catalogues, direct mailings and, more recently, the Internet. Sales of this nature often bypass the state's regulatory and tax collection procedures and are, therefore, violative of Florida law. In response to the growing concern expressed by licensed Florida retailers and wholesalers, the 1997 Legislature enacted Chapter 97-213, Laws of Florida, which creates a felony violation for knowingly and intentionally shipping alcoholic beverages from an out-of-state location directly to a Florida consumer in violation of the Beverage Law.

Florida, along with five other states [New York, Virginia, Indiana, North Carolina and Texas[3]] is defending its state's direct shipping law in federal court. At issue is the states' requirement that all sales of alcoholic beverages to Florida consumers be from in-state licensees. Legally, sales made to Florida consumers by persons or businesses outside of the state's boundaries are beyond the state's jurisdiction for purposes of enforcement and compliance unless that person or business has established some physical presence in the state. The constitutionality of Florida's alcoholic beverage licensing and taxation framework will turn on the court's balancing of two conflicting parts of the U. S. Constitution: the Commerce Clause which requires unrestricted trade between the states balanced against the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

[2] Based on 2001 National expenditure data, rebased to Florida using population aged 20+ and adjusting upward for tourism.
[3] The federal district courts in Indiana, Texas, and New York overturned those states' laws based on the Commerce Clause. Of these three cases, only Indiana's case has been heard on appeal and the 5th Circuit Court of Appeals reversed the lower court, reinstated state law, and upheld its constitutionality based on the 21st Amendment.

The federal district court in Florida's case, _Bainbridge v. Turner_,[4] upheld the constitutionality of current Florida law based on the 21st Amendment. The judgment of the district court, however, was vacated and the case was remanded from the 11th Circuit Court of Appeals back to the Middle District Court for additional fact-finding by the lower court. One of the issues of concern to the Court is the perceived disparity of treatment between in-state wineries with out-of-state wineries.

Florida Farm Winery

Section 561.221, F.S., creates an exception to the licensure prohibitions in the Beverage Law and authorizes a certified Florida Farm Winery to manufacturer, distribute and sell wine at retail. Florida Farm Wineries are also allowed to conduct tastings and sales of their wines at shows, expositions and festivals.

Section 561.57, F.S., allows Florida vendors to makes deliveries away from their licensed premises in vehicles that are owned or leased by the vendor. As a retail vendor, a Florida Farm Winery, is allowed to make such deliveries even though they are also a licensed manufacturer.

This bill makes several changes to the Beverage Law to address the concerns expressed by the Federal Court with regard to the direct shipping of alcoholic beverages.

The bill amends s. 561.57, F.S., to specify who may make deliveries of alcoholic beverages to whom and by what mode of transportation:

- manufacturers and distributors may make deliveries to other manufacturers and distributors in vehicles that are owned or leased by the licensee or by common carrier;
- distributors may make deliveries to vendors in vehicles that are owned or leased by the licensee or by common carrier; and,
- vendors may make deliveries to consumers in vehicles that are owned or leased by the licensee or by common carrier; except that a vendor that is also a manufacturer or distributor [a Florida Farm Winery] may not make any delivery directly to a consumer.

The bill amends s. 599.004, F.S., the Florida Farm Winery Program statute, to authorize a Florida Farm Winery to lease a portion of its premises to a vendor [retailer]. This provision is designed to enable the winery, through its lessee, to make sales and deliveries directly to consumers since they would otherwise be precluded from making direct deliveries under the amendments to s. 561.57. This amendment also specifies that sales may occur only on the premises of the winery.

C. SECTION DIRECTORY:

Section 1. Amends s. 561.32(5), F.S., to prohibit the waiver of certain transfer fees.

Section 2. Amends paragraph (b) of s. 561.221(1), F.S., and creates a new paragraph (c) concerning wine tastings and sales.

Section 3. Amends s. 561.57 (2), F.S., relating to alcoholic beverage deliveries by licensees.

Section 4. Amends s. 599.004, F.S., relating to the Florida Farm Winery Program.

Section 5. Provides that the act will take effect upon becoming a law.

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[4] Formerly _Bainbridge v. Martelli_ and _Bainbridge v. Bush_, 11th Circuit Docket Nos. 01-14688 and 01-14734 [Consolidated]; District Court Docket No. 99-02681-CV-T-27 [M.D. Florida]

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Representatives of certified Florida Farm Wineries maintain that the provisions of this legislation will adversely impact their ability to market their products and consequently may cause irreparable harm to the industry.

D. FISCAL COMMENTS:

Indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide any additional rule-making authority to the division.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Subcommittee on Trades Professions and Regulated Business

The Subcommittee on Trades, Professions and Regulated Business adopted one amendment that was offered by Representative Garcia. The bill prohibits the waiver of transfer fees when the transfer of an alcoholic beverage license occurs by operation of law because of a death, judicial proceedings, court appointment of a fiduciary, foreclosure or forced judicial sale, bankruptcy proceedings, or a seizure of the license by a government agency. The amendment prohibits the waiver of transfer fees when the transfer occurs due to a foreclosure or forced judicial sale and allows the waiver of transfer fees under the other circumstances.

Committee on Business Regulation

The full committee adopted the traveling amendment from subcommittee and also adopted one additional amendment by Representative Garcia. The bill was then voted favorably with committee substitute. The committee substitute: prohibits a Florida Farm Winery from making deliveries to directly to consumers; restricts sales to the premises of the Florida Farm Winery; allows a Florida Farm Winery to lease a portion of its premises to a vendor; and deletes a provision of law allowing a Florida Farm Winery to make sales of its product at Florida fairs. The bill allows any vendor that obtains the necessary permit to conduct tastings and sales of wine at Florida trade shows, expositions and festivals.