HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 1079	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Regulatory Affairs Committee; Rodrigues, R. and others	115 **Y's**	1 **N's**
COMPANION BILLS:	CS/CS/SB 698	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 1079 passed the House on March 4, 2016, as CS/CS/SB 698.

The bill amends a variety of statutes related to chs. 561-565 and 567-568, F.S., Florida's Beverage Law (Beverage Law) and chs. 569, 201, and 386, F.S., related to the sale of tobacco products. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of these industries.

The bill:

- Provides a three year statute of limitations where the Division may review and assess taxes on a person required to pay taxes on tobacco products;
- Permits persons required to remit tax on tobacco products, to correct a return;
- Permits the Division to provide alcoholic beverage vendor licenses to railroad transit stations, with limitations;
- Clarifies licensure requirements for food service establishments selling alcoholic beverages pursuant to an alcoholic beverage license;
- Requires a deposit for alcoholic beverages sold in kegs, and an inventory and reconciliation process as an accounting alternative for specified vendors;
- Permits vendors to transport alcoholic beverages through another premises owned or operated in whole or in part by the same vendor;
- Provides taxation provisions for passenger vessels that sell alcoholic beverages and tobacco products; and
- Permits the Division to issue a temporary permit authorizing a municipality, county, or charity to sell alcoholic beverages for consumption on the premises of an event only, for a period not to exceed three days, subject to specific requirements.

The Department anticipates an indeterminate increase in revenues to state or local governments.

The bill was approved by the Governor on April 6, 2016, ch. 2016-190, L.O.F., and the bill will become effective on July 1, 2016, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Beverage Law Generally

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law (Beverage Law). The Division is responsible for the regulation of the alcoholic beverage industry.[1]

In general, the Beverage Law provides for a structured three-tier distribution system consisting of the manufacturer, distributor, and vendor. The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverage; the distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer.[2] Manufacturers cannot sell directly to retailers or directly to consumers. In the three-tier 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.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[3] Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.[4] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[5]

The system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[6] Activities between the three-tiers are heavily regulated to prevent a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

A licensed manufacturer or distributor is prohibited 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.[7]

Tobacco Law Generally

The Division is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of tobacco products and alcoholic beverages.[8] Chapter 569, F.S., sets forth the licensing and regulatory scheme for persons selling tobacco products. The division is charged with the supervision of the distribution of cigarettes and other tobacco products, permitting of cigarette distributing agents, wholesale dealers, exporters and retail dealers, collection of related taxes and fees, and imposing penalties for violations of the tobacco laws.

Chapters 210, 386, and 569, F.S., provide the regulatory and tax structure for tobacco sales. Part I of chapter 210, F.S., provides for the taxation of cigarettes. Part II provides for the taxation of other tobacco products. Cigarettes are taxed in a different manner than other tobacco products and cigars are not subject to an excise tax. Tobacco products, cigars, and cigarettes are subject to the sales tax.

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[1] s. 561.02, F.S.
[2] s. 561.14, F.S.
[3] s. 561.14(3), F.S. However, see discussion regarding the exceptions provided in s. 561.221, F.S.
[4] s. 561.22, F.S.
[5] ss. 563.022(14) and 561.14(1), F.S.
[6] 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 (last visited Jan. 30, 2016).
[7] s. 561.42(1), F.S.
[8] s. 561.02, F.S.

A “wholesale dealer” or “dealer,” as used in ch. 569, F.S., means “any person located inside or outside this state who sells cigarettes to retail dealers or other persons for purposes of resale only.”[9] “Retail dealer” means any person located inside or outside this state other than a wholesale dealer engaged in the business of selling cigarettes.”[10]

Part II of chapter 210, F.S., defines “tobacco products” to mean loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), F.S., or cigars.

Passenger Vessels Alcoholic Beverages and Tobacco Taxes

Current Situation

Cigarette Taxation

Currently, any “dealer” of packages of cigarettes is obligated to pay excise taxes, ranging from 16.95 cents per package to 67.8 cents per package to the Division.[11] This excise tax is imposed upon the dealer for the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in this state. Retailers and manufacturers are not required to pay excise taxes on the sale of cigarettes pursuant to ch. 210, F.S. Therefore, the Division obtains taxes for the sale of cigarettes in this state from wholesale dealers.

If a wholesale dealer fails to file a return, timely report taxes, or having filed an incorrect return, fails to file a correct return, the Division may determine the tax due within three years of the earliest sale included in the determination, which essentially provides a three year statute of limitations during which the Division may review and assess taxes on the wholesale dealer. A dealer is entitled to judicial review of the Division’s determination of the amount of unpaid taxes only if the amount determined due, including penalties, is deposited with the Division and an undertaking or bond is filed with the court.[12]

Currently, cruise ships as passenger vessels are permitted as tobacco products retail dealers. They purchase cigarettes for sale on their ships directly from manufacturers on bond, pursuant to 26 U.S.C. § 5704, because the ships sell the majority of the tobacco products outside of jurisdictional waters.[13] For any tobacco products sold while in jurisdictional waters, the cruise ships monitor the number of packages sold, and pay the excise taxes accordingly once the ships return to port.

Cruise lines are not licensed as wholesale dealers. Therefore the 3 year statute of limitations has not been applied to any determination by the Division on the taxes owed for the sale of tobacco on the ships.

[9] s. 210.01(5) and (6), F.S.
[10] s. 210.01(7), F.S.
[11] s. 210.02(6), F.S.
[12] s. 210.13, F.S.
[13] 26 U.S.C. § 5704, provides that tobacco products may be transferred by a manufacturer or export warehouse proprietor without payment of taxes, so long as the tobacco products are for consumption outside the jurisdiction of the internal revenue laws of the United States.

Alcoholic Beverages Taxation

Cruise Lines must pay beverage tax and cigarette tax for products sold to passengers while in Florida – i.e. while the ship is at port and while the ship is in Florida waters.

Section 565.02, F.S., establishes requirements for licensing and selling alcoholic beverages for passenger vessels engaged exclusively in foreign commerce which have a cabin-berth capacity for at least 75 passengers. Passenger vessels may sell alcoholic beverages for consumption on board only:

- During a period not in excess of 24 hours prior to departure while the vessel is moored at a dock or wharf in a port in Florida;
- At any time while the vessel is located in Florida territorial waters and is in transit to or from international waters.

The permittee must pay to the state an excise tax for beverages sold pursuant to this section, if such excise tax has not previously been paid, in an amount equal to the tax which would be required to be paid on such sales by a licensed manufacturer or distributor.

The Department has promulgated a rule applying this taxation framework to the sale of tobacco.[14]

Two percent of excise taxes on alcoholic beverages are deposited into the Alcoholic Beverage and Tobacco Trust Fund to fund the Department of Division of Alcoholic Beverage and Tobacco's operations. The remainder of the revenues are deposited into the General Revenue Fund.[15] Revenues collected from the surcharge on cigarettes are deposited into the Health Care Trust Fund in the Agency for Health Care Administration,[16] and are subject to an eight percent General Revenue surcharge.[17] After deducting the eight percent General Revenue surcharge and depositing 0.9 percent into the Alcoholic Beverage and Tobacco Trust Fund, remaining revenues collected from the excise tax on cigarettes are distributed as follows:[18]

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent to the H. Lee Moffitt Cancer Center and Research Institute;
- 1 percent to the Biomedical Research Trust Fund; and
- The remainder to the General Revenue Fund.

Effect of the Bill

Cigarette Taxation

The bill amends s. 210.13, F.S., to provide that if a person who is required to pay taxes pursuant to ch. 210, F.S., other than a "dealer," fails to file a return, timely report taxes, or having filed an incorrect return, fails to file a correct return, the Division may determine the tax due within three years of the earliest sale included in the determination, which essentially provides a three year statute of limitations during which the Division may review and assess taxes.

[14] Rule 61A-10.010, F.A.C.
[15] s. 561.121, F.S.
[16] s. 210.011, F.S.
[17] s. 215.20, F.S.
[18] s. 210.20, F.S.

Alcoholic Beverages Taxation

The bill replaces the method by which beverage and tobacco taxes are collected from cruise lines. The method switches from a calculation based on the volume of alcohol or tobacco sold at port to a method based on ship capacity and the number of times a ship embarks from Florida.

The base rate will be calculated by the Department based on data provided by permit holders, and will be an amount equal to total alcoholic beverage and tobacco-related taxes and surcharges paid by all permit holders between January 1 and December 31, 2015, divided by the sum of the annual capacities of all permitted vessels. Annual capacity is an amount equal to the number of lower berths on a vessel multiplied by the number of embarkations of that vessel during a calendar year. An embarkation is an instance where a vessel departs from a port in Florida.

The new tax will be paid quarterly by each permit holder, less any tax already paid by a licensed manufacturer or distributor pursuant to the Beverage Law or tobacco tax statutes. Each permit holder must report the annual capacity for each of its vessels to the Department by August 1, 2016. The Department must calculate the base rate by September 1, 2016 and report it to each permit holder.

The revenues from the replacement tax will be distributed in the same manner as taxes on alcoholic beverages under current law.

Railroad Stations

Current Situation

Currently, a special license to serve or sell alcoholic beverages at railroad stations does not exist. In comparison, the Division may issue special airport licenses to restaurants that are a part of, or serve, publicly owned or leased airports. The special airport license permits the general public to purchase alcoholic beverages for consumption within designated areas of the airport terminal in not more than four places or locations in control of the holder of such license. The licenses may not be transferred to a new location, unless the publicly owned or leased airport moves its terminal facilities to a new location. The license further permits the vendor to sell wine and distilled spirits to the airlines in sealed miniature containers and other alcoholic beverages for consumption on the aircraft by the passengers of the plane while the plane is airborne. [19]

Although current law does not allow for a special license to be issued for the sale of alcoholic beverages to train stations, it does allow the Division to issue vendor permits to any operator of railroads or sleeping cars to sell alcoholic beverages on passenger trains. The license permits the vendor to sell alcoholic beverages in a dining, club, parlor, buffet, or observation car operated by the vendor, so long as the car has posted certified copies of the license. The alcoholic beverages must be sold only to passengers in the car for consumption in the car. The licensees must sell liquor[20] in miniature bottles. The annual tax for the license is $2500.[21] Passengers are not permitted to take the alcoholic beverages off of the railroad cars into any train station or other public place.

The operators of railroads or sleeping cars are required to keep records and make monthly reports on the 15th of every month, regarding the sale of alcoholic beverages within Florida. The licensees are required to pay excise taxes on alcoholic beverages for which excise taxes have not already been paid.[22]

[19] s. 561.20(2)(d), F.S.
[20] Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," and "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."
[21] s. 565.02(2), F.S.
[22] s. 565.02(3)(b), F.S.

Effect of the Bill

The bill permits the Division to issue a vendor's license to operators of railroad transit stations. The bill defines the term "railroad transit station" to mean:

> [A] platform or terminal facility where passenger trains operating upon a guided rail system according to a fixed schedule between two or more cities regularly stop to load and unload passengers or goods and includes a passenger waiting lounge and dining, retail, entertainment, or recreational facilities within the licensed premises owned or leased by the railroad operator or owner.

The bill provides that the railroad transit station operator must pay an annual tax of $2500. Such license would be good throughout the state and permits the railroad transit station operator to sell alcoholic beverages within the property of the railroad transit station for consumption on the licensed premises, in all areas within the railroad transit station and on passenger trains.

The railroad transit station operator is not required to sell alcoholic beverages in miniature 2 ounce bottles, but the bill does not alter such requirements on railroads or sleeping cars. The bill requires operators of railroads and sleeping cars to keep the alcoholic beverages they sell separate from those intended for sale in the railroad transit station. Additionally, the bill prohibits the transfer of the license to locations beyond the railroad transit station.

The bill also provides that railroad transit stations are not required to comply with s. 562.14(1), F.S., which provides that alcoholic beverages may not be served, or permitted to be served or consumed at any place holding a license between the hours of midnight and 7 a.m.

Keg Deposits

Current Situation

Under the Beverage Law, the term "entertainment/resort complex" means:

> a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owner(s)/operators(s) of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity shall include an area within a 5-mile radius of the theme park complex.[23]

A vendor that owns, manages, controls, and operates a theme park and operates places of business in the theme park where consumption of alcoholic beverages is permitted, may operate under one master license for all the businesses in the theme park if:

- The theme park complex comprises at least 25 enclosed acres of land with permanent exhibitions and a variety of recreational activities;
- The enclosed area has a controlled entrance to, and exit from, the enclosed area; and
- At least one million visitors annually pay admission fees to the theme park complex. [24]

In addition to the annual license fee, an additional tax of $1,500 is imposed for up to 5 additional bars, $2,500 for 6 to 10 additional bars, and $3,500 for more than 10 additional bars. The enclosed area

[23] s. 561.01(18), F.S.
[24] s. 565.02(6), F.S.

within the theme park is considered an extension of the licensed premises upon the payment of the fee and the notation of such extension on the sketch accompanying the original license application.

A marine exhibition park complex may obtain, upon the payment of appropriate fees, a license for on-premises consumption of alcoholic beverages not subject to any quota or limitation if:

- The marine exhibition park complex comprises at least 25 enclosed acres of land;
- The enclosed area has a controlled entrance to, and exit from, the enclosed area;
- At least 450,000 visitors annually pay admission fees to the marine exhibition park; and
- The marine exhibition park has been in continuous existence for at least 30 years.[25]

In addition to the annual license fee for both the theme parks and marine exhibition park complexes, a tax of $1,500 is imposed for up to 5 additional bars, $2,500 for 6 to 10 additional bars, and $3,500 for more than 10 additional bars.

The Beverage Law does not address keg deposits in statute; however, the Division promulgated Rule 61A-4.0131, F.A.C., in June 1977 to address the relationship between a distributor and vendor in regards to kegs. The rule was created to balance possible concerns that a keg, which is a recycled container, may be impermissibly loaned to a vendor by a distributor. Keg deposits were established as an alternative to requiring vendors to purchase each keg and sell it back when empty to avoid offending the Beverage Law.

Specifically, Rule 61A-4.0131, F.A.C., requires distributors of malt beverages, upon the sale of such beverages in "draft kegs" to a vendor, to require from all vendors a keg deposit of an amount not less than that charged the distributor by his brewer for each keg of beer sold. The amount of deposit charged to vendors for draft kegs of like brand must be uniform. Charges made for deposits collected and credits allowed for empty containers returned must be shown separately on all sales tickets or invoices. A copy of the sales tickets or invoices must be given to the vendor at the time of delivery.

Effect of the Bill

The bill creates s. 561.4205, F.S., which codifies the current Rule 61A-4.0131, F.A.C., to require a distributor selling an alcoholic beverage in bulk to a vender, using a recyclable keg or other similar reusable container, to charge the vender a "keg deposit," in an amount not less than that charged to the distributor by the manufacturer.

The deposit amount charged to a vendor for a draft keg or container of a like brand must be uniform. Charges made for deposits collected or credits allowed for empty kegs or containers returned must be shown separately on all sale tickets or invoices. A copy of such sales tickets or invoices must be given to the vendor at the time of delivery.

The bill provides a process for vendors qualifying as an entertainment/resort complex in s. 561.01(18), F.S., a theme park in s. 565.02(6), F.S., and a marine exhibition park complex in s. 565.02(7), F.S., which allows a distributor, in lieu of receiving a keg deposit, to implement an inventory and reconciliation process with such vendors in which an accounting of draft kegs is completed and any loss or variance in the number of kegs is paid for by such vendors on a per-keg basis equivalent to the required keg deposit.
This inventory and reconciliation process may occur twice per year, at the discretion of the distributor, but must occur at least annually. Upon completion of the keg inventory and reconciliation, the vendor must remit payment within 15 days of receiving an invoice from the distributor. The vendor may choose to establish and fund a separate account with the distributor for the purpose of expediting timely payment.

Hardship Waiver for Quota Licenses

[25] s. 565.02(7), F.S.

Current Situation

Section 561.20, F.S., limits the number of alcoholic beverage licenses for the sale of liquor along with beer and wine that may be issued per county. This limited alcoholic beverage license is often referred to as a "quota" license. The number of quota licenses issued is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the county population.[26]

Section 561.29(1), F.S., requires all quota license holders to maintain the licensed premises in an active manner, for licenses. All quota licensees are required to notify the Division in writing of any period which his or her license is inactive and place the physical license with the division to be held in an inactive status.

For licenses issued between July 1, 1981 and September 30, 1988, the term "in an active manner" means the licensed premises must be open for the sale of authorized alcoholic beverages during regular business hours of at least six hours a day for a period of 120 days or more during any 12-month period commencing 18 months after the acquisition of the license. If the licensee anticipates or experiences any period in which the license will be inactive, the license holders must notify the Division in writing and place the physical license in an inactive status.[27] The Division can waive or extend this activation requirement:

- Upon the finding of hardship; and
- If the licensee has purchased the license in order to transfer it to a newly constructed or remodeled location.

During the period the licensed premises is closed, the licensee is required to make reasonable efforts toward restoring the license to active status.[28]

For licenses issued or transferred after September 30, 1988, the term "in an active manner" means the license premises must be open for the sale of authorized alcoholic beverages during regular business hours of at least eight hours a day for a period of 210 days or more during any 12-month period commencing six months after the acquisition of the license by the licensee. Upon a written request from the licensee, the Division may give a written waiver of the activation requirement for a period not to exceed 12 month in cases where the licensee demonstrates:

- The licensed premises has been physically destroyed through no fault of the licensee;
- The licensee has suffered an incapacitating illness or injury which is likely to be prolonged; or
- The licensed premises has been prohibited from making sales as a result of any action of any court of competent jurisdiction.[29]

Additional waivers may be given but the waivers necessitated by any one occurrence may not cumulatively total more than 24 months.[30]

Effect of the Bill

The bill removes the division's discretion to waive or extend the activation requirement upon the finding of hardship for quota licenses with license periods commencing on or after July 1, 1981, but the license was issued before September 30, 1988. Additionally, the bill removes the Division's discretion to waive or extend the activation requirement where the licensee demonstrates the three requirements previously listed for licensees issued or transferred after September 30, 1988.

[26] s. 561.20, F.S.
[27] s. 561.29(1)(h), F.S.
[28] *Id*.
[29] s. 561.29(1)(i), F.S.
[30] *Id*.

Instead, the bill provides that, upon the written request of any quota licensee, regardless of the license issue or transfer date, the Division shall waive or extend the activation requirement for up to 12 months. Additionally, the Division may provide a continuance for an additional 12 months if the licensee demonstrates:

- The licensed premises has been physically destroyed to such an extent that active operation of the business at the premises is impracticable;
- Construction or remodeling is underway to relocate the license to another location;
- The licensed premises is prohibited from making sales as a result of a court order or the action or inaction of a local governmental entity relating to the permitting, construction, or occupational capacity of the premises.

For licenses issued between July 1, 1981 and September 30, 1988, the bill deletes the requirement that the licensee is required to make reasonable efforts toward restoring the license to active status during the period the licensed premises is closed.

Transporting Alcoholic Beverages Through a Licensed Premises

Current Situation

A vendor may obtain a license to sell liquor, beer, and wine only in sealed containers for consumption off the premises pursuant to s. 565.02(1)(a), F.S. Such vendors premises are commonly referred to as "package stores." Package stores are often directly attached to another licensed premises, licensed to sell beer and wine and owned and operated by the same person or entity. An example of such vendors would be a grocery store and liquor store owned and operated by the grocery store.

Package stores are permitted to sell, offer, or expose for sale only alcoholic beverages, "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."[31]

Currently, package stores, including those attached to other vendor licensed premises owned and operated by the same entity, are not permitted to have openings that allow direct access to any other building or room, except to a private office or storage room from which patrons are excluded.[32]

Effect of the Bill

The bill amends s. 565.04, F.S., to allow, notwithstanding any other law, a licensed distributor to transport alcoholic beverages through another premises owned in whole or in part by a vendor when delivering alcoholic beverages to a licensed vendor.

Restaurant License Clarification

Current Situation

There are several exceptions to the quota license limitation. Businesses who meet the requirements set out in one of the exceptions pursuant to s. 561.20(2), F.S., may be issued a special license by the Department that allows the business to serve any alcoholic beverages regardless of alcoholic content.

One such license is the restaurant license, often referred to as an SRX license, which may be issued to a "restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food

[31] s. 565.04, F.S.
[32] *Id.*

and nonalcoholic beverages" so long as any alcoholic beverages sold under such license is for on premises consumption only.[33]

In order to apply the language, the Division adopted Rule 61A-3.0141, F.A.C., clarifying that a licensee holding an SRX license must maintain the required 51 percentage on a bi-monthly basis, that the total gross revenues must come from the retail sale of food and non-alcoholic beverages, and that the proceeds of catering sales are not included in the calculation of total gross revenues.

Effect of the Bill

The bill codifies and clarifies the method by which the Division currently issues SRX licenses. The bill provides that a food service establishment that has 2,500 square feet of service area equipped to serve meals to 150 persons at one time, and that derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter, may obtain an alcoholic beverage license not subject to the quota requirements (SRX license).

Failure to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in the revocation of the license or denial of a pending license application. If the license is revoked or an application is denied, the entity or any person on the application required to qualify the entity is ineligible to have an interest in a subsequent application for an SRX license for 120 days after the final denial or revocation.

Grandfathering Growler Sales

Current Situation

In 2015, the Florida Legislature enacted ch. 2015-12, L.O.F., which permitted specific vendors to fill and refill growlers with malt beverages. Growlers are typically 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.[34] Section 563.06(7), F.S., defines growlers as a container of 32, 64, and 128 ounces in volume.

A growler may be filled or refilled by the following licensees:

- A manufacturer that holds a valid vendor's license pursuant to s. 561.221(2), F.S.;
- Any vendor that holds a valid quota license pursuant to ss. 561.20(1) and 565.20(1)(a)-(f), F.S.;
- Any 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.

Growlers must meet the following requirements:

- Have an unbroken seal and be incapable of being immediately consumed;
- Include an imprint or label that provides:
    - Name of the manufacturer
    - Brand
    - Percentage of alcohol by volume

The vendors may indicate the above requirements using an imprint or other form of a label attached to the growler.

Effect of the Bill

[33] s. 561.20(2)(a)4., F.S.
[34] BeerAdvocate, *The Growler: Beer-To-Go!*,(July 31, 2002), http://www.beeradvocate.com/articles/384/.

The bill provides that a growler may be filled or refilled by a vendor holding a license pursuant to s. 563.02(1)(a) or s. 564.02(1)(a), having held that license in current, active status on June 30, 2015, so long as:

- The vendor proves, to the satisfaction of the division, that the vendor had draft equipment and tapping accessories installed and had purchased kegs prior to June 30, 2015.
- The growlers are filled or refilled by the vendor or the vendor's employee aged 18 or older.
- The taps or mechanisms used to fill or refill the growlers are not accessible to customers.
- The growlers meet growler labeling or sealing requirements.
- The vendor does not permit consumption on premises, including tastings or other sampling activities.

This will permit vendors licensed pursuant to s. 563.02(1)(a), F.S., who legally filled and refilled growlers prior to the enactment of ch. 2015-12, L.O.F., to be able to do so again.

Temporary Alcoholic Permits

Background

Currently, the Division may issue a permit authorizing a bona fide nonprofit civic organization to sell alcoholic beverages for consumption on the premises only, for a period not to exceed three days, if the organization files an application, a local building and zoning permit, and a fee of $25 per permit.[35]

The net profits from the sales of the alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization. The nonprofit civic organization may only be issued three of these permits per calendar year. The nonprofit civic organization is permitted to purchase the alcoholic beverages from a distributor or a vendor licensed under the Beverage Law.[36]

Municipalities and counties are not eligible for this type of permit for events.

Local government entities are required to provide the state with annual financial reports. Section 218.32, F.S. requires each local government entity that is determined to be a reporting agency to submit a copy of its annual financial report for the previous fiscal year to the Department of Financial Services. The chair of the governing body must sign the report, attesting to the accuracy of the information included in the report.

[35] s. 561.422, F.S.
[36] *Id.*

Effect of the Bill

The bill amends s. 561.422, F.S., permitting the Division to issue a temporary permit authorizing a municipality, county, or charitable organization in addition to a nonprofit civic organization, to sell alcoholic beverages for consumption on the premises of an event only, for a period not to exceed three days, if the municipality, county, or charitable organization files an application, a local building and zoning permit, and a fee of $25 per permit.[37]

The net profits from the sales of the alcoholic beverages collected during the permit period by a municipality or county must be donated to a nonprofit civic organization or charity within 90 days after the event. The municipality or county may only be issued such permit if it has attempted and failed to solicit a qualified nonprofit civic organization or charity to conduct the sales. The municipality, county, or charity is permitted to purchase the alcoholic beverages from a distributor or a vendor licensed under the Beverage Law.

The bill provides the nonprofit civic organization, charity, municipality, or county may be issued no more than 12 such permits per calendar year. Finally, the bill provides the Department with rulemaking authority to enact the provision.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Railroad Stations:

The Department indicates the number of railroad transit stations is unknown. However, each railroad transit station will be required to pay $2500 annually for licensure, therefore, the Department anticipates an indeterminate increase in revenues.

Passenger Vessels:

Indeterminate. The Department indicates that it does not have enough information to quantify the fiscal impact on taxes. However, based on the fact that the fees collected from passenger vessels for tobacco and alcoholic beverages will be estimated on prior years payments, the amount collected should remain stable.

2. Expenditures:

Indeterminate. The Department indicates that it does not have enough information to quantify the fiscal impact on taxes. The language limits the Division's ability to audit tax payments for tobacco products to three years, therefore, the Division is likely to see a drop in expenditures related to auditing.

[37] s. 561.422, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Railroad Stations:

There would be an indeterminate increase in revenues because 24% and 38% of alcoholic beverage license fees are redistributed to counties and municipalities, respectively.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Railroad transit stations would be permitted to obtain licensure to sell alcoholic beverages, which would increase the stations' revenues. Competitive vendors in the area may lose revenues due to competition.

Passenger vessels would be able to easily calculate and pay taxes related to the sale of alcoholic beverages and tobacco on the vessels while in Florida jurisdictional waters. Therefore, administrative costs for Florida's cruise industry, associated with alcoholic beverage and tobacco-related taxes will be reduced.

D. FISCAL COMMENTS:

None.