

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1692

SPONSOR: Regulated Industries Committee and Senator Margolis

SUBJECT: Beverage Law

DATE: April 23, 2003 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | <u>Fav/CS</u> |
| 2. | _____ | _____ | _____ | _____ |
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I. Summary:

The committee substitute amends s. 561.32, F.S., to clarify that the waiver of transfer fees for quota alcoholic beverage licenses authorized by s. 561.32(5), F.S., shall not apply to transfers made within the 3-year period set forth in s. 561.32(5), F.S.

The committee substitute would require the Division of Alcoholic Beverages and Tobacco (“the division”) to issue permits to a certified Florida Farm Winery to conduct wine tastings of wine produced by Certified Florida Wineries at Florida fairs, trade shows, expositions, and festivals. The committee substitute deletes the provision that under current law permits a Florida Farm Winery to conduct sales of wine at such events.

The committee substitute authorizes manufacturers, distributors, and vendors to make deliveries in vehicles that are owned or leased by the licensee or by common carrier. A vendor who holds a manufacturer or distributor license or its subsidiary or affiliate may not make deliveries to consumers. It permits a Florida Farm Winery to lease a portion of its premises to a vendor, and limits sales at a winery to those on the premises.

This committee substitute substantially amends the following sections of the Florida Statutes: 561.32, 561.221, 561.57, and 559.004.

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (“the division”) of the Department of Business and Professional Regulation is the agency authorized to enforce the provisions of the Beverage Law in chs. 562, 563, 564, 567, and 568, F.S.

Quota alcoholic beverage licenses.

Section 561.20, F.S., places limits on the number of alcoholic beverage licenses that may be issued per county. Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as quota licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverages license that is limited in number; all other types of alcoholic beverages licenses are available without limitation.

Applications for quota licenses can exceed the number of available licenses. Therefore, quota licenses are often sold on the open market for thousands of dollars because of their limited availability.

Section 561.32(1), F.S., authorizes the transfer of alcoholic beverages licenses under limited circumstances. An alcoholic beverages licensee may transfer his or her license as part of a bona fide sale of a business, provided that the application of the purchaser is approved by the division. A person holding a lien against an alcoholic beverages license may enforce his or her interest in the license in a judicial proceeding. A lienholder's interest in the license must be disclosed to the division. The lienholder must be qualified under the Beverage Law as a precondition to the enforcement of the lien or security interest.

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 is levied at the rate of four mills, except that the transfer fee may not exceed \$5,000.

Section 561.32(4), F.S., requires the assessment of an additional transfer fee, if a quota license is transferred within three years of its initial issuance. The division must assess the additional transfer fee in an amount equal to 15 times the annual license fee specified in s. 565.02(1)(b)-(f), F.S., in the county in which the license is valid. However, if the license is in a county authorized for issuance of liquor licenses for package sale only, the transfer fee is equal to 15 times the annual license fee specified in s. 565.02(1)(a), F.S.

Section 565.02, F.S., provides in pertinent part:

(1) The following state license taxes apply to vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content:

(a) A vendor operating a place of business where beverages are sold only in sealed containers for consumption off the premises where sold shall pay an amount equal to 75 percent of the amount of the license tax for vendors in the same county as provided in paragraphs (b), (c), (d), (e), and (f).

(b) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of over 100,000, according to the latest

population estimate prepared pursuant to s. 186.901, for such county, shall pay \$1,820.

(c) A vendor operating a place of business where consumption on the premises is permitted in a county having a population over 75,000 and not over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay \$1,560.

(d) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of over 50,000 and not over 75,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay \$1,300.

(e) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of over 25,000 and not over 50,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay \$858.

(f) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of 25,000 or less, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay \$624.

Section 561.32(5), F.S., allows the division to waive transfer fees for transfers that occur 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.

Florida Farm Winery Program

Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services (department). A winery may qualify as a tourist attraction under this program if it is registered with and certified by the department as a Florida Farm Winery. A winery may not claim to be certified unless it has received written approval from the department.

To qualify as a certified Florida Farm Winery, a winery must meet the following standards:

1. Produce or sell less than 250,000 gallons of wine annually.
2. Maintain a minimum of 10 acres of owned or managed vineyards in Florida.
3. Be open to the public for tours, tastings, and sales at least 30 hours each week.
4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.
5. Pay an annual application and registration fee of \$100.

Vendor sales by manufactures of alcoholic beverages.

Section 561.22(1), F.S., provides that a manufacturer or distributor may not be licensed as a vendor, and a license may not be issued to a vendor as a manufacturer or distributor. Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor of alcoholic beverages from having any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law.

Section 561.221(1)(a), F.S., provides that a Florida licensed instate wine manufacturer may own, manage, operate, or control not more than three vendor's licenses, provided that the licensed premises of the vendor is situated on property contiguous to the manufacturing premises of the licensed manufacturer of wine. This provision is an exception to the prohibition in s. 561.22(1), F.S. It does not permit out-of-state wine manufactures to own, manage, operate, or control any vendor's licenses.

Section 561.221(1)(b), F.S., requires the division to issue permits to a certified Florida Farm Winery to conduct tasting and sales of wine produced by Certified Florida Wineries at Florida fairs, trade shows, expositions, and festivals. Out-of-state wine manufacturers cannot qualify for this exemption.

In *Bainbridge v. Turner*, 311 F.3d 1104 (11th Cir. 2002), the Eleventh Circuit U.S. Court of Appeals addressed the constitutionality of Florida's statutory scheme that prohibits out-of-state wineries from shipping their products directly to Florida consumers while permitting in-state wineries to do so. The commerce clause of art. I, section 8 of the United States Constitution prohibits states from regulating interstate commerce. Although the 21st amendment to the United States Constitution prohibits the transportation or importation of intoxicating liquors into any state in violation of that state's laws, the 21st amendment and the commerce clause do not permit states to use their regulatory authority as a pretext for protectionism. The court held that Florida's regulatory scheme may violate the commerce clause because it treats in-state and out-of-state wineries unequally. However, the court remanded the case for further proceedings, and concluded that if Florida could demonstrate that its statutory scheme was related to the core concern of the 21st amendment of raising revenue and not a pretext for protectionism, Florida's statutory scheme would not violate the commerce clause.

Wine tastings.

Section 564.08, F.S., authorizes licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S., provided that the conduct of the wine tasting is be limited to and directed toward the general public of the age of legal consumption.

Deliveries by alcoholic beverage licensees.

Section 561.57(1), F.S., permits alcoholic beverage vendors, including in-state wine manufacturers who are licensed as vendors, to make deliveries away from their places of business of sales actually made at the licensed place of business. Telephone or mail orders

received at vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.

Section 561.57(2), F.S., requires that deliveries made by a manufacturer, distributor, or vendor away from his or her place of business must be made only in vehicles owned or leased by the licensee.

III. Effect of Proposed Changes:

Section 1. Transfer of licenses.

The bill prohibits waiver of the transfer fee set forth in s. 561.32(4), F.S., which is an amount equal to 15 times the annual license fee, for a transfer made within 3 years of its initial issuance.

Section 2. Licensing of manufacturers and distributors as vendors and of vendors as manufactures; conditions and limitations.

The bill amends s. 561.221(1)(b), F.S., to require the division to issue permits to a certified Florida Farm Winery to conduct wine tastings of wine produced by Certified Florida Wineries at Florida fairs, trade shows, expositions, and festivals. The bill deletes the provision that permits a Florida Farm Winery to conduct sales of wine at such events.

The bill creates paragraph (c) to require the division to issue permits to vendors to conduct wine tastings and sales at Florida fairs, trade shows, expositions, and festivals. These permits would be limited to the length of the event. Section 561.221(1)(a), F.S., permits a manufacturer to be licensed as a vendor. Therefore, a vendor with a permit under paragraph (c) may be a manufacturer licensed as a vendor under paragraph (a). Although paragraph (b) limits Florida Farm Wineries to conducting wine tastings, but not sales, paragraph (c) would permit a Florida Farm Winery that is licensed as a vendor to conduct tastings and sales.

Section 3. Deliveries by licensees.

The bill amends s. 561.57(2), F.S., to authorize manufacturers, distributors, and vendors to make deliveries in vehicles that are owned or leased by the licensee or by common carrier. Current law does not authorize deliveries by common carrier. The bill further provides that a vendor may not make any deliveries to consumers if it holds a manufacturer's or distributor's license in the same entity as the vendor or in a subsidiary or affiliated entity.

Section 4. Florida Farm Winery Program.

The bill amends s. 599.004, F.S., to permit a Florida Farm Winery to lease a portion of its premises to a vendor. This section also provides that sales of alcoholic beverages by certified Florida Farm Wineries can only occur on the premises of the Florida Farm Winery.

Section 5.

This bill would take effect upon becoming law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Quota alcoholic beverage licenses that are transferred within 3 years of their initial issuance 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 will be subject to the applicable transfer fees set forth in s. 561.32(4), F.S.

B. Private Sector Impact:

Persons who transfer quota licenses with 3 years of their initial issuance will be subject to the applicable transfer fees set forth in s. 561.32(4), F.S., which fee is amount equal to 15 times the annual license fee.

A certified Florida Farm Winery would not be permitted to conduct wine tastings at Florida fairs, trade shows, expositions, and festivals, but would no longer be permitted to conduct sales of wine at such events. However, the vendors, including a Florida Farm Winery that is licensed as a vendor, would be permitted to conduct wine tastings and sales at such events.

Manufacturers, distributors, and vendors would be permitted to make deliveries in vehicles that are owned or leased by the licensee or by common carrier. A vendor that holds a manufacturer or distributor license or its subsidiary may not make deliveries to consumers. The representative from the Florida wine industry indicated that this provision would have a negative financial effect on the industry.

A Florida Farm Winery would be permitted to lease a portion of its premises to a vendor.

C. Government Sector Impact:

This bill will have a positive undetermined effect on revenue from transfer fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
