

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 400

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Alcoholic Beverages

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 400 provides Select Exempt Service status to the following employees of the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR): chiefs, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

The bill adds the Agency for Health Care Administration as one of the agencies from which an applicant for an alcoholic beverage license for consumption on premises must obtain a certificate that the applicant's place of business meets all sanitary requirements.

Existing law requires that a caterer licensed to sell beer, wine, and distilled spirits must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The bill provides that the percentage is based on a caterer's "gross food and nonalcoholic beverage revenue" instead of "gross revenue." A caterer must comply with the 51 percent requirement for each catered event.

Regarding a caterer's license to sell beer, wine and, distilled spirits, the bill expands the types of records that must be maintained to demonstrate compliance with its license. It requires that a caterer maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

The bill also:

- Repeals the fee for a temporary license issued in connection with an application to transfer an alcoholic beverage to the purchaser of a licensed business or to change the type or series of a license;
- Repeals the wine container limits, which under current law are limited to containers that hold no more than one gallon, unless it is in a reusable container that holds 5.16 gallons;
- Permits the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages;
- Repeals the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine, but retains the requirement that the restaurant patron purchase a meal with the bottle of wine; and
- Reduces the annual license tax for a craft distillery from \$4,000 to \$1,000.

The bill will reduce net revenue available to the Alcoholic Beverage and Tobacco Trust Fund (AB&T TF) by \$138,814 and revenue from the General Revenue service charge by \$11,105. *See* Section V.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The division¹ administers and enforces the Beverage Law,² which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

State Employment

Parts I – V of ch. 110, F.S., provide the system of personnel management in the state. Part I contains general state employment provisions; part II addresses the Career Service System; part III deals with the Senior Management Service System; part IV relates to volunteers; and part V establishes the Select Exempt Service System.

The terms “career service” and “career service employee” are not defined in the statutes. A “career service employee” who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.³ Career service employees are entitled a grievance process⁴ and the

¹ Section 561.02, F.S. Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² *See* s. 561.14, F.S.

³ Section 110.227(1), F.S.

⁴ Section 110.227(4), F.S.

right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.⁵

Section 110.205(2), F.S., lists the personnel positions that are exempt from the career service classification, including all members, officers, and employees of the Legislature. The career service classification also does not include assistant division directors, deputy division directors, and bureau chief positions in any department, and those positions determined by a department to have managerial responsibilities comparable to those positions.⁶ Each department head may exempt a maximum of 20 policymaking or managerial positions from the Career Service System.⁷

Select Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System and have duties and responsibilities that are managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.⁸ Employees in the Select Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotions, transfer, or other personnel action at the discretion of the agency head.⁹

Alcoholic Beverage License Applications – Sanitation Safety Certificate

Section 561.17(2), F.S., requires that alcoholic beverage licenses for consumption on the premises include a certificate from the Division of Hotels and Restaurants of the DBPR, the Department of Agriculture and Consumer Services, the Department of Health, or the county health department that the place of business meets all of the sanitary requirements of the state.

Caterers and Food Service Establishments

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, 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 its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

The limitation on the number of quota licenses per county does not apply to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and 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

⁵ Sections 110.227(5) and (6), F.S.,

⁶ Section 110.205(2)(m), F.S.

⁷ Section 110.205(2)(n), F.S., provides that policymaking or managerial positions are defined by the Department of Management Services and approved by the Administration Commission. Created in 14.202, F.S., the Administration Commission is part of the Executive Office of the Governor and is composed of the Governor and Cabinet.

⁸ Section 110.602, F.S.

⁹ Section 110.604, F.S.

period thereafter. This type of license is known as a “special restaurant license” or an “SRX license.” A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.¹⁰

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.

In addition, the limitation on the number of quota licenses per county does not apply to a caterer licensed by the Division of Hotels and Restaurants under ch. 509, F.S., who derives at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, and sells or serves beer, wine, and distilled spirits only for consumption on the premises of a catered event at which the licensee provides prepared food. Current law does not specify the period during which the 51 percent requirement applies. In contrast, the quota license exception for restaurants requires that a restaurant derive at least 51 percent of its gross food and beverage revenue from the sale of food and non-alcoholic beverages for the initial 60-day operating period and each subsequent 12-month period.¹¹

A caterer must also prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages.¹²

The annual fee is \$1,820 for a caterer’s alcoholic beverage license to sell or serve beer, wine, and distilled spirits on the premises of events at which the caterer provides prepared food.¹³

A caterer is required to maintain for three years all records required by the rule of the DBPR to demonstrate compliance with its license requirements.

Temporary License Application Fees

An alcoholic beverages licensee may sell its licensed business and transfer its alcoholic beverages license to the purchaser of the business.¹⁴ Section 561.331(1), F.S., provides the process for license transfers. The applicant for a transfer is entitled as a matter of right to receive a temporary license of the same type and series as that held by the seller of the business if the application does not on its face disclose a reason for denying the application. The temporary license is valid until the application is denied or 14 days after the initial approval of temporary license. The fee for a temporary license transferred to the purchaser of a business is \$100.

However, before the license is transferred, the purchaser of a beer, wine, or beer and wine license must pay a transfer fee of 10 percent of the annual license tax to the division. The fee to transfer

¹⁰ Section 565.02(1)(b) – (f), F.S.

¹¹ Section 561.20(2)(a)4., F.S.

¹² Section 561.20(2)(a)5., F.S.

¹³ See ss. 561.20(2)(a)5., and 565.02(1)(b), F.S.

¹⁴ Section 561.32, F.S.

a quota license is assessed on the average annual value of gross sales of alcoholic beverages for the license in the three years immediately preceding transfer. The fee is levied at the rate of 4 mills (four one-thousandths of a dollar), but the transfer fee may not exceed \$5,000. An applicant may elect to pay \$5,000 in lieu of the 4-mill assessment.¹⁵

An alcoholic beverage licensee may receive a temporary license upon an application to change the location of a license if the application does not on its face disclose a reason to deny the application. There is no temporary license fee to change the location of a license.¹⁶

An alcoholic beverages licensee may also apply to change the type or series of an alcoholic beverage license. The division may issue the temporary licenses if the application does not on its face disclose a reason to deny the application. These temporary licenses are valid until the application is denied or 14 days after the initial temporary license approval.¹⁷ If the fee for the new license is greater than the fee of the license held by the applicant, the temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.¹⁸

Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that hold more than one gallon of wine. However, wine may be sold in a reusable container that holds 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.¹⁹

Section 564.055, F.S., prohibits the sale of cider²⁰ at retail in any individual container that holds more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container that holds one gallon or more of cider, regardless of container type.

¹⁵ Section 561.331(1), F.S.

¹⁶ Section 561.331(2), F.S.

¹⁷ Section 561.331(3), F.S.

¹⁸ *Id.*

¹⁹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

²⁰ Section 564.06(4), F.S., provides that “cider” is “made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume.” “Must” is the expressed juice of a fruit before and during fermentation. *See* <https://www.merriam-webster.com/dictionary/must> (last visited March 16, 2017).

Growlers

Malt beverages must be sold or offered for sale in containers that hold no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container that contains one gallon or more of cider, regardless of individual container type.²¹

However, malt beverages may also be sold or offered for sale in a “growler,” which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. Growlers must identify or be imprinted or labeled with certain information, including the percentage of alcohol by volume, and have an unbroken seal or be incapable of being immediately consumed.²²

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee’s employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.²³

Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “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.”

A “distillery” is a manufacturer of distilled spirits,²⁴ and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A distillery must notify the division in writing of its decision to qualify as a craft distillery.²⁵

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying²⁶ distilled spirits must pay a state license tax of \$4,000 for each plant or branch

²¹ Section 563.06(6), F.S.

²² Section 563.06(7), F.S.

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²⁴ Section 565.03(1)(c), F.S.

²⁵ Section 565.03(1)(b), F.S.

²⁶ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited February 15, 2017).

operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.²⁷

A craft distillery may sell to consumers branded products²⁸ distilled on the licensed premises. The products must be in factory-sealed containers filled at the distillery and sold for off-premises consumption.²⁹ The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.³⁰ The craft distillery is not required to obtain, in addition to its manufacturer's license, a vendor's license in order to sell distilled spirits to consumers. Sales must be in face-to-face transactions with consumers³¹ who are making a purchase of no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of a single branded product.³²

There are 17 distilleries currently designated as craft distilleries, and an additional 21 licensed distilleries that produce fewer than 75,000 gallons of distilled spirits a year.³³

III. Effect of Proposed Changes:

Division Personnel

The bill amends s. 561.11(2), F.S., dealing with the power and authority of the division, to provide Select Exempt Service status to chief, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

Alcoholic Beverage License Applications – Sanitation Safety Certificate

The bill amends s. 561.17(2), F.S., to add the Agency for Health Care Administration as one of the agencies from which an applicant for a consumption on premises license must obtain a certificate that its place of business meets all sanitary requirements.

Caterers

The bill revises the method used to calculate the percentage of food and nonalcoholic beverages sold by a caterer licensed to sell beer, wine, and distilled spirits by amending s. 561.20(2)(a)5.,

²⁷ Section 565.03(3), F.S.

²⁸ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

²⁹ Section 565.03(1)(c), F.S.

³⁰ *Id.*

³¹ Section 565.03(1)(c)4., F.S.

³² Section 565.03(1)(c)1., F.S.

³³ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 11.

F.S. It provides that the percentage is based on a caterer's gross food and nonalcoholic beverages revenue. A caterer must comply with the 51 percent requirement for each catered event.

The bill expands the types of records that a caterer must maintain to demonstrate compliance with its license. A caterer must maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

Temporary License Application Fees

The bill amends s. 561.331(1), F.S., to repeal the \$100 fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. It also repeals the fees in s. 561.331(3), F.S., for a temporary license issued in connection with an application to change the type or series of a license.

Wine Containers

The bill repeals the wine container size limits in s. 565.055, F.S.

Cider Containers

The bill amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

Restaurants - Off-Premises Consumption of Wine

The bill amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

Craft Distilleries

The bill amends s. 565.03(2)(a)1., F.S., to reduce the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 400 repeals the \$100 license fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. The bill also repeals the fee for a temporary license issued in connection with an application to change the type or series of license. This temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater, if the fee for the new license is greater than the fee for the license held by the applicant. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.

The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

C. Government Sector Impact:

Division Personnel. SB 400 provides Select Exempt Service status to specified employees of the division. The DBPR states that 11 positions are affected by this change, resulting in increased personnel costs of between \$5,499.12 and \$19,800 annually, depending on the type of health coverage (single or family) selected by the affected employees. The DBPR also anticipates a minimal, unspecified increase in costs related to annual leave payouts at each affected employee's time of separation. The DBPR states that it can absorb all of these costs with existing resources.³⁴

Temporary License Application Fees. The DBPR states that the revenue from temporary licenses issued in connection with an application for a more expensive license type or series varies by year based on individual licensee circumstances and business discretion. Temporary license fees and transfer fees were \$191,600 for FY 2014-15 and \$251,300 for FY 2015-16.³⁵

Current law requires that 24 percent of the license tax collected in a county for a manufacturer's license or the vendor's license authorized in the bill be returned to the appropriate county tax collector.³⁶ Thirty-eight percent of the license taxes collected

³⁴ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 10.

³⁵ *Id.*

³⁶ Section 561.342(1), F.S.

within a municipality for those types of licenses are returned to the appropriate municipal officer.³⁷ The state receives the remaining revenue from those licenses, and that revenue is credited to the AB&T TF for the operation of the division and the DBPR.

Assuming issuance of the same number of temporary licenses as the division issued in FY 2015-16, the bill may reduce annual license tax revenue returned to counties and municipalities by up to \$60,312 and \$95,494, respectively, with a reduction in payments to the AB&T TF of \$95,494.

Craft Distilleries. The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale. The DBPR states that there are 17 distilleries currently designated as a craft distillery, and an additional 21 licensed distilleries that produce fewer than the 75,000 gallons of distilled spirits a year required to qualify as a craft distillery, for a total of 38 distilleries that may be affected by the fee reduction.³⁸ The DBPR anticipates that the fee reduction will result in a \$114,000 revenue reduction if the 21 distilleries that are currently not designated as craft distillery become designated as such.

The DBPR anticipates the reduction may cause license taxes returned to counties and municipalities to be reduced annually by up to \$27,360 and \$43,320, respectively, and the reduction in payments to the AB&T TF to be \$43,320.

Total Revenue Impact. In total, the bill will reduce net revenue to the AB&T TF by \$138,814. The bill also will result in a decrease in General Revenue of approximately \$11,105, due to the 8 percent service charge for General Revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.11, 561.17, 561.20, 561.331, 564.055, and 565.03.

This bill repeals section 564.05 of the Florida Statutes.

³⁷ Section 561.342(2), F.S.

³⁸ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 10.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 15, 2017:

The committee substitute (CS):

- Retains current law in s. 561.20(2)(a)4., F.S., which provides that the minimum square footage for a food service establishment to qualify for a special license is 2,500 square feet and the minimum equipped serving capacity is 150 persons.
- Amends s. 561.331(3), F.S., to provide that a temporary license may be issued in connection with an application to change the type or series of a license without the assessment of any additional fee or tax.
- Repeals the wine containers size limitations in s. 565.05, F.S.
- Amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.
- Amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The CS retains the requirement that the restaurant patron must purchase a meal with the bottle of wine.

B. Amendments:

None.