



Insurance, Business & Financial Affairs Policy Committee

**Wednesday, January 13, 2010
1:15 PM
212 Knott Bldg.**



The Florida House of Representatives
General Government Policy Council
Insurance, Business & Financial Affairs Policy Committee

Larry Cretul
Speaker

Pat Patterson
Chair

AGENDA

January 13, 2010
212 Knott Building

- I. Opening Remarks by Chair
- II. Consideration of the following bill(s):
 - HB 305 – Disposition of Human Remains by Rep. Renuart
 - HB 345 – Alcoholic Beverage Regulation by Rep. Kreegel
- III. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 305

Disposition of Human Remains

SPONSOR(S): Renuart

TIED BILLS:

IDEN./SIM. BILLS: SB 708

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Reilly <i>RJR</i>	Cooper <i>Jde</i>
2)	Military & Local Affairs Policy Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Pursuant to federal law, military service members must complete the United States Department of Defense "Record of Emergency Data" (Department of Defense Form 93). The form requires, in part, that service members designate a "person authorized to direct disposition" of their remains in the event of death. Only a family member can be selected for this responsibility. Service members update the form annually and prior to any deployment.

Funeral and cemetery regulation in Florida is governed by ch. 497, F.S., the Funeral, Cemetery, and Consumer Services Act. The act defines the "legally authorized person" to determine disposition of the deceased's remains as the deceased person under certain conditions, or the first existing family member from a priority listing of individuals. Specifically, the legally authorized person is defined as the first of the following individuals:

- The deceased person, if he/she has provided inter vivos authorizations and directions.
- The surviving spouse, unless the spouse has been arrested for domestic violence that contributed to the deceased person's death.
- A son or daughter 18 years of age or older.
- A parent.
- A brother or sister 18 years of age or older.
- A grandchild 18 years of age or older.
- A grandparent.
- Any other person in the next degree of kinship.

If no family member exists or is available, another person may be recognized as the legally authorized person.

House Bill 305 amends the definition of legally authorized person to include, for military service members who die while serving on active duty, the person designated on DD Form 93 or any successor form. This designation is given priority over the hierarchical list of family members who may serve as the legally authorized person under Florida law, and is second in priority only when the deceased service member is the legally authorized person. Thus, the family member selected on DD Form 93 will be recognized as the legally authorized person to direct disposition of the service member's remains if he/she dies while serving on active duty, unless the service member is the legally authorized person. The bill also eliminates potential conflicts regarding the ultimate disposition of the remains of service members who die while serving on active duty when the relative designated on DD Form 93 would not be considered the legally authorized person under ch. 497, F.S.

The bill takes effect upon becoming law and appears to have no financial impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0305.IBFA.doc

DATE: 1/7/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Disposition of the Remains of Deceased Service Members

"Person Authorized to Direct Disposition" Pursuant to Pub. L. No. 109-163

Military service members, including members of the Armed Forces and Active, National Guard, and Reserve Component personnel,¹ are required to complete the United States Department of Defense Record of Emergency Data (DD Form 93). In accordance with the National Defense Authorization Act for Fiscal Year 2006,² service members designate a "person authorized to direct disposition" of their remains in event of death. The designation is made in Item 13a of DD Form 93. A family member must be selected as the person responsible for disposition of the remains.³ The completed form is witnessed by an authorized military official.

"Legally Authorized Person" to Determine Disposition under the Florida Funeral, Cemetery, and Consumer Services Act

Under the Florida Funeral, Cemetery, and Consumer Services Act, ch. 497, F.S., the "legally authorized person" to determine disposition of a deceased's remains is defined as the deceased person if certain conditions have been met, or the first existing family member from a priority listing of individuals. Specifically, the legally authorized person is defined in s. 497.005(37), F.S. as the first of the following enumerated individuals:

- The deceased person, if he/she has provided inter vivos authorizations and directions.
- The surviving spouse, unless the spouse has been arrested for domestic violence that contributed to the deceased person's death.
- A son or daughter 18 years of age or older.

¹ See Enclosure 7, "General Instructions for Use and Preparation of the Record of Emergency Data (DD Form 93)," to Department of Defense Instruction 1300.18 for a complete listing of personnel required to complete DD Form 93. Found at: <http://www.defense.gov> (last accessed January 8, 2010).

² Pub. L. No. 109-163, s. 546.

³ The instruction to service members for completing Item 13a reads as follows: "Enter the name and relationship of the Person Authorized to Direct Disposition (PADD) of your remains should you become a casualty. Only the following persons may be named as a PADD: surviving spouse, blood relative of legal age, or adoptive relatives of the decedent. If neither of these three can be found, a person standing in loco parentis may be named." See "Detailed Instructions for Completing the Record of Emergency Data Form (DD Form 93)." Found at <http://www.defense.gov> (last accessed January 8, 2010).

- A parent.
- A brother or sister 18 years of age or older.
- A grandchild 18 years of age or older.
- A grandparent.
- Any other person in the next degree of kinship.

If no family member exists or is available, another person may be recognized as the legally authorized person.

The legally authorized person is determined solely from the priority listing of individuals set forth in statute. Thus, the military service member's designation on DD Form 93 has no effect on the determination of the legally authorized person under ch. 497, F.S.

Key Quality of Life Issue Identified by the United States Department of Defense

The United States Department of Defense (DoD) has identified "Comporting State Laws with DoD Rules on Disposition" as a Key Quality of Life Issue Supporting Service Members and Families for 2010.⁴ To date, DoD reports that it has obtained sponsorship of bills supporting this objective in 19 states, including Florida. The bills are tailored to address specific statutory language. Generally, they recognize the individual designated on DD Form 93 as the person authorized to direct disposition of the service member's remains under state law, and give this designation priority over all other persons who may serve in this capacity, except for the service member him/herself.

Effect of the Bill

House Bill 305 expands the listing of individuals who may serve as the legally authorized person to include, for military service members who die while serving on active duty, the family member designated on DD Form 93 or any successor form. In such circumstances, this designation will be given priority over the hierarchical list of family members who may serve as the legally authorized person, and will be second in priority only to the situation in which the service member qualifies as the legally authorized person. Thus, for military service members who die while serving on active duty, the family member designated on DD Form 93 will be recognized as the legally authorized person to direct disposition of the remains, unless the service member him/herself qualifies as the legally authorized person.

The bill also eliminates the potential for disputes over the ultimate disposition of the remains of service members who die while serving on active duty when the person designated on DD Form 93 would not be considered the legally authorized person under s. 497.005(37), F.S.

B. SECTION DIRECTORY:

Section 1. Amends the definition of legally authorized person to determine disposition of a deceased's remains under s. 497.005, F.S.

Section 2. Provides for the bill to take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

⁴ See <http://www.USA4MilitaryFamilies.org> (last accessed January 8, 2010).

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the disposition of human remains;
 3 amending s. 497.005, F.S.; revising the term "legally
 4 authorized person" for purposes of the Florida Funeral,
 5 Cemetery, and Consumer Services Act; providing an
 6 effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (37) of section 497.005, Florida
 11 Statutes, is amended to read:

12 497.005 Definitions.--As used in this chapter:

13 (37) "Legally authorized person" means, in the priority
 14 listed:

15 (a) The decedent, when written inter vivos authorizations
 16 and directions are provided by the decedent;

17 (b) The person designated by the decedent as authorized to
 18 direct disposition pursuant to Pub. L. No. 109-163, s. 564, as
 19 listed on the decedent's United States Department of Defense
 20 Record of Emergency Data, DD Form 93, or its successor form, if
 21 the decedent died while serving on active duty in any branch of
 22 the United States Armed Forces, United States Reserve Forces, or
 23 National Guard;

24 (c) The surviving spouse, unless the spouse has been
 25 arrested for committing against the deceased an act of domestic
 26 violence as defined in s. 741.28 that resulted in or contributed
 27 to the death of the deceased;

28 (d) A son or daughter who is 18 years of age or older;

- 29 | (e) A parent;
- 30 | (f) A brother or sister who is 18 years of age or older;
- 31 | (g) A grandchild who is 18 years of age or older;
- 32 | (h) A grandparent; or
- 33 | (i) Any person in the next degree of kinship.

34 |

35 | In addition, the term may include, if no family member exists or
 36 | is available, the guardian of the dead person at the time of
 37 | death; the personal representative of the deceased; the attorney
 38 | in fact of the dead person at the time of death; the health
 39 | surrogate of the dead person at the time of death; a public
 40 | health officer; the medical examiner, county commission, or
 41 | administrator acting under part II of chapter 406 or other
 42 | public administrator; a representative of a nursing home or
 43 | other health care institution in charge of final disposition; or
 44 | a friend or other person not listed in this subsection who is
 45 | willing to assume the responsibility as the legally authorized
 46 | person. Where there is a person in any priority class listed in
 47 | this subsection, the funeral establishment shall rely upon the
 48 | authorization of any one legally authorized person of that class
 49 | if that person represents that she or he is not aware of any
 50 | objection to the cremation of the deceased's human remains by
 51 | others in the same class of the person making the representation
 52 | or of any person in a higher priority class.

53 | Section 2. This act shall take effect upon becoming a law.

**INSURANCE, BUSINESS &
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 305 by Rep. Renuart
Disposition of Human Remains**

AMENDMENT SUMMARY

January 13, 2010

Amendment 1 (**line 21**) by Rep. Renuart. Removes language that limits recognition, under Florida law, of the person designated by a service member to direct disposition of his/her remains to situations in which the service member dies "while serving on active duty." Extends recognition of this designation to service members who die while serving in any branch of the military.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 305 (2010)

Amendment No. |

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee

3 Representative(s) Renuart offered the following:

4
5 **Amendment**

6 Remove line 21 and insert:

7 the decedent died while serving military service as described in

8 10 USC Sec. 1481(a)(1)-(8) in any branch of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 345

Alcoholic Beverage Regulation

SPONSOR(S): Kreegel

TIED BILLS:

IDEN./SIM. BILLS: SB 784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Livingston <i>[Signature]</i>	Cooper <i>[Signature]</i>
2) Finance & Tax Council			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level and the state "sales tax" is collected at the retail level.

The bill repeals language in the beverage law that prohibits the sale, processing, or consumption of distilled spirits containing more than 153 "proof." Proof is twice the percentage of alcohol by volume at 60 degrees Fahrenheit (e.g., 80 proof = 40% alcohol by volume)

The bill codifies, with changes, and clarifies the registration requirements specified in rule 61 A-4.005, FAC. relating to brand and label registrations for distilled spirits. The bill requires that a licensed distiller located in Florida that is filing a brand or label registration or renewing a registration shall have preference by the DBPR in processing the registration or fee payment over distillers that are not located in Florida.

The bill requires notification by the DBPR to each brand registrant within 10 days of initial receipt of their application and payment of the appropriate fee. The bill provides for the issuance of an up to 5-year registration to registrants. This provision allows registrants to choose how many years they would like to register the brand, up to a maximum of five years.

The bill allows distillers to conduct spirituous beverage tastings (consumer sampling) under the same parameters as are currently authorized for distributors and vendors. The bill authorizes a licensed distiller located in this state to deliver to a vendor licensed to sell spirituous beverages by package (carry-out) or for consumption on premises, free samples of up to 12 containers of no more than 1.75 liters per container of distilled spirits per year for promotional purposes.

The bill corrects cross-references in the sales tax chapter and clarifies the application of the current sales tax exemption to beverage tastings.

The DBPR indicates the impact on the DBPR "pertaining to taxes on the spirituous beverages and the allowance of samples by the distillers is estimated to have a small increase in excise tax revenue, \$13,949 resulting from anticipated increased sales."

The DBPR estimates "there will be an increase in workload in the Bureau of Licensing that will cost \$50,521 in operating expenditures in the first year and \$46,644 each thereafter."

Effective date – July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0345.IBFA.doc
DATE: 1/5/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer (vendor). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law. The provisions of the bill primarily apply to chapter 565, F.S., relating to "Liquor." Section 565.01, F.S., provides a definition for purposes of the beverage law and states:

565.01 Definition; liquor.--The words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" 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.

Present situation

Proof – alcohol content of distilled spirits

Currently s. 565.07, F.S., specifies:

565.07 Sale or consumption of certain distilled spirits prohibited.--No distilled spirit greater than 153 proof shall be sold, processed, or consumed in the state.

Section 561.01(4), F.S., defines alcoholic beverages as follows:

(4)(a) "Alcoholic beverages" means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

(b) The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.

The concentration of alcohol in a beverage is usually stated as the percentage of alcohol by volume (ABV) or as "proof." Proof is twice the percentage of alcohol by volume at 60 degrees Fahrenheit (e.g., 80 proof = 40% ABV).

Effect of proposed changes

The bill repeals the distilled beverage proof limitations specified in s. 565.07, F.S.

Present situation

Container labeling

Sections 564.045 and 565.095, F.S., closely mirror each other relating to "licensure as [a] primary American source of supply" (PAS) for wine and distilled spirits, respectively. The PAS provisions require the registration of each brand of wine and distilled spirits sold in Florida and the licensure of that brand's PAS. Generally, the PAS is either the manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured.

It has long been a common practice to require the registration of the brand and label of each alcoholic beverage container introduced into the marketplace. The 1937 Laws of Florida, chapter 18015, s. 8, specified in part:

Section 8. The Director of the Beverage Department by and with the consent of the Governor, is vested with power and authority to make and promulgate reasonable rules and regulations governing the labeling of all malt, vinous and spirituous beverages containing more than 1% of alcohol by weight, which rules and regulations shall comply with the Federal regulations pertaining to such labeling.

Current law relating to distilled spirits specifies:

565.08 Labeling regulations; liquor.--The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all liquors containing 0.5 percent or more of alcohol by volume, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

Currently, rule 61A-4.005, FAC, establishes the guidelines for brand and label registration:

61A-4.005 Brand Registration.

(1) Each brand or label of spirituous beverages sold or offered for sale within the State of Florida or transported within the State of Florida must be registered with the Division and must have a brand registration number assigned to it by the Division. Requests for registration of brands shall be submitted on forms prescribed by the department for that purpose and in the manner prescribed by the Division.

(4) The registration year for all brands or labels shall be from July 1 to June 30 inclusive of each year.

(5) Annual registration of brands shall be affected by additions to or deletions from the master list of the registrant for the previous year and by the payment of twenty (\$20.00) dollars for each brand or label registered.

(6) Subsequent to the annual registration of brands or labels, any registrant desiring to register new brands or labels under which spirituous beverages are to be sold or offered for sale or transported within the State of Florida may register such brand or label on a registration form prescribed by the Division for that purpose and must make payment of twenty (\$20.00) dollar registration fee for each such brand or label. The payment of the \$20.00 registration fee shall be for the balance of the current registration year as set forth in Section (4) above.

Currently, alcoholic beverage and tobacco licenses are renewed annually. In general, the majority of the alcoholic beverage licenses, with the exception of brand registrations, are renewed in September

for the northern part of Florida and in March for the southern part of the state. Brand registrations renewals are due by June 30th each year.¹

Currently, the Administrative Procedure Act (APA), chapter 120, F.S., specifies various procedural guidelines for the operation of state agencies. Section 120.60, F.S., addresses general licensure procedures. Notification of the receipt of an application by an agency is not required under the APC. However, subsection (1) of this section specifies in part:

Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require.

Subsection (1) also specifies that:

Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.

Effect of proposed changes

The bill codifies, with changes, and clarifies the registration requirements specified in rule 61 A-4.005, FAC. The bill adds the guideline that a registration must be renewed if the style of the brand or label is changed or if the registration is removed from the product list and is no longer marketed in this state. The bill further specifies that a registration application does not have to be filed and processed by the DBPR if no changes have been made to the brand or label during the year, however, the bill continues to require payment of the fee equal to the equivalent of the annualized fee.

The bill requires that a licensed distiller located in Florida that is filing a brand or label registration or renewing a registration shall have preference by the DBPR in processing the registration or fee payment over distillers that are not located in Florida.

The bill requires the DBPR to notify each brand registrant within 10 days that the application for registration and payment of the appropriate fee has been received by the DBPR. The bill also requires the DBPR to notify the applicant for registration of the approval or denial of a brand or label registration within 30 business days of receipt of the application and fee.

The bill provides for the issuance of an up to 5-year registration to registrants. This provision allows the registrant a choice as to how many years they would like to register the brand, up to a maximum of five years. The bill does not change the registration fee but does specify that the renewal fee may not exceed the statutory caps on an annualized basis.

Present situation

Beverage tastings

Activities and interaction between alcoholic beverage licensees are extensively regulated and constitute the basis for Florida's "tied house evil" law. Among those restrictions, s. 561.42, F.S. prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of any retailer. Notwithstanding the overall premise, the Beverage Law also contains exceptions to the structured three-tiered distribution system.

The DBPR web page notes -

"Section 561.42, F.S., provides certain limitations and prohibitions related to the manufacture, distribution, and retail sales of alcoholic beverages. Among other provisions, the statute provides for the following:

¹ DBPR spread sheet, 2010 Agency Legislative Proposals, Office of Budget & Financial Management, dated 11/14/2009, page 1, available in committee files.

- Prohibits, with certain exceptions, gifts, loans of money or property, or rebates between manufacturers or distributors and vendors;
- Limits the extension of credit and provides consequences for nonpayment of sales by a vendor;
- Provides certain restrictions related to manufacturers or distributors giving, lending, renting, selling, or otherwise furnishing advertising materials to a vendor; and
- Prohibits certain sampling activities."²

Beer, wine and spirits tastings (consumer sampling of the alcoholic beverage product) are permitted by the Beverage Law. Section 565.17, F.S., allows distilled spirits distributors and distilled spirits vendors (but not manufacturers) to conduct distilled spirits tastings where beverages are sold by the package (carry-out) or for on-premises consumption.

565.17 Beverage tastings by distributors and vendors.--A licensed distributor of spirituous beverages, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S., [tied house evil restrictions] provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

Currently, there are no statutes that regulate the size or number of the samples provided at beverage tastings. However, the Division does have rules to guide the samples of spirituous beverages as they pertain to "gifts," as a part of the "tied house evil" restrictions. Under rule 61A-1.010, F.A.C. spirituous beverage samples cannot exceed 3 liters to each licensed premises and samples cannot be provided as gifts to a vendor who has purchased the brand within the last 12 months unless the ownership of the manufacturer or distributor has been transferred to a new entity or the vendor's license has been transferred to a new owner.

Effect of proposed changes

The bill allows distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

The bill authorizes any licensed distiller located in this state to deliver to any vendor licensed to sell spirituous beverages by package or consumption on premises, free samples of up to 12 containers of no more than 1.75 liters per container of distilled spirits per year for promotional purposes without being in violation of the "tied house evil" financial assistance limitations.

Present situation

Sales tax – chapter 212, F.S.

Currently, a sales tax exemption exists as authorized in s. 212.08(7)(s), F.S., and specifies:

(s) Tasting beverages.--Vinous and alcoholic beverages provided by distributors or vendors for the purpose of "wine tasting" and "spirituous beverage tasting" as contemplated under the provisions of ss. 564.06 and 565.12, respectively, are exempt from the tax imposed by this chapter.

The footnote to this paragraph cites at footnote number 9:

"9. Note.--See ss. 564.08 and 565.17 for specific references to beverage tastings."

Effect of proposed changes

² See question 15 at <http://www.myfloridalicense.com/dbpr/abt/documents/abt>, January 4, 2010.

The bill corrects the cross-references in this sales tax section and clarifies the application of the current sales tax exemption to beverage tastings as authorized in s. 564.08, F.S., relating to wine and s. 565.17, F.S., relating to liquor.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.08(7)(s), F.S., to correct the cross-references in this section to clarify the current application of the sales tax exemption to beverage tastings of wine and distilled spirits.

Section 2. Repeals s. 565.07, F.S., relating to distilled beverage alcohol content [proof] limitations.

Section 3. Amends s. 565.08, F.S., to statutorily codify guidelines for the registration of brands or labels of distilled spirits beverages.

Section 4. Amends s. 565.17, F.S., to allow distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

Section 5. Effective date – July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Fiscal impact estimates were provided by the DBPR, Office of Legislative Affairs, 2010 Legislative Analysis Form, dated November 23, 2009.

The DBPR projects that “to change to a 5 year renewal process, the fees would be collected in one year for the full five years of liquor brand renewals, and would not be collected again for five years, thus having no revenues paid for these renewals in years 2, 3, 4, and 5. For example, if collected each year, the division would receive approximately \$130,500 each of the five years. If collected on a 5 year basis, the division would receive approximately \$652,500 in year 1 and then again in year 6.”

The DBPR estimates that the bill “may increase the number of spirituous beverage tastings. The revenue impact, although indeterminate is anticipated to be minimal. For example, if all 7 licensed distillers located in Florida gave the maximum amount of samples to 1% of the licensed spirituous beverage vendors, and the beverages were in the mid tax category, the maximum additional excise taxes would be \$65,242 per year. If half the distillers located in Florida provided half of the maximum amount of samples to 1% of the licensed spirituous beverage vendors, and the beverages were in the mid tax category, the maximum additional excise taxes would be \$13,949. If only one distiller provided the samples the additional excise taxes would be \$4,650.”

2. Expenditures:

The DBPR anticipates that “identifying Florida distillers (separate from out-of-state distillers) would require the review of all applications received in the brands queue on a daily basis. This workload equates to one additional FTE as a Regulatory Specialist II. The DBPR estimates that these expenditures would reflect “an increase in workload in the Bureau of Licensing within the division that will cost \$50,521 in operating expenditures in the first year and \$46,644 each year thereafter.”

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:
None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

In the aggregate the brand and label registration changes should facilitate the processing of the registrations for the primary source of supply for distilled spirits thus improving timelines for these licensees.

The bill is further designed to facilitate marketing processes for spirits distillers by allowing spirits tastings and free samples for promotional purposes.

D. FISCAL COMMENTS:

The DBPR states "The bill provides for the issuance of an up to 5-year registration to selected registrants. Issuing an "up to 5-year registration" for liquor would most likely not reduce the number of new and revised primary American source of supply licenses and brand registrations, but should reduce the number of renewals processed annually. Since this affects liquor only, and based on FY 08/09 liquor renewals, it would have a minimal impact as only 4,350 of the 38,715 total brand renewals were for liquor. This equates to 11% of all brands renewed. The LicenseEase system will need configuration changes to allow a renewal structure different than malt beverage and vinous brands. Also, using the phrase "up to" could indicate that the registrant would have a choice as to how many years they would like to register the brand, up to a maximum of five years which would also require significant changes to the current system's configuration.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 3 of the bill gives preference to in-state distillers to have their brand registrations or renewals processed before out-of-state distillers. Section 4 allows distillers located in the state to conduct spirituous beverage tastings, but does not mention or allow the out-of-state distillers to do the same. It may be argued that these sections of the bill could be construed as giving unfair/discriminatory treatment to in-state distillers.

In a case before the U. S. Supreme Court, *Granholm v. Heald*,³ the Court attempted to balance two parts of the U. S. Constitution: the Commerce Clause which requires unrestricted, non-discriminatory trade between the states and the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The question before the Supreme Court was: *Does a state regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the Commerce Clause in light of Section 2 of the Twenty-first Amendment?*

³ *Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005)

Section 2 of the 21st Amendment to the U. S. Constitution reads: *The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.*

The U. S. Supreme Court struck down Michigan and New York laws that were a part of the *Granholm* case. The Court held that the laws in both states discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the 21st Amendment.

The traditional three tier system of alcohol beverage distribution utilized by Florida and many other states was held to be legitimate as long as state laws satisfy the key holdings of *Granholm*.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to alcoholic beverage regulation; amending
 3 s. 212.08, F.S.; correcting and conforming cross-
 4 references; providing an exemption from specified taxes on
 5 alcoholic beverages provided by certain distillers for
 6 spirituous beverage tastings; repealing s. 565.07, F.S.,
 7 relating to the sale, processing, and consumption of
 8 certain distilled spirits; amending s. 565.08, F.S.;
 9 providing the Division of Alcoholic Beverages and Tobacco
 10 with certain requirements regarding the registration of
 11 brands and labels, fee payments, and notices; amending s.
 12 565.17, F.S.; authorizing certain distillers to conduct
 13 spirituous beverage tastings under specified conditions;
 14 authorizing certain distillers to deliver free samples to
 15 vendors authorized to sell spirituous beverages under
 16 specified conditions; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Paragraph (s) of subsection (7) of section
 21 212.08, Florida Statutes, is amended to read:

22 212.08 Sales, rental, use, consumption, distribution, and
 23 storage tax; specified exemptions.--The sale at retail, the
 24 rental, the use, the consumption, the distribution, and the
 25 storage to be used or consumed in this state of the following
 26 are hereby specifically exempt from the tax imposed by this
 27 chapter.

28 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
 29 entity by this chapter do not inure to any transaction that is
 30 otherwise taxable under this chapter when payment is made by a
 31 representative or employee of the entity by any means,
 32 including, but not limited to, cash, check, or credit card, even
 33 when that representative or employee is subsequently reimbursed
 34 by the entity. In addition, exemptions provided to any entity by
 35 this subsection do not inure to any transaction that is
 36 otherwise taxable under this chapter unless the entity has
 37 obtained a sales tax exemption certificate from the department
 38 or the entity obtains or provides other documentation as
 39 required by the department. Eligible purchases or leases made
 40 with such a certificate must be in strict compliance with this
 41 subsection and departmental rules, and any person who makes an
 42 exempt purchase with a certificate that is not in strict
 43 compliance with this subsection and the rules is liable for and
 44 shall pay the tax. The department may adopt rules to administer
 45 this subsection.

46 (s) Tasting beverages.--Vinous and alcoholic beverages
 47 provided by distributors, ~~or~~ vendors, or distillers for the
 48 purpose of "wine tasting" and "spirituous beverage tasting" as
 49 contemplated under the provisions of ss. 564.08 ~~564.06~~ and
 50 565.17 ~~565.12~~, respectively, are exempt from the tax imposed by
 51 this chapter.

52 Section 2. Section 565.07, Florida Statutes, is repealed.

53 Section 3. Section 565.08, Florida Statutes, is amended to
 54 read:

55 565.08 Labeling regulations; liquor.--

56 (1) The division is fully authorized to make and
 57 promulgate reasonable rules and regulations governing the
 58 labeling of all liquors containing 0.5 percent or more of
 59 alcohol by volume, which rules and regulations shall not
 60 conflict with the federal regulations pertaining to such
 61 labeling.

62 (2) Registration of brands or labels shall be effected by
 63 changes to a registered brand or label, by additions to or
 64 deletions from the master list of the registrant for the
 65 previous year, or by nonpayment of the registration fee for each
 66 brand or label registered. The division shall issue up to a 5-
 67 year registration to selected registrants, including in-state
 68 licensed distillers, upon the application for a multiyear
 69 registration, notwithstanding any other provision of law to the
 70 contrary. Fees for such multiyear registration shall not exceed
 71 the statutory fee caps for individual brands or labels on an
 72 annualized basis.

73 (3) Each licensed distiller located in this state that is
 74 required to file a brand or label registration or renewal
 75 registration and pay the applicable fee shall have preference in
 76 processing the registration or fee payment by the division over
 77 distillers not located in this state.

78 (4) The division shall notify each registrant, in writing
 79 or electronically, of the receipt of registration for a brand or
 80 label and the required payment for the registration within 10
 81 business days after receipt of the registration and payment of
 82 the fee. The division shall notify the registrant, in writing or
 83 electronically, of the approval or denial of a brand or label

84 registration within 30 business days after receipt of the
 85 registration and payment of the fee.

86 Section 4. Section 565.17, Florida Statutes, is amended to
 87 read:

88 565.17 Beverage tastings by distributors, ~~and vendors, and~~
 89 distillers.--

90 (1) A licensed distributor of spirituous beverages, or any
 91 vendor, is authorized to conduct spirituous beverage tastings
 92 upon any licensed premises authorized to sell spirituous
 93 beverages by package or for consumption on premises without
 94 being in violation of s. 561.42, provided that the conduct of
 95 the spirituous beverage tasting is shall be limited to and
 96 directed toward the general public of the age of legal
 97 consumption.

98 (2) (a) A licensed distiller located in this state is
 99 authorized to conduct spirituous beverage tastings upon any
 100 licensed premises authorized to sell spirituous beverages by
 101 package or for consumption on premises without being in
 102 violation of s. 561.42, provided that the conduct of the
 103 spirituous beverage tasting is limited to and directed toward
 104 the general public of the age of legal consumption.

105 (b) A licensed distiller located in this state is
 106 authorized to deliver to any vendor authorized to sell
 107 spirituous beverages by package or for consumption on premises
 108 free samples of up to 12 containers of no more than 1.75 liters
 109 per container of distilled spirits per annum for promotional
 110 purposes without being in violation of s. 561.42. Excise taxes
 111 shall be paid pursuant to s. 565.12.

HB 345

2010

112

Section 5. This act shall take effect July 1, 2010.

**INSURANCE, BUSINESS &
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 345 by Rep. Kreegel
Alcoholic Beverage Regulation**

AMENDMENT SUMMARY

January 13, 2010

Amendment 1. (lines 73-78) by Rep. Kreegel - Removes language that a distiller located in Florida shall have preference by the DBPR in processing the registration or fee payment over distillers that are not located in Florida.

Amendment 2. (line 98) by Rep. Kreegel - Removes language that a distiller located in Florida may conduct distilled spirits tastings thus allowing all licensed distillers to conduct tastings under the same parameters as are currently authorized for distributors and vendors.

Amendment 3. (line 105) by Rep. Kreegel - Removes language that a distiller located in this state may deliver to a vendor certain amounts of distilled spirits per year for promotional purposes thus allowing all licensed distillers to provide promotional spirits to vendors.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 345 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee
3 Representative Kreegel offered the following:

Amendment (with title amendment)

6 Remove line 98 and insert:

7 (2) (a) A licensed distiller is

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove line 12 and insert:

13 565.17, F.S.; authorizing distillers to conduct

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 345 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee

3 Representative Kreegel offered the following:

4

5 **Amendment**

6 Remove lines 73-78 and insert:

7 (3) The division shall notify each registrant, in writing

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 345 (2010)

Amendment No. 3

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee
3 Representative Kreegel offered the following:

4
5 **Amendment (with title amendment)**

6 Remove line 105 and insert:
7 (b) A licensed distiller is

8
9
10 -----
11 **T I T L E A M E N D M E N T**

12 Remove line 14 and insert:
13 authorizing distillers to deliver free samples to

