

TALLAHASSEE BAR & HOSPITALITY ASSOCIATION

Business Quarterly

SESSION STARTS

BUSY YEAR
FOR ALCOHOL LAW

LEGISLATIVE REVIEW *for Florida's 2017 Session*

SHATTERED!
GLASSWARE

BILL COULD REDUCE COST
TO BAR OWNERS

POLICE CONTINUE LOCAL
UNDER AGE
STINGS



CAUGHT
RED HANDED!
LEON COUNTY
AUDITS SRX
BARS



MARCH 2017

SESSION FOCUS GLASSWARE

For the first time, the Florida Legislature is addressing brewer glassware.

House Bill 853, filed by Rep. Tom Goodson seeks to modernize prohibition-era trade practices associated with providing branded glassware to bars and restaurants. While reaching out to bar owners about monthly glassware expenses, many relayed that they were annoyed with the current limitations on promotional items given by distributors and brewers

A Snapshot of Tallahassee Bar Glassware Costs

We polled several of our member bars and found that bars in Tallahassee spend about \$150 a month on glassware. We were shocked with the results! Glassware is more cost prohibitive for larger venues, and done less in venues that prominently feature dancing because of the hazard of breakage.

Consumer Experience: A Need for the Right Glassware

The Stella Artois Chalice is a perfect example of how the right glassware can ensure that consumers will enjoy the unique taste and beauty of Stella Artois beer. The chalice is designed so that every curve serves a discrete purpose to how Stella Artois should be enjoyed. The authentic shape of the body encourages the perfect balance of CO2 and liquid, enhancing head retention and flavor. Different brewers, large and small, also have their own unique branded glassware (i.e. special branded pilsner glasses for a Blue Moon or Samuel Adam's branded pint glass.) In Europe, most beer is served in the appropriate style of branded glassware. This practice enhances a consumer's experience.

Saving your bottom line: Saving Money from Glassware

Bar operating costs are weighed down by a ton of extra costs. Security, insurance, workers compensation, alcohol costs, labor, cleaning supplies, upkeep are just to name a few. Glassware remains a small, but tangible cost to bars overhead on a monthly basis.

The Current Law: Promotional Items Generally Allowed, Glassware Must Be Bought At Cost

Current Florida law allows brewers and distributors to give bars promotional materials such as neon signs and wall art. They may also sell at-cost, materials such as ashtrays, bottle openers, coasters, napkins and glasses. Interestingly enough , items such as pool table lights and clocks may be loaned to bars at no cost, and can be loaned indefinitely, but may not be the possession of the bar.

What can I do to help?

The bill should be in House Careers & Competition in the next two weeks, luckily for Tallahassee establishments, a large number of North Florida Representatives are on this committee, making up about a fourth of the overall committee. Bar owners who want to contact their legislators, may do so by clicking the link below.

Cost of Glassware Per Month

Establishment	Cost Per Month
Fifth & Thomas	\$30
Cabos	\$50-100
Gaines Street Pies	\$150-\$200
Tequila Tribe	\$150-\$200
Clyde's & Costello's	\$200
Firebetty's	\$300-\$400
Potbelly's	No Glassware
The Strip	No Glassware
Coliseum	No Glassware

Source: Individual Bar Respondents

Many bars with higher occupancies do not use glassware for liability reasons.

The Strip recently quit using glass bottles and moved to all cans to avoid breakage in high traffic areas.

EMAIL
your legislators
in support of
HB 853

To connect with your legislator,
[please click here.](#)



Our cover story

Florida Legislative Session for Alcohol Law

A busy session ahead for the industry

Bills about Bars & Restaurants

On-Premise Retailers

SB 400- SFS/SRX Modification of Requirements Bill

- This bill would change the square footage requirements for an SFS (previously SRX) license from 2,500 to 1,800. In addition, it would change the seating requirement from 150 to 100. It also gives the Director of ABT more discretion on which law enforcement officers within ABT they can hire and fire.
- This bill is a bad bill for current quota license holders. By continually watering down the requirements for SFS licensees, they increasingly put the government in a posture to abolish the quota system.
- Currently it does not look like it will pass. It has been temporarily postponed awaiting further action.

HB 853/SB 1040- Glassware Bill

- The Tallahassee Bar & Hospitality Association will be supporting this bill to reduce bar and restaurant owners bottom line on monthly glassware costs.
- This bill would allow for bars to receive free glassware directly from both craft breweries and large breweries. Currently it is illegal to give away glassware to bars, but distributors and brewers can sell glassware at their cost, which is generally cheaper than a bar can buy glassware because brewers and distributors buy in much larger bulk quantities. This bill would allow bars to receive glassware for free from brewers and distributors.

HB 983 / SB 1254- Dram Shop Law Modification Bill

- This bill creates a rebuttable presumption that any minor who has been furnished alcoholic beverages was done so willfully and knowingly by the establishment. This presumption can be rebutted if the establishment can prove that they checked their driver's license, passport, or other identification card. It also expands the liability of those who host house parties, including the property owners to include penalties consistent with the penalties for bartenders and bar owners. This bill is unlikely to pass.

Bills about Liquor Stores, Grocery Stores, Convenience Stores

Off-Premise Retailers



HB 81/SB 106 - Grocery Separation/Liquor Wall/Whiskey & Wheaties Bill

- This bill is being pushed by Wal-Mart. This bill would change the law so that Wal-Mart and other big box retailers can sell liquor directly in the store. Publix, ABC Liquors, and the Florida Independent Spirit Association oppose this bill. Wal-Mart, Target, and Whole Foods support it.

- This bill would upset the value of the quota license substantially by making national corporate retailers make a run to purchase as many quota licenses as possible.

- This bill would likely run small, independent mom and pop liquor stores out of business. They would be unable to compete with the bulk buying discounts that Wal-Mart and Target enjoy.

Craft Breweries

SB 544-Craft Breweries Bill

- This bill is being pushed by the Florida Brewers Guild, and would allow self-distribution of beer by craft brewers that brew less than 7,000 gallons a year.

-7,000 gallons a year is a very small amount for a brewery. No one would object to those tiny brewers from self-distribution, because it would allow them to enter the market place easily. The objection from the Beer Distributors has revolved around the slippery slope argument, that this year it is 7000 gallons, and next year they will try to make that 20,000 gallons. There is also some disagreement because the Beer Distributors and the Florida Brewers Guild struck a peace deal two years ago with the passage of the Growler bill.

Craft Distilleries

SB 166/HB 141- Craft Distilleries Bill

- This bill is being pushed by the Florida Craft Distillers Guild, which would allow craft distilleries to have an additional off-site sale location to sell their liquor in the same county as their distillery. It also repeals the limitations on the number of bottles a customer can purchase from the distillery. That limit is two bottles per person, per brand, per year.

Local Tallahassee Bar's in the Press on SB 166/HB 141:

"Gabe Grass of Grasslands Brewing in Tallahassee said most breweries and distillers do not want to have their own large-scale distribution system, but that the bills do offer a way for emerging businesses to get their brands into the marketplace sooner."

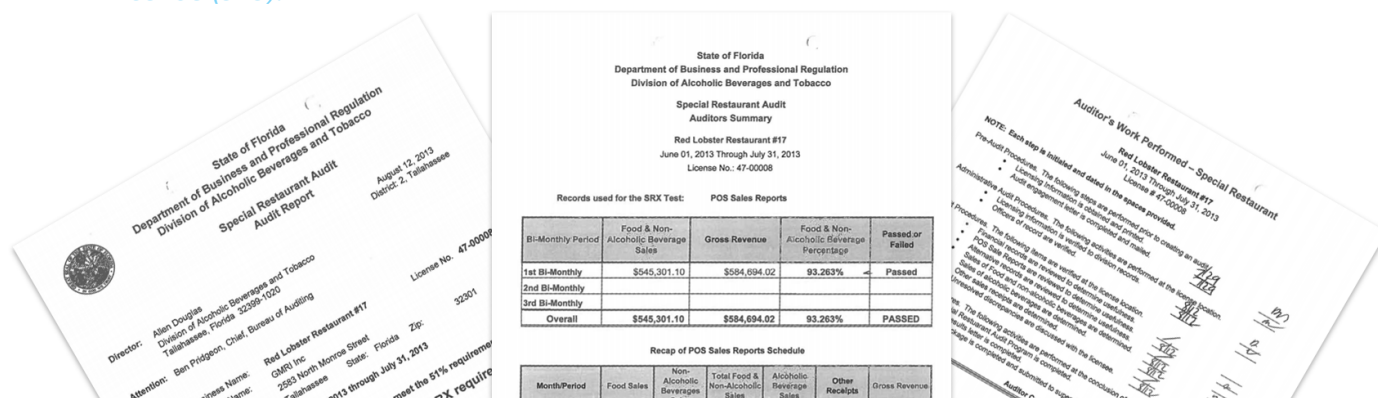
-Associated Press, 3/4/17

"It grows agriculture and makes me feel as a bar owner I can do something cool for my customers"

-Richard deMontollin, owner of Tallahassee's Liberty Bar and Restaurant, Miami Herald, 3/4/2017

Special Food Service License Auditing

The Special Restaurant License (SRX) has now been renamed to Special Food Service License (SFS).



Florida's regulatory agency for alcohol licenses, DBPR: ABT, has three bureaus, the Bureau of Licensing, the Bureau of Auditing, and the Bureau of Law Enforcement.

In this quarter, we'll look more in depth at the Bureau of Auditing's activities in Leon County surrounding the auditing of special food services licenses.

Since June 2016, the Division has been tasked with a new mandate from the Florida Legislature: Every new SFS license must go through a mandatory audit after their first sixty days of operation. Previously, there was no mandated auditing process for the SFS license holders.

What dates can they look at to audit?

The Division can insist compliance of the 51-49% threshold in any 30 day time period. For most audits, they will look at a 30-60 day time period. For more intense scrutiny, they may look at a larger time period, for example, looking at an entire year or Fall or Spring semester. This is a sign that they are looking more closely for compliance at your establishment.

What do they look for?

Auditors will usually first email or call you, and ask you to produce your POS (point-of-sale) records for a given time period. They will also usually look at your menu, and make sure that on the first glance, your percentages seem to make sense. POS system reports will be separated into four categories:

Alcoholic Beverages, Non-alcoholic Beverages, Food, and Other. Compliance is achieved if your Alcoholic Beverages, divided by your non-alcoholic beverages + food, is less than .49

What should I do if I didn't make my % in a given month?

Under no circumstances should you ever attempt to put yourself into compliance through "financial wizardry" or any other sort of fraud.

Examples of this may be where you decide to buy your own food for a private party in bulk, right at the end of your auditing period. Not only is this stupid, but it is fraud and this sort of activity will draw the scrutiny of auditors.

The Division will give you a second or third chance in order to get yourself into compliance. For example, have a dialogue with the Division about expanding your menu items, or offering brunch or lunch may be helpful for you to bring up your food sales percentages.

Happy Hour? Buy-one get-ones and other forms of freebies

There exists a constant stream of business owners wanting to "get creative" with the way they bake alcohol sales into their customer's bar experience. These should be evaluated on a case-by-case basis, however, here are some common ones.

If a burger joint sells a \$10.99 burger, that comes with a "free 16 oz. Bud Light", and the normal menu price for a 16 oz. Bud Light is \$4, then that transaction should be reported in your gross sales as a \$4 alcoholic beverage sale, and a \$6.99 food sale. If you sell private seating areas such as booths for \$229, and that booth comes with a "free bottle of Grey Goose", and the menu price of the Grey Goose is \$110, then that transaction should be reported as a \$110 alcoholic beverage sale, with a \$119 "other" category gross sale.

Happy Hour sales are calculated at the price paid for by the customer.

For example, if a PBR is sold at \$4, but during happy hour they are buy-one get-one, then the transaction should be reported as a \$4 gross alcoholic beverage sale.

Point of Sale Fraud

Typically, if an auditor has an on-site visit, that is a sign of bad things to come. One of the key components of their on-site visits is a check of liquor purchase orders, as well as food orders.

If you are reporting that you have an average nightly sale of dozens of burgers, and the auditors go into your kitchen and do not find any burgers, then they will have a cause for serious alarm.

Vendor-to-vendor Fraud

In Florida and most three-tier alcohol distribution systems, it is illegal for "vendor-to-vendor" purchases, such as a nightclub or bar buying liquor at a liquor store to resell on their premise.

If they identify bottles of liquor such as Fireball, and you are unable to produce liquor distributor sales receipts for those bottles, then you are in trouble. It is outlawed for

What should I do if I think another bar is operating outside of their claimed SFS %?

More so than most, Florida's alcohol industry relies on other industry stakeholders to keep each other accountable. If you suspect a vendor is operating fraudulently, you may report that behaviour by visiting :

http://bpr.state.fl.us/apps/complaint_forms/abt_form.asp

Non-Alcoholic + Food Beverages

$$\frac{\text{Non-Alcoholic} + \text{Food Beverages}}{\text{Non-Alcoholic} + \text{Food} + \text{Alcoholic Beverages}} \leq .51$$

SFS Auditing in Leon County By the Numbers

Selection of audits is done through three primary methods:

- 1) Random Algorithm Selection
- 2) Response to Complaints
- 3) Statutorily Mandated 60-Day Audits

Since the passage of 2016's SB 698, which mandated 60-day auditing is expected to increase from previous years. Hiring of additional auditors statewide has not yet needed to happen, however it is unclear now if random selection will decrease with the addition of the mandatory 60 day auditing.

Audits in Leon County

Year	# of Audits
2013	22
2014	18
2015	6
2016	18

Specific audits of Florida Bar's and Restaurants can be requested by association members.

The Prevention Corner

Each quarter we devote a section of the newsletter to promote ways to work with the prevention community prevent incidents before they start.

Dram Shop Laws Critical for Bar Owners To Know

by Jaeson Homela



Jaeson W. Homela is a personal injury lawyer at Barrett, Fasig & Brooks. Tallahassee is home to tens of thousands of college students when school is in session. It is no secret that college students tend to frequent bars and nightclubs more often than any other demographics. For that reason, adults in their early twenties have more than the average amount of automobile collisions involving alcohol. This brings up the question we are asked time and again: Is the provider of the alcohol in any way liable for damages?

The short answer to the question is no. Florida Statute § 768.125 states, "[a] person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person" However there are two exceptions, which, allow for liability to attach to the vendor or provider of the alcohol which led to the injuries. The two exceptions are:

Willful and Unlawful Service of Alcohol to a Minor:

Florida Statute § 768.125 does not protect "a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age." A bar or vendor can be held liable in damages if an underage individual is served or permitted to drink alcohol and then causes injury to another. However,

this exception requires more than just negligence on the part of the alcohol vendor. Under the statute, the vendor must "willingly" provide the alcohol to the minor. For instance, there will most likely be no liability in a situation where an underage individual is able to get alcohol by having an overage individual buy the drinks and pass them without the bartender's knowledge.

Furthermore, if an underage individual furnishes an alcohol vendor false identification (fake id) indicating he/she is of legal drinking age, and after "carefully" checking the identification and comparing it to the individual's appearance there is a good faith belief the individual is of legal drinking age, there can be no liability on the part of the vendor for underage service. That rule is set forth in Florida Statute § 562.11(1)(d).

Knowingly Serving an Alcoholic:

Additionally, Florida Statute § 768.125 does not protect "a person who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages." This exception is very hard to prove, because it must be proven the

individual was habitually addicted to alcohol; and the bartender must have knowledge the individual is habitually addicted to alcohol.

The first hurdle of proving the person is an alcoholic is generally proven by hiring an expert to comb through the individual's past medical and psychological records looking for evidence of alcohol addiction. Criminal records are also scoured in an attempt to determine whether the individual had been arrested in the past for things such as public drunkenness or driving under the influence and determining whether the individual was sent for counselling as a result. It is also sometimes beneficial to speak with those closest to the individual (if they will talk) to determine their positions with regard to the person's alcohol intake. The second hurdle is often more difficult than the first because you must prove the bartender was aware of the individual's addiction. This proves difficult because if the

individual has never been to the bar before or never gotten drunk at that particular bar before, there is no case. This hurdle is often overcome by speaking with the bartender and the "regulars" at the bar to determine whether the individual regularly spent time at that bar getting intoxicated.

Interestingly, what you won't see in the statute is liability for a bar or vendor "over-serving" an individual. Currently, Florida law does not hold a bar responsible for continuing to serve alcohol to a visibly intoxicated patron. Therefore, even if a guest is visibly intoxicated and the bartender continues to serve that individual alcohol, the bar will not be liable if that individual then causes a collision-UNLESS it can be shown that the individual was underage or was a known alcoholic to the bartender.



TPD, ABT is Actively Stinging Bars in Leon County for Underage Serving

In February, TPD in conjunction with ABT, performed several underage serving checks at various bars in Tallahassee.

In one instance, the bar tender poured the drink requested to see the patrons ID, and then the undercover shopper walked out of the bar, and TPD officers walked in, and threatened to arrest the bartender.

In the end, the bartender was charged a \$500 fine and sentenced to a small amount of community service. It is an important reminder of the vigilance necessary to prevent underage drinking, and the costs to your bar staff if not followed.

In addition, be advised that pouring a drink before checking the patrons ID, is a violation of Florida Statute in the eyes of the Tallahassee Police Department. The drink need not be handed to the patron in order for the violation to occur.

Bartenders Get Training on Over-Serving; Risks of Drunk Driving

On March 8th, owners from the Standard, Coliseum, Tabu, Potbelly's, and the Strip arranged for their bartending staff, door staff, and security staff to receive a training on responsible vendor practices by a presentation put on by Tallahassee Concerned Vendor's and SADD (Student's Against Drunk Driving).

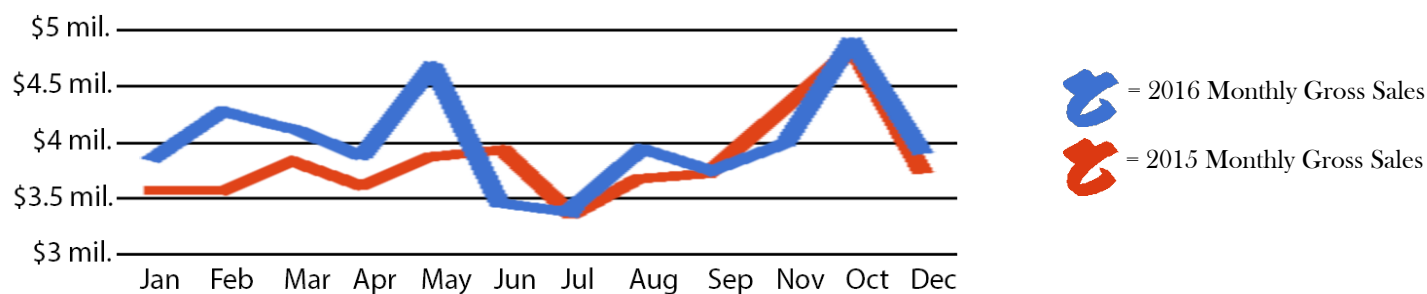
In addition to going over methods to detect over-intoxication, such as stumbling, slurred speech, and fumbling of wallets, staff was treated to a presentation by Kevin Brooks.

Kevin Brooks drove drunk when he was 21 and became paralysed as a result of his actions. He also fatally injured his passenger, Brandon, who was a long time family friend. Kevin explored the emotional and physical toll the experience took on him, as well as how he learned to cope with the experience. Kevin tours the country to speak to students about the dangers of drinking and driving.

There were over 100 bar staff in attendance. The meeting took place at The Moon.

THE TAB- Highest Sales in Leon County's History

Leon County's Quota Bar Economy 2015 vs. 2016



2016 Improved Quota Averages by 4%

Tax data is back from the final months of 2016, and it reveals that 2016 overall was 4.3% better than 2015 overall for quota bars in Tallahassee.

Last quarter we remarked that 2016 could be the first year in Leon County's history to have an average monthly quota bar gross sale of \$4 million a month.

Sadly, December's numbers have come in and 2016's monthly average for quota bars was at \$3,999,481, just \$500 dollars under. However, as projected, quota bar sales reached an all-time high in 2016.

In total, 2016's 28 quota bars had a gross sale of \$47,993,767, which is the highest year in Leon County's History by half a million dollars.

Quota Gross Sales Tracking Tool

In December 2016 we released our Quota Gross Sales Tracking Tool. It contains monthly sales data dating back to 2002.

Check it out at:

<https://docs.google.com/spreadsheets/d/1Yqs5g4LkEah0UYCZ0jxA09IYmUgXYElx5Fd8pypxYNw>

How is this data gathered?

Florida's Department of Revenue gathers monthly sales tax data from every business in Florida. Quota bars get their own category called "Drinking Places", and because of the relatively small amount of businesses this includes in Leon County, it is a useful measure of how well the quota bars are doing. Below is a full list of all the current quota bars in town that contribute to these totals. Only alcohol sales are included in these numbers.

Tallahassee's 28 Quota Bars

The Strip (Ken's Tavern/Yiannis/RedRocks)	The Wine Loft Wine Bar
Original Market Square Liquors	Krewe De Gras
Brass Tap: Midtown	Clyde's and Costellos
AMC Tallahassee Mall Bar	Potbelly's and The Painted Lady
Fire Betty's	Proof Brewing Company
Recess	Ahmed Grenadier Club #37
Cancun's Sports Bar	Governor's Club
The Moon	Finnegan's Wake/Fifth Ave. Tap Room
Madison Social	Cabos' Island Bar
Tabu Night Club	Bullwinkle's Saloon
The Standard on College	Waterworks
Pockets Pool & Pub	Lake Talquin Liquors
Poor Paul's Pourhouse	Colonial Liquors & Lounge
Zingales Billards & Sports Bar	Top Flite

About the Association



The Tallahassee Bar & Hospitality Association is a Florida LLC that was created in January 2016 to represent Tallahassee's bar, restaurant, and hospitality industry. Since it's creation, the association represents over 20 bars in Tallahassee to the City and State level.

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Big Bend Restaurant Supply is a company that provides quality new and used restaurant equipment, small wares, and janitorial supplies to restaurant owners and individuals. With over 150+ years of combined hospitality, restaurant and supply chain experience. This ranges from previous restaurant chain ownership as well as individual units. We can assist you in site selection, design, and budget.

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Alcohol License Brokers



Brent Moody with the Beverage Law Institute can assist. Beverage Law Institute provides clients with professional liquor license services, while growing personal relationships through integrity, knowledge, and southern hospitality.

Contact them at (850) 386-7020