



Division of Alcoholic Beverages and Tobacco Should Improve Primary Functions and Accountability System

at a glance

The Division of Alcoholic Beverages and Tobacco's operations benefit Florida's citizens by providing safeguards to protect the public, ensuring that the state receives its tax revenues, and helping prevent criminal activity. Stakeholders reported high levels of satisfaction with division performance. However, improvements should be made to several of the division's key processes, including

- modifying or eliminating the alcoholic beverage surcharge;
- reducing the number of underage alcoholic beverage and tobacco surveys and redirecting law enforcement efforts to focus more attention on retailers suspected or known to be out of compliance with underage alcohol and tobacco laws;
- taking additional steps to recover state revenue lost due to Internet and mail order tobacco sales;
- timely investigating smoking ban complaints;
- exploring the feasibility of electronic submittal of license applications; and
- improving its accountability system.

Scope

State law directs the Office of Program Policy Analysis and Government Accountability to complete a justification review of each state

agency program operating under a performance-based program budget. This report reviews the performance and identifies policy alternatives for the Department of Business and Professional Regulation's Division of Alcoholic Beverages and Tobacco. Appendix A summarizes our overall conclusions regarding the program.

Background

The Division of Alcoholic Beverages and Tobacco's mission is to

- supervise the distribution of alcoholic beverages and tobacco products to consumers in a free enterprise system;
- collect and deposit all taxes and fees authorized by law; and
- help ensure a safe, drug-free, and responsible hospitality industry for Florida residents and tourists.

To achieve this mission, the division licenses businesses that sell alcohol and tobacco products; conducts criminal and administrative investigations; imposes penalties for violations; completes audits, inventories and tax assessments; and provides state resources to local governments to address alcoholic beverage and tobacco concerns. The division carries out these responsibilities through three bureaus—licensing, auditing, and law enforcement. All three bureaus have staff in offices throughout the state.

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The Bureau of Licensing issues and collects fees for all alcoholic beverage licenses, cigarette permits, and other tobacco product permits (see Appendix B for a description of some of the most common license and permit types along with their respective fees). Florida law requires that the division issue licenses only to persons who are at least 21 years of age, are of good moral character, and have not been convicted of certain criminal offenses (e.g., any offense against the beverage or controlled substance laws of Florida, the United States, or any other state). When considering license applications, bureau staff must also determine whether the premises meets all requirements based upon the type of license applied for and whether the location is properly zoned. Field and central office staff process applications and assist applicants; central office staff approves all permanent license applications. Currently, Florida has approximately 67,000 active retail alcoholic beverage license and tobacco permit holders.

The Bureau of Auditing accounts for state excise taxes levied upon alcohol and tobacco products at the distributor/wholesale level, accounts for payment of surcharges on alcoholic beverages served for consumption on premises at the retail level, and ensures through audits that licensees correctly pay these taxes and surcharges.¹ Licensees report and remit taxes and surcharges on a monthly basis, and auditing staff review these reports when submitted and verify the reports during audits.

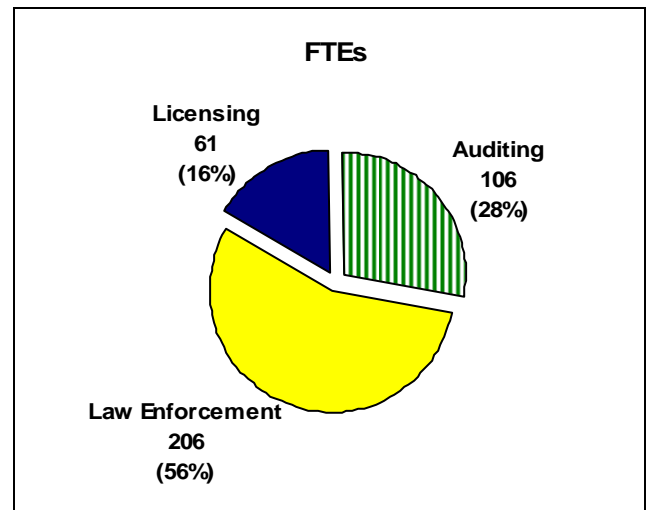
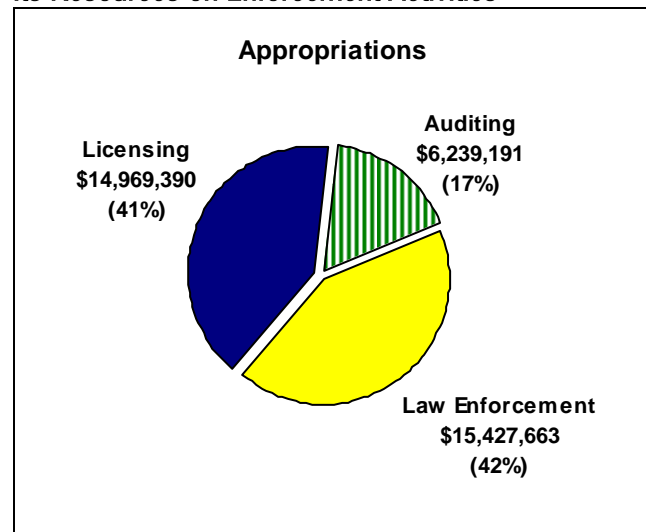
The Bureau of Law Enforcement manages the division’s law enforcement and investigation functions. Responsibilities include completing alcoholic beverage and tobacco retailer compliance surveys, inspecting licensed premises, conducting administrative and criminal investigations, coordinating and conducting joint law enforcement actions with local and federal agencies, and initiating enforcement action against noncompliant licensees.² As needed, the bureau’s law

enforcement officers also assist Bureau of Auditing staff in collecting delinquent taxes and fees.

Resources

For Fiscal Year 2004-05, the Legislature appropriated the division \$36.6 million and 372.75 full-time equivalent positions to perform its regulatory and administrative functions. Exhibit 1 shows how the Legislature allocated these resources across the division’s three bureaus. The majority of the division’s appropriation (42%) and FTEs (55%) was allocated to the Bureau of Law Enforcement.

Exhibit 1
The Division Spends the Largest Portion of Its Resources on Enforcement Activities



Source: 2003-04 General Appropriations Act.

¹ Bureau staff is to audit excise tax accounts semi-annually and surcharge accounts tri-annually.

² The bureau works with state-level agencies such as the Department of Children and Families and the Office of Drug Control to fulfill its responsibility of helping to deter underage alcohol and tobacco use.

In Fiscal Year 2003-04, the division collected approximately \$1.1 billion in revenue, which includes cigarette and alcoholic beverage taxes, alcoholic beverage surcharges, license and permit fees, and fines paid by licensees and permit holders (see Exhibit 2). The division transfers most of these collections to the General Revenue Fund. However, these funds also are used for division operations and for distribution to other state and local government agencies to support various programs, including substance abuse education, treatment, and prevention (see Appendix C for division revenue distributions).

Exhibit 2
The Division Collected \$1.1 Billion in Revenue in Fiscal Year 2003-04

| Revenue Type | Amount |
|---|------------------------|
| Alcoholic Beverage Excise Tax | \$ 546,641,500 |
| Alcoholic Beverage Surcharge | 44,969,100 |
| Cigarette Excise Tax | 416,980,000 |
| Other Tobacco Products Tax | 27,690,500 |
| Finger Printing Fee | 413,100 |
| License/Permit Fees | 35,725,400 |
| Hughes Act ¹ | 313,000 |
| Fines, Forfeitures, Seizures, Restitution | 619,200 |
| Other | 5,346,000 |
| Total | \$1,078,697,800 |

¹ The Hughes Act refers to a fee of \$10,750, which the division collects from each entity it issues a new quota liquor license. This fee is imposed on an initial issuance of a license only, and is in addition to the annual license fee. The revenues from this fee are used for alcohol and drug abuse education, treatment, and prevention programs (s. 561.19, F.S.).

Source: Division of Alcoholic Beverages and Tobacco.

Program Benefit and Placement

The division’s operations benefit the public and we found no compelling reason to alter its organizational placement. The division’s placement within a larger state agency is consistent with the assignment of this function within other states. Moreover, the division provides safeguards to protect the public,

ensures that the state receives its tax revenues, and helps prevent criminal activity.

A fundamental premise of state alcoholic beverage and tobacco regulatory systems is that these products are potentially hazardous and should therefore be subject to special conditions not applied to other products. Thus, all 50 states actively regulate alcoholic beverages and tobacco products through state government agencies. Some states regulate both products through one agency, while others divide product oversight, as well as tax collection, between two or more agencies. For example, New York and California collect alcoholic beverage taxes and enforce alcohol laws through state-level control boards, while their revenue departments collect tobacco taxes, and their health departments enforce tobacco-related laws. In Michigan, a division within the Department of Industry and Consumer Services collects alcohol taxes and enforces related laws, while the Department of Treasury collects tobacco taxes, and the Department of Community Health oversees tobacco access laws. Florida is one of only six states that provide both alcohol and tobacco enforcement and tax collection services through one state agency.³

Key industry representatives we contacted during the course of this review reported high levels of satisfaction with division staff and performance.⁴ These stakeholders said that division staff is professional, responsive, and efficient and reported that overall, the division is doing a good job fulfilling its primary mission and meeting statutory goals. Industry representatives commended the division’s enforcement of underage access laws, revenue collection, and communication with licensees.

³ Indiana, Kansas, Louisiana, South Carolina, and Vermont also regulate both alcoholic beverages and tobacco products through one state agency.

⁴ During the course of this review, OPPAGA received verbal and written feedback from several stakeholders, including ABC Fine Wine and Spirits, the Beer Industry of Florida, the Florida Beer Wholesalers Association, the Florida Restaurant Association, the Florida Tobacco and Candy Association, Tri-Eagle Sales, and Wine and Spirit Distributors of Florida.

Findings

Alcoholic beverage surcharge is burdensome to division and retailers

The surcharge that Florida currently imposes on alcoholic beverages consumed in bars and restaurants is cumbersome for retailers to track and relatively expensive for the division to administer. To improve the program, the Legislature could consider eliminating the tax or modifying how the division administers it.

In some form, all states impose taxes on the sale of alcoholic beverages. Typically, this is in the form of a sales tax, excise tax, and/or surcharge. In Florida, alcoholic beverage distributors pay an excise tax, and retail establishments pay a surcharge on beer, liquor, and wine sold for on-premises consumption. Currently, the state has over 20,000 licensed retail establishments (e.g., bars, restaurants, hotels, bowling centers, caterers, and clubs) that sell alcoholic beverages for on-premises consumption and are subject to the surcharge.

In Fiscal Year 2003-04, the surcharge generated \$45 million in state revenue. Surcharge revenue is primarily credited to the General Revenue Fund, with 27.2% transferred to the Department of Children and Families' Children and Adolescents Substance Abuse Trust Fund for substance abuse programs. This transfer amounted to about \$11 million for Fiscal Year 2003-04.

The amount of surcharge depends on the type of alcoholic beverage and volume sold (see Exhibit 3). Retailers have the option of calculating the surcharge based on actual drinks sold or volume of alcohol purchased from wholesale distributors.⁵ Since the surcharge was first imposed in 1990, the Legislature has reduced tax rates twice. The 1999 and 2000 Legislatures each reduced the tax rate by one-third. The 2001 Legislature considered but

did not pass legislation that would have eliminated the final third of the surcharge.

Exhibit 3 Florida Imposes Both Excise Taxes and Surcharges on Alcoholic Beverages

| Tax Type | Description | Tax Rate |
|------------------------------|---|--|
| Alcoholic Beverage Excise | Levied at the wholesale level on a per-gallon basis | Beer - \$0.48 |
| | | Wine (% alcohol by volume) <ul style="list-style-type: none"> • Less than 17.26% - \$2.25 • 17.26% or more - \$3.00 • Natural Sparkling - \$3.50 |
| Alcoholic Beverage Surcharge | Levied at the retail level for consumption on premises only; on a per-ounce basis | Liquor (% alcohol by volume) <ul style="list-style-type: none"> • Less than 17.26% - \$2.25 • 17.26% to 55.78% - \$6.50 • More than 55.78% - \$9.53 |
| | | Beer - \$0.0134 per 12 oz Coolers - \$0.0134 per 12 oz Wine - \$0.0334 per 4 oz Liquor - \$0.0334 per 1 oz Cider - \$0.02 per 12 oz |

Source: Division of Alcoholic Beverages and Tobacco.

The surcharge system is problematic

In two previous reports, OPPAGA found that the surcharge is a costly and complicated tax to administer, audit, and enforce and is burdensome to merchants.⁶ Specifically, compared to the excise tax that is imposed on less than 400 manufacturers, wholesalers, and distributors, the surcharge involves a much larger number of businesses (approximately 20,000). Thus, auditing of the surcharge requires a significantly disproportionate share of resources per tax dollar collected to ensure that businesses remit the surcharge owed. Moreover, due to the high rate of surcharge underpayment, the division must audit a large percentage of retailers to make sure they accurately remit the surcharge. In addition, the two methods used by retailers to calculate the surcharge further complicate reporting and auditing.

According to division officials, approximately 35% of Bureau of Auditing workload is devoted to collecting and auditing surcharge taxes; this amounts to \$2.5 million and 37 FTEs. Surcharge

⁵ For keeping prescribed records, proper accounting, and remitting the surcharge in a timely manner, retailers may deduct a collection allowance of 1% of the monthly surcharge owed.

⁶ *Review of the Surcharge on Alcoholic Beverages for On-Premises Consumption*, Report No. 96-62, March 1997 and *Progress Report: BPR Should Increase Education and Standardization Efforts for On-Premises Alcoholic Surcharge*, Report No. 98-80, May 1999.

tax collection also requires staff resources from the Department of Revenue (DOR).⁷ Each month DOR receives and processes surcharge payments for approximately 20,000 retailers; the division reimburses DOR about \$75,000 per year for these services. Since the average monthly surcharge payment is less than \$200, it is not practical to use the more efficient electronic funds transfer procedure for these payments.

The surcharge also places a burden on retailers, who must keep precise records and file detailed monthly reports. Retailers are required to document the type and volume of alcohol purchased or consumed on their premises and subject to the surcharge.⁸ Many retail establishments are small, locally owned bars or restaurants whose owners may be unaware of requirements and/or have limited resources for keeping records. Keeping precise records is often more difficult for retail package stores that also sell alcoholic beverages for onsite consumption, because these establishments must maintain separate sales records for package sales and sales subject to the surcharge. Our prior reports found that retailers often miscalculate the surcharge they owe. When retailers do not maintain adequate records, division auditors also have difficulty determining the surcharge owed and whether any additional tax is due.

Industry stakeholders who provided us input during our current review generally agree with our concerns regarding the surcharge. For example, stakeholders reported that the surcharge is unfair double taxation because the alcoholic beverage is already taxed at the wholesale level, penalizes consumers who chose to drink at retail establishments, and consumes a large portion of division time that could be spent on other regulatory activities. Most stakeholders asserted that the Legislature should repeal the surcharge, but none support recovering lost revenue from other sources.

The Legislature could consider two options for addressing surcharge problems

To address the significant concerns about the surcharge, we assessed two policy options: (1) repeal of the surcharge or (2) impose the surcharge at the wholesale level. Implementing the first suggestion would result in a reduction in program-generated revenue, while the second option would be revenue neutral while saving state resources. Both options would lessen administrative and record-keeping burdens on the division and Florida businesses.

The first option the Legislature could consider is eliminating the surcharge. This option's primary advantage is that it would reduce state administrative workload and facilitate the elimination of 37 related auditing positions at a savings of \$2.5 million.⁹ Repealing the surcharge would reduce the tax burden on Florida's citizens and would reduce record-keeping requirements on retailers. The major disadvantage of eliminating the surcharge is loss of state revenue, which would be approximately \$45 million per year.¹⁰

Alternatively, the Legislature could amend state law to require the surcharge to be paid at the wholesale rather than the retail level. Under this option, wholesalers would calculate the amount of tax due on each alcoholic beverage order prepared for retailers that serve drinks on premises; the wholesalers would remit the tax to the division, but would add the tax to retailers' invoices. Thus, customers who consume alcohol at retail establishments would continue to pay the tax. The Legislature could allow wholesalers to retain a small percentage of the tax to offset processing costs. In addition, the division could require wholesalers to use the more efficient and cost-effective electronic funds transfer process as the primary method of surcharge payment.

⁷ Retailers are required to remit the surcharge to DOR by the 15th of the month after the surcharge is imposed.

⁸ Retailers must also account for the volume of alcohol used in cooking, spilled, or given away during promotions and not subject to the surcharge.

⁹ The \$2.5 million estimate includes the amount saved by an overall 37% decrease in Bureau of Auditing workload as well as the amount saved by eliminating payment for services to the Department of Revenue.

¹⁰ Current statutory provisions direct that the Department of Children and Families use approximately \$11 million per year of these collections for substance abuse education, treatment, and prevention. If the Legislature wishes to continue this funding, it will need to make other provisions in the law.

This option's main advantage is that it would be revenue neutral and would reduce administrative burdens on both the state and businesses. Since the division already conducts audits at the wholesale level, implementing this option would not require an increase in workload. On the contrary, the division could reduce administrative and auditing positions in accordance with reduced surcharge workload, eliminating 37 FTEs and saving approximately \$2.5 million. This option would better ensure the collection of surcharge revenues from all retail establishments. Furthermore, imposing the surcharge at the wholesale level would eliminate cumbersome record-keeping requirements for retailers and would eliminate the need for division staff to conduct audits of over 20,000 retailers.

However, there are some disadvantages associated with this option. This option would not reduce the tax burden on citizens who choose to drink alcoholic beverages at retail establishments. Stakeholders who provided us input oppose this approach because it shifts record-keeping and remittance responsibilities to wholesalers and makes their recordkeeping more complex. Wholesalers/distributors would need to identify and segregate sales subject to the surcharge for those customers, by license type, that sell alcoholic beverages for consumption on-premises.¹¹ To implement this option successfully, the division would likely need to provide wholesalers transition training and technical assistance.

Underage tobacco and alcohol survey methodology is inefficient

The division's current method of testing businesses' compliance with underage alcohol and tobacco laws is an inefficient use of law enforcement resources. The division should revise its technique to improve efficiency and data reliability as well as free up resources for other critical enforcement activities, such as targeting alcoholic beverage and tobacco

retailers suspected or known to sell to underage consumers.

In Florida, it is illegal for individuals under the age of 21 to purchase and consume alcoholic beverages and for those under 18 to purchase, possess, and use cigarettes and tobacco products.¹² Likewise, state law prohibits businesses from selling these products to underage consumers. To ensure retailer compliance with these laws, the division's Bureau of Law Enforcement uses underage operatives to assist in conducting "surveys" (i.e., compliance checks) of businesses. Specifically, undercover bureau agents, along with underage operatives, visit a sample of retailers (e.g., grocery, convenience, and package stores; bars and restaurants) to test for compliance with underage alcoholic beverage and tobacco laws; the underage operatives attempt to purchase prohibited products, and agents issue citations to clerks who make such sales. For Fiscal Year 2003-04, the division reported an overall retailer compliance rate of 91%.

According to division officials, each year the bureau attempts to survey 20% of alcoholic beverage licensees and 10% of tobacco permit holders; these officials reported that the alcohol survey sample is an internal requirement, while the tobacco survey sample is a Synar Amendment requirement.¹³ Synar is a federal law that requires states to enact and enforce laws prohibiting the sale and distribution of tobacco products to persons under 18; states must achieve a retailer compliance rate of not less than 80% in order to continue receiving related federal funds.¹⁴ Synar requires states to test retailer compliance through underage operative surveys of a valid probability sample of outlets accessible to youth, but the law does not require

¹¹ Thus, the purchase method of calculating surcharge would apply to all on-premise retailers.

¹² Sections 562.111, 569.101, and 569.11, *F.S.*

¹³ Any change to the division's tobacco survey sample size or methodology would have to be approved by the U.S. Department of Health and Human Services prior to implementation.

¹⁴ In federal Fiscal Year 2003, Florida received \$95.5 million in Substance Abuse Prevention and Treatment Block Grant funds and achieved a compliance rate of 92.9%. These funds are distributed to the Department of Children and Families, which uses them for substance abuse prevention and treatment services.

states to survey 10% of tobacco permit holders.¹⁵ States vary widely in their compliance survey sample techniques, with some states surveying more than 20% of eligible tobacco retailers and others surveying less than 7%.

Division data demonstrates that in Fiscal Year 2003-04, the bureau conducted 16,866 surveys of 14,759 licensees.¹⁶ The number of licensees surveyed exceeds the sample requirements cited by division officials. Specifically, approximately 25% of alcoholic beverage and 18% of tobacco retailers were surveyed, rather than the 20% and 10% cited by division officials.

To gather valid and reliable data, the division could survey significantly fewer retailers

The division’s current alcohol and tobacco survey methodology leads to excessive effort by enforcement staff. In Fiscal Year 2003-04, the bureau’s survey activities consumed 26% of enforcement staff workload at an estimated cost of \$4 million. Further, the division’s alcoholic beverage survey sample, which it uses to calculate performance data that it reports to the Legislature, is not valid because it is not truly random.¹⁷ The sample includes retail outlets from a randomly generated sample list as well as businesses selected by law enforcement officers for spot testing. As a result, division management cannot generalize alcohol survey results statewide, nor compare them reliably from year to year. The department’s inspector general also found that the data used for the measure “percent of alcoholic beverages and tobacco retailers tested found to be in compliance with underage persons’ access” is unreliable (see page 11 below).

We determined that to obtain valid compliance data that would adhere to scientific and Synar standards, the bureau could survey a significantly smaller random sample of licensees. For example, to achieve a statistically valid regional sample, division enforcement staff could survey 1,827 licensees (see Exhibit 4 for required samples, by survey type, for statewide, regional, and district level samples).

**Exhibit 4
The Division Could Survey Fewer Retailers to Test Compliance with Alcohol and Tobacco Laws**

| | Current Sample | District Sample | Regional Sample | Statewide Sample |
|------------------------------|----------------|-----------------|-----------------|------------------|
| Alcoholic Beverage Retailers | 9,823 | 3,519 | 918 | 312 |
| Tobacco Retailers | 4,936 | 3,334 | 909 | 311 |
| Total | 14,759 | 6,853 | 1,827 | 623 |

Source: OPPAGA analysis.

Revising the division’s survey methodology in this manner has benefits. First, the division could continue to meet state and federal performance requirements while improving the scientific soundness and comparability of its compliance data. Second, the division could use the significant workload reduction to shift Bureau of Law Enforcement resources to other critical enforcement activities, such as targeting retailers suspected or known to sell alcoholic beverages and tobacco products to underage consumers. Shifting resources in this way would heighten law enforcement visibility in areas that require scrutiny and increase compliance by focusing more attention on those retailers who break the law rather than on those who appear on the random sample list.

To improve the efficiency of the division’s underage alcoholic beverage and tobacco survey efforts, while maintaining the deterrent effect of those efforts, the division should work with the Legislature to determine the appropriate sample size and redirect law enforcement resources accordingly. For example, the Legislature could direct the division to shift from its current over-sampled district level methodology to a regional survey sample. This would reduce the sample to 1,827 licenses, which represents an 87.6%

¹⁵ Federal documents we reviewed stated that for Synar purposes a valid probability sample is a random sample that includes two key elements: (1) sample drawn from population of all outlets accessible to youth and (2) each outlet has a known probability of greater than zero of being selected for inspection. The sample must reflect the distribution of the outlets in the state that are accessible to youth under the age of 18, the random inspections must be subject to generalization for the entire state, and there must be a 95% probability that the sampling error be no greater than three percentage points. We found no evidence of a requirement that 10% of permit holders be inspected.

¹⁶ There were 67,526 licensees eligible to be surveyed; 39,302 alcohol retailers and 28,224 tobacco retailers.

¹⁷ The tobacco sample for Synar purposes is valid, because it includes only those outlets on the random sample list.

reduction in the number of licensees surveyed. The division could use this workload reduction to focus more attention on retailers suspected or known to be out of compliance with underage alcohol and tobacco laws.

The division could take additional steps to recover state tax revenue lost due to Internet and mail order tobacco sales

Due to Internet and mail order sales to retailers and consumers, the state is losing significant cigarette and tobacco product tax revenue. To address this growing problem, the division should increase its efforts to identify and target Internet vendors selling products to Florida retailers and more actively seek lost tax revenue.

Florida law requires cigarette and tobacco product wholesalers and distributors to be permitted by the division prior to selling products to retailers in the state; retailers must also obtain a permit. Wholesalers and distributors are responsible for paying taxes on the cigarettes and tobacco products that they purchase, including shipments from out-of-state vendors (see Exhibit 5). In addition, state law requires that whenever cigarettes or tobacco products are shipped from outside the state to anyone other than a wholesaler or distributor, the person (retailer or consumer) receiving the product is responsible for paying the applicable tax; this law applies to products ordered from catalogs, the Internet, and other sources.¹⁸ Similarly, the federal Jenkins Act requires any person who sells and ships cigarettes across a state line to a buyer, other than a licensed distributor, to report the sale to the buyer’s state tobacco tax administrator; this law does not apply to tobacco products.

Exhibit 5 Wholesalers, Retailers, and Consumers Must Pay Cigarette and Tobacco Taxes

| Tax Type | Description | Tax Rate |
|--|--|--|
| Cigarette Excise | Levied at the wholesale level on | Packs with 2 to 10 - \$0.1695 |
| | a per pack basis | Packs with 10 to 20 - \$0.339 |
| | | Packs with 25 - \$0.42 375 |
| Other Tobacco Products Excise ¹ | Levied at the wholesale level as a percentage of wholesale price | 25% of wholesale price to distributors |

¹ Include snuff, chewing tobacco, and loose tobacco but exclude cigars.

Source: Division of Alcoholic Beverages and Tobacco.

In spite of these laws, loss of cigarette and tobacco tax revenue due to Internet and mail order sales is a growing problem across the country. Because of increased cigarette and tobacco product prices, many consumers are seeking less costly alternatives for purchasing these products, including ordering from Internet sites. A recent United States General Accounting Office (GAO) report found that as Internet cigarette sales continue to grow, so will the amount of lost state tax revenue due to noncompliance with federal and state laws.¹⁹ The report noted, “One research firm estimated that Internet tobacco sales in the U.S. will exceed \$5 billion in 2005 and that the states will lose about \$1.4 billion in tax revenue from these sales.” According to recent estimates, there are over 400 websites currently selling tobacco products. However, the report indicated that the federal government has had limited involvement in enforcing the Jenkins Act, most vendors do not comply with the act or notify their customers of their responsibilities under the act, and states have had limited success in promoting vendor compliance with the act.

A recent case shows that the state loses tax revenue because of Internet and mail order sales to retailers

While the division cannot feasibly collect taxes from consumers, it could take steps to identify and collect unpaid taxes from retailers who are

¹⁸ Sections 210.02(6), 210.30(1)(c), and 210.30(2), *F.S.*

¹⁹ *Internet Cigarette Sales: Limited Compliance and Enforcement of the Jenkins Act Result in Loss of State Tax Revenue*, U.S. General Accounting Office, [GAO-03-714T](#), May 2003.

using the Internet and mail order to circumvent Florida tax laws. A recent case illustrates what can happen when an out-of-state vendor sells tobacco products directly to Florida retailers without regard to state tax laws. In 1994, division auditors discovered that a single out-of-state company was shipping tobacco products to retailers, with neither the company nor the retailers paying state taxes. The division did not investigate the matter further until it received similar complaints in 2001.²⁰ Upon extensive statewide investigation, division auditors and law enforcement agents discovered that at least 165 licensees had purchased tobacco products directly from the vendor, with an estimated unpaid tax liability of \$730,328.²¹ The division subsequently billed the licensees for the unpaid taxes, and as of May 4, 2004, 82 retailers had paid \$301,304 of the taxes due. The division has initiated administrative action against retailers that have refused to pay.

Despite this significant example of non-payment of taxes, the division continues to make limited progress in the area of Internet and mail order sales. As stated above, federal law requires out-of-state vendors that ship cigarettes to retailers and consumers to report these shipments to state tax administrators. According to division officials, in 2002 Bureau of Auditing staff began to pursue businesses known to ship products into Florida via Internet or mail order sales. Periodically, and as staff becomes aware of new businesses, they send an information packet notifying vendors of statutory reporting requirements. However, to date, the division has successfully obtained sales information from only four Internet vendors. The reported information resulted in about \$7,500 in tax assessments from Fiscal Year 2001-02 to 2003-04, with about half (\$3,566) being collected from consumers.

²⁰ Division officials were unable to explain why auditing staff did not investigate the issue further in 1994.

²¹ Investigators used United Parcel Services shipment records to determine what businesses had received shipments from the out-of-state company between 2000 and 2003. Division agents contacted the retailers and requested invoices that documented purchases from the company, and auditors used available invoices to estimate taxes due.

To ensure optimum collection of cigarette and tobacco taxes due the state, the division could place more emphasis on collecting taxes from Internet and mail order sales to Florida retailers, including

- compiling a more comprehensive list of vendors using information from other states, research studies, and Internet searches;
- providing these vendors with information packets detailing federal and state reporting and tax requirements;
- contacting retailers identified as owing taxes and notifying them of their tax obligation, deadline for paying taxes, and penalties/assessment associated with not paying taxes due; and
- increasing coordination with the federal government and other states by providing the Bureau of Alcohol, Tobacco and Firearms and other states tobacco tax administrators with information about vendors identified as illegally selling products to Florida retailers.

Smoking ban implementation successful, but investigation timeliness needs improvement

Division complaint data indicates that implementation of recent amendments to the state's Clean Indoor Air Act has been generally successful, with 50% of investigations revealing no violation of the act. However, the division has not investigated all complaints in a timely manner, which could increase the likelihood of future noncompliance. To help ensure the continued success of the act, the division should investigate all complaints within a reasonable timeframe.

In 2002, 71% of Florida voters supported amending the state's Clean Indoor Air Act to prohibit smoking in most indoor workplaces, including restaurants, bars within restaurants, and hotels. Several venues are exempt from the provisions of the "smoking ban," including private residences, retail tobacco shops, designated smoking hotel guest rooms, and

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stand-alone bars.²² The law went into effect on July 1, 2003.

The Division of Alcoholic Beverages and Tobacco is responsible for enforcing the law in establishments subject to its regulatory authority, primarily bars and restaurants with alcoholic beverage licenses.²³ The division has established a method for processing smoking ban complaints, which includes a Bureau of Law Enforcement agent in Tallahassee receiving and logging complaint data and referring complaints to district law enforcement agents for investigation. If the agent determines that a violation has occurred, he or she issues a notice to comply and schedules a follow-up visit; if the investigator notes continued violation at follow-up, he or she initiates administrative action. Businesses found to be in violation risk a civil penalty of \$275 for the first offense, \$550 for the second, and \$750 for the third. Individual smokers who violate the smoke-free law may also be fined up to \$100 for the first violation and up to \$500 for each subsequent violation.

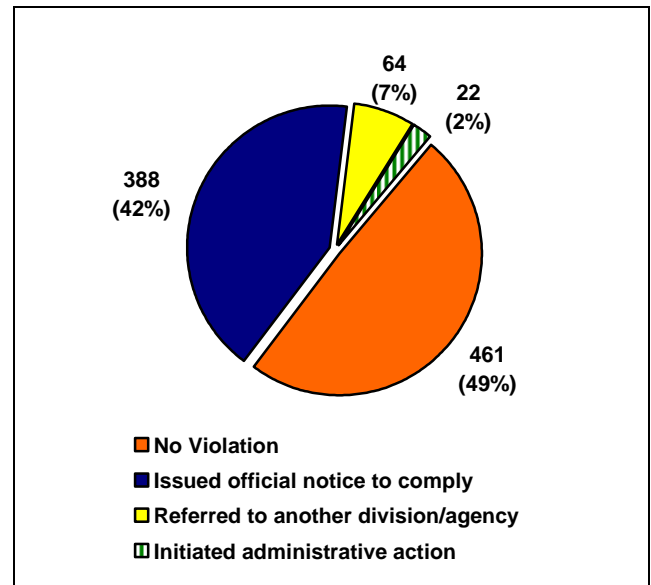
Most businesses comply with the smoking ban, but many complaints go uninvestigated for too long

The results of the division's complaint processing efforts demonstrate that overall, establishments are complying with the smoking ban. Between July 1, 2003, and May 10, 2004, the division entered 1,160 smoking ban complaints into its tracking system and closed 81% of these cases. For 49% of the complaints it closed, the division determined that no violation had occurred; for 42%, the division issued the establishment a "notice to comply" (see Exhibit 6). The division initiated administrative action for only 2% of the cases.

²² A "stand-alone bar" is any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages for consumption on premises. At such bars, the serving of food is incidental to the consumption of alcoholic beverages. Bars can apply to the division for a "stand-alone" designation.

²³ The Department of Health and the Department of Business and Professional Regulation's Division of Hotels and Restaurants are responsible for enforcing the law in establishments subject to their regulatory authority.

Exhibit 6
The Division Closed 49% of Complaint Cases With No Violation Noted



Source: OPPAGA analysis of Division of Alcoholic Beverages and Tobacco data.

Although the division has successfully closed the majority of smoking ban complaints, a significant percentage of cases remain open for an inordinate amount of time before division staff investigates them. For example, of the 211 complaint cases that were open and uninvestigated as of May 20, 2004, 19% had been open for more than six months. Another 21% had been open, but not investigated, for between four and five months. Division officials cited resource constraints as the reason why. When the division does not investigate complaints in a timely manner, it increases the likelihood of additional instances of noncompliance, weakens the division's deterrent powers, and allows licensees that may have violated the law to continue operating with little fear of enforcement action.

To help ensure increased compliance with the smoking ban, the division should investigate all complaints within a reasonable timeframe. To facilitate prompt investigation, the division should identify districts where timeliness is most problematic, determine the cause, and if necessary, shift resources or emphasis to these districts so agents can investigate complaints within an acceptable time period.

LicenseEase has not improved efficiency of division license application process

While the department's new licensing system allows many businesses and professionals to apply for licenses online, the system has not significantly improved the Division of Alcoholic Beverages and Tobacco's license application process. Although the system was intended to automate the licensing process, alcoholic beverage and tobacco licensees still must complete and submit applications manually. To address this issue, the department should make additional efforts to facilitate full online application submittal.

In February 2001, the Department of Business and Professional Regulation entered into a contract for the design, implementation, and operation of an Internet-based, department-wide, single licensing system and a call center. At the time the department initiated the contract, it was operating with several systems and a number of diverse business processes. The overall objectives of the project were to consolidate like department functions, facilitate department operations using one coordinated system, and improve the overall quality, effectiveness, and efficiency of department business operations. The contract required three project components: (1) statewide licensing system (i.e., LicenseEase); (2) call center services; and (3) application management services. The estimated total cost of the project is \$69 million; as of July 2003, the department had expended \$25.6 million on the project.

LicenseEase has improved licensing for some professions, but not for alcohol and tobacco businesses

According to contract monitoring reports, the department has launched LicenseEase according to project goals and timelines. However, these reports also found that department staff and customers have concerns with the new system. Moreover, Division of Alcoholic Beverages and Tobacco staff and industry stakeholders reported that the new system has not improved the

overall license application process for alcohol and tobacco vendors.

A February 2004 Florida Auditor General (AG) operational audit revealed that, in general, the department has made progress in installing LicenseEase.²⁴ However, a March 2004 AG report that presented the findings of a limited survey of department staff found that 43.8% of respondents rated the new system's effect on processing and maintaining licensure data as less efficient and less accurate as compared to previous methods.²⁵

Similarly, a December 2003 Northrop Grumman Information Technology contract monitoring report noted that the department has largely achieved project goals through the successful initial implementation of LicenseEase.²⁶ However, results of a limited survey of department board members and business users conducted in conjunction with the report revealed that some users believe that in order for LicenseEase "to be truly useful, it would need to be possible for an applicant to begin and end the process online" and that "the centralized approach is unwieldy, three times more expensive than the system it is replacing and provides poorer service."²⁷

According to division staff, LicenseEase has not significantly automated or improved the efficiency of Division of Alcoholic Beverages and Tobacco licensing activities. Specifically, while the system allows users to apply online for licenses in professions such as cosmetology, real estate, and electrical contracting, businesses cannot complete and submit electronic applications for alcoholic beverage licenses or tobacco permits. On the contrary, with the implementation of LicenseEase, the division's licensing application forms grew longer, with

²⁴ *Department of Business and Professional Regulation – On-Line Licensing System and Call Center Services Agreement*, Florida Auditor General, Report No. [2004-112](#), February 2004.

²⁵ *Department of Business and Professional Regulation – Single Licensing System*, Florida Auditor General, Report No. [2004-149](#), March 2004. Survey respondents were department staff who serve as leaders for their respective licensing or support area.

²⁶ *Special Project Monitoring: Single License System Quarterly Assessment Report*, Northrop Grumman Information Technology, December 2003.

²⁷ *Ibid.*

some forms increasing from less than 10 pages to nearly 20. Furthermore, the applications, while accessible from the system's website, are in portable document format (PDF), so applicants must print them out and complete them by hand. Industry stakeholders indicated that the division could improve its performance by facilitating the electronic completion and submission of alcoholic beverage and tobacco licenses.

In addition, according to division officials, LicenseEase is more labor-intensive than the old system in many areas, requiring additional work time to accomplish a number of tasks. For example, they reported that under the old system, processing a routine beer and wine license for consumption on premises required the use of 3 computer screens; under LicenseEase, 29 screens are required. Likewise, brand registration under the old system required six staff hours per day with no system costs. Under the new system, brand registration requires two to three employees working full-time, and the system costs almost \$150,000 per year to maintain.

Given the department's significant investment in the LicenseEase system, and the project goal of facilitating licensing operations using one coordinated system, the department should explore the feasibility of online application submittal for alcoholic beverage and tobacco licenses. Enabling licensees to submit applications electronically would save time and resources for division staff and licensees and would help the department realize its goal of one-stop licensing for all regulated businesses and professions. The department should work with the State Technology Office to develop a solution and if a feasible plan is developed, request the necessary funds through the legislative budget request process.

Accountability system needs improvement to accurately measure division performance

In general, the division's performance measures appropriately relate to its primary activities and functions (see Appendix D). However, the department inspector general recently found

that division performance data is unreliable. In addition, we determined that the division could improve the usefulness of its performance information by redefining some indicators.

Performance data unreliable

In 2001, the department's inspector general reported that the division's performance measures are "relevant and meaningful to program objectives."²⁸ However, a recent inspector general report identified significant concerns about the reliability of the division's performance data. Specifically, the review found that

- the division has not developed detailed written procedures for describing the methodology for collecting, analyzing, verifying, and reporting performance measurement data for approved outcome and output measures; and
- data reported for all of the approved outcome and output measures are unreliable.²⁹

The inspector general cited two causes for unreliable data. First, the division recently converted data from old databases to the department's new online system, LicenseEase; the data conversion was difficult and in some cases, incomplete. Second, the division uses multiple database systems that do not interact with each other. Division management referenced both of these causes when reporting that they could not attest to the accuracy of any of the division's performance data.

The inspector general recommended that the division develop detailed procedures relative to the steps involved in collecting, recording, accumulating, and reporting all performance data, including a process for verifying the reliability of data after collection. Further, the inspector general recommended that program management continue to work towards developing LicenseEase into a reliable tracking system. Finally, the inspector general recommended that program management work towards incorporating the current multiple database systems presently into a single database system.

²⁸ Department of Business and Professional Regulation Inspector General, *Special Project 049*, March 2001.

²⁹ Department of Business and Professional Regulation Inspector General, *Special Project 076*, June 2004.

To ensure the reliability of the information it reports to the Legislature, the division should implement the inspector general's recommendations, including establishing written procedures for collecting, recording, and reporting performance data and facilitating the accurate and efficient use of LicenseEase for capturing, analyzing, and reporting information.

Performance measures need improvement

In general, the division's legislative performance measures appropriately represent its primary activities. However, the division needs to redefine two auditing measures to accurately describe performance. Moreover, the division should develop a measure that provides information about the resolution of consumer complaints.

The Bureau of Auditing measures "number of audits conducted" and "collections per dollar of auditing expenditure" are misleading and should be revised. The first measure includes activities that do not meet the standard definition of an audit, including cursory reviews of monthly reports. Similarly, the second measure compares bureau expenditures to total tax collections, not just audit assessments. These approaches result in the division overstating its performance by including data on activities beyond those routinely associated with mainstream auditing functions (e.g., voluntary payment of excise taxes and surcharges). To address this concern, the division should make the adjustments described below.

- Number of audits conducted—only include the bureau's major audits: surcharge, wholesale beverages, cigarettes, other tobacco products
- Collections per dollar of auditing expenditure—only include collections directly resulting from audit assessments per dollar of direct auditing expenditure

In addition, the division does not currently have measures that demonstrate its responsiveness and efficiency related to handling consumer complaints. A program's legislative performance system should include such measures as gauges of customer service. The Legislature affirmed this concept in 2001 with the passage of the Florida Customer Service Standards Act, which

provides that each state department must (1) develop customer satisfaction measures as part of the department's performance measurement system; (2) employ a system to track customer complaints and complaint resolutions; and (3) provide statistical data on customer complaints and complaint resolutions in annual reports or other performance publications.³⁰ Although the statute requires departments to collect and report this information, the division's consumer complaints are too unique to be combined with those of the other diverse businesses and professionals served by the department.

According to division staff, the division has the ability to track consumer complaints through LicenseEase. Staff can enter complaint receipt date, source, type, resolution, and closing date into the new data system. In addition, the system can generate specialized reports compiling this data for designated periods. Division staff reported that designing a process to track consumer complaints would require minimal training of department call center and division staff and could be accomplished relatively easily.

To provide the Legislature with information about its customer service efforts, the division should begin tracking consumer complaints. The division should begin collecting complaint data, including receipt date, source, type, resolution, and closing date. The data should be gathered in Fiscal Year 2004-05, with the goal of reporting "percent of consumer complaints resolved within 90 days" to the Legislature as a performance measure by Fiscal Year 2006-07.

Conclusions and Recommendations —————

The Division of Alcoholic Beverages and Tobacco's operations benefit the public and we found no compelling reason to alter its organizational placement. The division provides safeguards to protect the public, ensures that the state receives its tax revenues, and helps prevent criminal activity. Stakeholders reported high

³⁰ Section 23.30, *F.S.*

Justification Review

levels of satisfaction with division staff and performance. However, improvements should be made to several of the division's key processes, including

- surcharge collection;
- underage alcoholic beverage and tobacco surveys;
- Internet and mail order tobacco tax collection;
- investigation of smoking ban complaints;
- online license application processing; and
- accountability system.

To improve the division's surcharge collection process, the Legislature should consider two policy options: (1) repealing the surcharge or (2) imposing the surcharge at the wholesale level. Each option has advantages and disadvantages for the Legislature to consider. Modifying or eliminating the surcharge has potential reduced program costs of approximately \$2.5 million dollars and 37 FTEs and reduced regulatory burden on businesses.

To improve the efficiency of the division's underage alcoholic beverage and tobacco survey efforts, while maintaining the deterrent effect of those efforts, the division should work with the Legislature to determine the appropriate sample size for these efforts and redirect law enforcement resources accordingly.

To help ensure optimum collection of cigarette and tobacco taxes due the state, we recommend that the division place more emphasis on collecting taxes from Internet and mail order sales by compiling a comprehensive vendor list, providing vendors with information packets detailing federal and state reporting and tax requirements, and contacting retailers identified as owing taxes.

To help ensure increased compliance with the smoking ban, we recommend that the division investigate all complaints within 45 days of receipt. To facilitate prompt investigation, the division should identify districts where timeliness is most problematic, determine the cause (e.g., lack of resources), and, if necessary shift resources or emphasis to these districts so agents can investigate complaints within the required timeframe.

Given the department's significant investment in the LicenseEase system and the project goal of facilitating operations using one coordinated licensing system, we recommend that the department work with the State Technology Office to develop a solution and if a feasible plan is developed, request the necessary funds through the legislative budget request process.

To improve the accuracy and usefulness of its legislative performance indicators, the division should implement the inspector general's recommendations for improving data reliability, revise the measures "number of audits conducted" and "collections per dollar of auditing expenditure," and use LicenseEase to track consumer complaints. The division should make these improvements in Fiscal Year 2004-05 and report them to the Legislature in Fiscal Year 2005-06.

Agency Response—————

In accordance with the provisions of s.11.45(7)(d), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Business and Professional Regulation for review and response. The Secretary's written response is included in Appendix E.

Appendix A

OPPAGA Conclusions for Program Evaluation and Justification Review

Section 11.513(3), *Florida Statutes*, provides that OPPAGA program evaluation and justification reviews shall address nine issue areas. Our conclusions on these issues as they relate to the Department of Business and Professional Regulation's Division of Alcoholic Beverages and Tobacco are summarized below.

| Issue | OPPAGA Conclusions and Policy Options |
|--|--|
| The identifiable cost of the program | In Fiscal Year 2003-04, the Legislature appropriated the division \$36.6 million and 372.75 full-time equivalent positions to perform its regulatory and administrative functions. |
| The specific purpose and public benefit of the program | The purposes of regulation include supervising the distribution of alcoholic beverages and tobacco products to consumers in a free enterprise system, collection and depositing all taxes and fees authorized by law, and helping to ensure a safe, drug-free, and responsible hospitality industry. |
| The consequences of discontinuing the program | If the program were discontinued, there would likely be reduced statutory compliance with alcoholic beverage and tobacco laws, which could result in reduced state revenue collections and increased sale of tobacco and alcoholic beverage to underage patrons. |
| Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program | The division's activities, while not essential state functions, help to protect the interests of Florida's citizens. Thus, the program should be continued, with the improvements recommended below. |
| Progress towards achieving outputs and outcomes associated with the program | According to the department's inspector general, the division's performance-based program budgeting data is currently unreliable and cannot be used to demonstrate that the division is effective at accomplishing its purpose. We concur with the inspector general's findings and recommendations. In addition, we found that the Legislature should modify at least two performance measures so that the division more accurately reports program performance. |
| An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. 216.011, <i>F.S.</i> , associated with the program | In general, the division's formal measurement system appropriately relates to its primary activities and functions. However, the department inspector general recently found that division performance data is unreliable and may or may not accurately reflect program results. Therefore, we are unable to report on most key areas of performance. |
| Whether the information reported as part of the state's performance-based program budgeting system has relevance and utility for the evaluation of each program | The division's performance measures are generally relevant and meaningful to program objectives. However, we recommend altering two current measures and adding one measure that reports on customer complaint handling. |
| Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports | The inspector general cited two causes for the division's unreliable performance data. First, the division recently converted data from old databases to the department's new online system and the data conversion was difficult and in some cases, incomplete. Second, the division uses multiple database systems that do not interact with each other. |
| Alternative courses of action that would result in administering the program more efficiently and effectively | <p>To improve its primary functions and ensure the efficient regulation of Florida's alcoholic beverage and tobacco industry, we make the recommendations which follow below.</p> <ul style="list-style-type: none"> • The Legislature should consider eliminating or modifying the alcoholic beverage surcharge. • The division should work with the Legislature to determine the appropriate sample size for underage alcoholic beverage and tobacco surveys and should redirect law enforcement resources accordingly. • The division should place more emphasis on collecting taxes from Internet and mail order sales and should seek out illegal and untaxed sale of cigarettes and tobacco products. • The division should investigate all smoking ban complaints within 45 days of receipt and should identify districts where timeliness is most problematic and if necessary, shift resources to these districts. • The department should make additional efforts to facilitate online application submittal for alcoholic beverage and tobacco licenses. |

Appendix B

Common License and Permit Fees

| License and Permit Types | Annual Fee by County Population | | | | |
|--|---------------------------------|-----------------|-----------------|------------------|--------------|
| | Under 25,000 | 25,000 - 50,000 | 50,000 - 75,000 | 75,000 - 100,000 | Over 100,000 |
| Package Sales – Beer only | \$ 28.00 | \$ 56.00 | \$ 84.00 | \$ 112.00 | \$ 140.00 |
| Package Sales – Beer and Wine | 84.00 | 112.00 | 140.00 | 168.00 | 196.00 |
| Package Sales - Beer, Wine, and Liquor | 468.00 | 643.50 | 975.00 | 1,170.00 | 1,365.00 |
| Consumption on Premises – Beer only | 56.00 | 112.00 | 168.00 | 224.00 | 280.00 |
| Consumption on Premises – Beer and Wine | 168.00 | 224.00 | 280.00 | 336.00 | 392.00 |
| Consumption on Premises – Beer, Wine, Liquor | 624.00 | 858.00 | 1,300.00 | 1,560.00 | 1,820.00 |
| Quota – Liquor ¹ | 624.00 | 858.00 | 1,300.00 | 1,560.00 | 1,820.00 |
| Clubs | 400.00 | 400.00 | 400.00 | 400.00 | 400.00 |
| Retail Tobacco Products Dealer | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 |
| Cigarette Wholesale Dealer | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| Cigarette Distributing Agent | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 |
| Other Tobacco Products | 25.00 | 25.00 | 25.00 | 25.00 | 25.00 |

¹ Quota licenses are for consumption on-premises and are required when less than 49% of sales come from food or non-alcoholic drinks. For every increase in the population of a county by 7,500 residents, a new quota license is created. First year licensees of this type are charged a one-time fee of \$10,750, which goes toward substance abuse education, prevention, and treatment. Existing licenses can be purchased or businesses can enter the division’s annual quota drawing to win the right to apply for a license.

Source: Division of Alcoholic Beverages and Tobacco.

Appendix C

Fiscal Year 2003-04 Division Revenue Distributions

| Distribution Type | Amount |
|---|------------------------|
| General Revenue Fund | \$ 841,441,100 |
| Revenue Sharing Trust Fund for Counties | 11,109,400 |
| Public Medical Assistance Trust Fund | 113,000,000 |
| H. Lee Moffitt Cancer Center | 11,220,000 |
| Children and Adolescents Substance Abuse | 11,321,500 |
| Retail Tobacco Permit Distribution | 147,000 |
| Counties Distribution (Beverage License) | 6,088,800 |
| Cities Distribution (Beverage License) | 6,573,800 |
| Viticulture Distribution | 275,500 |
| Division Operations | 24,575,500 |
| Hughes Act Trust Fund ¹ | 313,000 |
| Finger Printing Fee | 413,900 |
| Other ² | 1,446,900 |
| Department of Health—Clean Air Act | 1,300 |
| Department of Children and Families (Cater License) | 144,900 |
| Transfers to Administrative & ABT Trust Fund | 8,608,800 |
| Distribution & Transfers | 16,300 |
| Investment Cost | 42,000,000 |
| Total | \$1,078,697,800 |

¹The Hughes Act refers to a fee of \$10,750, which the division collects from each entity it issues a new quota liquor license. This fee is imposed on an initial issuance of a license only, and is in addition to the annual license fee. The revenues from this fee are used for alcohol and drug abuse education, treatment, and prevention programs (s. 561.19, *F.S.*).

²Includes refunds, re-issues, and advance disposal fee.

Source: Division of Alcoholic Beverages and Tobacco.

Appendix D

Division Legislative Performance Measures

| Measure | Reported Performance 2002-03 | Reported Performance 2003-04 | Inspector General Comments | OPPAGA Comments |
|---|------------------------------|------------------------------|---|--|
| Outcomes | | | | |
| Percent complying wholesale/retail licensees on yearly basis | 98.24% | 87% | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure |
| Percent of total retail alcohol and tobacco licensees and permit holders inspected | 38% | 36% | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure |
| Percent of alcoholic beverages and tobacco retailers tested found to be in compliance with underage persons' access | 90% | 91% | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure |
| Percent of license applications processed within 90 days | 97% | 96.3% | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure |
| Percent of retail and wholesale tax dollars identified by audit that were collected | 99.73% | 100% | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure |
| Collections per dollar of auditing expenditure | \$177 | \$186.55 | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure but modify calculation components (e.g., collections directly resulting from audit assessments per dollar of direct auditing expenditure) |
| Percent of consumer complaints resolved within 90 days | NA | NA | NA | Add as legislative measure |
| Outputs | | | | |
| Number of licensees | 70,788 | 71,027 | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure |
| Number of applications processed | 25,818 | 29,685 | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure |
| Number of audits conducted | 279,759 | 301,919 | Current data available is unreliable; efforts to improve are underway | Keep as legislative measure but redefine to include only traditional audits (e.g., surcharge, wholesale beverages, cigarettes, other tobacco products), which amounted to approximately 7,000 in Fiscal Year 2003-04 |

Source: Division of Alcoholic Beverages and Tobacco.

Appendix E



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

August 23, 2004



Jeb Bush
Governor

Diane Carr
Secretary

Office of the Secretary

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RE: Justification Review — Division of Alcoholic Beverages and Tobacco,
Department of Business and Professional Regulation

Dear Mr. VanLandingham:

Pursuant to section 11.513, F.S., the Department of Business and Professional Regulation provides the following response to the August 2004 Justification Review Findings pertaining to the Division of Alcoholic Beverages and Tobacco.

Finding No.1: Alcoholic beverage surcharge is burdensome to division and retailers.

The Department cannot agree or disagree as the decision to eliminate or modify the surcharge is beyond the Department's administrative charter.

1. Recommendation option A:

a. Due to the loss of \$40 million in state revenue if the surcharge is eliminated, the Department would recommend to the Governor and Legislature there be no elimination of the tax.

b. If the Governor or Legislature determines to eliminate the surcharge, the Department does not concur that this will result in the elimination of 37 FTE positions, as the Department reserves the right to determine the actual reductions based on the needs of the Department in other critically short areas of tax audit.

2. Recommendation option B:

a. If the Governor or Legislature determines to modify the surcharge by moving the administration to the wholesale distributor from the retailer, the Department reserves the right to determine the actual FTE reductions based on the needs of the Department in other critically short areas of tax audit, and to articulate the need for additional IT system costs to accommodate the new method of collection and the costs of training the wholesale distributors to this method.

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Finding No.2: Underage tobacco and alcohol survey methodology is inefficient.

The Department concurs.

1. The Division will reduce random surveys to the minimum required by federal program guidelines to ensure maximum federal funding.

OPPAGA Comment

As noted in our report, the division must seek approval from the U.S. Department of Health and Human Services prior to implementing any change in the tobacco survey sample size or methodology.

2. The Division will redirect law enforcement resources saved from additional random surveys to targeted actions and record such targets as part of the total survey coverage for state reporting purposes.

Finding No.3: The division could take additional steps to recover state tax revenue lost due to Internet and mail order tobacco sales.

The Department concurs.

1. The Division will continue basic and minimum awareness activities, within the available manpower and time constraints, as we are doing now, to ensure affected businesses are informed of legal requirements in regards to internet sales and tax responsibilities.
2. The Division will investigate all tax law violations, as they become known.
3. The Department will look for the State Technology Office to lead the overall statewide effort as well as for the principal coordination with other states and the federal government, while the Division will continue current limited and focused coordination with select state governments and the federal government as required.

Finding No.4: Smoking ban implementation successful, but investigation timeliness needs improvement.

The Department concurs, with modifications to the data.

1. OPPAGA Report
 - a. Data provided for review was from a manual Excel Spreadsheet, the Division's best collection of information at that time.
 - b. The report showed 211 cases open and uninvestigated as of May 20, 2004, with 19% (41 cases) open and uninvestigated for more than six months.
2. Division Review
 - a. The Department's LicenseEase system has been modified to track and report smoking designation complaints, and the Division now has an accurate count of complaints received and processed.

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- b. Utilizing the new LicenseEase system, the Division found that of the 19% believed to be open and uninvestigated for over six months, all but 4 cases had been handled.

OPPAGA Comment

The division's follow-up analysis did not include a determination of how long smoking ban complaint cases remained open prior to being investigated.

3. The Division has corrected the data capture issue, and has instituted procedures to ensure that all complaints are documented accurately, investigated and tracked to monitor this process. The division smoking complaint policy now requires a visit to the establishment by the Bureau of Enforcement within 14 days, and if possible, a resolution within 30 days.

Finding No.5: Due to the nature of the division licensing process, the division is unable to take full advantage of the online licensing capabilities of the LicenseEase System, and notes the following limitations:

1. The Department recognizes the unique conditions imposed on this Division by local and state government requirements that govern the permissions and permits associated with the licensing of businesses engaged in the sale of alcoholic beverage or tobacco products.
 - a. Both the applicant and the premises seeking licensure must qualify before an applicant can obtain licensure by the Division.
 - b. All individuals not currently licensed by the Division must submit fingerprints on cards specified by the FBI.
 - c. The premises must be properly zoned by the county or municipality within which the business is located.
 - d. Consumption-on-premises businesses must obtain health approval.
 - e. All businesses must evidence registration with the Department of Revenue for payment of sales and use taxes.
2. The Division will review the feasibility of the maximum use of on-line licensing, given the limitations and unique requirements of alcoholic beverage and tobacco licensing imposed by local government and state governments.
 - a. The on-line licensing for alcoholic beverage and tobacco licensing has been previously explored in the design and development of LicenseEase during the Phase 4 rollout for the Division.
3. The Division will submit a report in 90 days outlining the feasibility of on-line licensing for each of the division's major license categories, including the electronic completion and submission of all alcoholic beverage and tobacco license applications.

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Finding No.6: Accountability system needs improvement to accurately measure division performance, as current performance data is unreliable.

The Department concurs.

1. The performance measurement has been thoroughly defined and documented with detailed procedures and those definitions/procedures have been promulgated and stored in a central repository for future access and use.
2. Procedures have been implemented to ensure the accuracy of the information retained in LicenseEase, the Department's new electronic database, through review and reconciliation of validation reports to manually captured daily activity reports.
3. Data capture procedures have been developed, defining the required data elements and providing a useful training tool to current and future employees.
4. Auditing performance measures.
 - a. The Division will revise the activities calculated in the two auditing measures pertaining to the number of audits conducted and to the collections per dollar of auditing expenditure to represent performance of activities routinely associated with mainstream auditing functions.
 - b. By changing the methods of calculating the Division's cost of auditing functions, the number of audits conducted and collections per dollar of auditing expenditure will be reduced.
 - c. The Division will continue to maintain their current methods of reporting these two measures, and will perform a year-end comparison of both methods to provide an appropriate judgement as to the full performance to be included in these measures.
5. Consumer complaints performance measures.
 - a. The Department's new LicenseEase electronic database does have the capability of tracking and reporting consumer complaints, and the Division will begin utilizing this system to collect complaint data, beginning with Fiscal Year 2004-2005.
 - b. The Division will prepare a report of the percent of consumer complaints resolved within 90 days, to be presented to the Legislature by Fiscal Year 2006-2007.

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Page Five

We appreciate the effort put forth by your staff. We are confident that your efforts to improve the operations of state government will continue to assist us all in our efforts to provide better and more efficient service. Please advise if additional information is required.

Sincerely,

/s/
Diane Carr
Secretary

cc: James Blount, Chief of Staff
Lianne Acebo, Deputy Secretary
G. Stephen Lauer, Inspector General
Jack Tuter, Director, Division of Alcoholic Beverages & Tobacco

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



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- [Florida Government Accountability Report \(FGAR\)](#) is an Internet encyclopedia of Florida state government. FGAR offers concise information about state programs, policy issues, and performance.
- [Best Financial Management Practices Reviews of Florida school districts](#). In accordance with the *Sharpening the Pencil Act*, OPPAGA and the Auditor General jointly conduct reviews to determine if a school district is using best financial management practices to help school districts meet the challenge of educating their students in a cost-efficient manner.

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Gary R. VanLandingham, OPPAGA Interim Director