

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 148

INTRODUCER: Senator Bradley

SUBJECT: Beverage Law

DATE: February 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

I. Summary:

The bill amends s. 561.20(1)(a)4., F.S., to repeal the prohibition against package sales for off-premises consumption by food service establishments, i.e., restaurants, licensed under this subparagraph to sell beer, wine, and liquor.

Under current law, qualifying restaurants may be licensed to sell beer, wine, and liquor for consumption on the premises if they meet the following requirements. To qualify for the license, a restaurant must have at least 2,500 square feet of service area, be equipped to serve 150 persons at one time, and derive at least 51 percent of gross food and beverage revenue from the sale of food and nonalcoholic beverages. Such alcoholic beverage licensee may not make package sales of alcoholic beverages. This type of license is known as a “special restaurant license” or an “SRX license.”

Under the bill, alcoholic beverages sold for off-premises consumption must be in a sealed container and accompanied by the sale of food within the same order.

The effective date of this bill is July 1, 2021.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

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

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses may also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

Special Restaurant License

The limitation on the number of quota licenses per county does not apply to a food service establishment that has at least 2,500 square feet of service area, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month operating period thereafter.² This type of license is known as a “special restaurant license” or an “SRX license.”³

A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.⁴

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.⁵

COVID-19-Related Executive Orders by the Governor

On March 9, 2020, the Governor issued Executive Order 20-52⁶ to declare a state of emergency for the State of Florida in response to the COVID 19 pandemic.⁷

² The required square footage and number of persons the restaurant must be equipped to serve may be different for county or municipality jurisdiction due to special acts enacted by the Legislature that affect these requirements for the county or municipality. For a list of the special act requirements for counties and municipalities, including the applicable act in the Laws of Florida, see: www.myfloridalicense.com/dbpr/abt/documents/GENLAWS.pdf (last visited Feb. 12, 2021).

³ The division has re-designated the “SRX” license to a “SFS” license or “Special Food Service Establishment” license. However, these licenses are still commonly known as “SRX” licenses.

⁴ Section 565.02(1)(b) – (f), F.S.

⁵ Section 565.02(1)(b)-(f), F.S.

⁶ Copies of the Governor’s executive orders in response to the COVID-19 pandemic may be found at: <https://www.flgov.com/covid-19-executive-orders/> (last visited Feb 13, 2021).

⁷ The Governor executive order were issued pursuant to his authority under Article IV, s. (1)(a) of the Florida Constitution and the State Emergency Management Act in s. 252.31, F.S.

On March 17, 2020, the Governor issued Executive Order 20-68 to order all restaurants to immediately limit occupancy to 50 percent of the building's current occupancy, to comply with social distancing requirements, and to implement a health screening protocol for employees.⁸

On March 20, 2020, the Governor issued Executive Order 20-71 to suspend all sales of food for consumption on premises, and all sales of alcoholic beverages by the drink or in sealed containers for consumption on the premises. The order allowed vendors to continue to sell food and alcoholic beverages in sealed containers for off-premises consumption.⁹

Executive Order 20-71 also suspended the restriction in s. 561.20(2)(a)4., F.S., prohibiting an SRX restaurant licensee from making package sales of alcoholic beverages, provided the SRX licensee complied with the restrictions in Executive Order 20-68.¹⁰ The executive order required that:

- Any sale of an alcoholic beverage in a sealed container for consumption off-premises must be accompanied by the sale of food within the same order; and
- Any delivery of an alcoholic beverage must comply with s. 561.57, F.S.

Under the executive order, the suspension of the package sale restriction for SRX licenses was effective through the expiration of the state of emergency declared in Executive Order 20-52, including any extensions thereof.¹¹

The Governor's suspension of the package sale prohibition in s. 561.20(2)(a)4., F.S., permitted SRX licensees to sell, for off-premises consumption, alcoholic beverages in sealed containers, i.e., in containers sealed by the manufacturer. The executive order did not authorize alcoholic beverage vendors to sell liquor-based or wine-based mixed drinks for consumption off-premises. As noted by the DBPR, "unless otherwise permitted by law, the sale of alcoholic beverages in sealed containers requires the containers to be sealed by the manufacturer."¹²

III. Effect of Proposed Changes:

The bill amends s. 561.20(1)(a)4., F.S., to repeal the prohibition against package sales of alcoholic beverages for off-premises consumption by food service establishments licensed to sell beer, wine, and liquor. Under the bill, alcoholic beverages sold by an SRX licensee for off-premises consumption must be in a sealed container and accompanied by the sale of food within the same order.

The effective date of this bill is July 1, 2021.

⁸ Executive Order 20-68, section 3, Mar. 17, 2020.

⁹ Executive Order 20-71, sections 1 and 2, Mar. 20, 2020.

¹⁰ Executive Order 20-71, section 1, Mar. 20, 2020.

¹¹ The state of emergency declared in Executive Order 20-52 has been extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, and 20-316. The most recent extension, Executive Order 20-316, was signed by the Governor on December 29, 2020.

¹² See DBPR, Frequently Asked Questions Related to Executive Order 20-71, updated Mar. 20, 2020, page 3, , available at: www.myfloridalicense.com/DBPR/os/documents/DBPR%20FAQs%20re%20EO%2020-71.pdf (last visited Feb. 13, 2021).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

DBPR noted that the bill may enable qualifying food service establishments to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.¹³

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹³ 2021 Agency Legislative Bill Analysis for SB 148, Department of Business & Professional Regulation, at page 6, (Jan. 4, 2021) (on file with the Senate Committee on Regulated Industries).

VIII. Statutes Affected:

This bill substantially amends section 561.20 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
