

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 148

INTRODUCER: Regulated Industries Committee and Senator Bradley

SUBJECT: Beverage Law

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 148 allows food service establishments, i.e., restaurants, licensed under s. 561.20(1)(a)4., F.S., to sell and deliver beer, wine, and liquor for off-premises consumption under certain conditions.

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, SRX licensees may sell and deliver manufacturer-sealed containers of beer and wine for off-premises consumption. The bill also allows SRX licensees to sell and deliver any alcoholic beverage drink that is prepared and sealed by the licensee or its employee, including wine-based and liquor-based beverages, for off-premises consumption. However, it prohibits an SRX licensee from selling manufacturer-sealed containers of distilled spirits for off-premises consumption. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order. SRX licensees must also comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.

The bill requires alcoholic beverage drinks prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container. All containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces.

Alcoholic beverages that are prepared and sealed by the licensee and delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle. A container in compliance with these requirements is not considered an open container.

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.

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

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.

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

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone, electronic, or mail orders received at a vendor’s licensed place of business are construed as a sale actually made at the vendor’s licensed place of business.⁶

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party, including, but not limited to, common carriers.

By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁷

Common carriers⁸ may transport alcoholic beverages.⁹ The recipient’s age and identity must be verified at the time of delivery. All deliveries by a licensee or a third-party must comply with s. 562.11, F.S., which prohibits selling, giving, serving, or permitting to be served alcoholic beverages to a person under 21 years of age.¹⁰

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 Section 561.57(1), F.S.

⁷ Section 561.57(2), F.S.

⁸ Section 561.01(19), F.S., defines a “common carrier” as “any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges.”

⁹ Section 561.57(5), F.S.

¹⁰ Section 561.57(6), F.S.

COVID-19-Related Executive Orders by the Governor

On March 9, 2020, the Governor issued Executive Order 20-52¹¹ to declare a state of emergency for the State of Florida in response to the COVID 19 pandemic.¹²

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.¹³

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.¹⁴

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 20-68.¹⁵ 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.¹⁶

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."¹⁷

¹¹ 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).

¹² 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.

¹³ Executive Order 20-68, section 3, Mar. 17, 2020.

¹⁴ Executive Order 20-71, sections 1 and 2, Mar. 20, 2020.

¹⁵ Executive Order 20-71, section 1, Mar. 20, 2020.

¹⁶ 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.

¹⁷ 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).

III. Effect of Proposed Changes:

The bill amends s. 561.20(1)(a)4., F.S., to allow food service establishments, i.e., restaurants, licensed under this subparagraph to sell and deliver beer, wine, and liquor for off-premises consumption under certain conditions.

The bill creates s. 561.575, F.S., to provide requirements for package sales and deliveries of alcoholic beverages by SRX licensees. Under the bill, SRX licensees may sell and deliver manufacturer-sealed containers of beer and wine for off-premises consumption. The bill also allows SRX licensees to sell and deliver any alcoholic beverage drink that is prepared and sealed by the licensee or its employee, including wine-based and liquor-based beverages, for off-premises consumption. However, it prohibits an SRX licensee from selling manufacturer-sealed containers of distilled spirits for off-premises consumption. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order.

Under the bill, SRX license must also comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.

The bill requires alcoholic beverage drinks prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container. Alcoholic beverages that are prepared and sealed by the licensee and delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.¹⁸

Containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces. Malt beverage containers must comply with the container size, labeling, and filling requirements of s. 563.03, F.S., except that such containers may not exceed 32 ounces.¹⁹

The bill also amends s. 316.1936(9), F.S., to provide that an alcoholic beverage that has been sealed by a licensee or employee is not an open container under the prohibition against an open container of alcoholic beverages in a motor vehicle.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁸ The sealing and transportation by motor vehicle requirements in the bill are comparable to the sealing and transportation requirements in s. 564.09, F.S., for a partially consumed bottle of wine.

¹⁹ Section 563.06(7), F.S., permits a malt beverage growler to hold 32, 64, or 128 ounces of malt beverage.

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.²⁰

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.20 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on February 17, 2021:

The committee substitute:

²⁰ 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).

- Clarifies that wine-based and liquor-based beverages prepared and sealed by the licensee may be sold or delivered for off-premises consumption.
- Limits the amount of alcoholic beverages that may be sold or delivered for off-premises consumption to 32 ounces.
- Requires alcoholic beverages prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container.
- Requires alcoholic beverages prepared and sealed by the licensee and transported by motor vehicle to be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.
- Requires malt beverage containers to comply with the size, labeling, and filling requirements of s. 563.06, F.S., except that such containers may not exceed 32 ounces.
- Requires SRX license to comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.
- Prohibits the sale of manufacturer-sealed containers of distilled spirits.
- Provides that an alcoholic beverage that is sealed by a licensee or employee is not an open container under the prohibition against an open container of alcoholic beverages in a motor vehicle under s. 316.1936, F.S.

B. Amendments:

None.