

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 329 Alcoholic Beverage Licenses
SPONSOR(S): Commerce Committee; Tomkow, and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 134, CS/SB 148

FINAL HOUSE FLOOR ACTION: 111 Y's 1 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 329 passed the House on April 14, 2021, as CS/SB 148, as amended. The bill was amended in the Senate on April 28, 2021, and returned to the House. The House concurred in the Senate amendment as amended and passed the bill as amended on April 28, 2021. The bill includes portions of SB 134.

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law. Alcoholic beverage means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

The bill:

- Allows restaurants with a special food service (SFS) quota exemption license to sell or deliver certain alcoholic beverages in a sealed container to-go, if accompanied by food.
- Specifies that, in order for certain non-SFS licensees to prepare and sell drinks for off premises consumption, the licensee must be licensed as a public food service establishment, the sale of food and nonalcoholic beverages must account for at least 40% of the total charge for the order, and such sales may not occur after the licensee stops preparing food on the licensed premises for the day or after midnight, whichever is earlier.

The bill prescribes the manner in which drinks prepared by licensees for off-premises consumption must be sealed, packaged, and handled before consumption, and clarifies that a sealed drink transported in accordance with the requirements of the bill is not an open container.

Additionally, the bill amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine with the purchase of "a meal."

The bill was approved by the Governor on May 13, 2021, ch. 2021-30, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.²

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.³ “Wine” means “all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products.”⁴

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee’s employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.⁵

Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and 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. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.⁶

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

² S. 561.02, F.S.

³ S. 563.01, F.S.

⁴ S. 564.01, F.S.

⁵ S. 564.09, F.S.

⁶ S. 561.57(1) & (2), F.S.

Special 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. 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, if certain conditions are met.

A “special license” is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such license is a “special food service” (SFS) license which applies to a food service establishment that has 2,500 square feet, 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. SFS licensees may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Such a food service establishment must be audited by the Division for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period, and each 12-month operating period thereafter.

Open Containers

Section 316.1936, F.S., prohibits possession⁷ of open containers of alcoholic beverages in vehicles and provides certain exceptions, including a provision specifying that a bottle of wine that has been resealed and is transported pursuant to s. 564.09, F.S., is not an open container.⁸

Executive Orders

On March 20, 2020, Governor DeSantis signed Executive Order 20-71⁹, which closed restaurants for on-site consumption of food and alcohol, and authorized SFS licensees to sell package sales of alcohol for delivery, take-out, or consumption off-premises if the alcohol is in a sealed container and the order includes food. While restaurants have since been allowed to reopen for on-site consumption of food and alcohol,¹⁰ SFS licensees are still able to sell for delivery, take-out, or consumption off-premises alcohol in sealed containers with the purchase of food.

Effect of the Bill

The bill amends s. 561.20(2)(a)4., F.S., to specify that special restaurant licensees (SFS) may sell or deliver alcoholic beverages in a sealed container for off-premises consumption, including wine-based and liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. The bill specifies that such licensees may not sell a bottle of distilled spirits sealed by a manufacturer. The sale or delivery of such beverages must be **accompanied by the sale of food**, and the delivery of alcoholic beverages must comply with s. 561.57, F.S. Malt beverages sold or delivered pursuant to this provision must comply with container size, labeling, and filling requirements.

The bill amends s. 564.09, F.S., to specify that a restaurant patron need only purchase “a meal” in order to remove a partially consumed bottle of wine from the restaurant.

⁷ S. 316.1936(3), F.S., specifies that “An open container shall be considered to be in the possession of the operator of a vehicle if the container is not in the possession of a passenger and is not located in a locked glove compartment, locked trunk, or other locked nonpassenger area of the vehicle.”

⁸ S. 316.1936(9), F.S.

⁹ Executive Order 20-71 expires upon the expiration of Executive Order 20-52, which was most recently extended pursuant to Executive Order 21-94 on April 27, 2021, for an additional 60 days.

¹⁰ See Executive Order 20-123 (May 14, 2020).

The bill amends s. 565.045, F.S., to specify that vendors licensed under s. 565.02(1)(b)-(f), F.S.,¹¹ (i.e., vendors who are licensed to sell liquor by the drink for consumption on premises, including certain quota and special quota-exempt licensees), may prepare and sell or deliver drinks for off premises consumption under the following conditions:

- The licensee is licensed as a public food service establishment;
- The sale of food and nonalcoholic beverages accounts for at least 40 percent of the total charge for the order, and
- Such sales do not occur after the licensee stops preparing food on the licensed premises for the day or after midnight, whichever is earlier.

The bill prescribes the manner in which drinks prepared by licensees for off-premises consumption must be sealed, packaged, and handled before consumption, and clarifies that a sealed drink transported in accordance with the requirements of the bill is not an open container.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may enable food service establishments that also hold certain alcoholic beverage licenses to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.

D. FISCAL COMMENTS:

None.

¹¹ S. 565.02(1)(b)-(f), F.S., refers to vendors who are permitted to sell any alcoholic beverage regardless of alcoholic content for consumption on the premises.