

STORAGE NAME: h1471z.br.doc
DATE: May 9, 2001

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2001-257, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION
FINAL ANALYSIS**

BILL #: HB 1471
RELATING TO: Food Service Employee Training and Alcoholic Beverage Licenses
SPONSOR(S): Representative(s) Alexander
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 11 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 10 NAYS 0
- (3) COUNCIL FOR SMARTER GOVERNMENT (W/D)
- (4)
- (5)

I. SUMMARY:

The bill clarifies several provisions relating to food service employee training programs and repeals a provision of law relating to alcoholic beverage licenses.

The bill amends s. 509.049, F.S., to clarify that operators of food safety training programs established and administered to food handler employees at a public food service establishments prior to July 1, 2000, can submit those programs to the Division of Hotels and Restaurants, Department of Business and Professional Regulation for its review and approval. Private providers of training programs who are not restaurant operators may submit their programs for approval.

The bill makes approval of a program subject to the provider's continued compliance with minimum program standards. The division may conduct random audits and may audit any program which it has reason to believe is not in compliance with the statute. The division may revoke a program's approval if it finds it not to be in compliance with the statute or rules.

The amendments to s. 509.049, F.S., also clarify that the Division of Hotels and Restaurants may adopt rules concerning, but not limited to: the information to be included on application forms; the maintenance of specified records by providers of training; the specific food-safety related components of the training program; and the licensee's responsibility for providing proof of employee training.

The bill also repeals subsection (6) of s. 561.32, F.S., created by the 2000 Legislature, which imposes a transfer fee, equal to 50 times the annual license fee, on the transfer of any quota liquor license issued after October 1, 2000. With the repeal of this statute, transfers of quota liquor licenses are controlled by the statute in effect prior to July 1, 2000 [s. 561.32(3) and (4)], which prohibits the transfer of a quota license during the first three years from initial issuance except upon payment of a transfer fee equal to 15 times the annual license fee.

The provisions of this legislation are not expected to have a significant impact on state revenue collections or expenditures.

The act will take effect upon becoming a law.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Food Service Training Programs

Chapter 509, F.S., authorizes the Division of Hotels and Restaurants [division] of the Department of Business and Professional Regulation to regulate public lodging and public food service establishments.

Florida Administrative Code 61C-4.010, provides that public food service establishments shall be subject to the provisions of federal law, Chapter 3, Food Code, for purposes of food safety and sanitation issues, except when specifically authorized otherwise by rule. Combined, the Federal Food Code and Florida's Administrative Code provide comprehensive food service safety standards.

Section 509.039, F.S., requires the division to implement training and certification standards for all *food service managers* who are responsible for the storage, preparation, display, or serving of foods to the public. These standards provide for a certification program which authorizes private or public agencies to conduct an approved test and certify the results of those tests to the division. The fee for the test may not exceed \$50. Section 509.039, F.S., does not require the division to maintain a database for the examination and certification of food service managers. The division has adopted, by rule, the Conference for Food Protection's recommended accredited examination providers as those approved to examine individuals employed as food managers in the state. Certifications provided by these examinations are recognized and have nation-wide reciprocity. This information is maintained by the certifying organizations, in accordance with division rule, and provided to the division upon request.

Similarly, s. 509.049, F.S., requires the Division of Hotels and Restaurants to adopt, by rule, minimum food safety protection standards for *food service employees*. These standards are to be used in the training of food service employees who are responsible for the storage, preparation, display, or serving of food to the public in establishments subject to the regulation of Chapter 509, F.S.

Amendments to this statute by the 2000 Legislature implemented a food safety training certificate program for food service employees to be administered by a private nonprofit provider. Persons employed in the service of food on the effective date of the bill were required to receive certification

by January 1, 2001. Food service employees hired after November 1, 2000, are required to receive certification within 60 days after their employment. Certification is valid for three years and the division is authorized to establish, by rule, a per employee fee sufficient to cover the contracted price for the program. The fee is presently established at \$6.

Following the issuance of a request for competitive sealed proposals, this four-year contract was awarded to the Florida Restaurant Association. Approximately 100 other established food safety training programs that were being utilized on the effective date of the 2000 amendments to s. 509.049 and met the division's standards for qualification, were also approved for use throughout the state under the grandfather provision included in the law.

The Division estimates that there are approximately one-half million food service employees working in Florida at any given time. Additionally, according to statistics provided to the division by the National Restaurant Association, the restaurant industry is transitory and has an employee turnover rate in excess of 100% with an estimated 64% working in food service for less than three years with their current employer.

The division has established as a condition of program approval that providers maintain appropriate records, and the current rules require that establishments maintain the curriculum and materials used to conduct training.

Quota Liquor Licenses

Florida's retail alcoholic beverage licensing system is generally built around the quota license structure with all other retail licenses which allow the sale of liquor enacted as exceptions to the quota limitation. There is no limitation on the number of beer and wine retail licenses which may be issued in the state. There is, however, a limit on the number of quota [liquor] licenses which may be issued based on population: one license for every 7,500¹ residents in a county. A quota license allows the sale of all alcoholic beverages [beer, wine and liquor] for either consumption on or off the vendor's licensed premises.

Quota licenses also operate with considerable more flexibility than special classification licenses issued as an exception to the quota restriction, e.g., most specialty licenses may not make package sales of spirits. Liquor package stores and bars/nightclubs typically operate under the authority of a quota license. The law provides for an annual lottery-type, double random drawing to award quota licenses. If the winning quota license applicant does not qualify for issuance of the license, the license option transfers to the next person in line based on their ranking from the quota drawing.

Retail quota license fees are based on the county's population and whether alcoholic beverages would be consumed on the vendor's licensed premises or sold for consumption off-premises. The cost of a quota license ranges from \$468 in the smaller counties to \$1,820 in counties with populations over 100,000. Alcoholic beverage license fees are deposited into the Alcoholic Beverages and Tobacco Trust Fund.

Section 561.342, F.S., requires that 24 percent of alcoholic beverage license fee revenue be returned to the county in which the business is located and that 38 percent of alcoholic beverage license fee revenue be returned to the municipality in which the business is located.

In addition to these license fees, s. 561.19(6), F.S., requires the payment of a \$10,750 fee on the initial issuance of a quota license. This fee, commonly referred to as the "Hughes Act" fee, is

¹ The quota ratio was increased from one in 2500 residents in a county to one in 5000 by the 1992 Legislature and from one in 5000 to one in 7500 by the 2000 Legislature.

deposited in the Children and Family Services' Operations and Maintenance Trust Fund and is used to supplement funding of alcohol and drug abuse education, treatment and prevention programs.

Section 561.32(3)(a), F.S., assesses a transfer fee on the average annual value of gross sales of alcoholic beverages for the three years immediately preceding the transfer and levied at the rate of four mills, except that the transfer fee may not exceed \$5,000. In addition to that transfer fee, if a quota license is transferred within three years of issuance, an additional transfer fee in an amount equal to 15 times the annual license fee is assessed [s. 561.32(4)].

In addition to the transfer fees assessed pursuant to s. 561.32(3)(a), Chapter 2000-191, Laws of Florida, imposes a transfer fee equal to fifty times the annual license fee on the transfer of any quota license issued after October 1, 2000, under the newly established quota of one license for every 7,500 residents in a county.

No quota licenses have been issued under the quota ratio established in 2000.

C. EFFECT OF PROPOSED CHANGES:

Food Service Training Programs

The bill amends s. 509.049, F.S., to clarify that operators of food safety training programs established and administered to food handler employees at public food service establishments prior to July 1, 2000, can submit those programs to the Division of Hotels and Restaurants, Department of Business and Professional Regulation for its review and approval. Private providers of training programs who are not restaurant operators may submit their programs for approval.

The bill makes approval of a program subject to the provider's continued compliance with minimum program standards. The division may conduct random audits and may audit any program which it has reason to believe is not in compliance with the statute. The division may revoke a program's approval if it finds it not to be in compliance with the statute or rules.

The amendments to s. 509.049, F.S., also clarify that the Division of Hotels and Restaurants may adopt rules concerning, but not limited to: the information to be included on application forms; the maintenance of specified records by providers of training; the specific food-safety related components of the training program; and the licensee's responsibility for providing proof of employee training.

Quota Liquor Licenses

This bill repeals subsection (6) of s. 561.32, Florida Statutes, which imposes a transfer fee equal to fifty times the annual license fee for any quota license issued under the one in 7,500 residents quota. The quota ratio remains unchanged.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 509.049, Florida Statutes, relating to administration of the food safety training certificate program.

Section 2. Repeals subsection (6) of s. 561.32, Florida Statutes, relating to transfer fees on quota liquor licenses.

Section 3. Provides that the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The provisions of this legislation are not expected to have a significant impact on state revenue collections.

2. Expenditures:

The provisions of this legislation are not expected to require a significant expenditure of state funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

No quota liquor licenses have been issued or transferred under the one in 7,500 quota ratio implemented by the 2000 Legislature. By most accounts, the transfer fee imposed by s. 561.32(6) effectively prohibited the transfer of all quota licenses issued under the new quota ratio. Repeal of that transfer fee will, therefore, reinstate transfer capabilities.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The dual subject matter, as expressed in the title of the bill, may subject this legislation to constitutional challenge.

B. RULE-MAKING AUTHORITY:

The division is required to adopt rules regarding administration of the food service employee training certification program, including requirements for the contents of the application forms, required information to be maintained by providers of training, components of the training program, and proof of employee training.

C. OTHER COMMENTS:

The Division reports that the Florida Restaurant Association, the division's contracted provider for employee training, has sold 285,427 certification books which includes the certification card and the scantron sheet for database maintenance. The FRA's training verification report is predicated upon operators voluntarily returning the scantron sheets to the FRA after the program is administered. However, only 47,500 of the scantron sheets have been returned to be entered into the FRA database. It appears that the cards are issued to the employee following training but without the necessity of returning the scantron information sheets.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 19, 2001, the Committee on Business Regulation, adopted one "strike-everything" amendment to the bill and passed the bill, 11 Yeas and 0 Nays. The amendment conforms the House bill to the Senate bill as follows:

- The amendments to s. 509.049, F.S., clarify that a food service training program may be submitted for approval to the Division of Hotels and Restaurants by the operator of a restaurant or by a private provider of food service training.
- The amendments to s. 509.049, F.S., clarify that the Division of Hotels and Restaurants may adopt rules concerning, but not limited to: the information to be included on application forms; the maintenance of specified records by providers of training; the specific food-safety related components of the training program; and the licensee's responsibility for providing proof of employee training.
- The strike-everything amendment also included a repeal of subsection (6) of s. 561.32, F.S. That subsection imposes a transfer fee, equal to 50 times the license fee, on the transfer of any quota liquor license issued after October 1, 2000. Inclusion of this amendment necessitated a title change and the title now reads, "An act relating to public food service establishments *and* alcoholic beverage licenses." The dual subject matter, as expressed in the title of the bill, may subject the legislation to constitutional challenge.

Final Action

The bill was reported favorably, 10 Yeas, 0 Nays, by the Fiscal Policy & Resources Committee on April 24th and was withdrawn from the Council for Smarter Government. The House of Representatives adopted the Business Regulation Committee amendment and passed the bill, 117 Yeas and 0 Nays, on

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May 3, 2001. The Senate passed the bill, 37 Yeas and 0 Nays on May 4, 2001. The bill was signed by the Governor on June 15, 2001 and became Chapter 2001-257, Laws of Florida.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Janet Clark Morris

Staff Director:

M. Paul Liepshutz

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Douglas Pile

Staff Director:

Greg Turbeville

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Janet Clark Morris

Staff Director:

M. Paul Liepshutz