

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1377 Beverage Law
SPONSOR(S): Kallinger
TIED BILLS: IDEN./SIM. BILLS: SB 2520

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Trades, Professions & Reg. Business [Sub], 7 Y, 0 N, Morris, Liepshutz.

SUMMARY ANALYSIS

To assure impartiality in granting quota liquor licenses as they become available due to an increase in a county's population, the law provides for a double-random lottery-type drawing to establish the order of selection to apply for a license.

When the Division of Alcoholic Beverages and Tobacco revokes a quota license, the policy has been to place the revoked license into the annual quota license drawing for reissuance.

This bill amends the Beverage Law to allow revoked quota licenses to be placed into the double-random quota license drawing for reissuance.

The bill is expected to have a positive, but insignificant, impact on state revenue collections.

The bill provides an effective date of July 1, 2003.

[Two amendments were adopted by the Subcommittee and are traveling with the bill. See IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES for an explanation of the amendment.]

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

Chapters 561-565 and 567 and 568, Florida Statutes, comprise Florida's Beverage Law. The Beverage Law requires a person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages. The sale of alcoholic beverages is generally considered to be a privilege and as such, licensees are held to a high standard of accountability. The Division of Alcoholic Beverages and Tobacco [division], Department of Business and Professional Regulation is the state agency given responsibility for enforcement of the Beverage Law.

The Beverage Law requires the division to conduct background investigations on potential licensees and requires that licensees meet prescribed standards of moral character. Further, the Beverage Law prohibits certain business practices and relationships. Alcoholic beverage licenses are subject to fine, suspension and/or revocation for violations of the Beverage Law.

Florida's retail alcoholic beverage licensing system is generally built around the quota license structure with all other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. Unlike retail beer and wine licenses, s. 561.20(1), Florida Statutes, provides for a quota or limitation on the number of liquor licenses which may be issued in a county based on population: one license for each 7,500 residents. Quota limitations were initially enacted in the interest of promoting temperance by limiting the number of retail outlets and, therefore, the availability of alcoholic beverages. A quota liquor license allows the sale of all legal alcoholic beverages, beer, wine and liquor, regardless of alcoholic content. Quota licenses also allow the sale of alcoholic beverages by the package as well as by the drink.

To assure impartiality in granting these liquor licenses, the law provides for a double random lottery drawing procedure to establish the order of selection to apply for a license. Since there is limited availability, quota licenses often sell on the private market for thousands of dollars. Bars/nightclubs and liquor package stores typically operate under the authority of a quota license; whereas, restaurants typically operate under a special restaurant license [SRX license] which is an exception to the quota license law.

Upon revocation of a quota license, the division's policy has been to place the revoked license into the annual quota license drawing. This policy was recently challenged and the Division of Administrative Hearings [DOAH] ruled that the division was without statutory authority to put the revoked quota licenses back into a quota license drawing.

This bill amends s. 561.19(2)(a), F.S., to allow revoked quota licenses to be placed in the double-random quota license drawing for the issuance of the license.

The bill will have a positive, but indeterminate impact on state revenue collections and will take effect July 1, 2003.

C. SECTION DIRECTORY:

Section 1. Amends s. 561.19(2)(a), F.S., to allow revoked quota licenses to be placed into a new quota license drawing.

Section 2. Provides an effective date of July 1, 2003.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Placing revoked quota licenses back into the drawings will generate new license fee revenue but the Division of Alcoholic Beverages and Tobacco estimates that amount to be less than \$11,600 annually, due to the low number of quota licenses that are revoked each year.<sup>1</sup>

The Division estimates an additional \$73,100 in revenue to the Department of Children and Family's Operations and Maintenance Trust Fund due to the one-time \$10,750 Hughes Act fee collected upon initial issuance of a quota license.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties.

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<sup>1</sup> According to the Division of Alcoholic Beverages and Tobacco, during the last five years, 34 quota licenses have been revoked.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

No additional rule-making authority is granted in this legislation.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Two amendments were adopted by the Subcommittee on Trades, Professions and Regulated Business at the March 25, 2003 subcommittee meeting.

Amendment 1 by Representative Kallinger has two components. First, the amendment clarifies that the provisions of the bill do not prohibit a person who holds a perfected lien or security interest in a quota license from enforcing the lien or security interest. Second, the amendment increases, from a second degree misdemeanor to a first degree misdemeanor, the penalty for an alcoholic beverage licensee who provides alcoholic beverages to a person younger than 21 or who permits a person younger than 21 to consume alcohol.

Amendment 2 by Representative Zapata concerns the issuance of temporary licenses [commonly referred to as 3-day permits] to nonprofit civic organizations to sell alcoholic beverages. The amendment requires the applicant to provide evidence of approval of the location from the local building/zoning authority and requires all proceeds from the sale of alcoholic beverages to be retained by the nonprofit civic organization.