

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1377 w/CS Beverage Law

SPONSOR(S): Kallinger

TIED BILLS: IDEN./SIM. BILLS: SB 2520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Trades, Professions & Reg. Business [Sub]	7 Y, 0 N	Morris	Liepshutz
2) Business Regulation	33 Y, 1 N w/CS	Morris	Liepshutz
3) Finance & Tax			
4)			
5)			

SUMMARY ANALYSIS

This bill amends several provisions of the Beverage Law.

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. This bill amends the Beverage Law to allow revoked quota licenses to be placed into the double-random quota license drawing for reissuance. Provisions are included to protect a lender's secured interest in a quota license that has been revoked and extends the time period within which the lender has to enforce a perfected lien.

The bill creates the *Christopher Fugate Act* and increases the penalty from a second degree misdemeanor to a first degree misdemeanor for an alcoholic beverage licensee who sells or serves alcoholic beverages to an employee under the age of 21 or allows an employee under the age of 21 to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment.

The Beverage Law authorizes the issuance of temporary 3-day permits to non-profit civic organizations authorizing the sale of alcoholic beverages to assist with the organizations' civic or charitable events. The bill requires the non-profit civic organization applying for a 3-day permit to provide the DABT with a building and zoning permit showing that the location for the event has been approved by the appropriate local governmental agency and requires that all net profits from alcohol sales go to the nonprofit organization.

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

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1377b.br.doc

DATE: April 2, 2003

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.

Quota Licenses

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.

Perfected Liens

Section 561.65, F.S., establishes the procedure for the recording and enforcement of mortgage, lien and security interests in certain alcoholic beverage licenses. The statute requires the person holding the lien or security interest to record the lien or security interest with the Division of Alcoholic Beverages and Tobacco within 90 days of its creation and requires the division to notify any lienholder with a properly recorded lien or security interest of any pending revocation or suspension.

This bill amends s. 561.65, F.S., to increase the length of time a person holding a perfected lien has to seek enforcement of the lien against a quota license after an order of revocation or suspension has been issued. The time period is increased from 12 days to 180 days.

This section is further amended to prohibit the reissuance of a revoked quota license pursuant to the amendments proposed to s. 561.19(2), F.S., until that 180 day has elapsed or until the enforcement proceeding is final.

Temporary Alcoholic Beverage Licenses for Non-Profit Civic Organizations

Section 561.422, F.S., provides for the issuance of a *temporary* alcoholic beverage license, commonly referred to as 3-day permits, to bona fide nonprofit civic organizations upon payment of a \$25 permit fee and submission of a completed application. These licenses are used by the non-profit organization as a means of generating funds for their civic or charitable cause. The license is valid for up to three days and allows the sale of all types of alcoholic beverages for on-premises consumption. The license is subject to any state law or municipal or county ordinance regulating the time for selling alcoholic beverages.

This bill provides that the applicant for a 3-day permit must also present a local building and zoning permit indicating that the location for the event has been approved by the appropriate municipal or county authority. In addition, the bill specifies that all "net profits" from sales of alcoholic beverages at the event be retained by the nonprofit civic organization.

Christopher Fugate Act

Section 562.11, F.S., provides that it is unlawful for any person to sell, give, serve or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on a vendor's licensed premises. Anyone convicted of a violation of these provisions commits a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed \$500.

Similarly, s. 562.111, F.S., provides that it is unlawful for any person under the age of 21 to have alcoholic beverages in his or her possession. Anyone convicted of a violation of these provisions commits a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed \$500. In addition, the court is required to direct the Department of Highway Safety and Motor Vehicles to withhold issuance, or suspend or revoke, the person's driver's license or driving privileges as provided in s. 322.056.

Students, over the age of 18, who are enrolled in a college program where the tasting of alcoholic beverages is for instructional purposes, are exempt from these prohibitions.¹ In addition, a person

¹ s. 562.11(4), F.S. and 562.111(2)

under the age of 21 may possess alcoholic beverages if they are employed under the provisions of s. 562.13, F.S.², and possess the alcoholic beverage in the scope of his or her employment.

This bill amends s. 562.11, F.S., to increase the current penalty for an alcoholic beverage licensee, its agents, officers, servants or employees, from the current second degree misdemeanor offense to a first degree misdemeanor.

The bill provides that an alcoholic beverage licensee or his or her agents, officers, servants or employees may not provide alcoholic beverages to a person younger than 21 years of age who is employed by the licensee, except as authorized pursuant to ss. 562.11 or 562.13, F.S. In addition, a licensee or the agents, officers, servants or employees of a licensee may not permit an employee younger than 21 years of age to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment. A licensee or the agents, officers, servants or employees of a licensee who violates this provision commits a misdemeanor of the first degree, punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000.

The bill provides that the newly created s. 562.11(1)(b), F.S., shall be known by its popular name, the "Christopher Fugate Act."

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. Amends s. 561.422, F.S., to require presentation of a local building and zoning permit with the application for a 3-day license and to require that all net profits from the sale of alcoholic beverages remain with the nonprofit civic organization.

Section 3. Amends s. 561.65(1), F.S., to prevent a revoked quota license from being reissued under the new provisions established in s. 561.19(2)(a) until 180 days after an order of revocation was issued or the enforcement proceeding is final.

Section 4. Amends s. 562.11(1), F.S., by creating a new paragraph (b) entitled the "Christopher Fugate Act." This new language creates a new provision of law and increases the existing penalty for a licensee or the licensee's agents, officers, servants, or employees that provide alcoholic beverages to a person younger than 21 or that allow a person younger than 21 to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment. The penalty is increased from a second degree misdemeanor as established in paragraph (a) to a first degree misdemeanor.

Section 5. Reenacts s. 561.706(3), F.S., for the purpose of incorporating the amendment to s. 562.11, in a reference.

Section 6. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

² s. 562.13, F.S., prohibits an alcoholic beverage vendor from employing a person who is less than 18 years of age but creates several exceptions to that prohibition, e.g., professional entertainers, persons employed in grocery stores, etc.

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.³

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

³ According to the Division of Alcoholic Beverages and Tobacco, during the last five years, 34 quota licenses have been revoked.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Subcommittee on Trades, Professions & Regulated Business

Two amendments were adopted by the Subcommittee on Trades, Professions & 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.

Committee on Business Regulation

The Committee on Business Regulation adopted one strike-all amendment by Representative Kallinger at the full committee meeting on April 1, 2003 and the two amendments from subcommittee were withdrawn. The strike-all amendment incorporated the two subcommittee amendments and:

- Clarified that the changes to the quota statute is prospective and therefore affects only those licenses that are revoked after July 1, 2003;
- Protects a lender's secured interest in a quota license that has been revoked and extends the time period within which the lender has to enforce the lien from 12 days to 180 days;
- Designates the amendments to s. 562.11, F.S., as the *Christopher Fugate Act*; and
- Requires all net profits, rather than all proceeds, from alcohol sales to go to the nonprofit organization.