

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:

This bill amends ch. 86-377, Laws of Florida, which created an exception to the alcoholic beverage licensing statutes and provided for the issuance of a special alcoholic beverage license to an entertainment or lodging complex within the City of Orlando. The bill authorizes that entity to allow other operators to manage and own individual businesses which may operate within the complex under the special alcoholic beverage license.

Present Situation

In 1986, The Florida Legislation passed ch. 86-377, Laws of Florida, a special act which allowed the issuance of a special alcoholic beverage license for an entertainment or lodging complex in downtown Orlando. The license was for both on and off-premise sales, and was contingent on the following criteria:

1. the complex was owned, managed and operated by a single business entity;
2. the complex consisted of five acres located within the described tract;
3. the complex received 750,000 visitors a year who pay admission;
4. the complex provided meeting facilities for at least 250 persons; and
5. the complex contained a restaurant having at least 4,000 square feet of service area which was equipped to serve 150 persons full-course meals at one time.

C. SECTION DIRECTORY:

Section 1: Amends s.1 of ch. 86-377, Laws of Florida, authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation to issue a special alcoholic beverage license for an entertainment or lodging complex within the City of Orlando.

Deletes language requiring that the entertainment and lodging complex be operated by the same business entity and under one business name.

Deletes language permitting package sales.

Limits the designated boundary for location of the entertainment or lodging complex to those "along or near" the Church Street, Orlando, corridor.

Adds language which authorizes the business entity to allow other businesses to operate within the complex under the special alcoholic beverage license. Provides that such business operators meet the same qualifications as other applicants subject to the provisions of the state's alcoholic beverage laws. Provides that a "sub-licensee

" individually qualify for such license. Provides that a "sub-licensee" be held individually liable for any violation of the beverage laws.

Provides that a business entity which is not licensed to operate within the complex may not sell alcoholic beverages within the boundaries of the complex.

Section 2: Amends the definition of "entertainment or lodging complex" by removing the criteria that a minimum of 750,000 visitors annually pay admission fees to the entertainment or lodging complex.

Section 3: Provides an effective date of upon becoming law.

Current Law

Chapters 561-565, 567 and 568, F. S., 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 generally is considered to be a privilege and licensees are held to a high standard of accountability. The Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation is the state agency responsible for enforcement of the Beverage Law.

The Beverage Law requires that the Division 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. Unless sold by the package for consumption off the licensed premises, the sale and consumption of alcoholic beverages by the drink is limited to the "licensed premises" of a retail establishment over which the licensee has dominion or control. The beverage law does not allow a patron to leave an establishment with an open alcoholic beverage and/or enter another licensed premise with an alcoholic beverage.

Florida's retail alcoholic beverage licensing system is generally built around the quota license¹ structure with all other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. Bars/nightclubs and liquor package stores typically operate under the authority of a quota license whereas restaurants usually operate under a special restaurant license. A restaurant with a special restaurant license is required to have at least 2,500 square feet of service area, be equipped to serve 150 persons full course meals at one time, and derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. In addition, a restaurant operating under a special restaurant license cannot make package sales and is prohibited from serving liquor after the hours of serving food have elapsed.

There are exceptions in general law to the quota limitation that authorize the issuance of liquor licenses to certain groups under specified conditions and with specified limitations.

¹ Unlike retail beer and wine licenses, s. 561.20(1), F. S., 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.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 1 and 24, 2003

WHERE? The *Orlando Sentinel*, a daily newspaper of general circulation in Orange County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Article III, s. 11(a)(12) of the Florida Constitution prohibits the legislature from passing a special law or general law of local application pertaining to a grant of privilege to a private corporation. Potentially, a law granting a special alcoholic beverage license could be declared unconstitutional if the operating entity is a private corporation and the bill is a special law.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Section 1, lines 22 and 23: "along or near" is vague. This description does not provide sufficient guidance as to the area encompassed by the bill.

Other Comments:

This local bill provides an exception from general law (the alcoholic beverage licensing statutes) and therefore may not be placed on the Special Order Calendar for expedited consideration pursuant to House Rule 5.5(b).

The Florida Beer Wholesalers Association, Inc. provided a number of comments regarding the bill:

- The proposal eliminates requirements that justified the original special alcohol beverage license.
- The act appears to create a pseudo-licensing scheme, which is not authorized by the Beverage Law. There is no basis or precedent for a "sub-licensee." The pseudo-licensing purports to mimic the general licensing law, but without the associated fees, actual licenses and corresponding legal responsibility.

- The act purports to divide individual liability and responsibility so that the unlawful conduct of one operator does not adversely affect another. However, since this is a pseudo-licensing system, the proposal doesn't put the wrongdoer's license at risk because the wrongdoer doesn't have a license. This proposed system may create enforcement difficulties for the Division, and provide a standard for accountability that is less than that required for other licensees. For example, if a food services provider that is owned independently of the business entity that owns the complex license is found to be in violation of the Beverage Law, whom will the Division charge with the violation?
- The Act removes the "sub-licensees" from the requirements of the three tier/Tied House Evil Law in s. 561.42, F.S.², as that law only applies to "licensed vendors."

The bill also is opposed by a number of other groups, including the Beer Industry of Florida and the Wine and Spirits Distributors of Florida.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.

² This law provides that no licensed distributor of alcoholic beverages shall have any financial interest, directly or indirectly, in the establishment or business of any licensed vendor; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever, etc.