

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty and promote personal responsibility

Restaurant patrons will be able to legally remove one partially consumed bottle of wine from licensed premises without being in violation of the beverage law, open container law, or local ordinance.

B. EFFECT OF PROPOSED CHANGES:

Chapter 509, F.S., provides, in part, for the licensure and regulation of public food service establishments. Section 509.072, F.S., creates the "Hotel and Restaurant Trust Fund to be used for the administration and operation of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (DBPR). The division is statutorily required to "carry out all of the provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of public lodging establishments and public food service establishments for the purpose of safeguarding the public health, safety, and welfare." "Public food service establishment" is defined by statute for purposes of regulation.

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] of the DBPR is the state agency given responsibility for enforcement of the Beverage Law. Chapter 564 relates specifically to the regulation of wine.

Section 561.01, F.S., in part, defines "licensed premises" to include "drink parlor.... other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license...."

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 alcoholic beverages enacted as exceptions to the quota limitation, including restaurant licenses. Rule 61A-1.006(2) of the division defines "restaurant" for purposes of the regulation of alcoholic beverages. The web site of the division also addresses restaurant licensure under their FAQ folder:

"2. I own a restaurant, and wish to sale [sell] alcoholic beverages; what kind of license do I need?

Answer:

A special (SRX) restaurant alcoholic beverage license can be obtained (if certain requirements are met) at any time, and is an exception to the number of licenses per county restrictions. The SRX license allows you to sell beer, wine, and liquor for consumption-on-premises, in connection with a restaurant. However, a restaurant must derive 51% of their revenue from food and non-alcoholic beverages to qualify for this special license. If this percentage cannot be met and maintained, the restaurant would not qualify for the special license and would then be required to obtain a regular (quota) license. (Reference: F.S. 561.20)."

[correction noted by the editor]

Other alcoholic beverage licenses are also available to a restaurant licensee that prohibit the sale of liquor but allow the sale and consumption of beer/wine, just wine, or just beer. Licenses may have specific restrictions, such as, restaurants licensed to sell wine for consumption on the premises under a series 2COP (consumption on premises) license also allow the licensee to sell wine by the package in “factory” sealed containers only.

While the state retains primary regulatory authority over the activities of alcoholic beverage licensees, certain areas of responsibility have been delegated to counties or municipalities by statute. Sections 562.45 and 562.14, F.S., grant zoning authority to counties and municipalities, as well as, the authority to enact ordinances regulating the type of entertainment, hours of operation, and conduct permitted in licensed alcoholic beverage establishments.

This combination of state and local regulation effectively prohibits the patron from removing an open container of alcoholic beverages from the premises of a restaurant alcoholic beverage licensee.

The State Uniform Traffic Control Law, s. 316.1936, F.S., prohibits open containers of alcoholic beverages in motor vehicles. For violations:

An operator is “guilty of a noncriminal moving traffic violation;”
A passenger is “guilty of a nonmoving traffic violation.”

Effect of proposed changes

The bill creates section 564.09, F.S., to allow restaurants licensed to sell wine on the premises to permit patrons to remove one unsealed bottle of wine for consumption off the licensed premises provided the patron also purchased a full-course meal and consumed a portion of the bottle of wine with the meal.

The bill requires a partially-consumed bottle of wine that is to be removed from the premises to be securely resealed by the licensee or the licensee’s employee, 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, and have a dated receipt for the wine and meal attached to the container.

The container must be placed in a locked glove compartment, trunk, or other non-passenger area if being transported in a vehicle.

The bill amends section 316.1936, F.S., to allow transportation of a resealed wine container in a vehicle without being in violation of the open container law.

C. SECTION DIRECTORY:

Section 1. Creates s. 565.09, F.S., to authorize a restaurant patron to remove a resealed wine container from a restaurant for consumption off-premises.

Section 2. Amends s. 316.1936, F.S., to allow transportation of a resealed wine container in a vehicle without being in violation of the open container law.

Section 3. Effective date - July 1, 2005

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:
None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None anticipated.
2. Expenditures:
None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DBPR notes that the consuming public will be able to legally remove one partially consumed bottle of wine from a licensed premises without being in violation of the beverage law or open container law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR comments:

The term "full-course meal" appears to need better definition for consistency with the existing licensing framework and for enforcement purposes. This could be accomplished through the addition of the following language: "a full-course meal consisting of a salad or vegetable, entrée, a beverage and bread." If the bill was amended, the amendatory language could read:

Remove lines 21-22 and insert in lieu thereof: "off the premises if the patron has 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 such meal on the restaurant premises. A partially consumed bottle"

The DBPR notes: "The bill does not address any penalties for violations by the licensee or the patron."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES