

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 169 Designated Drivers  
**SPONSOR(S):** Jobs & Entrepreneurship Council, Heller and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 282

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>(ref. removed)</u>	<u></u>	<u></u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u>12 Y, 0 N, As CS</u>	<u>Livingston</u>	<u>Thorn</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

The Division of Alcoholic Beverages and Tobacco [division], Department of Business and Professional Regulation (DBPR), is the state agency given responsibility for enforcement of Florida’s alcoholic beverage laws. The beverage law provides for a structured three-tiered distribution system: manufacturer to wholesale distributor to retail vendor, with the retail vendor making the ultimate sale to the consumer.

Current provisions of the beverage laws specify:

Retail alcoholic beverage establishments; rights as private enterprise.—

A licensed retail alcoholic beverage establishment open to the public is a private enterprise and may refuse service to any person who is objectionable or undesirable to the licensee, but such refusal of service shall not be on the basis of race, creed, color, religion, sex, national origin, marital status, or physical handicap.

The bill specifies that a person who is acting as a designated driver for a patron who is purchasing alcoholic beverages from a retail vendor could not be refused service solely because the driver is not purchasing alcoholic beverages.

The bill further specifies that a retail alcoholic beverage establishment is not exempted from complying with any local ordinance regulating the presence of persons under 21 years of age on the premises.

Fiscal

The proposed legislation is not expected to have any fiscal impact to the state.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty - The bill prohibits a retail vendor of alcoholic beverages from refusing service to a patron acting as a designated driver for other patrons at the licensed retail establishment if the driver is not purchasing alcoholic beverages.

Promote personal responsibility - As a means to avoiding alcohol-related highway accidents and fatalities, prevention advocates encourage the use of designated drivers. These drivers are often persons who have not consumed alcohol and provide safer and sober transportation for persons who have consumed alcohol.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

Chapters 561-565 and 567 and 568, F.S., comprise Florida's alcoholic 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 (DBPR), is the state agency given responsibility for enforcement of the beverage laws.

The 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 alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer to wholesale distributor to retailer, with the retail vendor making the ultimate sale to the consumer.<sup>1</sup> Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law.<sup>2</sup> With exceptions, a manufacturer or distributor is prohibited from having any financial interest in the establishment or business of any retailer. Also, with exceptions, a manufacturer, distributor or exporter may not be licensed as a vendor and a vendor may also not be licensed as a manufacturer, distributor or exporter.

Section 562.11(1)(a), F.S., makes it 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 the licensed premises. Section 562.50, F.S., prohibits the sale or furnishing of alcoholic beverages to a person habitually addicted to alcoholic beverages, under certain circumstances.

Section 2, Article I of the State Constitution provides, in part, "All natural persons, female and male alike, are equal before the law and have inalienable rights... No person shall be deprived of any right because of race, religion, national origin, or physical disability."

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<sup>1</sup> See s. 561.14, F.S. for license and registration classifications

<sup>2</sup> In the beverage alcohol industry, licensed premises are often called "houses." It was perceived to be an *evil* for houses of the retail tier to be tied to houses at the wholesaler or manufacturing tier – hence, *Tied House Evil*. This group of laws is designed to prevent manufacturers or wholesalers from owning or controlling retail outlets where their product may be sold to the exclusion of other products and where, during pre-prohibition years, an abundance of social ills existed.

Section 562.51, F.S., states:

Retail alcoholic beverage establishments; rights as private enterprise.--A licensed retail alcoholic beverage establishment open to the public is a private enterprise and may refuse service to any person who is objectionable or undesirable to the licensee, but such refusal of service shall not be on the basis of race, creed, color, religion, sex, national origin, marital status, or physical handicap.

Effect of proposed changes

The bill addresses "retail licensees" when the premises are open to the general public. The bill creates an exception to the owner operating the business as a private enterprise and appears to override the current authority of a licensee to refuse service to anyone who is objectionable or undesirable to the licensee.

The bill specifies that a person who is acting as a designated driver for a patron who is purchasing alcoholic beverages could not be refused service of any nature solely because the driver is not purchasing alcoholic beverages.

The bill further specifies that a retail alcoholic beverage establishment is not exempt from complying with any applicable municipal or county ordinance regulating the presence of persons under 21 years of age on the premises of any such establishment.

C. SECTION DIRECTORY:

Section 1. Amends s. 562.51, F.S., to prohibit a licensed retail alcoholic beverage establishment open to the public from denying service to a designated driver.

Section 2. Effective date - October 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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:

The proposed legislation is not expected to have any fiscal impact to the state.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No Statement of Sponsor submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On April 12, 2007, the Jobs & Entrepreneurship Council adopted a Council Substitute and reported the CS out of Council by a unanimous vote.

The CS differs from the original bill by specifying that a retail alcoholic beverage establishment is not exempted from complying with any local ordinance regulating the presence of persons under 21 years of age on the licensed premises.