

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Rules Committee

BILL: SB 462

INTRODUCER: Senator Latvala

SUBJECT: Beverage Law

DATE: March 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>McCarthy</u>	<u>Cooper</u>	<u>CM</u>	Favorable
3.	<u>McCarthy</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises the alcoholic beverage license qualification requirements for a performing arts center by providing an exemption from the requirement that all persons with an interest, directly or indirectly, in an alcoholic beverage license must obtain the approval of the Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation. The exemption applies to the performing arts center's volunteer officers or directors or any change of such positions or interests.

The bill would permit volunteer officers or directors of a performing arts center to continue to serve without having to be fingerprinted as part of the alcoholic beverage license application process. The bill does not affect the requirement that the performing arts center must disclose the identity of the volunteer officers or directors. Those persons would not have to submit separate applications and a set of fingerprints for the division's approval of their qualifications.

This bill substantially amends sections 561.15 and 561.17, Florida Statutes.

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) is the agency authorized to enforce the provisions of the Beverage Law in chs. 561, 562, 563, 564, 565, 567, and 568, F.S.¹

¹ See s. 561.08, F.S.

Definitions

Section 561.01, F.S., defines “alcoholic beverages” as “distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.”

Section 561.01(17), F.S., provides the following definition for the term “performing arts center”:

“Performing arts center” means a facility consisting of not less than 200 seats, owned and operated by a not-for-profit corporation qualified as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986 or of the corresponding section of a subsequently enacted federal revenue act, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts through:

- (a) The preparation, production, public presentation, or public exhibition of dramatic or musical works, dance, opera, motion pictures, television, music, recordings, or works of fine, performing, or visual arts of any nature;
- (b) The conducting of lectures, seminars, classes, or workshops for development of skills or techniques related to the practice or appreciation of any or all of these arts;
- (c) The broadcast or telecast of the performing or visual arts through whatever means is desirable, including, but not limited to, television, radio, cable, or the latest state-of-the-art media, equipment, or techniques;
- (d) The reproduction of the performing, visual, or fine arts through motion pictures, videotapes, video disks, delayed presentations, sound recordings, or whatever in the future becomes a viable means or state-of-the-art;
- (e) The provision of banquet, concession, or other on-premises food and alcoholic and nonalcoholic beverage activities;
- (f) The conduct of retail activities reasonably related to the other uses of the facility;
- (g) The conduct of fundraising activities reasonably related to the arts;
- (h) The provision of auxiliary services for performing or visual artists, educators, students, or the public which are necessary or desirable to promote or facilitate the foregoing uses, including, but not limited to, the publication and dissemination of any or all materials related to the foregoing;
- (i) The conduct of rehearsals, conventions, meetings, or commercial or other activities; or
- (j) Such other activities for the promotion and development of the arts not described in paragraphs (a)-(i) as the not-for-profit corporation determines, provided that no such activity is inconsistent with or otherwise violates any applicable statute, ordinance, or regulation.

License Application Requirements

Section 561.15, F.S., sets forth the basic qualifications for holding an interest in an alcoholic beverage license. These include being of good moral character and being 21 years of age or

older. If a corporation applies for an alcoholic beverage license, its officers must be of good moral character and not less than 21 years of age.²

The beverage law also restricts the issuance of an alcoholic beverage to persons with a specified criminal history, including corporations whose officers possess the disqualifying criminal history. Section 561.15(2), F.S., provides:

No license under the Beverage Law shall be issued to any person who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state; who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, or keeping a disorderly place or of any criminal violation of chapter 893 or the controlled substance act of any other state or the Federal Government; or who has been convicted in the last past 15 years of any felony in this state or any other state or the United States; or to a corporation, any of the officers of which shall have been so convicted. The term “conviction” shall include an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

If a corporation is unable to qualify for or continue to hold an alcoholic beverage license because an officer is disqualified due to a prior criminal conviction, the corporation must terminate its relationship with the officer so convicted.³

Section 561.17(1), F.S., authorizes the division to require an applicant for an alcoholic beverage license to submit a set of fingerprints as a condition for approval of the application.⁴ The fingerprint requirement in s. 561.17(1), F.S., is permissive. Section 561.17(1), F.S., provides in relevant part:

Before any application is approved, the division may require the applicant to file a set of fingerprints on regular United States Department of Justice forms for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division.
(*Emphasis supplied.*)

To determine whether the applicant meets the requirements for licensure, applicants for an alcoholic beverage license must disclose all persons with a direct or indirect interest in the alcoholic beverage license, and the applicant’s officers, shareholders, and directors. The disclosure is performed by filing with the division a sworn application, and a personal questionnaire for each person required to be disclosed, and a set of fingerprints.

² See s. 561.15(1), F.S.

³ See s. 561.15(4), F.S.

⁴ See 61A-2.014 F.A.C.

Performing Arts Center Alcoholic Beverage License

The beverage law provides an alcoholic beverage license for performing arts centers.⁵ The license permits the sale of alcoholic beverages for consumption only on the licensed premises and provided that any consumption of alcoholic beverages, except as part of food and beverage service for banquets or receptions, may occur only in conjunction with an artistic, educational, cultural, promotional, civic, or charitable event occurring on the premises under the authorization of or offered directly by the performing arts center.

The performing arts center may transfer the license to a qualified applicant authorized by contract with the performing arts center to provide food and beverage service for the center. However, the license must remain at all times the exclusive property of the performing arts center, and upon termination by any manner of the contract between the performing arts center and the applicant concerning the furnishing of food and beverage service, the license shall revert to the performing arts center by operation of law.⁶

The fee for a performing arts center's alcoholic beverage license cannot exceed \$400.⁷

If the license is transferred to a food and beverage service provider with a contract for services with the performing arts center, as provided in s. 561.20(2)(j), F.S., then the persons, officers, shareholders or directors of the food and beverage provider would complete a personal data questionnaire and be fingerprinted. Changes to the persons, officers, shareholders or directors are required to submit a change of officer application and new persons, officers, shareholders or directors would submit a personal data questionnaire and be fingerprinted.⁸

Exemptions

Section 561.15(3), F.S., exempts companies regularly traded on a national securities exchange and not over the counter, insurers, banks, and savings and loan associations that have an interest in an alcoholic beverage license from the requirement to obtain the division's approval of their officers, directors, or stockholders or any change of these positions. Because the division is not required to approve the qualifications of these persons, these persons are not required to submit a set of fingerprints.

This exemption does not apply to performing arts centers and their officers, shareholders or directors. They are required to submit a personal data questionnaire and to be fingerprinted.

III. Effect of Proposed Changes:

The bill amends the qualification requirements for an alcoholic beverage license in s. 561.15(3), F.S., and the license application requirements in s. 561.17(1), F.S., to provide an exemption for performing arts centers from the requirement that all persons with an interest, directly or indirectly, in an alcoholic beverage license must obtain division approval. The exemption applies

⁵ Section 561.20(2)(j), F.S

⁶ *Id.*

⁷ *Id.*

⁸ Section 561.32, F.S.

to the performing arts center's volunteer officers or directors or any change of such positions or interests.

The exemption in the bill is similar to the current exemption in ss. 561.15(3) and 561.17(1), F.S., for companies regularly traded on a national securities exchange, insurers, banks, and savings and loan associations.

The bill would permit volunteer officers or directors of a performing arts center to continue to serve without having to be fingerprinted as part of the alcoholic beverage license application process. The bill does not affect the requirement that the performing arts center must disclose on the application the identity of volunteer officers or directors.

If a performing arts center changed any volunteer officer or director, the division could still require that the center identify the new officer by submitting a change of officer application with the division, but the officer would not have to submit a personal data questionnaire or be fingerprinted.

The bill does not appear to affect the process for food and beverage service providers contracted with the performing arts center.

Because the volunteer officers and directors of a performing arts center would not be subject to division approval as a condition for a license, the division could not suspend, revoke, or refuse to issue an alcoholic beverage license based on any disqualifying criteria associated with any of the volunteer officers or directors of the performing arts center.

The bill uses the undefined term "volunteer" and appears to limit the exemption to officers or directors who are unpaid, do not receive a salary, or are otherwise not compensated for their service.⁹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ Although, the term "volunteer" is often used in the Florida Statutes without reference to whether the service is provided for compensation, the term is usually presented in the context of a service provided without compensation or specifically described or defined as an uncompensated service. For example, in the context of worker's compensation, s. 440.02(15)(d)6., F.S., specifically excludes volunteers from the definition of an employee by providing that a volunteer is a "person who does not receive monetary remuneration for services is presumed to be a volunteer." In the context of the state employment of volunteers, s. 110.501(1), F.S., defines the term "volunteer" to mean "any person who, of his or her own free will, provides goods or services, or conveys an interest in or otherwise consents to the use of real property pursuant to chapter 260, to any state department or agency, or nonprofit organization, with no monetary or material compensation." Section 766.1115, F.S., relating to "Access to Health Care Act" and providing health services to underserved populations, also provides that volunteer services are not compensated by referencing "volunteer, uncompensated services." In the context of the state's strategy to combat the threat of sexual predators to the public safety, s. 775.21(3)(b)5., F.S., references "prohibiting sexual predators from working with children, either for compensation or as a volunteer."

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

There are 49 performing arts centers in Florida that are licensed to serve or sell alcoholic beverages and whose officers and directors would be affected by this bill. A performing arts center and its volunteer officers and directors would save the costs associated with submitting a set of fingerprints for new volunteer officers and directors or any change of volunteer officers or directors. According to the department, that cost ranges from \$50 to \$55 per individual. The division does not assess a fee for the personal questionnaire for the officers and directors, which the volunteer officers and directors would be exempted by the bill from having to submit to the division for approval of their qualifications.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.