

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 Committee on Commerce and Tourism

BILL: CS/SB 148

INTRODUCER: Regulated Industries Committee and Senator Bradley

SUBJECT: Beverage Law

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Reeve</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 148 permits food service establishments with a “special restaurant license,” or an “SRX license,” to sell and deliver alcoholic beverage drinks prepared and sealed by the licensee as well as manufacture-sealed beer, wine, and liquor for off-premises consumption under certain conditions. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order.

Current law requires SRX licensees to derive at least 51 percent of gross food and beverage revenue from the sale of food and nonalcoholic beverages, in addition to meeting other requirements. Such establishments may not sell manufacturer-sealed containers of distilled spirits for off-premises consumption.

The bill requires alcoholic beverage drinks to be sealed by the licensee with an unbroken seal that prevents the beverage from being consumed, and placed in a bag or other container secured in such a manner that it is visibly apparent if the container has been opened or tampered with. A dated receipt of the beverage and meal must be provided and attached to the container. Containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces. Alcoholic beverages prepared and sealed by the licensee that are delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.

The bill takes effect July 1, 2021.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor.² The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses may also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

Special Restaurant License

The limitation on the number of quota licenses per county does not apply to a food service establishment that has at least 2,500 square feet of service area, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month operating period thereafter.³ This type of license is known as a “special restaurant license” or an “SRX license.”⁴

A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.⁵

¹ Section 561.02, F.S.

² Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

³ Section 561.20(2)(a)4., F.S. The required square footage and number of persons the restaurant must be equipped to serve may be different for county or municipality jurisdiction due to special acts enacted by the Legislature that affect these requirements for the county or municipality. For a list of the special act requirements for counties and municipalities, including the applicable act in the Laws of Florida, *see*: Division of Alcoholic Beverages and Tobacco, *General Laws of Local Application and Special Acts*, available at www.myfloridalicense.com/dbpr/abt/documents/GENLAWS.pdf (last visited Mar. 8, 2021).

⁴ The division has re-designated the “SRX” license to an “SFS” license or “Special Food Service Establishment” license. However, these licenses are still commonly known as “SRX” licenses.

⁵ Section 561.20(2)(a)4., F.S.

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.⁶

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone, electronic, or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.⁷

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party, including, but not limited to, common carriers.

By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁸

Common carriers⁹ may transport alcoholic beverages.¹⁰ The recipient's age and identity must be verified at the time of delivery. All deliveries by a licensee or a third-party must comply with s. 562.11, F.S., which prohibits selling, giving, serving, or permitting to be served alcoholic beverages to a person under 21 years of age.¹¹

COVID-19-Related Executive Orders by the Governor

On March 9, 2020, the Governor issued Executive Order 20-52 to declare a state of emergency for the State of Florida in response to the COVID-19 pandemic.¹²

On March 17, 2020, the Governor issued Executive Order 20-68 to order all restaurants to immediately limit occupancy to 50 percent of the building's current occupancy, to comply with social distancing requirements, and to implement a health screening protocol for employees.¹³

On March 20, 2020, the Governor issued Executive Order 20-71 to suspend all sales of food for consumption on premises, and all sales of alcoholic beverages by the drink or in sealed

⁶ Section 565.02(1)(b)-(f), F.S.

⁷ Section 561.57(1), F.S.

⁸ Section 561.57(2), F.S.

⁹ Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

¹⁰ Section 561.57(5), F.S.

¹¹ Section 561.57(6), F.S.

¹² The Governor's executive orders were issued pursuant to his authority under Article IV, s. (1)(a) of the State Constitution and the State Emergency Management Act found in ss. 252.31 and 252.60, F.S.

¹³ Fla. Exec. Order No. 20-68 (Mar. 17, 2020).

containers for consumption on the premises. The order allowed vendors to continue to sell food and alcoholic beverages in sealed containers for off-premises consumption.¹⁴

Executive Order 20-71 also suspended the restriction in s. 561.20(2)(a)4., F.S., prohibiting an SRX restaurant licensee from making package sales of alcoholic beverages, provided the SRX licensee complied with the restrictions in Executive Order 20-68.¹⁵ The executive order required that:

- Any sale of an alcoholic beverage in a sealed container for consumption off-premises must be accompanied by the sale of food within the same order; and
- Any delivery of an alcoholic beverage must comply with the delivery requirements in s. 561.57, F.S.

Under the executive order, the suspension of the package sale restriction for SRX licenses was effective through the expiration of the state of emergency declared in Executive Order 20-52, including any extensions thereof. Executive order 20-52 has been extended six times since its issuance, most recently on December 29, 2020.¹⁶

The Governor's suspension of the package sale prohibition in s. 561.20(2)(a)4., F.S., permitted SRX licensees to sell, for off-premises consumption, alcoholic beverages in sealed containers, i.e., in containers sealed by the manufacturer. The executive order did not authorize alcoholic beverage vendors to sell liquor-based or wine-based mixed drinks for consumption off-premises. As noted by the DBPR, "unless otherwise permitted by law, the sale of alcoholic beverages in sealed containers requires the containers to be sealed by the manufacturer."¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 561.20(2)(a)4., F.S., to permit food service establishments, i.e., restaurants, with SRX licenses to sell and deliver alcoholic beverages for off-premises consumption under certain conditions.

Section 2 creates s. 561.575, F.S., to provide requirements for deliveries of alcoholic beverages by SRX licensees. Under the bill, SRX licensees may sell and deliver manufacturer-sealed containers of beer and wine for off-premises consumption. The bill also allows SRX licensees to sell and deliver any alcoholic beverage drink that is prepared and sealed by the licensee or its employee, including wine-based and liquor-based beverages, for off-premises consumption. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order.

¹⁴ Fla. Exec. Order No. 20-71 (Mar. 20, 2020).

¹⁵ *Id.*

¹⁶ Fla. Exec. Order No. 20-316 (Dec. 29, 2020). Section 252.36(2), F.S., provides that states of emergency may not continue for more than 60 days unless renewed by the Governor.

¹⁷ See Division of Business and Professional Regulation, *Frequently Asked Questions Related to Executive Order 20-71*, available at www.myfloridalicense.com/DBPR/os/documents/DBPR%20FAQs%20re%20EO%2020-71.pdf (last visited Mar. 8, 2021).

Containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces. Malt beverage containers must comply with the container size, labeling, and filling requirements of s. 563.03, F.S., except that such containers may not exceed 32 ounces.¹⁸

The bill requires alcoholic beverage drinks prepared and sold or delivered for off-premises consumption to be securely sealed by the licensee with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. Alcoholic beverage drinks prepared and sealed by the licensee must be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt of the beverage and meal must be provided and attached to the container.

Alcoholic beverages that are prepared and sealed by the licensee and delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.¹⁹

SRX licensees must comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.

The bill expressly prohibits an SRX licensee from selling manufacturer-sealed containers of distilled spirits for off-premises consumption.

Section 3 amends s. 316.1936(9), F.S., to provide that an alcoholic beverage that has been sealed by a licensee or employee is not an open container under the prohibition against open containers of alcoholic beverages in a motor vehicle.

Section 4 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁸ Section 563.06(7), F.S., permits a malt beverage growler to hold 32, 64, or 128 ounces of malt beverage.

¹⁹ The sealing and transportation requirements in the bill are comparable to the requirements found in s. 564.09, F.S., for the sealing and transportation of a bottle of wine partially consumed at a restaurant.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may enable qualifying food service establishments to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 561.20 and 316.1936 of the Florida Statutes.
This bill creates section 561.575 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Regulated Industries on February 17, 2021:

The committee substitute:

- Clarifies that wine-based and liquor-based beverages prepared and sealed by the licensee may be sold or delivered for off-premises consumption.
- Limits the amount of alcoholic beverages that may be sold or delivered for off-premises consumption to 32 ounces.
- Requires alcoholic beverages prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container.
- Requires alcoholic beverages prepared and sealed by the licensee and transported by motor vehicle to be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.
- Requires malt beverage containers to comply with the size, labeling, and filling requirements of s. 563.06, F.S., except that such containers may not exceed 32 ounces.
- Requires SRX license to comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.
- Prohibits the sale of manufacturer-sealed containers of distilled spirits.
- Provides that an alcoholic beverage that is sealed by a licensee or employee is not an open container under the prohibition against an open container of alcoholic beverages in a motor vehicle under s. 316.1936, F.S.

B. Amendments:

None.