

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 Rules

BILL: CS/SB 1090

INTRODUCER: Rules Committee and Senator Martin

SUBJECT: Unauthorized Sale of Alcoholic Beverages

DATE: February 14, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Wyant</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
3.	<u>Oxamendi</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1090 increases the criminal penalties for the unlicensed or unlawful sale of alcoholic beverages under s. 562.12(1)(a), F.S., which prohibits the sale of alcoholic beverages without a license or in a manner not permitted by the license and keeping and maintaining a place where alcoholic beverages are sold unlawfully. The bill increases the penalty for a violation of this provision from a second degree misdemeanor to a third degree felony, and payment of a fine of not less than \$5,000 and not more than \$10,000.

The bill also creates s. 562.12(1)(b), F.S., to provide that any person who unlawfully sells alcoholic beverages at a commercial establishment or keeps and maintains a place where alcoholic beverages are sold or intended to be sold unlawfully commits a felony of the third degree, and must pay a fine of not less than \$5,000 and not more than \$10,000.

Under current law, a felony of the third degree is punishable by a term of imprisonment not to exceed five years and a fine not to exceed \$5,000.

The bill provides that any person who commits a second or subsequent violation of s. 562.12(1), F.S., commits a second degree felony,¹ with a fine of not less than \$15,000 but not more than

¹ Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years. Section 775.083, F.S., provides that a felony of the second degree is punishable by a fine not exceeding \$10,000.

\$20,000. Under current law a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years and a fine not exceeding \$10,000.

The bill provides additional grounds for local nuisance abatement boards to declare a place or premises a public nuisance. A place or premises may be declared a public nuisance, if used on more than two occasions within a 12-month period, as the site of a violation of s. 562.12, F.S., relating to the unlicensed or unlawful sale of alcoholic beverages. Local nuisance abatement boards are authorized to prohibit specified nuisances, including ordering the closure of any place or premises that has been used as the site of certain specified nuisances, such as being the site of repeated controlled substances criminal violations.

The bill takes effect July 1, 2024.

II. Present Situation:

Alcoholic Beverages

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

Section 562.12(1), F.S., prohibits the sale of alcoholic beverages without a license issued by the division. An alcoholic beverage licensee may only sell alcoholic beverages in the manner permitted by her or his license. In addition, a licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or any person who keeps and maintains a place where alcoholic beverages are sold unlawfully, is guilty of a second degree misdemeanor.²

Section 562.12(2), F.S., provides that it is unlawful for any person to operate as an exporter³ of alcoholic beverages within the state without registering as an exporter pursuant to s. 561.17, F.S. A person who violates this prohibition is guilty of a misdemeanor of the second degree.⁴

Section 561.01(4)(a), F.S., defines the term “alcoholic beverages” to mean distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

Nuisance Abatement

Section 893.138, F.S., allows local governments to establish a nuisance abatement board to hear public nuisance complaints. These boards may take various administrative actions to abate a

² Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

³ Section 561.01(16), F.S., defines an “exporter” as “any person that sells alcoholic beverages to persons for use outside the state and includes a ship’s chandler and a duty-free shop.”

⁴ Section 561.17(4), F.S., requires persons to register with the division before engaging in the business of exporting alcoholic beverages.

violence-related, drug-related, prostitution-related, or stolen property-related public nuisance and criminal gang activity, including a closure of the place or premises.

Under s. 893.138(5), F.S., a local administrative board created to address public nuisances may order the owner of such place or premises to adopt appropriate procedures to abate a nuisance, or enter an order immediately prohibiting:

- Maintaining the nuisance;
- Operating or maintaining the place or premises, including the closure or operation of the place or premises; and
- Conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

Section 893.138(2), F.S., lists criminal activities which, if committed at any place or premises during a specified period of time, may create a public nuisance. Such nuisance may be abated by order of a nuisance abatement board. Those properties subject to nuisance abatement by the board include any place or premises that has been used:

- On more than two occasions within a 6-month period as the site of a violation of s. 796.07, F.S., prohibiting prostitution;
- On more than two occasions within a 6-month period as a site for the unlawful sale, delivery, manufacture, or cultivation of a controlled substance;
- On one occasion as the site of a felony involving the unlawful possession of a controlled substance and that has been previously used as the site for the unlawful sale, delivery, manufacture, or cultivation of a controlled substance;
- By a criminal street gang for a pattern of criminal street gang activity, as defined in s. 874.03, F.S.;
- On more than two occasions within a 6-month period for a violation of s. 812.019, F.S., relating to stolen property;
- On two or more occasions within a 6-month period, as the site of a violation of ch. 499, F.S., relating to the Florida Drug and Cosmetic Act; or
- On more than two occasions within a 6-month period, as the site of a violation of any combination of murder and other specified aggravated batteries.

Local governments may adopt an ordinance to:⁵

- Impose additional penalties for public nuisances, including fines not to exceed \$250 per day;
- Require the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Provide continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance;
- Impose penalties, including fines not to exceed \$500 per day for recurring public nuisances;
- Require the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and

⁵ Section 893.138(11), F.S.

- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. However a lien may not be created to foreclose on real property which is a homestead under s. 4, Art. X of the State Constitution.

The nuisance abatement board may also bring a complaint under s. 60.05, F.S., seeking temporary and permanent injunctive relief against any nuisance described in s. 893.138(2), F.S.

Section 60.05, F.S., also provides a process for an Attorney General, state attorney, city attorney, county attorney, sheriff, or any citizen of the county to sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. For other types of public nuisances such as the disposal of dead animals, the abandonment of refrigerators and other appliances, and abandoned or derelict vessels, ch. 823, F.S., provides penalties for the maintenance of those nuisances.

III. Effect of Proposed Changes:

The bill increases the criminal penalties for the unlicensed or unlawful sale of alcoholic beverages under s. 562.12(1)(a), F.S., which prohibits the sale of alcoholic beverages without a license or in a manner not permitted by the license and keeping and maintaining a place where alcoholic beverages are sold unlawfully. The bill increases the penalty for a violation of this provision from a second degree misdemeanor to a third degree felony,⁶ with a fine of not less than \$5,000 but not more than \$10,000.

The bill also creates s. 562.12(1)(b), F.S., to provide that any person who unlawfully sells alcoholic beverages at a commercial establishment or keeps and maintains a place where alcoholic beverages are sold or intended to be sold unlawfully commits a felony of the third degree, and payment of a fine of not less than \$5,000 and not more than \$10,000.

The bill provides that any person who commits a second or subsequent violation of s. 562.12(1), F.S., commits a second degree felony,⁷ with a fine of not less than \$15,000 but not more than \$20,000.

The bill amends s. 893.138(2), F.S., to provide that a place or premises may be declared a public nuisance, if used on more than two occasions within a 12-month period, as the site of a violation of s. 562.12, F.S., relating to the unlicensed or unlawful sale of alcoholic beverages.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

⁷ Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years. Section 775.083, F.S., provides that a felony of the second degree is punishable by a fine not exceeding \$10,000.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Representatives from the Orange County Sheriff indicated that many after-hours clubs and hookah lounges serve alcoholic beverages without a liquor license and that the current penalty of a second degree misdemeanor has had little deterrent effect.⁸ Persons consume alcohol all night long and shootings and other crimes have been committed at these establishments.⁹

The bill increases the criminal penalties for the unlicensed or unlawful sale of alcoholic beverages under s. 562.12(1)(a), F.S., which prohibits keeping and maintaining a place where alcoholic beverages are sold unlawfully. The bill increases the penalty for a violation of this

⁸ See Orange County Sheriff calls for legislative changes to combat illegal alcohol sales, *Orlando Spectrum News13*, (Oct. 31, 2023), available at: <https://mynews13.com/fl/orlando/news/2023/10/31/orange-county-sheriff-calls-for-legislative-changes-to-combat-illegal-alcohol-sales> (last visited February 2, 2024).

⁹ *Id.*

provision from a second degree misdemeanor to a third degree felony,¹⁰ with a fine of not less than \$5,000 but not more than \$10,000. However, the bill also creates s. 562.12(1)(b), F.S., to provide that any person who unlawfully sells alcoholic beverages at a commercial establishment or keeps and maintains a place where alcoholic beverages are sold or intended to be sold unlawfully commits a felony of the third degree, and must pay a fine of not less than \$5,000 and not more than \$10,000. These two criminal violations are substantially similar and the term “commercial establishment” is not defined.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 562.12 and 893.138.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on February 14, 2024:

The committee substitute:

- Provides that any person who unlawfully sells alcoholic beverages at a commercial establishment or keeps and maintains a place where alcoholic beverages are sold or intended to be sold unlawfully commits a felony of the third degree, and must pay a fine.
- Increases from a 6-month period to a 12-month period the period during which a local government may declare a place of business a public nuisance if there are two or more violations of s. 562.12, F.S., at the location.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁰ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.