

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1123 Unlawful Sale Of Alcoholic Beverages

**SPONSOR(S):** Judiciary Committee, Regulatory Reform & Economic Development Subcommittee, Bankson and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 1 N, As CS	Phelps	Anstead
2) Judiciary Committee	22 Y, 0 N, As CS	Yeager	Kramer
3) Commerce Committee			

### SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages within the state. Any person who wishes to sell alcohol must file an application with the Division, and contingent on approval, will be issued a license. It is unlawful for any person to sell alcoholic beverages without a license from the Division, or to sell in a manner not permitted by his or her license. A person who violates this prohibition commits a second-degree misdemeanor. Additionally, a person who is convicted of a second or subsequent violation of any provision of the Beverage Law commits a third-degree felony.

A nuisance is an activity arising from a person's unreasonable, unwarranted, or unlawful use of his or her own property in a way that injures the rights of another person or the public and produces such material annoyance, inconvenience, and discomfort that the law presumes resulting damage. Section 893.138, F.S., permits local governments to establish a nuisance abatement board to hear public nuisance complaints. The board may impose administrative fines and other noncriminal penalties to abate such nuisance.

CS/CS/HB 1123 amends s. 562.12, F.S., to increase the criminal penalty from a second-degree misdemeanor to a third-degree felony for the unlicensed or unlawful sale of alcoholic beverages when committed by any person, including a licensee, at a commercial establishment or for keeping and maintaining a place where alcoholic beverages are sold or intended to be sold unlawfully, and requires a person convicted of such an offense to pay a fine of not less than \$5,000 and not more than \$10,000. Under the bill, a person committing a second or subsequent violation of either offense commits a second-degree felony and must pay a fine of not less than \$15,000 and not more than \$20,000. Any other violation of s. 562.12, F.S., remains a second degree misdemeanor.

The bill amends s. 893.138(2), F.S., to provide that a local administrative board may declare a place or premises a public nuisance if it is used on more than two occasions within a twelve-month period as the site where a violation of s. 562.12, F.S., relating to the unlawful sale of alcoholic beverages, occurred.

The bill may have an indeterminate fiscal impact on state and local governments as the bill increases criminal penalties for the unlicensed or unlawful sale of alcoholic beverages and provides additional activities and properties that may be enjoined as a public nuisance. State and local governments may incur additional expenses from legal proceedings relating to nuisance abatement. Increasing the criminal penalty for specified violations of s. 562.12, F.S., may result in more jail and prison admissions and may increase the length of incarceration a person may serve.

The bill provides an effective date of July 1, 2024.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1123c.JDC

DATE: 2/22/2024

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Alcoholic Beverage Licenses

###### *Qualifications*

In Florida, the Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) supervises the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages within the state.<sup>1</sup> The Division is also charged with issuing alcohol beverage licenses and retains primary regulatory authority over the activities of licensees under the Beverage Law.<sup>2</sup> Licenses and registrations referred to in the Beverage Law are classified into the following tiers:

- Manufacturers licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and no one else within the state, unless authorized by statute;
- Distributors licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages;
- Vendors licensed to sell alcoholic beverages at retail only;
- Brokers or sales agents, whether resident or non-resident, licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else, in this state;
- Importers, whether resident or nonresident, licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else, in this state;
- Bottle clubs; and
- Exporters registered to sell alcoholic beverages.<sup>3</sup>

A person must obtain a license from the Division before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages.<sup>4</sup> Licenses are only issued to persons of good moral character who are not less than 21 years of age.<sup>5</sup> The Division must not issue a license under the Beverage Law to any person:

- Who has been convicted within the last five years of an offense against the beverage laws of Florida, any other state, or the United States;
- Who has been convicted within the last five years in Florida or any other state of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or of any criminal violation under ch. 893, F.S.,<sup>6</sup> or the controlled substance act of any other state or federal government; or
- Who has been convicted in the past 15 years of any felony in this state or any other state or the United States.<sup>7</sup>

###### *Obtaining an Alcoholic Beverage License*

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<sup>1</sup> S. 561.02, F.S.; "Alcoholic beverages" means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. S. 561.01(4)(a), F.S.

<sup>2</sup> *Id.*; Florida's Beverage Law regulates the manufacturing, distribution, and sale of alcohol beverages within the state. Ch. 561-565, 567, and 568, F.S.

<sup>3</sup> S. 561.14, F.S.

<sup>4</sup> S. 561.17(1), F.S.

<sup>5</sup> S. 561.15(1), F.S.

<sup>6</sup> Chapter 893, F.S., provides for drug abuse prevention and control.

<sup>7</sup> S. 561.15(2), F.S.

To obtain an alcoholic beverage license, a person must file a sworn application in the format prescribed by the Division with the district licensing personnel of the Division in which the place of business for which a license is sought is located.<sup>8</sup> The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of the entity that have a direct or indirect interest in the business seeking to be licensed.<sup>9</sup>

All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed, and applications for consumption on the premises must be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business meets all state sanitary requirements.<sup>10</sup>

After the application has been appropriately filed, the application must be fully investigated as to the qualifications of the applicants and location sought to be licensed.<sup>11</sup> The Division must approve or disapprove the application following the investigation.<sup>12</sup> If approved, the license must be issued upon payment to the Division of the license tax.<sup>13</sup> The license must be renewed annually.<sup>14</sup>

### *Penalties for the Unauthorized Sale of Alcoholic Beverages*

Under s. 562.12, F.S., it is a second-degree misdemeanor for any person to sell alcoholic beverages without a license from the Division, or for any licensee to sell alcoholic beverages in a manner not permitted by his or her license.<sup>15</sup> A licensee also commits a second-degree misdemeanor if he or she:

- Keeps or possesses alcoholic beverages not permitted to be sold by his or license;
- Keeps or possesses alcoholic beverages not permitted to be sold without a license with the intent to sell or dispose of the same unlawfully; or
- Keeps and maintains a place where alcoholic beverages are sold unlawfully.<sup>16</sup>

Additionally, under s. 562.45(1), F.S., a person who is convicted of a second or subsequent violation of any provision of the Beverage Law commits a third-degree felony. The Division has authority to revoke or suspend the license of any person holding a license under the Beverage Law, including when the licensee maintains a nuisance on the licensed premises.<sup>17</sup>

### Nuisance Abatement

A nuisance is an activity arising from a person's unreasonable, unwarranted, or unlawful use of his or her own property in a way that injures the rights of another or the public and produces such material annoyance, inconvenience, and discomfort that the law presumes resulting damage.<sup>18</sup> A nuisance may also be something that annoys and disturbs a person in possession of his or her property, making its ordinary use or occupation physically uncomfortable.<sup>19</sup>

Any place or premises may be declared a public nuisance that has been used:

- On more than two occasions within a six-month period, as the site of a violation of s. 796.07, F.S., relating to prostitution;

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. *Id.*

<sup>10</sup> S. 561.17(2), F.S.

<sup>11</sup> S. 561.18, F.S.

<sup>12</sup> S. 561.19(1), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> S. 561.26, F.S.

<sup>15</sup> S. 562.12, F.S.

<sup>16</sup> S. 562.12(1), F.S.; A person who has been convicted of a second-degree misdemeanor may be sentenced by a term of imprisonment not exceeding sixty days or by a fine not to exceed \$500. S. 775.082(4)(a), F.S.; s. 775.083(1)(e), F.S.

<sup>17</sup> S. 561.29, F.S.; s. 561.29, F.S.

<sup>18</sup> Black's Law Dictionary 736 (6th ed. 1996).

<sup>19</sup> *Id.*

- On more than two occasions within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03, F.S.;
- On more than two occasions within a six-month period, as the site of a violation of s. 812.019, F.S., relating to dealing in stolen property;
- On two or more occasions within a six-month period, as the site of a violation of the Florida Drug and Cosmetic Act;
- On more than two occasions within a six-month period, as the site of a violation of any combination of the following:
  - Section 782.04, F.S., relating to murder;
  - Section 782.051, F.S., relating to attempted felony murder;
  - Section 784.045(1)(a)2., F.S., relating to aggravated battery with a deadly weapon; or
  - Section 784.021(1)(a), F.S., relating to aggravated assault with a deadly weapon without intent to kill.<sup>20</sup>

The persons and places identified as a public nuisance may be enjoined.<sup>21</sup> When any such nuisance exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county where the nuisance exists may bring a nuisance abatement action in the name of the state to enjoin the nuisance, the person maintaining it, and the owner or agent of the premises where the nuisance is located.<sup>22</sup>

Section 893.138(1), F.S., permits local governments to establish a nuisance abatement board to hear public nuisance complaints. The board may impose administrative fines and other noncriminal penalties to abate a violence-related, drug-related, prostitution-related, or stolen property-related public nuisance and criminal gang activity, including a closure of the place or premises.<sup>23</sup> If a board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such a place or premises to adopt abatement procedures or it may enter an order immediately prohibiting:

- The maintaining of the nuisance;
- The operating or maintaining of the place or premises, including the closure of the place or premises; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to nuisance.<sup>24</sup>

A county or municipal ordinance may establish additional penalties for public nuisances and supplement local administrative action under s. 893.13, F.S., by:

- Imposing fines not to exceed \$250 per day;
- Requiring the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Providing continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance;
- Imposing fines not to exceed \$500 per day for recurring public nuisances;
- Requiring 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;
- Providing that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and

<sup>20</sup> S. 893.138(2), F.S.

<sup>21</sup> S. 823.05, F.S.

<sup>22</sup> S. 60.05(1), F.S.

<sup>23</sup> S. 893.138(1), F.S.

<sup>24</sup> S. 893.138(5), F.S.

- Providing 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.<sup>25</sup>

### Dangers of Illicit After-Hours Clubs and Hookah Lounges

Communities across the state deal with illicit after-hours clubs or hookah lounges that operate without an alcohol license or in violation of their license.<sup>26</sup> These operations have attracted criminal activity involving dangerous drugs and violent crimes.<sup>27</sup> According to law enforcement in Orlando, these places are specifically targeted due to knowledge of their illegal operations, however, current penalties for the unlawful or unauthorized sale of alcoholic beverages do not serve as a meaningful deterrent for such operations.<sup>28</sup>

### **Effect of Proposed Changes**

CS/CS/HB 1123 amends s. 562.12, F.S., to increase the criminal penalty from a second-degree misdemeanor to a third-degree felony for the unlicensed or unlawful sale of alcoholic beverages when committed by any person, including a licensee, at a commercial establishment or for keeping and maintaining a place where alcoholic beverages are sold or intended to be sold unlawfully, and requires a person convicted of such an offense to pay a fine of not less than \$5,000 and not more than \$10,000. Under the bill, a person committing a second or subsequent violation of either offense commits a second-degree felony and must pay a fine of not less than \$15,000 and not more than \$20,000. Any other violation of s. 562.12, F.S., remains a second degree misdemeanor.

The bill amends s. 893.138(2), F.S., to provide that a local administrative board may declare a place or premises a public nuisance if it is used on more than two occasions within a twelve-month period as the site where a violation of s. 562.12, F.S., relating to the unlawful sale of alcoholic beverages, occurred. In doing so, the local administrative board may abate such nuisance through the procedures delineated in s. 893.138, F.S.

The bill provides an effective date of July 1, 2024.

### **B. SECTION DIRECTORY:**

- Section 1:** Amends s. 562.12, F.S., relating to beverages sold with improper license, or without license or registration, or held with intent to sell prohibited.
- Section 2:** Amends s. 893.138, F.S., relating to local administrative action to abate certain activities declared public nuisances.
- Section 3:** Provides an effective date of July 1, 2024.

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

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

<sup>25</sup> S. 893.138(11), F.S.

<sup>26</sup> Cristobal Reyes, *Orange sheriff announces proposed 'legislative changes' after 2 arrested in hookah lounge shooting*, Orlando Sentinel (Oct. 30, 2023), <https://www.orlandosentinel.com/2023/10/30/orange-sheriff-announces-proposed-legislative-changes-after-2-arrested-in-hookah-lounge-shooting/> (last visited Feb. 16, 2024).

<sup>27</sup> *Id.*; see also C.T. Bowen, *Hillsborough County bans late-night hookah lounges*, Tampa Bay Times (Aug. 18, 2021), <https://www.tampabay.com/news/hillsborough/2021/08/18/hillsborough-county-bans-late-night-hookah-lounges/> (last visited Feb. 16, 2024) (Hillsborough County commissioners unanimously approved an ordinance requiring lounges to close at 3 a.m. after a string of violent incidents at or near hookah lounges).

<sup>28</sup> *Id.*

2. Expenditures:  
See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate fiscal impact on state and local governments as the bill increases criminal penalties for specified offenses related to the unlicensed or unlawful sale of alcoholic beverages and provides additional activities and properties that may be enjoined as a public nuisance. State and local governments may incur additional expenses from legal proceedings relating to nuisance abatement. Increasing the criminal penalty for specified violations of s. 562.12, F.S., may result in more jail and prison admissions and may increase the length of incarceration a person may serve.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:  
Not applicable. The bill does not appear to affect county or municipal governments.
2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 6, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the time period for when local administrative boards may declare a place or premise a public nuisance for the unlicensed or unlawful sale of alcohol beverages from two times in a 6-month period to two times in a 12-month period.

On February 21, 2024, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Narrowed the applicability of the third degree felony and mandatory fine to the unlawful sale of alcoholic beverages by any person, including a licensee, which occurs at a commercial

establishment or the keeping and maintaining of a place where alcoholic beverages are sold or intended to be sold unlawfully.

- Narrowed the applicability of the second degree felony and mandatory fine to second or subsequent violations of either offense above.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.