

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 639 Issuance of Special Beverage Licenses

SPONSOR(S): Commerce Committee and Regulatory Reform & Economic Development Subcommittee, Esposito and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1262

FINAL HOUSE FLOOR ACTION: 107 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/CS/HB 639 passed the House on April 28, 2023, and subsequently passed the Senate on May 2, 2023.

In Florida, alcoholic beverages are regulated by the Beverage Law, which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.

Florida law 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.

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special food service license" (SFS license), which applies to a food service establishment that:

- Has 2,500 square feet,
- 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.

Additionally, there is an exception to quota licensing for certain bona fide clubs, including beach or cabana clubs. Such clubs must meet certain criteria to qualify for such a license.

The bill lowers requirements for certain food service establishments to qualify for an SFS license by reducing the minimum:

- Service area to **2,000** square feet, and
- Service capacity to **120** persons.

The bill will still require a food service establishment to derive 51 percent or more gross sales from food and nonalcoholic beverage sales in order to qualify for an SFS license.

The bill expands beach or cabana club beverage license criteria to include clubs with:

- Locker room or bathroom facilities for at least 100 persons, instead of locker rooms with facilities for at least 100 persons.
- Any type of public food service establishment of any seating size, instead of a restaurant with seats with tables for at least 100 persons.

The bill does not have a fiscal impact on local governments and has an indeterminate fiscal impact on state government.

Subject to the Governor's veto powers, the bill becomes effective upon becoming law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Regulation of Alcoholic Beverages

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

Special Food Service License

Florida law 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. 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, if certain conditions are met.⁴

A “special license” is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a “special food service license” (SFS license), which applies to a food service establishment that:⁵

- Has **2,500** square feet,⁶
- 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.

The required revenue percentage is computed as the sum of gross food and nonalcoholic beverage revenue divided by the sum of gross food, alcoholic beverage, and non-alcoholic beverage revenue.⁷ Records of each purchase and each sale of food, alcoholic beverages, and nonalcoholic beverages must be maintained for a period of 3 years.⁸

SFS licensees must be audited by the division for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 120-day operating period, and every one to four years thereafter, depending on beverage revenue. Failure by an SFS licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverage sales results in revocation of the SFS license. An SFS licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.⁹

SFS licensees may sell or deliver alcoholic beverages in a sealed container for off-premises consumption, including liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. Such licensees may not sell a bottle of distilled spirits sealed by a manufacturer. The sale or delivery of such beverages must be accompanied by the sale of food.¹⁰

¹ S. 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ S. 561.02, F.S.

⁴ S. 561.20(1), F.S.

⁵ S. 561.20(2)(a)4., F.S.

⁶ The service area includes only the food service establishment’s buildings and other contiguous outside areas which are under the management and control of the licensed food service establishment. Rule R. 61A-3.0141(1), F.A.C.

⁷ R. 61A-3.0141(4), F.A.C.

⁸ R. 61A-3.0141(3), F.A.C.

⁹ *Id.*

¹⁰ *Id.*

There are several exceptions to the Beverage Law created by special laws, which are applicable to specific local areas. Many reduce certain licensing requirements for special zones in local jurisdictions. For example, ch. 2022-259, L.O.F., allows DBPR to issue an SFS license to restaurants within the Kings Avenue Commercial Corridor in Jacksonville that:

- Have 1,000 square feet,
- Are equipped to serve 50 persons at one time, and
- Derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

Beach or Cabana Club License

Beverage licenses may not be limited in number for certain bona fide chartered or incorporated clubs which have been in operation for at least 2 years in the county where it exists.¹¹ However, such clubs must meet certain criteria to qualify for such a license.

Club licenses are limited to:¹²

- Subordinate lodges or clubs of national fraternal or benevolent associations;
- Golf clubs, tennis clubs, and beach or cabana clubs which are municipally or privately owned or leased;
- Nonprofit corporations or clubs devoted to promoting community, municipal, or county development or any phase of community, municipal, or county development;
- Clubs fostering and promoting the general welfare and prosperity of members of showmen and amusement enterprises;
- Clubs assisting, promoting, and developing subordinate lodges or clubs of national fraternal or benevolent associations; and
- Clubs promoting, developing, and maintaining cultural relations of people of the same nationality.

In order to qualify for a beach or cabana club license, a corporation, partnership, or individual operating a club must own or lease and maintain a bona fide beach or cabana club consisting of beach facilities, swimming pool, locker rooms with facilities for at least 100 persons, and a restaurant with seats at tables for at least 100 persons, comprising in all an area of at least 5,000 square feet located on a contiguous tract of land of in excess of 1 acre.¹³

A beach or cabana club that fails to maintain the facilities may be subject to revocation of the club beverage license.¹⁴

Public Food Service Establishments

Under DBPR, the Division of Hotels and Restaurants licenses, inspects, and regulates public lodging and food service establishments in Florida.¹⁵

“Public food service establishments” means any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, with certain exceptions.¹⁶

¹¹ S. 561.20(7)(a), F.S.; s. 565.02(4), F.S.

¹² S. 561.20(7)(a), F.S.

¹³ S. 561.20(7)(d), F.S.

¹⁴ *Id.*

¹⁵ S. 20.165, F.S.; Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Apr. 18, 2023).

¹⁶ S. 509.013(5), F.S.

Classifications of public food service establishments include permanent food service restaurants, catering services, mobile food dispensing vehicles, vending machines, theme park carts, culinary education programs, and temporary food service events.¹⁷

Effect of the Bill

The bill lowers requirements for a food service establishment to qualify for an SFS license by reducing the minimum:

- Service area requirement to **2,000** square feet, and
- Service capacity to **120** persons.

However, a food service establishment will still need to derive 51 percent or more gross sales from food and nonalcoholic beverage sales in order to qualify for an SFS license.

The bill expands beach or cabana club beverage license criteria to include clubs with:

- Locker room or bathroom facilities for at least 100 persons, instead of locker rooms with facilities for at least 100 persons.
- Any type of public food service establishment of any seating size, instead of a restaurant with seats with tables for at least 100 persons.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may allow more restaurants to obtain an SFS license or beach or cabana club license, which would increase fees to the state.

2. Expenditures:

The bill may allow more restaurants to obtain an SFS license or beach or cabana club license, which would require more regulatory actions, such as inspections and audits, by DBPR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁷ R. 61C-1.002, F.A.C.; Florida Department of Business and Professional Regulation, *Hotels and Restaurants – Licensing Guides*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/licensing-guides/> (last visited Feb. 24, 2023).

The bill may allow more restaurants to obtain an SFS license, which may make it less expensive to own and operate a restaurant that sells alcoholic beverages and could lead to more restaurants opening. It could also increase beverage service options for consumers.

D. FISCAL COMMENTS:

None.