

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2520

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Regulated Industries Committee, and Senator Diaz de la Portilla

SUBJECT: Beverage Law

DATE: April 22, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 2520 amends the Beverage Law to:

- Authorize the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to distribute revoked quota alcoholic beverage licenses in public drawings, but prevent revoked licenses encumbered by a perfected lien or security interest from being distributed for 180 days or until an enforcement proceeding is final. The committee substitute also extends the period for enforcing a lien or security interest in a license from 12 days to 180 days.
- Require nonprofit civic organizations to present a local building and zoning permit in order to obtain a 3-day temporary alcoholic beverage license and mandate that these organizations must retain all net profits from sales of alcoholic beverages collected during the permit period.
- Create the Christopher Fugate Act, which increases the criminal penalties for licensees or agents, officers, servants, or employees of a licensee who unlawfully provide alcoholic beverages to employees under 21 years of age or permit employees under 21 years of age to consume alcoholic beverages on the licensed premises or in the scope of employment.

This committee substitute substantially amends the following sections of the Florida Statutes: 561.19, 561.422, 561.65, and 562.11. The committee substitute also reenacts s. 561.706, F.S.

## II. Present Situation:

### Quota Alcoholic Beverage Licenses

The Beverage Law (chs. 561-568, F.S.) is administered by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation. Under the Beverage Law, vendors are required to obtain a license in order to sell alcoholic beverages in this state (s. 562.12(1), F.S.). The division issues licenses permitting the sale of alcoholic beverages for consumption on premises in three major categories: beer only (ch. 563, F.S.); beer and wine only (ch. 564, F.S.); and beer, wine, or liquor (ch. 565, F.S.).

The number of alcoholic beverage licenses permitting the sale of beer, wine, and liquor for consumption on premises which may be issued in a county is limited to a quota of one license per 7,500 residents (s. 561.20, F.S.). Certain other licenses are exempt from this quota requirement. For example, certain restaurants deriving at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages may obtain a special license that is exempt from the quota requirement (s. 561.20(2)(a)4., F.S.).

A liquor license subject to the quota requirement is commonly cited as a “quota license.” New quota licenses are authorized as the population of a county increases. Quota licenses can also be authorized when a county that has historically prohibited the sale of alcoholic beverages authorizes alcoholic beverage sales. In addition to other requirements, a licensee issued a new quota liquor license must pay the Division of Alcoholic Beverages and Tobacco a fee of \$10,750 (s. 561.19(5), F.S.).<sup>1</sup> According to the division, a quota license has an estimated market value of between \$17,000 and \$250,000.

As new quota licenses are authorized, the applications for persons seeking to be issued a license can exceed the number of new licenses available to be issued. To distribute the available quota licenses among the applicants, current law requires the Division of Alcoholic Beverages and Tobacco to conduct public drawings using the double random selection drawing method (s. 561.19(2)(a), F.S.). This method is used to distribute quota licenses that become available by reason of:

- A county’s population increases to exceed the quota limit; or
- A county that has historically prohibited the sale of alcoholic beverages authorizes alcoholic beverage sales (*id.*).

The Beverage Law does not authorize the division to distribute quota licenses in a public drawing for reasons other than these two specified reasons. Consequently, under current law, quota licenses that are revoked by the division are not subject to distribution in a public drawing. In addition, upon the revocation of an existing license, current law does not allow the renewal or issuance of a new license to replace the revoked license unless the respective county’s population exceeds the quota limit for a new license (s. 561.20(3), F.S.).

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<sup>1</sup> The \$10,750 initial liquor license fee is in addition to annual license taxes for liquor licenses, which range between \$624 and \$1,820 (ss. 561.19(5) and 565.02, F.S.).

A 2002 order by an administrative law judge at the Division of Administrative Hearings invalidated a policy statement of the Division of Alcoholic Beverage and Tobacco which required revoked quota licenses in counties that have not exceeded their respective quota limits to be subject to distribution in public drawings.<sup>2</sup>

### **Liens or Security Interests in Alcoholic Beverage Licenses**

Under current law, the Division of Alcoholic Beverages and Tobacco is required to record liens and security interest in alcoholic beverages licenses and, upon request, conduct searches for recorded liens in the division's records (s. 561.65(4), F.S.). In order to perfect a lien or security interest in an alcoholic beverage license, a lienholder must record the lien or security interest with the division within 90 days after the creation of the lien or security interest (*id.*).

The division is required to notify a lienholder that has recorded its lien or security interest in an alcoholic beverage license when an order to show cause why the license should not be suspended and revoked, or an order suspending or revoking the license, is filed (s. 561.65(3), F.S.). If an alcoholic beverage license is suspended or revoked, the lienholder generally has the right under current law to enforce the lien or security interest within 12 days after the order of suspension or revocation is filed (s. 561.65(1), F.S.). However, current law specifies that this 12-day period for enforcing the lien commences from the date the division mails notice to the lienholder of the order suspending or revoking the license (s. 561.65(3), F.S.).

### **Temporary Permits for Nonprofit Civic Organizations**

Under current law, the Division of Alcoholic Beverages and Tobacco is authorized to issue a temporary alcoholic beverage permit that allows a "bona fide nonprofit civic organization" to sell alcoholic beverages for consumption on the premises only (s. 561.422, F.S.). The permit may be valid for a period not to exceed 3 days. In order to obtain a permit, a civic organization must file an application and pay a \$25 fee per permit. The division may issue no more than 3 temporary permits to any one civic organization in a calendar year (*id.*).

The Beverage Law does not limit the authority of a county or municipality to enact ordinances governing the hours of business, the location of place of business, and sanitary regulations for any alcoholic beverage licensee (s. 562.45(2)(a), F.S.). Although a temporary permit issued to a civic organization is subject to any state law or municipal or county ordinance regulating the time for selling alcoholic beverages (s. 561.422, F.S.), current law does not authorize the division to deny a temporary permit if a civic organization does not comply with local ordinances.

### **Sale of Alcoholic Beverages to Persons Under 21 Years of Age**

Under current law, with certain exceptions, it is unlawful for a person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on the licensed premises (s. 562.11, F.S.).

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<sup>2</sup> *Beverage Hospitality, Inc. v. Department of Business and Professional Regulation*, No. 01-4576RU (Fla. DOAH May 29, 2002).

Any person who violates these provisions commits a misdemeanor of the second degree, punishable by up to 60 days in jail and up to a \$500 fine (*id.*).

With certain exceptions, it is unlawful for a person under 21 years of age to possess alcoholic beverages (s. 562.111(1), F.S.). A person under 21 years of age who violates this provision, as a first offense, commits a misdemeanor of the second degree, punishable by up to 60 days in jail and up to a \$500 fine. A subsequent offense is a misdemeanor of the first degree, punishable by up to 1 year in jail and up to a \$1,000 fine. In addition to these penalties, the court is required to direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend or revoke, the violator's driver's license or driving privilege (s. 562.111(3), F.S.).

A person under 21 years of age may possess alcoholic beverages under the following conditions:

- Employment of any person 18 years of age or older in the sale, preparation, or service of alcoholic beverages in licensed premises in any establishment licensed by the Division of Alcoholic Beverages and Tobacco or the Division of Hotels and Restaurants (s. 562.111(1), F.S.);
- Tasting of alcoholic beverages by a student over 18 years of age who is enrolled in a college program in which the tasting is for instructional purposes (s. 562.111(2), F.S.); or
- Employment under s. 562.13, F.S., acting in the scope of her or his employment, which includes:
  - A professional entertainer 17 years of age who is not in school;
  - A minor employed in the entertainment industry in compliance with, or under a waiver from, the Child Labor Law (part I of ch. 450, F.S.);
  - A person under 18 years of age employed in a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station that has obtained a license to sell beer or beer and wine, when these sales are made for consumption off the premises;
  - A senior high school student (17 years of age or older), with written permission of his or her school principal, or any high school graduate, employed by a bona fide food service establishment in which alcoholic beverages are sold if he or she does not participate in the sale, preparation, or service of the beverages and his or her duties are of a nature as to provide training and knowledge that might lead to further advancement in food service establishments;
  - A person under 18 years of age employed as a bellhop, elevator operator, or other position in a hotel when he or she is engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises;
  - A person under 18 years of age employed in a bowling alley in which alcoholic beverages are sold or consumed, if he or she does not participate in the sale, preparation, or service of the beverages;
  - A person under 18 years of age employed by a bona fide dinner theater, if his or her employment is limited to the services of an actor, actress, or musician; or
  - A person under 18 years of age employed in certain theme park complexes, if he or she does not participate in the sale, preparation, or service of alcoholic beverages (s. 562.13(2), F.S.).

Except for these circumstances, it is also unlawful for any vendor licensed under the Beverage Law to employ any person younger than 18 years of age (s. 562.13(1), F.S.). In addition, a

vendor may not employ a minor if the employment, whether as a professional entertainer or otherwise, involves nudity on the part of the minor and the nudity is intended as a form of adult entertainment (s. 562.13(2), F.S.).

### **Enforcement of the Beverage Law**

Under the Beverage Law, vendors are required to obtain a license in order to sell alcoholic beverages in this state (s. 562.12(1), F.S.). Licensed vendors are subject to administrative discipline by the Division of Alcoholic Beverages and Tobacco. Penalties for violations include the suspension or revocation of a vendor's license (s. 561.29, F.S.), and certain violations are subject also to criminal penalties (s. 562.12, F.S.).

The division has authority to revoke or suspend a license for violations by the "licensee or his or her or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States" (s. 561.29(1)(a), F.S.). A "licensee" under the Beverage Law is a legal or business entity, person, or persons that hold a license issued by the Division of Alcoholic Beverages and Tobacco and that meet the qualifications for licensure (s. 561.01(14), F.S.).

A licensee is subject to discipline under penalty guidelines adopted by the division (rule 61A-2.022(11), F.A.C.). For violations involving the sale or service of alcoholic beverages to a person under 21 years of age or permitting a person under 21 years of age to consume alcoholic beverages on the licensed premises (s. 562.11, F.S.), the guidelines provide for the following penalties:

- 1st occurrence: \$1,000 fine and 7-day suspension of license;
- 2nd occurrence: \$3,000 fine and 30-day suspension of license; and
- 3rd occurrence: revocation of license (rule 61A-2.022(11), F.A.C.).

### **Christopher Fugate**

Christopher Fugate died resulting from injuries sustained in a motor vehicle wreck on July 24, 2002, in Tallahassee, Florida. According to reports, Christopher Fugate, a native of DeSoto County, was 19 years of age and had been consuming alcoholic beverages after-hours at the public food service establishment where he worked.<sup>3</sup> His parents have filed a lawsuit against the establishment alleging violations of the Beverage Law.<sup>4</sup>

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<sup>3</sup> Tallahassee Democrat, *Parents Sue Hooters Over Son's Death* (Oct. 4, 2002), available at <http://www.tallahassee.com/mld/tallahassee/4208364.htm> (last visited Apr. 17, 2003); Knight Ridder/Tribune Business News, *Family Files Wrongful Death and Negligence Lawsuit Against Florida Restaurant for Violations Against Florida Beverage Law* (Oct. 4, 2002), available at [http://hotel-online.com/News/PR2002\\_4th/Oct02\\_BarSuit.html](http://hotel-online.com/News/PR2002_4th/Oct02_BarSuit.html) (last visited Apr. 17, 2003).

<sup>4</sup> *Fugate v. Hooters of Leon, Inc., et al.*, No. 37 2002 CA 002438 (Fla. Leon Cty. Ct. filed Oct. 3, 2002).

### III. Effect of Proposed Changes:

**Section 1** amends s. 561.19, F.S. The committee substitute requires the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to distribute quota liquor licenses that are revoked in public drawings using the double random selection drawing method. This is the same method currently used to distribute quota licenses that become available by reason of an increase in a county's population or by reason of a county that has historically prohibited the sale of alcoholic beverages authorizing alcoholic beverage sales.

The committee substitute also specifies that the division's distribution of revoked quota licenses in public drawings does not prohibit a lienholder having a perfected lien or security interest in quota license from enforcing the lien within 180 days after the order of suspension or revocation. The committee substitute also prohibits a quota license encumbered by a perfected lien or security interest from being distributed in a public drawing until the 180-day period has elapsed or the enforcement proceeding is final. (*See* section 3 of the committee substitute.)

**Section 2** amends s. 561.422, F.S. The committee substitute prohibits the Division of Alcoholic Beverages and Tobacco from issuing a 3-day temporary alcoholic beverage permit to a nonprofit civic organization unless the organization presents a local building and zoning permit. According to the division, presentation of this permit would demonstrate the organization's compliance with local ordinances and adherence to requirements of the local zoning authority. The committee substitute also requires that all net profits from the sale of alcoholic beverages collected during the 3-day permit period must be retained by the nonprofit civic organization.

**Section 3** amends s. 561.65, F.S. The committee substitute extends the period for a lienholder to enforce a lien or security interest in an alcoholic beverage license from 12 days to 180 days after the order of suspension or revocation is filed and specifies that the 180-day period commences from the date the division mails notice to the lienholder of the order suspending or revoking the license. The committee substitute also prohibits a quota license encumbered by a perfected lien or security interest from being distributed in a public drawing until the 180-day period has elapsed or the enforcement proceeding is final. (*See* section 1 of the committee substitute.)

**Section 4** amends s. 562.11, F.S. The committee substitute creates "the Christopher Fugate Act." The act prohibits an alcoholic beverage licensee or an agent, officer, servant, or employee of a licensee from:

- Providing alcoholic beverages to a person younger than 21 years of age who is employed by the licensee, except as authorized in specified laws; or
- Permitting a person younger than 21 years of age who is employed by the licensee to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment.

A licensee or an agent, officer, servant, or employee of a licensee who violates one of these provisions commits a misdemeanor of the first degree, punishable by up to 1 year in jail and up to a \$1,000 fine. The committee substitute effectively increases the penalties for these violations from a misdemeanor of the second degree under current law to a misdemeanor of the first degree.

**Section 5** reenacts s. 561.706(3), F.S., for the purpose of incorporating the amendment to s. 561.11, F.S., in a reference thereto. The committee substitute effectively requires the Division of Alcoholic Beverages and Tobacco to include an arrest of a vendor who violates the Christopher Fugate Act when compiling a record of arrests.

**Section 6** provides an effective date of July 1, 2003.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An applicant seeking a revoked quota liquor license would have to participate in a public drawing using the double random selection drawing method in order to obtain the license. A lienholder having a lien or security interest in an alcoholic beverage license would be permitted 180 days to enforce its lien or security interest.

Nonprofit civic organizations would have to present a local building permit and zoning permit to be issued a 3-day temporary alcoholic beverages permit. These organizations would have to retain all net profits from sales of alcoholic beverages collected during the permit period.

C. Government Sector Impact:

The committee substitute would require the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to conduct public drawings using the double random selection drawing method to distribute revoked quota liquor licenses. The committee substitute also prohibits the division from distributing a quota license encumbered by a perfected lien or security interest in a public drawing until 180 days after an order of suspension or revocation or until the enforcement proceeding is

final. The committee substitute does not appear to cause a significant impact on the division's operational costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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