

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 719 CS

Restaurants Licensed to Sell Wine on the Premises

SPONSOR(S): Kyle

TIED BILLS:

IDEN./SIM. BILLS: SB 1114

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----------------------------------|-----------------|------------|----------------|
| 1) Business Regulation Committee | 18 Y, 0 N | Livingston | Liepshutz |
| 2) Transportation Committee | 12 Y, 2 N, w/CS | Thompson | Miller |
| 3) Commerce Council | | | |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

The Division of Hotels and Restaurants of the Department of Business and Professional Regulation (DBPR) is statutorily required to "carry out all of the provisions...relating to the inspection or regulation of...public food service establishments for the purpose of safeguarding the public health, safety, and welfare."

The Division of Alcoholic Beverages and Tobacco [division] of the DBPR is the state agency given responsibility for enforcement of the Beverage Law. Chapter 564, F.S., relates specifically to the regulation of wine.

While the state retains primary regulatory authority over the activities of alcoholic beverage licensees, certain areas of responsibility have been delegated to counties or municipalities to include zoning, regulating the type of entertainment, hours of operation, and conduct permitted in licensed alcoholic beverage establishments.

This combination of state and local regulation effectively prohibits a patron from removing an open container of alcoholic beverages from the premises of a restaurant alcoholic beverage licensee.

The bill creates section 564.09, F.S., to allow restaurants licensed to sell wine on the premises to permit patrons to remove one unsealed bottle of wine for consumption off the licensed premises provided the patron also purchased a full-course meal and consumed a portion of the bottle of wine with the meal. The bill requires a partially-consumed bottle of wine that is to be removed from the premises to be securely resealed.

The container must be placed in a locked glove compartment, locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk. The bill allows transportation of a resealed wine container without being in violation of the open container law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty—Restaurant patrons will be able to legally remove one partially consumed bottle of wine from licensed premises without being in violation of the beverage law, open container law, or local ordinance.

B. EFFECT OF PROPOSED CHANGES:

Chapter 509, F.S., provides, in part, for the licensure and regulation of public food service establishments. Section 509.072, F.S., creates the “Hotel and Restaurant Trust Fund to be used for the administration and operation of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (DBPR). The division is statutorily required to “carry out all of the provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of public lodging establishments and public food service establishments for the purpose of safeguarding the public health, safety, and welfare.” “Public food service establishment” is defined by statute for purposes of regulation.

Chapters 561-565 and 567 and 568, Florida Statutes, comprise Florida’s Beverage Law. The Beverage Law requires a person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages. The sale of alcoholic beverages is generally considered to be a privilege and as such, licensees are held to a high standard of accountability. The Division of Alcoholic Beverages and Tobacco [division] of the DBPR is the state agency given responsibility for enforcement of the Beverage Law. Chapter 564 relates specifically to the regulation of wine.

Section 561.01, F.S., in part, defines “licensed premises” to include “drink parlor... other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license....”

Florida’s retail alcoholic beverage licensing system is generally built around the quota license structure with all other retail licenses that allow the sale of alcoholic beverages enacted as exceptions to the quota limitation, including restaurant licenses. Rule 61A-1.006(2) of the division defines “restaurant’ for purposes of the regulation of alcoholic beverages. The web site of the division also addresses restaurant licensure under their FAQ folder:

“2. I own a restaurant, and wish to sale [sell] alcoholic beverages; what kind of license do I need?

Answer:

A special (SRX) restaurant alcoholic beverage license can be obtained (if certain requirements are met) at any time, and is an exception to the number of licenses per county restrictions. The SRX license allows you to sell beer, wine, and liquor for consumption-on-premises, in connection with a restaurant. However, a restaurant must derive 51% of their revenue from food and non-alcoholic beverages to qualify for this special license. If this percentage cannot be met and maintained, the restaurant would not qualify for the special license and would then be required to obtain a regular (quota) license. (Reference: F.S. 561.20).”

[correction noted by the editor]

Other alcoholic beverage licenses are also available to a restaurant licensee that prohibit the sale of liquor but allow the sale and consumption of beer/wine, just wine, or just beer. Licenses may have specific restrictions, such as, restaurants licensed to sell wine for consumption on the premises under a series 2COP (consumption on premises) license also allow the licensee to sell wine by the package in "factory" sealed containers only.

While the state retains primary regulatory authority over the activities of alcoholic beverage licensees, certain areas of responsibility have been delegated to counties or municipalities by statute. Sections 562.45 and 562.14, F.S., grant zoning authority to counties and municipalities, as well as, the authority to enact ordinances regulating the type of entertainment, hours of operation, and conduct permitted in licensed alcoholic beverage establishments.

This combination of state and local regulation effectively prohibits the patron from removing an open container of alcoholic beverages from the premises of a restaurant alcoholic beverage licensee.

The State Uniform Traffic Control Law, s. 316.1936, F.S., prohibits open containers of alcoholic beverages in motor vehicles. "Open container" means any container of alcoholic beverage which is immediately capable of being consumed from, or the seal of which has been broken. It is unlawful and punishable for any person to possess an open container of an alcoholic beverage or consume an alcoholic beverage while seated in or on a motor vehicle that is parked or stopped within a road.

"Road" means a way open to travel by the public, including, but not limited to, a street, highway, or alley. Passengers in vehicles designed, maintained, and used primarily for the transportation of persons for compensation and in motor homes are exempt. Examples of exemptions include:

- A passenger of a vehicle in which the driver holds a valid commercial driver's license with a passenger endorsement or a Class D driver's license;
- A passenger of a bus in which the driver holds a valid commercial driver's license with a passenger endorsement or a Class D driver's license; or
- A passenger of a self-contained motor home which is in excess of 21 feet in length.

An operator violating the open container law is guilty of a noncriminal moving traffic violation punishable by a fine of \$60 plus applicable court costs and fees. The fees and court costs vary county by county, but the total paid for each citation would range from \$112.50 to \$118.50 and an assessment of 3 points against the driver's license. A passenger violating the open container law is guilty of a nonmoving traffic violation punishable by a fine of \$30 plus applicable court costs and fees. The fees and court costs vary county by county, but the total paid for each citation would range from \$68.50 to \$74.50.

Effect of proposed changes

The bill creates section 564.09, F.S., to allow restaurants licensed to sell wine on the premises to permit patrons to remove one unsealed bottle of wine for consumption off the licensed premises provided the patron also purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal.

The bill requires a partially-consumed bottle of wine that is to be removed from the premises to be securely resealed by the licensee or the licensee's employee, placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed, and have a dated receipt for the wine and meal attached to the container.

The container must be placed in a locked glove compartment, locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

The bill amends section 316.1936, F.S., to allow transportation of a wine container resealed as required by the bill under s. 564.09, F.S., in a vehicle without being in violation of the open container law.

C. SECTION DIRECTORY:

Section 1. Creates s. 565.09, F.S., to authorize a restaurant patron to transport a resealed wine container from a restaurant for consumption off-premises.

Section 2. Amends s. 316.1936, F.S., to allow transportation of a resealed wine container in a vehicle without being in violation of the open container law.

Section 3. Effective date - July 1, 2005

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DBPR notes that the consuming public will be able to legally remove one partially consumed bottle of wine from a licensed premises without being in violation of the beverage law or open container law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR further comments: "The bill does not address any penalties for violations by the licensee or the patron."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **April 5, 2005** the Committee on Transportation considered HB 719 and adopted 1 strike-all amendment and 1 amendment to the strike-all amendment, which: provides a definition of 'full-course meal'; clarifies that the wine may be transported behind the last upright seat of vehicles without a trunk; and clarifies the exception to the open container prohibition by requiring the resealed wine container to be transported in the manner required by the newly created s. 564.09, F.S.

HB 719 was then reported favorably as amended with a committee substitute.