

Committee Substitute for House Bill No. 2281

An act relating to the Department of Business and Professional Regulation; amending s. 509.049, F.S.; revising language with respect to food service employee training; providing for a food service training certificate program; providing for approval of existing programs; providing for requests for competitive sealed proposals; requiring certain food service employees to receive certification by certain times certain; providing for time of validity of certification; amending s. 509.291, F.S.; revising the membership of the Hotel and Restaurant Advisory Council; amending s. 561.01, F.S.; revising the definition of the term "licensee" under the Beverage Law; amending s. 561.17, F.S.; revising a provision relating to license and registration applications under the Beverage Law; amending s. 561.181, F.S.; revising language with respect to temporary initial licenses; amending s. 561.20, F.S.; revising language with respect to the limitation on the number of alcoholic beverage licenses issued; creating a special license category for caterers; providing conditions for operation; providing for adoption of rules; providing for deposit of fees; amending s. 561.29, F.S.; revising language with respect to the revocation and suspension of licenses under the Beverage Law to include another prohibition; amending s. 561.32, F.S.; revising a provision relating to the transfer of a license; prohibiting transfers of certain licenses under the Beverage Law; providing exceptions; providing for reversion to the state of certain licenses deemed abandoned; providing for transfer of certain licenses under certain circumstances; specifying fees for such transfers; amending s. 561.331, F.S.; revising language with respect to a temporary license issued upon application for transfer, change of location, or change of type or series; amending s. 565.05, F.S.; providing an exception regarding the purchase of alcoholic beverages by golf clubs; amending s. 565.06, F.S.; authorizing the sale of alcoholic beverages in certain individual containers at golf clubs; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 509.049, Florida Statutes, is amended to read:

509.049 Food service employee training.—The division shall adopt, by rule, minimum food safety protection standards for the training of all food service employees who are responsible for the storage, preparation, display, or serving of foods to the public in establishments regulated under this chapter. These standards shall not include an examination, but shall provide for a food safety training certificate program for food service employees to be administered by a private nonprofit provider chosen by the division. The division shall issue a request for competitive sealed proposals which includes a statement of the contractual services sought and all terms and conditions applicable to the contract. The division shall award the contract to the provider whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other

criteria set forth in the request for proposals. The division shall contract with a provider on a 4-year basis and is authorized to promulgate by rule a per employee fee to cover the contracted price for the program administered by the provider. In making its selection, the division shall consider factors including, but not limited to, the experience and history of the provider in representing the food service industry, the provider's demonstrated commitment to food safety, and its ability to provide a statewide program with industry support and participation. Any food safety training program established and administered to food handler employees utilized at a public food service establishment prior to the effective date of this act shall be submitted by the operator to the division for its review and approval. If the food safety training program is approved by the division, nothing in this section shall preclude any other operator of a food service establishment from also utilizing the approved program or require the employees of any operator to receive training from or pay a fee to the division's contracted provider. Review and approval by the division of a program or programs under this section shall include, but not be limited to, the minimum food safety standards adopted by the division in accordance with this section or certification. It shall be the duty of the licensee of the public food service establishment to provide training in accordance with the described rule to all employees under the licensee's supervision or control. The licensee may designate a certified food service manager to perform this function as an agent of the licensee. Food service employees must receive certification pursuant to this section by January 1, 2001. Food service employees hired after November 1, 2000, must receive certification within 60 days after employment. Certification pursuant to this section shall remain valid for 3 years.

Section 2. Subsection (1) of section 509.291, Florida Statutes, is amended to read:

509.291 Advisory council.—

(1) There is created a 10-member ~~an 18-member~~ advisory council.

(a) The Secretary of Business and Professional Regulation shall appoint five ~~11~~ voting members to the advisory council. Each member appointed by the secretary must be an operator of an establishment licensed under this chapter and shall represent the industries regulated by the division, except that one member appointed by the secretary must be a layperson and shall represent the general public. Such members of the council shall serve staggered terms of 4 years.

(b) ~~The division, the Department of Health, The Florida Hotel and Motel Association, the Florida Restaurant Association, the Florida Apartment Association, and the Florida Association of Realtors shall each designate one representative to serve as a voting member of the council, and one member appointed by the secretary must be appointed to represent nontransient public lodging establishments.~~ In addition, one hospitality administration educator from an institution of higher education affiliated with the Hospitality Education Program pursuant to s. 509.302(2) shall serve for a term of 2 years as a voting member of the council. This single representative shall be

designated on a rotating basis by the institution or institutions of higher education affiliated with this program pursuant to s. 509.302(2).

(c) Any member who fails to attend three consecutive council meetings without good cause may be removed from the council by the secretary.

Section 3. Subsection (14) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

(14) “Licensee,” “applicant,” or “person” means a legal or business entity, person, or persons that hold a license issued by the division and meet the qualifications set forth in s. 561.15 an individual, corporation, firm, partnership, limited partnership, incorporated association, unincorporated association, professional association, or other legal or commercial entity; a combination of such entities; or any such entity having a financial interest, directly or indirectly, in another such entity.

Section 4. Subsection (1) of section 561.17, Florida Statutes, is amended to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel supervisor of the district of the division in which the place of business for which a license is sought is located, a sworn application in duplicate on forms provided to the district licensing personnel supervisor by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. 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. Prior to any application being approved, the division may require the applicant to file a set of fingerprints on regular United States Department of Justice forms for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when so required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the application shall be denied by the division. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license shall not be required to obtain division approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic

beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, shall not be considered as having an interest, directly or indirectly, in the license.

Section 5. Section 561.181, Florida Statutes, is amended to read:

561.181 Temporary initial licenses.—

(1)(a) When any person has filed a properly completed application which does not on its face disclose any reason for denying an alcoholic beverage license, the division shall issue to such person a temporary initial license of the same type and series for which the application has been submitted, to be valid for all purposes under the Beverage Law, except as provided in paragraph (b).

(b) A license issued under this section entitles a vendor to purchase alcoholic beverages for cash only. This paragraph does not apply:

1. If the entity holding the temporary initial license is also the holder of a beverage license authorizing the purchase of the same type of alcoholic beverages as is authorized under the temporary license.

2. To purchases made as part of a single-transaction cooperative purchase placed by a pool buying agent.

~~(2) The temporary initial license shall be valid until the application is denied or until 14 days after the application is approved.~~

~~(2)(3)~~ A temporary initial license shall expire and shall not be continued or extended beyond the date the division denies the application for license, beyond 14 days after the date the division approves the application for license, or beyond the date the applicant pays the license fee for and the division issues the license applied for, or beyond the date the temporary initial license otherwise expires by law, whichever date occurs first. If the department issues a notice of intent to deny the license application for failure of the applicant to disclose the information required by s. 561.15(2) or (4), the initial temporary license expires and shall not be extended during any proceeding for administrative or judicial review pursuant to chapter 120.

~~(3)(4)~~ Each applicant seeking a temporary initial license shall pay to the division for such license a fee equal to one-fourth of the annual license fee for the type and series of license being applied for or \$100, whichever is greater, which fee shall be deposited into the General Revenue Fund.

Section 6. Subsection (1) and paragraph (a) of subsection (2) of section 561.20, Florida Statutes, are amended to read:

561.20 Limitation upon number of licenses issued.—

(1) No license under s. 565.02(1)(a)-(f), inclusive, shall be issued so that the number of such licenses within the limits of the territory of any county exceeds one such license to each 7,500 ~~5,000~~ residents within such county.

Regardless of the number of quota licenses issued prior to October 1, 2000 ~~1992~~, on and after that date, a new license under s. 565.02(1)(a)-(f), inclusive, shall be issued for each population increase of 7,500 ~~5,000~~ residents above the number of residents who resided in the county according to the April 1, 1999 ~~1994~~, Florida Estimate of Population as published by the Bureau of Economic and Business Research at the University of Florida, and thereafter, based on the last regular population estimate prepared pursuant to s. 186.901, for such county. Such population estimates shall be the basis for annual license issuance regardless of any local acts to the contrary. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

(2)(a) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(21), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(21), in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that the provisions of this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under the provisions of chapter 509, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under the provisions of chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners; ~~or~~

4. Any restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages; however, no restaurant granted a special license on or after January 1, 1958, pursuant to general or special law shall operate as a package store, nor shall intoxicating beverages be sold under such license after the hours of serving food have elapsed; or-

5. Any caterer, deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, licensed by the Division of Hotels and Restaurants under chapter 509. Notwithstanding any other provision of law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in s. 561.20(1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages, to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this subparagraph, including licensed vendor receipts for the purchase of alcoholic beverages and records identifying each customer and the location and date of each catered event. Notwithstanding any provision of law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in s. 561.20(1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Family Services' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under the provisions of this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under the provisions of this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 7. Paragraph (k) is added to subsection (1) of section 561.29, Florida Statutes, to read:

561.29 Revocation and suspension of license; power to subpoena.—

(1) The division is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient cause appearing of:

(k) Failure by the holder of any license issued under the Beverage Law to comply with a stipulation, consent order, or final order.

Section 8. Subsection (5) of section 561.32, Florida Statutes, is amended, and subsection (6) is added to said section, to read:

561.32 Transfer of licenses; change of officers or directors; transfer of interest.—

(5) The division shall waive the transfer fee and the delinquent penalties, but not the license renewal fee, when the transfer of an interest in an alcoholic beverage license occurs by operation of law because of a death, judicial proceedings, court appointment of a fiduciary, foreclosure or forced

judicial sale, bankruptcy proceedings, or seizure of a license by a government agency.

(6)(a) Notwithstanding any other provision of law, except as provided in paragraph (b), any license issued after October 1, 2000, under s. 561.20(1) shall not be transferable in any manner, directly or indirectly, including by any change in stock, partnership shares, or other form of ownership of any entity holding the license, except by probate or guardianship proceedings. Any attempted assignment, sale, or transfer of interest in such license, directly or indirectly, in violation of this provision is hereby declared void and the license shall be deemed abandoned and shall revert to the state to be issued in the manner provided by law for issuance of new licenses.

(b) A license issued after October 1, 2000, under s. 561.20(1) may be transferred as provided by law only upon payment to the division of a transfer fee in an amount equal to fifty times the annual license fee specified in s. 565.02(1)(b)-(f) in the county in which the license is valid. However, if the county is only authorized for the issuance of a liquor license for package sales only, the transfer fee shall be an amount equal to fifty times the annual license fee specified in s. 565.02(1)(a). The transfer fee provided for in this paragraph shall be in addition to any other transfer fee provided by paragraph (3)(a).

Section 9. Section 561.331, Florida Statutes, is amended to read:

561.331 Temporary license upon application for transfer, change of location, or change of type or series.—

(1) Upon the filing of a properly completed application for transfer pursuant to s. 561.32, which application does not on its face disclose any reason for denying an alcoholic beverage license, by any purchaser of a business which possesses a beverage license of any type or series, the purchaser of such business and the applicant for transfer are entitled as a matter of right to receive a temporary beverage license of the same type and series as that held by the seller of such business. The temporary license will be valid for all purposes under the Beverage Law until the application is denied or until 14 days after the application is approved. Such temporary beverage license shall be issued by the district supervisor of the district in which the application for transfer is made upon the payment of a fee of \$100. A purchaser operating under the provisions of this subsection is subject to the same rights, privileges, duties, and limitations of a beverage licensee as are provided by law, except that purchases of alcoholic beverages during the term of such temporary license shall be for cash only. However, such cash-only restriction does not apply if the entity holding a temporary license pursuant to this section purchases alcoholic beverages as part of a single-transaction cooperative purchase placed by a pool buying agent or if such entity is also the holder of a state beverage license authorizing the purchase of the same type of alcoholic beverages as authorized under the temporary license.

(2) Upon the filing of an application for change of location pursuant to s. 561.33 by any qualified licensee who possesses a beverage license of any type or series, which application does not on its face disclose any reason for denying an alcoholic beverage license, the licensee is entitled as a matter of

right to receive a temporary beverage license of the same series as that license held by the licensee to be valid for all purposes under the Beverage Law until the application is denied or until 14 days after the application is approved. Such temporary license shall be issued by the district supervisor of the district in which the application for change of location is made without the payment of any further fee or tax. A licensee operating under the provisions of this subsection is subject to the same rights, privileges, duties, and limitations of a beverage licensee as are provided by law.

(3) Upon the filing of a properly completed application to change the type or series of a beverage license by any qualified licensee having a beverage license of any type or series, which application does not on its face disclose any reason for denying an alcoholic beverage license, the licensee is entitled as a matter of right to receive a temporary beverage license of the type or series applied for, which temporary license is valid for all purposes under the Beverage Law until the application is denied or until 14 days after the application is approved. Such temporary license shall be issued by the district supervisor of the district in which the application for change of type or series is made. If the department issues a notice of intent to deny the license application for failure of the applicant to disclose the information required by s. 561.15(2) or (4), the temporary license for transfer, change of location, or change of type of series expires and shall not be extended during any proceeding for administrative or judicial review pursuant to chapter 120. If the fee for the type or series or license applied for is greater than the fee for the license then held by the applicant, the applicant for such temporary license must pay a fee in the amount of \$100 or one-fourth of the difference between the fees, whichever amount is greater. A fee is not required for an application for a temporary license of a type or series for which the fee is the same as or less than the fee for the license then held by the applicant. The holder of a temporary license under this subsection is subject to the same rights, privileges, duties, and limitations of a beverage licensee as are provided by law.

(4) Nothing in this section shall be construed to permit the transfer or issuance of temporary licenses contrary to the county-by-county limitation on the number of such licenses based on population as provided in s. 561.20(1).

Section 10. Section 565.05, Florida Statutes, is amended to read:

565.05 Purchase of distilled spirits by licensed clubs; size of individual containers.—It is unlawful for any person holding a license as a club for the sale of distilled spirits to purchase any of said distilled spirits in individual containers larger than 1.75 liters or 59.18 ounces, or smaller than 0.50 liter or 16.9 ounces, except for golf clubs licensed pursuant to s. 561.20(7)(b), which may purchase 50 milliliter or 1.7 ounce containers.

Section 11. Section 565.06, Florida Statutes, is amended to read:

565.06 Clubs to sell only individual drinks.—It is unlawful for any person holding a license as a club for the sale of intoxicating liquors and beverages to sell the same except by the individual drink. However, golf clubs

licensed pursuant to s. 561.20(7)(b) may sell individual containers of 50 milliliters or 1.7 ounces for consumption on the premises only.

Section 12. This act shall take effect July 1, 2000.

Approved by the Governor June 2, 2000.

Filed in Office Secretary of State June 2, 2000.