

CHAPTER 2017-137

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 689

An act relating to the Division of Alcoholic Beverages and Tobacco; amending s. 561.11, F.S.; revising the power and authority of the division to include appointment of division personnel; requiring that certain personnel be assigned to the Selected Exempt Service; amending s. 561.17, F.S.; authorizing the Agency for Health Care Administration to certify that an alcoholic beverage license applicant's place of business meets sanitary requirements; amending s. 561.20, F.S.; revising provisions relating to special licenses to sell alcoholic beverages for licensed caterers; making technical changes; amending s. 561.331, F.S.; removing the fee for transferring or changing the location of a temporary beverage license; amending s. 562.13, F.S.; authorizing minors employed by specified businesses to sell beer and wine under certain circumstances; amending s. 564.01, F.S.; revising a definition; amending s. 565.03, F.S.; revising requirements for an annual state license tax for a distillery and craft distillery; providing an effective date.

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

Section 1. Subsection (2) of section 561.11, Florida Statutes, is amended to read:

561.11 Power and authority of division.—

(2) The division shall have full power and authority to appoint division personnel and provide for the continuous training and upgrading of all such division personnel in their respective positions with the division. Notwithstanding any law to the contrary, chiefs, assistant chiefs, regional managers including majors, and district and office managers including captains shall be assigned to the Selected Exempt Service and their salaries and benefits shall be set by the Department of Management Services in accordance with the rules of the Selected Exempt Service under part V of chapter 110. The This training shall include the attendance of such division personnel at workshops, seminars, or special schools established by the division or other organizations when attendance at such educational programs shall in the opinion of the division be deemed appropriate to the particular position that which the employee holds.

Section 2. Subsection (2) of section 561.17, Florida Statutes, is amended to read:

561.17 License and registration applications; approved person.—

(2) All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and

Restaurants of the Department of Business and Professional Regulation, ~~or the Department of Agriculture and Consumer Services, or the Department of Health, the Agency for Health Care Administration,~~ or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

Section 3. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not 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 super-~~seede 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 that ~~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 that ~~which~~ operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 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 during the first 60-day operating period and each 12-month operating period thereafter. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. 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 subsection (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 and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other 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 subsection (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 Families' 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; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any ~~other provision of law to the contrary~~, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-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 sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does 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 subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

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 4. Subsections (1) and (3) of section 561.331, Florida Statutes, are 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 ~~that~~ 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 ~~without the assessment of any additional fee or tax~~ 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.

(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 ~~without the assessment of any additional fee or tax~~. 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.

Section 5. Paragraph (c) of subsection (2) of section 562.13, Florida Statutes, as amended by Senate Bill 106 or other similar legislation enacted in the 2017 Regular Session or an extension thereof, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

(2) This section shall not apply to:

(c)1. Persons under the age of 18 years who are employed in a retail drugstore, grocery store, department store, florist shop, specialty gift shop, or automobile service station whose license fees are specified in ~~s. 563.02(1), s. 564.02(1), or s. 565.02(1)(a)~~, if such vendor derives 30 percent or less of its monthly gross revenue from sales of alcoholic beverages. This exception applies only if the minor employees are supervised by a person 18 years of age or older who verifies that any purchaser of alcoholic beverages is 21 years of age or older and who approves the sale of alcoholic beverages to such purchaser; however, the requirement for supervision and approval does not apply to the sale of beer and wine. Failure to comply with the restriction on monthly revenue from the sale of alcoholic beverages is unlawful if a person under the age of 18 years is employed in the licensed premises during a month that the restriction is exceeded.

2. Persons under the age of 18 years who are employed in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that has obtained a license to sell only beer or beer and wine when such sales are made for consumption off the premises.

However, a minor to whom this subsection otherwise applies may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity, as defined in s. 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment.

Section 6. Subsection (1) of section 564.01, Florida Statutes, is amended to read:

564.01 Definitions.—

(1) “Wine” means all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer’s taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

Section 7. Paragraph (a) of subsection (2) of section 565.03, Florida Statutes, is amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

(2)(a) A distillery or a craft distillery authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch operating in the state, as follows:

1. A distillery If engaged in the business of manufacturing distilled spirits; ~~a state license tax of \$4,000.~~

2. A craft distillery engaged in the business of manufacturing distilled spirits: \$1,000.

3.2. A person If engaged in the business of rectifying and blending spirituous liquors and nothing else; ~~a state license tax of \$4,000.~~

Section 8. This act shall take effect July 1, 2017.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.