

Title: Florida dbpr (Department of Business & Professional Regulations)
Alcoholic Beverages & Tobacco – Statutes & Rules

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References: Florida Statutes
Chapter 561 – Beverage Law – Administration
Chapter 562 – Beverage Law – Enforcement
Chapter 563 – Beer
Chapter 564 – Wine
Chapter 565 – Liquor
Florida Administrative Code
Chapter 61A-1 – Definitions
Chapter 61A-2 – General
Chapter 61A-3 – Vendors and License

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DISCLAIMER

The Business Practice Committee of the B.P.O. Elks of the State of Florida has prepared this information to assist the Local Lodges of this Fraternal Order. The FSEA Business Practice Committee is neither responsible nor empowered to be responsible for the establishment of such procedures. The Business Practice Committee acts as a resource to assist Local Lodges. You should always consult your Lodge's tax and legal advisors before engaging in any endeavors or transactions to ensure compliance with Federal, State, and Local Laws.

Florida Department of Business and Professional Regulations (dbpr) has issued statutes and rules concerning how alcoholic beverages and tobacco regulations will be followed by all businesses and charity organizations within the State of Florida. It is in the best interest of each Elk Lodge to become very familiar with Florida Statutes and Rules concerning Alcoholic Beverages. **BE AWARE THAT ELK MEMBERS/OFFICERS CAN BE HELD ACCOUNTABLE WHEN THEY DO NOT FOLLOW THE RULES.** The following information is only a short summary on a few of the important parts of the Florida Statutes on serving Alcoholic Beverages and should not be taken lightly.

Every Elk Lodge in the State of Florida must have a "11C" Alcoholic Beverage Club License in order to serve Alcohol within its Lodge. In Florida Statutes, Chapter 561 and Chapter 565, statutes and rules have been written on how the license will be used. Chapter 561.20(7)(a) "There shall be no limitation as to the number of licenses issued pursuant to s.565.02(4). However, any licenses issued under this section shall be limited to: 1. Subordinate lodges or clubs of national fraternal or benevolent associations;" Chapter 565.02(4) specifies an incorporated club will pay an annual State License Tax of \$400.00. This paragraph also says **LODGE OFFICERS CAN BE HELD LIABLE** if the License Tax is not paid. In addition (in part, start at line eleven) "The payment of such club license tax shall authorize the service and distribution to members and non – resident guests of the club only, and such service and distribution to the members and nonresident guests shall not be deemed sales within the meaning of the law in this state; but any service or distribution to anyone other than a member or nonresident guest of such licensed club shall be deemed a sale, and any officer, member, or employee of any such licensed club who sells or distributes or serves any beverages to any person other than a member or non-resident guest of such club for money or other value shall be deemed guilty of

selling such beverages without a license and shall be punished as provided by law.” In other words, if a Lodge is caught selling alcohol beverages to non Elk members, the LODGE can be held ACCOUNTABLE and be PUNISHED as provided by law.

In accordance with Chapter 565.06, Elk Lodges can 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.”

Chapter 565.11 refers to refilling liquor bottles. “Any person who shall reuse or refill with distilled spirituous liquors for the purpose of sale a bottle or other container which has once been used to contain spirituous liquors, or any person who shall willfully misrepresent or permit to be misrepresented the brand of distilled spirits being sold or offered for sale in or from any bottles or containers, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and, when such person is licensed under this law, be subject to have his or her license revoked by the division. The possession of such a refilled or a mislabeled bottle or other container of spirituous liquors shall be prima facie evidence of the violation of this section.”

Florida Administrative Code and Florida Administrative Register, Rule Chapter 61A-3, Chapter Title: Vendors and licenses, identifies several rules that must be followed by every Elk Lodge in the State of Florida. Some of the most important rules to know is:

Rule No. 61A-3.0101 – License Renewals, Fixing Dates by Counties,
Exceptions

Rule No. 61A-3.017 – Management, Operation and Responsibility
Licensed Premises

Rule No. 61A-3.019 – Club Licenses

It is recommended by the Business Practices Committee that every House Committee and all Lodge Officers know the rules under Chapter 61A-3. For example, under rule No. 61A-3.019 Club Licenses item number (1) "Alcoholic beverages may be served only to bona fide club members or to their guests. The payment for such service and distribution must be made only by bona fide club members." Another example, under rule No. 61A-3.019 Club licenses item number (7) "Clubs are prohibited from selling or serving or permitting their service of alcoholic beverages at social functions given at the club by any non-member of the club." There are 12 items under rule No. 61A-3.019 Club Licenses. The House Committee and all Lodge Officers should know all 12 and how they relate to the Lodge.

Chapter 561.422 Nonprofit civic organizations, charitable organizations, municipalities, and counties: temporary permits. This chapter authorizes charitable organizations to obtain a permit for \$25.00 and the period will not exceed 3 days. The alcoholic beverages must be consumed on Lodge premises only. No more than 12 permits can be issued per calendar year and the purchase of alcoholic beverages is only authorized from a distributor or vendor licensed under the Beverage Law. DBPR may adopt rules and conduct audits to ensure compliance with this section.

Florida Administrative Code and Florida Administrative Register, Rule No. 61A-5.0013 Application for Temporary Permit or Special Sales License. Item number (1) repeats the numbers of days a permit is authorized for and number of permits allowed during a calendar year as listed in Chapter 461.422 of the Florida Statutes. Item number (2) identifies what records that must be kept and for how long. All Lodges obtaining a permit MUST HAVE A RECORD of all alcoholic beverages PURCHASED and TOTAL SALES for each EVENT and retain these records for a period of three years.

The exemption code 501(c)(8) issued by the Internal Revenue Service (IRS) allows the Elk Lodges to serve their members and their non-member guest without having to pay taxes on their income. All sales to non-members that are not guest of an Elk will be taxed (UBI).

The Florida Department of Business & Professional Regulation (dbpr) requires each Lodge to obtain a "11C" Alcoholic Beverage License which allows each Lodge to serve their members and their non-member guest alcoholic beverages. NOTE: The non-member guest is NOT ALLOWED TO PAY for their alcoholic beverages. The Elk they are a guest of must pay.

Neither the IRS nor the dbpr allows the Lodges to serve the public anything at any time; however, each one has an exception. Volunteer rule for the IRS and obtaining a not to exceed 3 day Temporary Permit for dbpr. Each one has rules that must be followed and the Lodge must be able to prove with proper documentation, they are following all rules and regulations.

All sales made by a Lodge during a Temporary Permit period will be subject to UBI tax unless the Lodge completes a well documented report proving all sales were made by using volunteer workforce meeting the 85% rule. The name of each volunteer and paid employee must be recorded on the report.

FOR EACH EVENT, THE LODGE MUST HAVE A REPORT THAT CONTAINS:

COST of the Alcoholic Beverages served

TOTAL INCOME from sale of Alcoholic Beverages

COST of food

TOTAL INCOME from sale of food

NAME OF EACH VOLUNTEER and name of paid employee, if any