

## INFORMATIONAL BULLETIN 2021-004

**NOTICE:** When necessary, the Division of Alcoholic Beverages and Tobacco prepares informational bulletins on topics of common public interest and matters of regulatory significance for informational purposes only. Information presented in this Informational Bulletin is not intended to create or modify the Division's requirements or procedures as established in the Florida Beverage Law and the Florida Administrative Code. All actions taken by the Division are based on provisions of Florida law in effect at the time the action is taken by the Division. Applicants, licensees and other interested parties are advised that any Florida law or regulation cited or reproduced for reference herein may have been modified subsequent to the preparation of this document, and accordingly, are encouraged to review current Florida laws and regulations and seek independent counsel if necessary regarding matters regulated by the Division. For inquiries related to subjects addressed in this Informational Bulletin or related matters, please contact the Division's local licensing office in your area. Contact information is available at the following web address: <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/contact/>

### DATE

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Informational Bulletin 2021-004 is based on information available as of November 4, 2021.

### SUBJECT

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Informational Bulletin 2021-004 relates to Theft, Robbery, And Related Crimes, Chapter 812, Florida Statutes, as amended by Chapter 2021-131, Laws of Florida.

### SCOPE

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Informational Bulletin 2021-004 addresses Chapter 2021-131, Laws of Florida, as it relates to the Convenience Business Security Act, hereafter referred to as "the Act."

### APPLICABLE LAWS/RULES

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Sections 812.1701, 812.171, 812.172, 812.1725, 812.173, 812.174, 812.175, and 812.176, Florida Statutes.

### SUMMARY

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#### ***Date Act Became Effective***

On June 21, 2021, Governor DeSantis signed Senate Bill 1040 into law, creating chapter 2021-131, Laws of Florida. The changes to Florida law within the Act took effect on June 30, 2021.

#### ***Laws Amended and Convenience Business Definition***

Chapter 2021-131, Laws of Florida, amends sections 812.173, 812.174, 812.175, and 812.176, Florida Statutes, and transfers the authority to regulate convenience businesses from the Attorney General to the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation. A "convenience business" is defined in section 812.171, Florida Statutes, as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, that is open for business at any time between the hours of 11 p.m. and 5 a.m., and that is licensed by the Division of Alcoholic Beverages and Tobacco, hereafter referred to as "the Division". The term does not include: (1) a business that is solely or primarily a restaurant; (2) a business that always has at least five

employees on the premises after 11 p.m. and before 5 a.m.; (3) a business that has at least 10,000 square feet of retail floor space; or (4) a business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

#### ***Minimum Security Equipment at Convenience Businesses Premises***

Section 812.173, Florida Statutes, requires every convenience business to be equipped with: (a) a security camera system capable of recording and retrieving an image to assist in offender identification and apprehension, (b) a drop safe or cash management device for restricted access to cash receipts, (c) a lighted parking lot illuminated at an intensity of at least 2 foot-candles per square foot at 18 inches above the surface, (d) a conspicuous notice at the entrance which states that the cash register contains \$50 or less, (e) window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area, (f) height markers at the entrance of the convenience business which display height measures, and (g) a cash management policy to limit the cash on hand at all times after 11 p.m. Further, every convenience business shall be equipped with a silent alarm to law enforcement or a private security agency, unless an application for an exemption, which must be in writing and accompanied by an administrative fee of \$25 for each store for which an exemption would apply, is made to and granted by the Division.

#### ***Reporting of Certain Crimes on Convenience Businesses Premises and Enhanced Security Requirements***

If a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment occurs or has occurred at the convenience business since July 1, 1989, and arises out of the operation of the convenience business, the convenience business is required to notify the Division in writing pursuant to section 812.173(4), Florida Statutes. Additionally, within 30 days after a judicial determination that one or more of the aforementioned crimes occurred at the convenience business, the convenience business shall implement at least one of the enhanced security measures set out in subsections 816.173(4)(a)-(e), Florida Statutes. A convenience business may file with the Division a notice of exemption from such enhanced security measures after maintaining such measures for no less than 24 months without any other occurrence or incidence of the crimes listed in section 816.173(4), Florida Statutes.

#### ***Role of the Division and Required Employee Safety Training Curriculum***

Section 812.173, Florida Statutes, gives the Division authority to investigate the premises and records of any licensee to determine whether the licensee is a convenience business and subject to this Act. The Division is also directed to review and approve or disapprove a convenience business' robbery deterrence and safety training curriculum in writing within 60 days after receipt of the proposed curriculum and an administrative fee not to exceed \$100 by section 812.174, Florida Statutes. The curriculum must be submitted for reapproval biennially on or before the date established by rule by the Division. Further, section 812.174, Florida Statutes, provides that no person shall be liable for ordinary negligence due to implementing an approved curriculum for employees if the training was actually provided.

#### ***Violations of Convenience Business Security Act***

If the Division finds a convenience business has violated any provision of the Act, a notice of violation shall be issued and the violator shall have 30 days after receipt of the notice to provide proof of compliance to the Division. If the violation continues after the 30-day period, the Division may impose a civil fine not to exceed \$5,000 pursuant to section 812.175, Florida Statutes.

## FREQUENTLY ASKED QUESTIONS

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### **1. Who is affected by the Convenience Business Security Act?**

The Act applies to “convenience businesses.” Section 812.171, Florida Statutes, defines a convenience business as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, that is open for business at any time between the hours of 11 p.m. and 5 a.m., and that is licensed by the Division of Alcoholic Beverages and Tobacco.

A “convenience business” does not include: (1) a business that is solely or primarily a restaurant; (2) a business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.; (3) a business that has at least 10,000 square feet of retail floor space; or (4) a business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

### **2. What security devices and standards are required to be compliant with the Act?**

Section 812.173(1), Florida Statutes, requires every convenience business to be equipped with: (a) a security camera system capable of recording and retrieving an image to assist in offender identification and apprehension; (b) a drop safe or cash management device for restricted access to cash receipts; (c) a lighted parking lot illuminated at an intensity of at least 2 foot-candles per square foot at 18 inches above the surface; (d) a conspicuous notice at the entrance which states that the cash register contains \$50 or less; (e) window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area; (f) height markers at the entrance of the convenience business which display height measures; and (g) a cash management policy to limit the cash on hand at all times after 11 p.m.

Additionally, a convenience business shall not have window tinting that reduces exterior or interior view in a normal line of sight and shall be equipped with a silent alarm to law enforcement or a private security agency. However, a silent alarm may not be required if an application for an exemption and an administrative fee of \$25 for each store for which an exemption would apply is made to and granted by the Division of Alcoholic Beverages and Tobacco.

### **3. When is a convenience business required to implement enhanced security measures under the Act?**

Section 812.173(4), Florida Statutes, requires implementation of at least one enhanced security measure within 30 days after a judicial determination that a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment, as those crimes are identified and defined by Florida Statutes, has occurred at a convenience business.

**4. What actions must a convenience business take when it is required to implement enhanced security measures?**

If one or more of the crimes described in the answer to question 4 above occurs or has occurred at a convenience business, and arises out of the operation of the convenience business, that convenience business shall notify the Division of Alcoholic Beverages and Tobacco in writing and shall implement at least one of the following security measures within 30 days after a judicial determination that the crime(s) occurred at the convenience business:

- (a) Provide at least two employees on the premises at all times after 11 p.m. and before 5 a.m.;
- (b) Install for use by employees at all times after 11 p.m. and before 5 a.m. a secured safety enclosure of transparent polycarbonate or other material that meets at least one of the following minimum standards:
  - 1. American Society for Testing and Materials Standard D3935 (classification PC110 B 3 0800700) and that has a thickness of at least 0.375 inches and has an impact strength of at least 200 foot pounds; or
  - 2. Underwriters Laboratory Standard UL 752 for medium power small arms (level one), Bullet Resisting Equipment;
- (c) Provide a security guard on the premises at all times after 11 p.m. and before 5 a.m.;
- (d) Lock the business premises throughout the hours of 11 p.m. to 5 a.m., and only transact business through an indirect pass-through trough, trapdoor, or window; or
- (e) Close the business at all times after 11 p.m. and before 5 a.m.

**5. What type of training should a convenience business provide its employees to be compliant with the Act?**

Convenience businesses shall provide proper robbery deterrence and safety training by an approved curriculum to its retail employees within 60 days of employment. The Division shall review and approve or disapprove a proposed curriculum. Approval shall be given to a curriculum that trains and familiarizes retail employees with the security principles, devices, and measures required by section 812.173, Florida Statutes.

**6. What is the current process for the Division to review a convenience business' employee training and is there a fee for the review?**

The Division will continue to honor the approval of all trainings previously reviewed and approved by the Attorney General. Licensees who need to have their training approved may submit their employee training for review by the Division to the following email address: [cstore@myfloridalicense.com](mailto:cstore@myfloridalicense.com). The Division shall review and approve or disapprove a proposed curriculum in writing within 60 days after receipt of a proposed curriculum submitted in writing and any required fee. At this time there is no fee for the Division to review training curriculum because the Division has not adopted the fee by rule. At this time there is also not a date set by rule for licensees to provide their training curriculum to the Division for reapproval every two years.

The Division has started the process to adopt a formal rule that will detail the process to approve a convenience business' employee training and set the fee amount. A Notice of Development was published in the Florida Administrative Register stating the Division intends to adopt three new rules pursuant to the authority within the Act. The

notice is available at: <https://www.flrules.org/gateway/ruleNo.asp?id=61A-8.001>. Additional notices related to these rules will be posted at the link above as they are available.

**7. How long must a business continue to maintain an enhanced security measure?**

Any convenience business that by law implemented and maintained an enhanced security measure as required by the Division of Alcoholic Beverages and Tobacco without any occurrence or incidence of the crimes identified in section 812.173(4), Florida Statutes, for a period of no less than 24 months immediately preceding the filing of a notice of exemption, may file with the department a notice of exemption from these enhanced security measures.

**8. Has the Division adopted rules related to the Act?**

No. On November 1, 2021 the Division issued a Notice of Development in the Florida Administrative Register stating that it intends to adopt three new rules pursuant to the authority within the Act. The notice is available at: <https://www.flrules.org/gateway/ruleNo.asp?id=61A-8.001>. Additional notices related to these rules will be posted at the link above as they are available.

**9. Has the Division entered into any agreements with local governments to assist in the enforcement of sections 812.1701-812.175, Florida Statutes?**

No. At this time, the Division has not entered into any agreements regarding the Act, and intends to enforce the act through the use of its sworn and non-sworn members. However, local law enforcement agencies may continue to perform their lawful duties at convenience businesses within their respective jurisdictions on behalf of their agencies, rather than on behalf of the Division under the authority of the Act.