

<b>FILED</b>	
Department of Business and Professional Regulation	
AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	4/29/2020
File #	2020-02751

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

IN RE:

JON L. WHITEHOUSE PETITION FOR  
DECLARATORY STATEMENT,

DABT CASE NO.: 2020-003468  
DS: 2020-007

Petitioner.

**DS 2020-007**

**FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT**

The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("Division"), pursuant to Rule 28-105.003, Florida Administrative Code ("F.A.C."), files this Final Order on the Petition for Declaratory Statement ("Petition") requested on behalf of John L. Whitehouse ("Petitioner").

**ISSUE PRESENTED**

1. Petitioner requests a declaratory statement on whether Petitioner's intended business plan to manufacture and sell alcohol infused gelatin would require Petitioner to obtain an alcoholic beverage license from the Division. Petitioner frames the issue as three separate questions as follows:

- (a) Whether Petitioner's alcohol infused gelatin can be considered a beverage;
- (b) If it is not a beverage, is it subject to current licensing and regulation under the Beverage Law as an alcoholic beverage; and,
- (c) If Petitioner's alcohol infused gelatin is subject to the Beverage Law, which license would apply to Petitioner.

**FINDINGS OF FACT**

2. Petitioner is a natural person with an address of 2805 Glyn St., Orlando, Florida 32807.

3. Petitioner does not hold an alcoholic beverage license with the Division. Nor has Petitioner submitted an application to the Division for any type of alcoholic beverage license.

4. On or about January 17, 2020, Petitioner submitted the Petition to the Division, requesting that the Division provide a declaratory statement on the issues presented within. A copy of the Petition is attached hereto as **Exhibit A** and is incorporated by reference.

5. On January 23, 2020, the Division published notice of its receipt of the Petition in Volume 46, Number 16 of the Florida Administrative Register ("F.A.R.").

6. The notice provided that motions for leave to intervene must be filed within twenty-one days after the date the notice was published. *See Fla. Admin. Code R., 28-105.0027.* No motions to intervene were received.

7. On February 24, 2020, Petitioner provided additional documentation to the Division ("Supporting Documentation"). A copy of Petitioner's Supporting Documentation is attached as **Exhibit B** and is incorporated by reference.

8. The Petition indicates that Petitioner will produce and sell "Jell-o-shots" that contain alcohol to consumers on a made to order basis.

9. According to Petitioner's Supporting Documentation, the business will: a) provide a service of labor that customers do not wish to do themselves; b) not be a mass producer of its retail product; and c) purchase all alcohol from local retail stores.

10. Additionally, Petitioner asserts his customers will be allowed to bring their preferred choice of alcohol onto the premises to be infused into gelatin.

11. The conclusion of this Final Order is based on the facts described in the Petition, Supporting Documentation, and the particular factual assertions described therein. All of the facts presented in the Petition and Supporting Documentation were duly considered and form the basis of this Final Order. For the following reasons, Petitioner's first and second inquiries are granted and answered, and Petitioner's third inquiry is denied as set forth below.

### **CONCLUSIONS OF LAW**

12. The Division has jurisdiction over this matter. *See* §§ 120.565, 561.02, 561.08, and 561.11, Fla. Stat. The Division is responsible for the administration, regulation, and enforcement of chapters 561 through 568, Florida Statutes, commonly referred to as the "Beverage Law." *See* § 561.02, Fla. Stat.

13. Section 561.01(4)(a) defines alcoholic beverages as "distilled spirits and all alcoholic beverages containing one-half of 1 percent or more alcohol by volume." Florida's Beverage Law contains no definition of the term "beverage."

14. "In ascertaining the plain meaning of statutory language, consulting dictionary definitions is appropriate." *State v. Weeks*, 202 So. 3d 1, 7 (Fla. 2016).

15. The *Merriam-Webster Dictionary* defines "beverage" as "a drinkable liquid."<sup>1</sup>

16. The *Merriam-Webster Dictionary* also defines "gelatin" as "glutinous material obtained from animal tissues by boiling *especially*: a colloidal protein *used as a food*, in photography, and in medicine."<sup>2</sup> (emphasis added).

17. Petitioner's gelatin product as described is not a drinkable liquid, so it is not a "beverage" in the traditional sense.

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<sup>1</sup> "Beverage." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/beverage>. Accessed 2 Mar. 2020.

<sup>2</sup> "Gelatin." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/gelatin>. Accessed 2 Mar. 2020.

18. However, the statutory definition of “alcoholic beverages” includes more than just beverages; in 1986, the Legislature amended the definition of “alcoholic beverages” to add “distilled spirits.” *See* Ch. 86-269, Laws of Florida.

19. At the same time, the Legislature amended the definition of “distilled spirits” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine *in any form*, including *all dilutions and mixtures* thereof from whatever source or *by whatever process produced.*” *Id.* (codified at § 565.01, Fla. Stat.) (emphasis added). Based on this amendment, “distilled spirits” is no longer restricted to “spirituous beverages created by distillation and by mixture of distilled beverages by what is commonly termed ‘blending.’” *Id.*

20. Accordingly, pursuant to section 565.01, Florida Statutes, the definition of “alcoholic beverages” is not limited to products capable of consumption only as a drinkable liquid. Although Petitioner’s product as described is not a drinkable liquid, if it contains “ethyl alcohol, ethanol, or spirits of wine in any form,” it would be subject to the Beverage Law. *Id.*

21. The Division has previously deemed a similar product made with distilled spirits to fall within the scope of the Beverage Law. *See In re: Fitzpatrick Enterprises, Inc.*, DS 2000-026.

22. In *Fitzpatrick Enterprises*, the Division concluded that a product known as “cosmic jelly” was subject to regulation under the Beverage Law, and the producer of the product also subject to licensure as a manufacturer. In so concluding, the Division mentioned as noteworthy the fact that “cosmic jelly” began as a liquid mixture before the proposed manufacturing process altered it into a gel-like substance, which could be re-liquified through the application of high heat.

23. Petitioner's reference to the "Jell-O" brand suggests he would undertake a similar process to the one proposed in *Fitzpatrick Enterprises*.

24. Petitioner's proposed gelatin product also does not appear to fit within an exception to the Division's scope of regulation for ethyl alcohol intended for scientific, chemical, mechanical, industrial, or medicinal purposes; patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific chemical, mechanical or industrial preparations, or products unfit for beverage purposes; or flavoring extracts and syrups, unfit for beverage purposes. See § 561.02, Fla. Stat.

25. For these reasons, Petitioner's alcohol-infused gelatin, if made with distilled spirits, would be subject to current licensing and regulation under the Beverage Law as an alcoholic beverage.

26. Regarding Petitioner's third question, there are a number of licenses under the Beverage Law potentially implicated by Petitioner's proposed business plan, and depending on Petitioner's exact conduct, Petitioner could be required to obtain an appropriate license from the Division.

27. If Petitioner intends to produce the gelatin product for distribution at wholesale to licensed distributors, Petitioner may be subject to licensure by the Division as a manufacturer, and if qualified, entitled to a license for that purpose. See §§ 561.01(7), 561.14(1), Fla. Stat. If Petitioner only intends to sell the product at retail, Petitioner is subject to licensure by the Division as a vendor, and if qualified, entitled to a license for that purpose. See § 561.14(3), Fla. Stat.

28. Additionally, to the extent that Petitioner permits patrons to bring alcoholic beverages in liquid form to his place of business, Petitioner may be subject to regulation<sup>3</sup> as a “bottle club” as defined in section 561.01(15), Florida Statutes.


29. Given the Petitioner’s lack of a sufficiently detailed explanation of his precise business model, the Division declines to answer Petitioner’s third question. *See* § 120.565(2), Fla. Stat.

### CONCLUSION

Having considered the facts and circumstances set forth in the Petition and Supporting Documentation, it is ORDERED that the Division hereby GRANTS IN PART and DENIES IN PART Petitioner’s Petition for Declaratory Statement on behalf of Jon L. Whitehouse, and answers Petitioner’s inquiry as set forth above. Accordingly, these conclusions have no application in the event that the factual circumstances described herein are incorrect or change. The conclusion relies on the application of the provisions of the Beverage Law in effect as of the date of this order, and may not apply in the future if provisions of the Beverage Law pertinent to this conclusion are modified.

DONE and ORDERED in Tallahassee, Florida this 29<sup>th</sup> day of April, 2020.



  
R. Sterling Whisenhunt, Director  
Division of Alcoholic Beverages and Tobacco

<sup>3</sup> Section 561.14(6), Florida Statutes, specifies “It is the finding of the Legislature that bottle clubs are susceptible to a distinct and separate classification under the Beverage Law for purposes of regulating establishments permitting the consumption of alcoholic beverages. *Any person operating a bottle club must be licensed pursuant to this chapter and may not hold any other alcoholic beverage license for such premises while licensed as a bottle club.* Nothing in this subsection shall be construed to permit the purchase at wholesale or retail of alcoholic beverages for supplying or reselling to the patrons pursuant to a license issued under this chapter.”

**NOTICE OF RIGHT TO APPEAL UNLESS WAIVED**

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and section 120.68, Florida Statutes.

**CERTIFICATE OF SERVICE**

I hereby certify that the preceding FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT has been provided via U.S. Mail and email to the following party on this 29<sup>th</sup> day of April, 2020.

Jon L. Whitehouse  
2805 Glyn St.  
Orlando, Florida 32807  
[valcrow@cfl.rr.com](mailto:valcrow@cfl.rr.com)

  
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RONDA BRYAN, AGENCY CLERK  
Department of Business & Professional Regulation

**Copies furnished to:**

R. Sterling Whisenhunt, Director  
Raymond Treadwell, General Counsel  
Ross Marshman, Deputy General Counsel  
Megan Kachur, Chief Attorney

# Petition for Declaratory Statement Before the Florida Division of Alcoholic Beverages and Tobacco

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/17/2020
File #	

Jon L. Whitehouse  
2805 Glyn St.  
Orlando, FL 32807  
email: [valcrow@cfl.rr.com](mailto:valcrow@cfl.rr.com)  
Ph #: 321 239-2208

**DS 2020-007**

## Licenses and Permits for Alcoholic Beverages

A Declaratory Statement is being sought for the purpose of determining and assuring, that all proper compliance issues involving a retail business that will produce and sell alcohol infused Jell-o-shots, are clearly and legally defined. The purpose of this retail business is to provide a service that will infuse liquid alcohol into a gelatin form.

- 1) 561.01(4)(a) "Alcoholic beverages" means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

Under the current licensing and permitting rules, there is no language that describes what regulations govern the sale of alcohol held in gelatin form.

In all dictionaries, a beverage is commonly defined as any drinkable liquid. With this definition in mind, can alcohol infused gelatin be considered a beverage? If it is not a beverage, is it subject to current licensing and regulation as an alcoholic beverage? If it is, what license would apply?

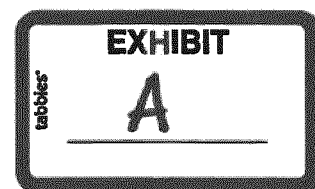
This issue is at the heart of a new retail opportunity whose main objective is a business that offers a service of labor that infuses alcohol in gelatin.

Jon Whitehouse

**DBPR**

**JAN 21 2020**

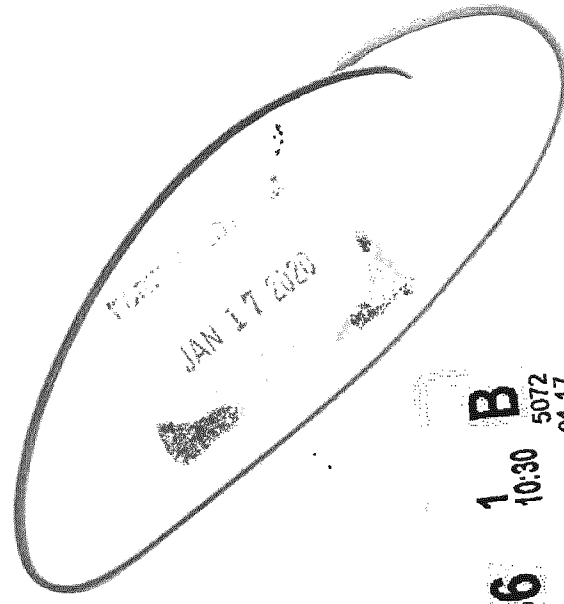
**OGC-ABT**





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ORIGIN ID:ORLA (000) 000-0000  
JONATHAN WHITEHOUSE

2805 GLYN ST

ORLANDO, FL 32807  
UNITED STATES US

SHIP DATE: 16 JAN 20  
ACTWT: 0.10 LB  
CAD: 6992104/S6F02021

BILL CREDIT CARD

TO MEGAN KACHUR

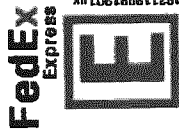
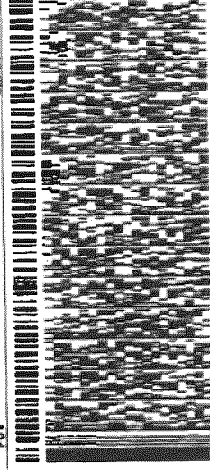
ATTN: LICENSE  
2601 BLAIR STONE RD

TALLAHASSEE FL 32399

(000) 000-0000  
UNIT  
F01

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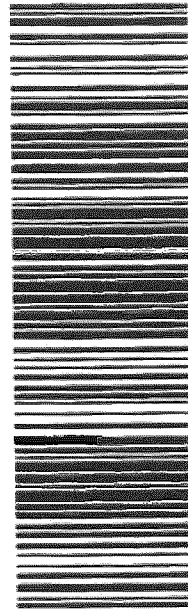
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FL-US TLH



Part # 156227-435 HRC-B EXP 08/20  
587373/587373/0520

## **Johnson, Rachal**

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**From:** Kachur, Megan  
**Sent:** Monday, March 02, 2020 2:11 PM  
**To:** Knowles, John  
**Cc:** Johnson, Rachal  
**Subject:** FW: Additional information

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI some additional information submitted for the petition for declaratory statement that you're assigned to, and I just don't remember the number off-hand.

Rachal, please add the below to the petition's file. Thank you!

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**From:** McGinn, Daniel  
**Sent:** Monday, March 02, 2020 2:05 PM  
**To:** Kachur, Megan  
**Subject:** FW: Additional information

Good afternoon Megan,

I think this may have been directed to the Chief of Staff as a result of his prior role, but I think it should have gone to you and your team.

-Dan

**From:** Philpot, Thomas  
**Sent:** Monday, March 2, 2020 2:03 PM  
**To:** Whisenhunt, Sterling; McGinn, Daniel  
**Subject:** FW: Additional information

For your review.

TP

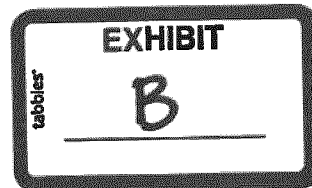
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**From:** Jon L Whitehouse [mailto:[valcrow@cfl.rr.com](mailto:valcrow@cfl.rr.com)]  
**Sent:** Monday, February 24, 2020 7:02 PM  
**To:** Philpot, Thomas  
**Subject:** Re: Additional information

Mr. Philpot, I hope you will find this additional information helpful.

Jon

Business



The business I am proposing is like any other retail business. This business will provide a service of labor that customers do not wish to do themselves. Like most any other retail enterprise, it is based on serving a particular need of either simple convenience, or not possessing the skills and/or creativity to achieve a desired, presentable result. Where this business differs from most retail endeavors is, we are not a mass producer of our retail product.

This is a customized, made to order product that is determined entirely by the customer. They choose the color, flavor, and what alcohol is infused into the gelatin. With this business, they can now choose what form the Jell-O-Shot will be. Due to the nature and chemistry of alcohol when infused in gelatin, Jell-O-Shots can not be produced with alcohol greater than 80 proof because the gelatin simply will not gel. 50 proof is the most common alcohol used for Jell-O-Shots. Because of the limitations of this chemistry, no Jell-O-Shot contains an actual, full shot of alcohol. Basically, all Jell-O-Shots are only half shots.

### Alcohol

This business is designed to provide a basic service of labor, as well as a level of creativity not currently available anywhere. The customized nature of this business makes it impossible, if not, impracticable to purchase alcohol through tax exempt. This is why I came to the decision to purchase all alcohol at retail prices, from local retail stores. Since I can't possibly know what alcohol each customer will choose, the amount of alcohol I would need to have on hand would be enormous, as well as being an inefficient misuse of capital and simple storage space. Customers can also bring their preferred choice of alcohol to be infused into gelatin.

This unique creativity is the animating point of this business.

### Legal and Liability

I have spent considerable money on lawyers with experience in matters related to alcohol, alcohol licensing, and business liability associated with the business of alcohol and its myriad of uses. I was pleased to find that they agreed with me on my layman's interpretation of the possible questions, and the legal solutions to providing a product that has alcohol listed as a main ingredient. Because there will be no alcohol infused Jell-O-Shot consumption inside, or outside the retail store, my legal liabilities are the same as any retail store that sells alcoholic beverages for people to consume at their private residence. Of course, the standard State of Florida minimal health requirements for a food service business must be observed for an occupational license to be issued.

Having owned and operated a restaurant with a full liquor license, all of the standard protocols for assuring age compliance per state law will be fully enforced. I will have an extra protocol that will require that the legal aged adult paying for the alcohol infused Jell-O-Shots must sign a brief statement attesting that they will not serve these alcohol infused Jell-O-Shots to persons who are not 21 years of age or older. My business model is geared toward professional, upscale customers, not frat house party boys slurping lime shooters out of solo cups. For the most part, these alcohol infused Jell-O-Shots are consumed as just the opening appetizer to a party, not the sole source of alcohol consumption.

### Transportation

So as to prevent any customer from being charged with having an open container of alcohol in a moving vehicle; which was confirmed to me they could be, by the Orange County Sheriffs Office, all containers holding alcohol infused Jell-O-Shots will be sealed with security tape. If the security tape is not removed, it will clearly show that it has not been opened. Otherwise, the alcohol infused Jell-O-Shots would have to be transported in the trunk of the vehicle, where the driver and/or passengers could not access them while driving. In the trunk of the car,....in Florida? Not a good idea.