

**29.4 [UNLAWFULLY SELLING ALCOHOLIC BEVERAGES AT A  
COMMERCIAL ESTABLISHMENT] [KEEPING AND MAINTAINING A PLACE  
WHERE ALCOHOLIC BEVERAGES ARE SOLD OR INTENDED TO BE SOLD  
UNLAWFULLY]**

§ 562.12(1)(b), Fla. Stat.

**To prove the crime of** (crime charged), **the State must prove the following element beyond a reasonable doubt:**

*Give 1a or 1b as applicable.*

1. a. (Defendant) **unlawfully sold an alcoholic beverage at a commercial establishment.**

b. (Defendant) **kept and maintained a place where alcoholic beverages were sold or intended to be sold unlawfully.**

**The Court instructs you that it is unlawful to sell an alcoholic beverage [without a license to do so issued by the Department of Business and Professional Regulation] [in a way not permitted by an alcoholic beverage license issued by the Department of Business and Professional Regulation] [(insert applicable unlawful way to sell alcohol)].**

*§ 561.01, Fla. Stat.*

**An “alcoholic beverage” means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though the remainder ingredients were distilled water.**

**“Sold” means any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under the Beverage Law.**

**Lesser Included Offenses**

**[UNLAWFULLY SELLING ALCOHOLIC BEVERAGES AT A COMMERCIAL  
ESTABLISHMENT] [KEEPING AND MAINTAINING A PLACE WHERE ALCOHOLIC  
BEVERAGES ARE SOLD OR INTENDED TO BE SOLD UNLAWFULLY]**

**—§ 562.12(1)(b)**

| <b>CATEGORY ONE</b>                                      | <b>CATEGORY TWO</b> | <b>FLA. STAT.</b> | <b>INS. NO.</b> |
|----------------------------------------------------------|---------------------|-------------------|-----------------|
| Unlawful Sale of Alcohol (only if element 1a is charged) |                     | 562.12(1)(a)      | --              |
|                                                          | Attempt             | 777.04(1)         | 5.1             |



### **Comments**

A second violation of § 562.12(1), Fla. Stat., bumps a third degree felony up to a second degree felony. *See* § 562.12(2), Fla. Stat. As of January 2025, it is unclear whether the existence of a prior violation should be treated as an element of the crime that must be found by the jury or whether a prior violation can be proven to the judge at sentencing. If treated as an element, it would be error to inform the jury of a prior violation before a verdict. Therefore, if the information or indictment contains an allegation of a prior violation, do not read the allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a previous violation would be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted on February 21, 2025.