

**STORAGE NAME:** h1529.rs  
**DATE:** March 17, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REGULATED SERVICES  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1529 (PCB RS 97-01a)

**RELATING TO:** Alcoholic beverages; preempting alcoholic beverage regulation to the state; prohibiting use of licensed premises (RAVES)

**SPONSOR(S):** Committee on Regulated Services, Representatives Morroni, Fasano and Tobin

**STATUTE(S) AFFECTED:** Sections 561.02, 562.14 & 562.45, Florida Statutes

**COMPANION BILL(S):** SB 470

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) REGULATED SERVICES YEAS 11 NAYS 0
- (2)
- (3)
- (4)
- (5)

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**I. SUMMARY:**

The bill provides the express legislative intent that the primary regulatory authority over the activities of alcoholic beverage licensees remains with the Division of Alcoholic Beverages and Tobacco. However, the bill does not affect or impair the enactment or enforcement of local zoning, land development or comprehensive plan regulation or other power authorized by Article VIII, Sections 1 and 5. When enacting ordinances designed to promote and protect the general health, safety and welfare of the public, the bill requires local governments treat alcoholic beverage licensees in a nondiscriminatory manner.

The bill prohibits certain premises licensed for the sale of alcoholic beverages to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited. This prohibition is in response to a growing phenomena known as RAVES. RAVES are all night dance parties frequently held in vacant warehouses, fields and more recently in licensed alcoholic beverage establishments. RAVES typically begin in the early morning hours, often after the hours in which alcoholic beverages may be legally sold, and may continue until 9:00 or 10:00 A.M. RAVES attract large numbers of youth under the age of 18 and have been associated with a high incidence of underage drinking and illegal drug use. The bill provides an exception for the use of a licensed premises on Sundays after 8:00 A.M.

The economic impact of this bill is expected to be insignificant, although indeterminable.

The act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Powers of Local Governments**

The regulation of the sale of alcoholic beverages in the State of Florida is governed by the Federal and State Constitutions as well as federal statutes, state statutes and some local ordinances.

The 21st Amendment to the U. S. Constitution, which repealed prohibition, restricted congressional power to authorize the transportation and importation of alcoholic beverages into a state in violation of that state's laws. By so doing, the amendment gave each state power to regulate and restrict the sale and distribution of alcoholic beverages within their individual borders, unhampered by the restrictions of the "commerce clause" of the U. S. Constitution.

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." U. S. Const. Amend. XXI, s.2.

Article VIII of the Constitution of the State of Florida establishes the authority of local governments. Section 1 gives counties the power of self-government not inconsistent with general or special law and authorizes county ordinances not inconsistent with general law. Section 2 grants governmental, corporate and proprietary powers to municipalities and provides that municipalities may exercise any power for municipal purposes, except as otherwise provided by law. Further, Article VIII, sections 5 and 6 reserve to the counties the option of deciding whether the county shall allow the sale of alcoholic beverages.

Chapter 125, Florida Statutes, sets forth statutory authority of county commissions and authorizes the establishment and enforcement of regulations for the sale of alcoholic beverages pursuant to general law. Similarly, chapter 166 sets forth statutory authority for municipalities and states that the provisions contained in that chapter shall be construed to secure for municipalities the broad exercise of home rule powers granted by the constitution other than those expressly prohibited.

The Beverage Law consists of chapter 561 relating to administration, chapter 562 relating to enforcement, chapters 563, 564 and 565 relating to beer, wine and liquor; and chapters 567 and 568 relating to wet and dry county elections. The Beverage Law requires a person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages. The sale of alcoholic beverages is generally considered to be a privilege and as such, licensees are held to a high standard of accountability.

Section 561.02 grants broad authority to the Division of Alcoholic Beverages and Tobacco (DABT), Department of Business and Professional Regulation to administer and enforce the Beverage Law. Specifically, that statute requires DABT to:

“...supervise the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages and shall enforce the provisions of the Beverage law...”

Chapter 567 of the Beverage Law sets forth the procedure for counties to hold local option elections for the purpose of determining whether that county will allow the sale of alcoholic beverages and chapter 568 sets forth penalties for the sale of alcoholic beverages in counties where prohibited. Certain other areas of responsibility in the Beverage Law have been delegated to counties or municipalities by statute. Specifically, s. 562.45, F.S., grants zoning authority as well as authority to enact ordinances regulating the type of entertainment, hours of operation, and conduct permitted in licensed beverage establishments, including bottle clubs, to counties and municipalities. In addition, s. 562.14, F.S., prohibits alcoholic beverages from being sold, consumed, served or permitted to be served or consumed in a licensed premises between the hours of midnight and 7:00 A.M. of the following day, unless provided otherwise by county or municipal ordinance.

The Courts have interpreted these statutes to be a grant of the state’s 21st Amendment powers to municipalities and counties except where the authority is expressly preempted to the state or in the case of an ordinance which conflicts with a state regulatory scheme which is so pervasive that it completely occupies the field in question.

The Florida Constitution and the statutes thus imbue the City with the state’s full police powers, including those under the Twenty-first amendment, except those powers expressly preempted. (Emphasis the Court’s) See City of Daytona Beach v. DelPercio, 476 So.2d 197,201 (Fla. 1985)

In a decision concerning the validity of an ordinance requiring a health warning sign in certain establishments, *Hillsborough County v. Florida Restaurant Association, Inc.*, 603 So.2d 587 (Fla. 2 DCA 1992), the court held that in order to find an express preemption, the state statute must expressly refer to signage requirements. The Court upheld the signage ordinance as a proper exercise of the county’s police powers and concluded that the cited statute, s. 562.45, did not provide an exclusive list of subject matters upon which counties or cities may enact local ordinances.

### **Alcoholic Beverage License Classifications**

Alcoholic beverage licenses are issued either for consumption on the licensed premises (COP) or for package sales (APS). There is no limitation on the number of beer and wine retail licenses which may be issued in the state. There is, however, a limit on the number of “quota” licenses which may be issued based on population: one license for every 5,000 residents in a county. A quota license allows the sale of all alcoholic beverages (beer, wine and liquor) for either consumption on or off the vendor’s licensed premises. Liquor package stores and bars and nightclubs typically operate under the authority of a quota license.

In addition, there are numerous special license classifications which also allow the sale of all alcoholic beverages. For instance, s. 561.20, F.S., authorizes the issuance of a special liquor license to hotels, condominium associations, restaurants, boards of county

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commissions, airports, etc., if they meet specified statutory qualifications. These special license classifications were designed to enhance the operation of a business but are ancillary to the principal purpose of the business, e.g., a special restaurant license.

Section 561.01(11), F.S., provides a definition for a licensed premises and includes all rooms in the building which are so closely connected therewith as to admit free passage from drink parlor to other rooms over which the licensee has some dominion or control, and further includes all of the area included on the sketch which is required to be submitted by the licensee.

**B. EFFECT OF PROPOSED CHANGES:**

The bill amends ss. 561.02 and 562.45, F.S., in an attempt to clarify the authority of the state and local governments regarding the regulation of alcoholic beverages. Legislative intent language is added to s. 561.02, F.S., which specifies that the state retains primary regulatory authority over alcoholic beverage licensees.

A new subsection (3) is added to s. 562.45, F.S., which specifies that a local government may not enact any ordinance that regulates or prohibits "those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco."

Subsection (3) also requires local governments, acting under their home rule authority to enact ordinances designed to promote and protect the health, safety and welfare of the public, to treat an alcoholic beverage licensee in a nondiscriminatory manner which is consistent with the manner of treatment of any other lawful business. Present law allows local governments to enact ordinances regulating the hours of operation and location of businesses selling alcoholic beverages, the type of entertainment and conduct allowed and in certain other areas, such as sanitary conditions. This new subsection recognizes the need for some regulations to address specific areas, such as those just mentioned, and provides that in those instances an alcoholic beverage licensee may be treated in a manner which is different than the manner of treatment for other businesses.

Further, the bill amends s. 562.14(2), F.S., to prohibit establishments which sell alcoholic beverages for consumption on the vendor's licensed premises from allowing the licensed premises to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited. This prohibition applies only to licensees whose principal business is the sale of alcoholic beverages, such as bars, and does not include special license classifications such as those issued to restaurants. The bill provides that a violation of this prohibition constitutes a second degree misdemeanor.

Lastly, the bill provides an exception to the prohibition contained in s. 562.14(2) which allows the rental, lease or other use of the licensed premises on Sundays after 8:00 A.M.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill prohibits certain alcoholic beverage licensees from renting, leasing, or otherwise allowing the use of the licensed premises during hours in which alcoholic beverages are prohibited from being sold.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

See 4.a. above.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Insignificant. The DABT will incur the expense of notifying alcoholic beverage licensees of the prohibition contained in the bill.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None, however, the inability of a vendor to lease the licensed premises during the hours the vendor is prohibited by law from selling alcoholic beverages may result in future lost income for the vendor.

2. Direct Private Sector Benefits:

Unknown.



3. Effects on Competition, Private Enterprise and Employment Markets:

See C.1. above.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

The amendments to s. 562.14, F.S., contained in this bill are in response to a growing phenomena known as "RAVES." RAVES are all night dance parties frequently held in vacant warehouses, fields and more recently in licensed alcoholic beverage establishments. RAVES typically begin at 2:00 or 3:00 A.M., after the hours at which alcoholic beverages may be legally sold and may continue until 9:00 or 10:00 A.M., or later. RAVES attract large crowds of young people under the age of 18 and have been associated with a high incidence of underage drinking and illegal drug use.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

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