

STORAGE NAME: h3787s1z.rs
DATE: May 14, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

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

BILL #: CS/HB 3787

RELATING TO: Alcohol and tobacco sales

SPONSOR(S): Committee on Regulated Services and Representative Morroni

COMPANION BILL(S): SB 1680 (s)

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

- (1) REGULATED SERVICES YEAS 11 NAYS 0
- (2) CRIME & PUNISHMENT
- (3) FINANCE & TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. FINAL ACTION STATUS:

This bill died in the Committee on Crime & Punishment. One provision included in this legislation, however, passed as an amendment to SB 720. [See **SB 720** for details.]

II. SUMMARY:

This bill has three primary components dealing with the regulation and sales of alcoholic beverages and tobacco products. First, the bill amends various sections of the statutes to grant clear authority for law enforcement officers to utilize persons under the lawful age to purchase or possess alcoholic beverages or tobacco to test vendor compliance with the laws and to authorize the underage person's possession of these products while working in conjunction with law enforcement.

Second, the bill prohibits any new establishment which sells alcoholic beverages for consumption on premises from locating within 500 feet of a public or private school, unless the appropriate local governing body determines, in a public hearing, that the location promotes the health, safety and general welfare of the community.

Third, the bill allows a county, which has already voted to allow the package sales of alcoholic beverages, to hold a local option election on the sole question of also allowing sales for consumption on premises.

The bill has no economic impact on state revenues. Failure to meet federal standards for enforcement of the state's law prohibiting sales of tobacco products to underage persons could, however, result in the loss of significant federal grants used for the treatment of substance abuse problems.

The bill will take effect upon becoming a law.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Alcohol and Tobacco Vendor Compliance Checks

Section 562.11, Florida Statutes, prohibits the sale, gift or service of alcoholic beverages to persons under the age of 21. Section 569.101, Florida Statutes, prohibits the sale, delivering, bartering, furnishing or gift of tobacco products to persons under the age of 18. Section 562.111, Florida Statutes, prohibits the possession of alcoholic beverages by persons under the age of 21 and s. 569.11, Florida Statutes, prohibits the possession of tobacco products by persons under the age of 18.

The Division of Alcoholic Beverages and Tobacco (DABT) of the Department of Business and Professional Regulation, as well as other law enforcement agencies, routinely utilize persons under the age of 21 to test vendor compliance with s. 562.11, Florida Statutes, and also utilize persons under the age of 18 to test vendor compliance with s. 569.101, Florida Statutes. Both criminal and administrative cases have been made against licensees as a result of sales made to these underage operatives. Absent the use of underage operatives, law enforcement agencies must rely solely on surveillance operations which is manpower intensive and, therefore, not cost effective.

Subsection (7) of s. 569.002, Florida Statutes, provides that "any person under the age of 18" *does not include* a person who:

- (a) Has had his or her disability of nonage removed under chapter 743;
- (b) Is in the military reserve or on active duty in the Armed Forces of the United States;
- © Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility;
- (d) Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapters 210 or 569; or
- (e) *Is working in conjunction with a law enforcement agency to test the compliance of dealers with this chapter.*

Arguably, paragraph (e) has unintentionally created a paradox wherein the plain language emancipates a person working with law enforcement from the purchase and possession prohibitions contained in ss. 569.101 and 569.11, Florida Statutes. The practical, albeit unintended, effect of paragraph (e) may be to prohibit a law enforcement agency from issuing either a criminal or administrative citation to a vendor due to the vendor's unlawful sale of tobacco to a person under the age of 18 if the underage person is working in conjunction with the law enforcement agency.

Requirements of Federal Law

Public Law 102-321, the ADAMHA Reorganization Act, was enacted by Congress in 1992. A provision of that law which is commonly referred to as the "Synar Amendment" prohibits dispensing of certain federal block grants unless a state has implemented a law prohibiting the sale of tobacco products to persons under the age of 18 and that the sales prohibition be enforced "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18."

The federal act specifically requires the state to conduct random, unannounced inspections to ensure compliance with the law. Florida is often proffered by the federal government as an example of an effective program. For federal FY 1997/98, the Department of Children and Family Services received \$56 million in such federal grants. States in non-compliance with these requirements risk up to a 40% reduction in funding.

Authority for Local Regulation of Alcoholic Beverage Establishments

Section 562.45, F.S., prohibits a county or municipality from enacting any ordinance that regulates or prohibits those activities or business transactions of an alcoholic beverage licensee which are regulated by the Division of Alcoholic Beverages and Tobacco. That statute, however, grants to counties and municipalities the authority to enact ordinances regulating the hours of business operation; location of businesses; sanitary requirements; and the type entertainment and conduct permitted in a licensed establishment. The Division is prohibited from issuing a change in the type or series of license or approve a change of location unless the applicant provides documentation of compliance with applicable zoning restrictions.

Section 562.14, F.S., also addresses an alcoholic beverage licensee's hours of operation and restricts the sale or service of alcoholic beverages between the hours of midnight and 7 a.m. of the following day, except as otherwise provided by county or municipal ordinance.

Local Option Elections on the Sale of Alcoholic Beverages

The Constitution of the State of Florida, Article VIII, Sections 5 and 6, reserves to each county the authority to determine, through a local option election, whether the sale of "intoxicating liquors, wines, or beer" may be allowed in that county. Section 5 requires a petition request signed by 25% of the electors in the county to hold an election and prohibits another election on the same subject for a period of two years. When approved by a county, the Florida Constitution requires the sale of alcoholic beverages to be regulated by state law.

Chapter 567, Florida Statutes, sets forth the procedure for petitioning for and holding a local option election to determine whether the sale of alcoholic beverages may be sold in a county. Section 567.001, Florida Statutes, defines "intoxicating liquor, wine, or beer" as containing more than 6.243 percent of alcohol by volume. This percentage allows the sale of some types of alcoholic beverages, e.g. beer, in all counties.

Section 567.01, Florida Statutes, states the legislative intent to avoid the necessity of holding two separate elections by determining in one election whether the sale of alcoholic beverages will be allowed in a county and also whether the sale, if allowed, would be restricted to package sales, or whether sales by the drink for on premise consumption would also be allowed.

Section 567.06, Florida Statutes, requires the ballot to pose two, two-part questions to the electorate. The first question is whether to vote "for" or "against" the sale of alcoholic beverages. The second question is to vote whether to allow "sales by the package and drink" or whether to allow "sales by the package only."

B. EFFECT OF PROPOSED CHANGES:

Alcohol and Tobacco Vendor Compliance Checks

This bill amends ss. 562.11 and 569.101, Florida Statutes, to clearly allow a law enforcement officer to utilize underage persons to test vendor compliance with the alcoholic beverage and tobacco sales prohibitions contained therein. Further, these amendments exempt the underage person from any civil or criminal liability imposed by ss. 562.111 and 569.11, Florida Statutes, as long as their possession of the product is done while acting on behalf of the law enforcement officer.

This bill also amends s. 569.02(7), Florida Statutes, to delete paragraph (e), which contained the language creating the paradoxical situation outlined in the PRESENT SITUATION section.

Authority for Local Regulation of Alcoholic Beverage Establishments

This bill amends s. 562.45, Florida Statutes, to prohibit a new business, which would allow the on-premises consumption of alcoholic beverages, from locating within 500 feet of a public or private elementary, middle or secondary school. The bill sets a statewide minimum standard but allows a county to opt-out on a case-by-case basis. If a county or city determines, following a public hearing, that approving a business at a location within 500 feet of a school promotes the public health, safety and welfare of the community, the location may be approved.

Local Option Elections on the Sale of Alcoholic Beverages

This bill amends ss. 567.01, 567.06 and 567.07, Florida Statutes, to provide a county, which has already voted to allow the sale of alcoholic beverages by package only, an additional option of having an election, after the expiration of two years, on the sole question of whether to also allow sales of alcoholic beverages for consumption on premises.

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

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- (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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

- 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?

N/A

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

N/A

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?

N/A

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. STATUTE(S) AFFECTED:

Sections 562.11, 562.45, 569.002, 569.101, 567.01, 567.06 and 567.07, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates a new subsection (4) in s. 562.11, Florida Statutes, to authorize law enforcement officers to utilize persons under the age of 21 to test vendor compliance with the prohibition on sales of alcoholic beverages to persons under the age of 21. This new subsection also exempts the underage person from the civil and criminal penalties for possession of alcoholic beverages contained in s. 562.111, Florida Statutes, while acting on behalf of the law enforcement officer.

Section 2. Amends subsection (2) of s. 562.45, Florida Statutes, to set a statewide minimum standard prohibiting the location of new on-premise alcoholic beverage establishments within 500 feet of a public or private school. The amendment allows the county or municipality, after holding a public hearing, to allow such a location if they find it promotes the health, safety and general welfare of the community.

Section 3. Amends subsections (2) and (6) of s. 567.01, Florida Statutes, to allow a local option election to determine whether the sale of alcoholic beverages may be sold in a county for on premise consumption. Amends legislative intent.

Section 4. Creates a new subsection (3) in s. 567.06, Florida Statutes, to provide additional ballot instructions.

Section 5. Creates a new subsection (3) in s. 567.07, Florida Statutes, to allow a county which has already voted to allow the package sale of alcoholic beverages, to conduct a local option election on the sole question of whether to also allow the sale of alcoholic beverages for consumption on premises. Present subsection (3) is renumbered as subsection (4). Requires expiration of two years from date of previous election prior to holding a new election.

Section 6. Amends subsection (7) of s. 569.002, Florida Statutes, to delete paragraph (e).

Section 7. Creates a new subsection (4) in s. 569.101, Florida Statutes, to authorize law enforcement officers to utilize persons under the age of 18 to test vendor compliance with the prohibition on sales of tobacco products to persons under the age of 18. This new subsection also exempts the underage person from the civil penalties for possession of tobacco products contained in s. 569.11, Florida Statutes, while acting on behalf of the law enforcement officer.

Section 8. Provides that the act shall take effect upon becoming a law.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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.

2. Direct Private Sector Benefits:

None.

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

None.

D. **FISCAL COMMENTS:**

State and local law enforcement agencies already utilize underage persons to test retailer compliance with alcohol and tobacco sales restrictions, therefore, this bill will not result in any increased expenditure of funds.

Failure to pass this or similar legislation, or initiate a less cost efficient surveillance program which enables the Division to meet federal standards, could potentially jeopardize receipt of federal block grants used for the prevention and treatment of substance abuse problems. [see Subpart II -- Block Grants for Prevention and Treatment of Substance Abuse, ADAMHA Reorganization Act, P.L. 102-321] The Department of Children and Family Services received slightly over \$56 million in such grants for federal FY 1997-98.

V. 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.

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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.

VI. COMMENTS:

None.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Regulated Services, on March 23, 1998, adopted two amendments to HB 3787, and passed the bill as a committee substitute.

The first amendment by Representative Morroni prohibits a new business which sells alcoholic beverages for on-premise consumption from locating within 500 feet of a public or private school.

The second amendment by Representatives Jones, King and Fasano allows voters in a county which has already voted to allow the package sales of alcoholic beverages, to vote on the sole question of whether to allow the sale of alcoholic beverages for on premises consumption.

VIII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

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Legislative Research Director:

Janet Clark Morris

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