

STORAGE NAME: h0005.jud

DATE: November 17, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 5

RELATING TO: Beverage Law/Underage Students

SPONSOR(S): Representative Heyman

TIED BILL(S):

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

- (1) REGULATED SERVICES YEAS 7 NAYS 0
 - (2) JUDICIARY
 - (3) COLLEGES & UNIVERSITIES
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates an exception to the Beverage Law by allowing an individual to provide an alcoholic beverage to a student who is under 21 years of age but over 17 years of age, if the alcoholic beverage is provided as part of the student's required curriculum at a qualifying postsecondary educational institution. This bill also stipulates that alcoholic beverages can never be offered to a student who is under 21 years of age but over 17 years of age for the purposes of consumption or imbibition. The alcoholic beverages must remain in the possession and control of instructional personnel who are at least 21 years of age. In addition, the college involved must indemnify the state and require each participating student to also indemnify the state.

The bill provides a clarification to the prohibition against the possession of alcoholic beverages by an individual under 21 years of age by allowing a student who is over 17 years of age to taste an alcoholic beverage, if the student is doing so as part of the student's required curriculum at a qualifying postsecondary educational institution.

Federal law directs the United States Secretary of Transportation to withhold 10% of certain federal transportation funds from a state in which the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age is lawful. Committee staff of the Committee on Regulated Services has been apprised by counsel for the U. S. Department of Transportation that the bill will not trigger any negative action by the Department under 23 U.S.C. s. 158, the National Minimum Drinking Age [NMDA]. Consequently, there is no negative fiscal impact on federal transportation funding.

The bill has no fiscal impact on state revenue.

The bill has an effective date of July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Section 562.11, F.S., provides that "it is unlawful for any person to sell, give, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises." Anyone convicted of violating this provision is guilty of a misdemeanor of the second degree, and may be sentenced to a term of prison not exceeding 60 days and may be assessed a fine not exceeding \$500.

Section 562.111, F.S., provides that it is unlawful for any person under 21 years of age to possess any alcoholic beverage. However, any person 18 years of age or older can sell, prepare, or serve alcoholic beverages on the premises of an establishment that is licensed by the Division of Alcoholic Beverages and Tobacco or the Division of Hotels and Restaurants. Anyone convicted of violating this provision is also guilty of a misdemeanor of the second degree.

There are several areas of study in which alcoholic beverages may be a recommended part of the curriculum, e.g., culinary arts, restaurant/hotel management, food science/food design, enology/viticulture. Currently at least two of Florida's public post-secondary institutions, FSU and FIU, offer courses involving alcoholic beverage tasting as part of their hospitality management programs. In addition, other licensed and accredited independent colleges and universities, such as Johnson and Wales University in North Miami, offer culinary arts or hospitality programs in which wine or other alcoholic beverage tasting is a recommended part of a program of study. At present, Florida law contains no exceptions to the prohibitions found in ss. 562.11 and 562.111, F.S., which would enable students under the age of 21 to participate in this portion of study.

OTHER STATES' LAWS

NEW YORK - Article 5, Section 65c, New York State Consolidated Laws, provides that a person under 21 years of age may possess any alcoholic beverage with the intent to consume if the alcoholic beverage is given to a student in a curriculum licensed or registered by the New York Department of Education and the student is required to taste or imbibe alcoholic beverages in courses which are required by the curriculum. The alcoholic beverages can only be used for instructional purposes. The State of New York adopted this law in 1986.

RHODE ISLAND - Title 3, Chapter 38, Section 3813, Rhode Island General Laws, provides that a person can give any alcoholic beverage to a student under 21 years of age and a student under 21 years of age can receive any alcoholic beverage if the alcoholic beverage is delivered in a curriculum at an accredited college in which the student is required to taste or imbibe alcoholic beverages in courses which are required by the curriculum. The alcoholic beverages can only be used for instructional purposes. The State of Rhode Island adopted this law in 1987.

SOUTH CAROLINA - Sections 20-7-8920 and 20-7-8925, South Carolina Code of Laws, provides that a student who is at least 18 years of age can taste, but not consume or imbibe, alcoholic beverages if the student is enrolled in a culinary course at an accredited college or university. The alcoholic beverages can only be used for instructional purposes during classes that are part of the curriculum. The alcoholic beverages must at all times remain in the possession and control of an authorized instructor of the college or university who must be at least 21 years of age.

Section 59-10-3195, South Carolina Code of Laws, provides that the State Commission on Higher Education shall have review authority in order to determine the legitimacy and appropriateness of permitting students under 21 years of age to taste alcoholic beverages. This law also requires Commission approval of proposed courses and authorizes the Commission to establish rules and restrictions. Finally, this law provides that enrollment in bartending courses or similar courses of instruction does not qualify for this exception. The State of South Carolina adopted the aforementioned laws in 1998.

C. EFFECT OF PROPOSED CHANGES:

This bill allows a student under 21 years of age but over 17 years of age to taste alcoholic beverages if such beverages are delivered as part of the student's required curriculum at a public postsecondary education institution or a postsecondary educational institution that is institutionally accredited by an agency recognized by the United States Department of Education and is either licensed or exempt from licensure by the State Board of Independent Colleges and Universities.

Presently, there are approximately 100 licensed and accredited independent colleges and universities some of which, for example Johnson and Wales University in North Miami, offer culinary arts or hospitality programs. In addition, there are 10 public universities and 28 community colleges operating in Florida, many of which offer these or similar programs.

The bill stipulates that alcoholic beverages can never be offered to a student for the purposes of consumption or imbibition and the alcoholic beverages must always remain in the possession and control of instructional personnel who must be at least 21 years of age. Finally, the bill requires the college involved and each participating student to agree to indemnify and hold harmless the State of Florida.

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 562.11, F.S., and provides an exception to the Beverage Law by allowing an individual to provide an alcoholic beverage to a student who is under 21 years of age but over 17 years of age, if the alcoholic beverage is provided as part of the student's required curriculum at a public postsecondary education institution or a postsecondary educational institution that is institutionally accredited by an agency recognized by the United States Department of Education and is either licensed or exempt from licensure by the State Board of Independent Colleges and Universities; provides that a student who is under 21 years

of age but over 17 years of age can taste alcoholic beverages that are provided only for instructional purposes; provides that alcoholic beverages can never be offered to a student who is under 21 years of age but over 17 years of age for the purposes of consumption or imbibition; provides that the alcoholic beverages must remain in the possession and control of instructional personnel who are at least 21 years of age; and provides that the college involved and each participating student must agree to indemnify the state.

SECTION 2: Amends section 562.111, F.S., and provides an exception to the prohibition against the underage possession of alcoholic beverages to a student who is over 17 years of age if the student is tasting the alcoholic beverage as part of his or her required curriculum at a public postsecondary education institution or a postsecondary educational institution that is accredited by an agency recognized by the United States Department of Education and is either licensed or exempt from licensure by the State Board of Independent Colleges and Universities; provides that alcoholic beverages can never be offered to a student who is under 21 years of age but over 17 years of age for the purposes of consumption or imbibition; and provides that the alcoholic beverages must remain in the possession and control of instructional personnel who are at least 21 years of age.

SECTION 3: Establishes an effective date of July 1, 2000.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

This bill does not contain any revenue raising provision.

2. **Expenditures:**

According to the Department of Business and Professional Regulation, Department of Education, Office of Postsecondary Education Coordination, Division of Community Colleges, Board of Regents and the Independent Colleges and Universities of Florida, implementation of this legislation will have no appreciable fiscal impact on their departments or schools.

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. **Revenues:**

This bill does not contain any revenue raising provision.

2. **Expenditures:**

This bill will not require an expenditure of revenue by local governments.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill has no apparent economic impact on the private sector.

D. FISCAL COMMENTS:

United States Code: Title 23, Section 158, the National Minimum Drinking Age [NMDA] provides that the Secretary of Transportation shall withhold 10% of the amount required to be apportioned to a state for expenditures on the National Highway System, the Congestion Mitigation and Air Quality Improvement Program, the Interstate System, and the Federal Aid Urban Systems Program in which the purchase or public possession in such state of any alcoholic beverage by a person who is less than 21 years of age is lawful. However, in a telephone conversation on March 25, 1999, Committee on Regulated Services staff received verbal assurance from Counsel for the U. S. Department of Transportation that the bill will not trigger any negative action under 23 U.S.C. section 158.

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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

According to spokespersons for the Department of Business and Professional Regulation, Department of Education, Office of Postsecondary Education Coordination, Division of Community Colleges, Board of Regents and the Independent Colleges and Universities of Florida, no additional rule-making authority is necessary.

C. OTHER COMMENTS:

To be eligible for the exception that the bill provides, it appears that a college must agree to indemnify the state and require each participating student to also agree to indemnify the state. Provisions contained in section 768.28(18), F.S., stipulate the following:

"Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into a contractual relationship with another agency or subdivision of the state. Such a contract must not contain any provision that requires one party to

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indemnify or insure the other party for the other party's negligence or to assume any liability for the other party's negligence."

Since there is no apparent constitutional impediment, the requirement for indemnification which is provided in this legislation may be interpreted as an exception to the prohibition established in s. 768.28(18), F.S. At the same time, s. 768.28(18), F.S., may be read to place a limit on the extent of indemnification between the school and the state. The plain language of s. 768.28(18), F.S., seems to dictate that regardless of a "contract" of indemnification, a promise to hold the state harmless is limited both by sovereign immunity and any limitations on liability that the school may have by virtue of its status as an agency of the state.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

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