

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/ SB 1176

SPONSOR: Education Committee and Senator Garcia

SUBJECT: Alcoholic Beverages/Students/Curriculum

DATE: February 4, 2002

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	Favorable/CS
2.	_____	_____	RI	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill authorizes certain postsecondary educational institutions to offer students, who are at least 18 of age, the tasting of alcoholic beverages for instructional purposes. The alcoholic beverages must remain in the possession of instructional personnel, who must be at least 21 years of age. The student must execute a waiver and consent to hold harmless and indemnify the state.

This bill amends sections 562.11 and 562.111 of the Florida Statutes.

## II. Present Situation:

Section 562.11, F.S., provides that it is unlawful to sell, give, serve, 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 alcoholic beverages on the licensed premises. Violation of these provisions is a misdemeanor of the second degree, punishable by imprisonment not exceeding 60 days and a \$500 fine.

Section 562.111, F.S., provides that it is unlawful for any person under 21 years of age to possess alcoholic beverages, unless the person is employed by a licensee and is acting within the scope of his or her employment. Violation of these provisions is a misdemeanor of the second degree, punishable by imprisonment not exceeding 60 days, a \$500 fine, and suspension or revocation of the driver's license as provided in s. 322.056, F.S.

Currently, at least 22 public postsecondary institutions, 3 state universities and 19 community colleges, offer courses involving alcoholic beverage tasting as part of their hospitality management or culinary arts programs. Two licensed and accredited independent colleges and universities offer culinary arts or hospitality programs in which alcoholic beverage tasting is recommended as part of the curriculum. However, one of the independent colleges does not

allow wine tasting to occur on campus. Of course, these institutions require students to be at least 21 to participate in the alcoholic beverage tasting. However, there are no exceptions in Florida law to permit students under the age of 21 to participate in alcoholic beverage tasting.

### **III. Effect of Proposed Changes:**

The bill amends s. 562.11, F.S., to provide that a person may give or serve alcoholic beverages to a student at least 18 years of age. The alcoholic beverage must be delivered as part of the student's required curriculum during classes and must remain at all times in possession and control of the instructional personnel, who must be at least 21 years of age. The alcoholic beverages must be provided for instructional purposes only and may not be consumed or imbibed by the student.

The bill limits the exemption to postsecondary educational institutions that are accredited by an agency recognized by the United States Department of Education and are public postsecondary institutions or are nonpublic postsecondary educational institutions licensed or exempt from licensure pursuant to chapter 246. Currently, all public universities, colleges, and community colleges meet the criteria. In addition, there are 96 accredited nonpublic colleges and universities holding licenses or certificates of exemption from the Commission for Independent Education. Pursuant to s. 246.087, F.S., licensure means that a college must meet the Commission's standards, which include educational program, qualified administrators and faculty, financial stability, and other indicators of strength and quality. Pursuant to s. 246.085, certificates of exemption are given to those institutions that are chartered in Florida and accredited by: (1) the Commission on Colleges of the Southern Association of Colleges and Schools; (2) the Accrediting Council for Independent Colleges and Schools; (3) the Accrediting Association of Bible Colleges; (4) the Transnational Association of Christian Colleges and Schools; or (5) an agency recognized by the Department of Education to accredit professional degree programs above the baccalaureate level under certain statutory guidelines.

The bill also amends s. 562.111, F.S., to create an exemption from the prohibition on possession of alcoholic beverages by persons under 21. Specifically, the prohibition does not apply if the person in possession of the alcoholic beverage is at least 18 and the above conditions are met.

The student must execute a waiver and consent that indemnifies the state.

The bill takes effect on July 1, 2002.

The committee substitute incorporates technical changes to clarify the purpose and intent of the bill.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Pursuant to 23 U.S.C. 158, the United States Secretary of Transportation is directed to withhold 10 percent 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. Federal law does not expressly state whether a state jeopardizes its receipt of federal transportation funds under the circumstances proposed in this bill. Last year, the Assistant Chief Counsel for General Law of the National Highway Traffic Safety Administration at the United States Department of Transportation, Heidi Coleman, advised the Senate Committee on Regulated Industries that based on the U.S. Department of Transportation's implementing regulations, the proposed legislation does not cause Florida "to fall out of compliance with the 23 U.S.C. 158." Ms. Coleman was again contacted this year by Education Committee staff to ascertain whether the proposed legislation continues to avoid a violation of 23 U.S.C. 158. To date, no response has been received.

New York, Rhode Island and South Carolina have laws that allow students to taste and or consume alcoholic beverages in certain educational settings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides an exemption for when the alcoholic beverage is delivered as part of the student's required curriculum at a postsecondary educational institution. However, the bill further requires that, in order to obtain the exemption, the student must be enrolled in a "college." Section 246.021 defines the term "college" as a degree conferring institution. Accordingly, the limitation to "college" would exclude all schools and technical centers in the state that may be accredited and licensed or exempt from licensure but are not colleges. A college would be able to provide a course that requires alcoholic beverage tasting through one of its programs while an identical program at a school or technical center would be barred from offering the course. If the intent of the bill is to provide an exemption from the drinking age requirements for courses involving alcoholic beverage tasting at all postsecondary education institutions that meet the accreditation and licensing or exemption requirements, the bill would require amendment to reflect an exemption when the student is enrolled at an "institution" rather than a "college." Of course, the number of institutions covered under the exemption may substantially increase given the number of schools and technical centers that are accredited and licensed or exempt from licensure in the state that offer such programs.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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