

STORAGE NAME: h0417s1.sgc.doc
DATE: January 31, 2002

**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS**

BILL #: CS/HB 417
RELATING TO: Beverage Law
SPONSOR(S): Committee on Colleges & Universities and Representative Prieguez
TIED BILL(S): None

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

- (1) COLLEGES & UNIVERSITIES YEAS 12 NAYS 1
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 8 NAYS 2
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 417 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 at least 18 years of age, if the alcoholic beverage is provided as part of the student's required curriculum at a qualifying postsecondary educational institution. CS/HB 417 also stipulates that alcoholic beverages can never be offered to a student 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, each participating student must agree to indemnify and hold harmless the State of Florida.

CS/HB 417 also creates an exception to the prohibition against the possession of alcoholic beverages by an individual under 21 years of age by allowing a student who is at least 18 years of age to possess and 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 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. House Committee on Regulated Services' staff received confirmation from Counsel for the U. S. Department of Transportation on March 23, 1999 and October 25, 1999 concerning legislation similar to CS/HB 417 that was filed during the 1999 and 2000 Legislative Sessions. On both occasions staff was advised that the legislation would not trigger any negative action by the Department under 23 U.S.C. s. 158. The U. S. Department of Transportation has been contacted regarding CS/HB 417; no response has yet been received.

CS/HB 417 does not appear to have a fiscal impact on state revenues. Florida Department of Education staff anticipates the costs to each institution for processing waiver and consent forms required of students who take courses under this provision will be negligible.

CS/HB 417 has an effective date of July 1, 2002.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

FLORIDA BEVERAGE LAW

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, 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, Department of Business and Professional Regulation. Anyone convicted of violating this provision is also guilty of a misdemeanor of the second degree.

FEDERAL LAW

United States Code: Title 23, Section 158, the National Minimum Drinking Age [NMDA] provides that the Secretary of Transportation shall withhold 10 percent 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. The term "purchase" is defined as the acquisition by the payment of money or other consideration. The term "public possession" is defined as the possession of any alcoholic beverage for any reason, including consumption on any street or highway, in any public place, or in any place open to the public. Public possession does not include the possession of alcohol for an established religious purpose; the possession of alcohol when accompanied by a parent, spouse, or legal guardian who is 21 years of age or older; the possession of alcohol for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital, or medical institution; the possession of alcohol in private clubs or establishments; or the possession of alcohol during the sale, handling, transport, or service in dispensing of any alcoholic beverage pursuant to the lawful employment of a person under 21 years of age by a licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

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 8, Section 3-8-13, 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 during classes. 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 required 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 do not qualify for this exception. The State of South Carolina adopted the aforementioned laws in 1998.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 417 allows a student under 21 years of age but at least 18 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 pursuant to the provisions of chapter 246, F.S. CS/HB 417 also 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, CS/HB 417 requires each participating student to agree to indemnify and hold harmless the State of Florida.

ELIGIBLE INSTITUTIONS

In order for a student under 21 years of age but at least 18 years of age to possess or taste alcoholic beverages as part of the required curriculum, the student must attend a public postsecondary institution or an accredited college, which is either licensed or exempt from licensure pursuant to the provisions of chapter 246, F.S. Presently, there are approximately 127 institutions that are either licensed or exempt from licensure pursuant to ch. 246, F.S. Some of these institutions offer culinary arts or hospitality programs in which wine or other alcoholic beverage tasting is a recommended part of a program of study. For instance, Johnson & Wales University, located in North Miami, offers CA 4095, *Oenology*, which provides a comprehensive study of wines.

Emphasis is placed on the major wine producing regions of the world. This course also incorporates formal wine tasting that focuses on sensory evaluation and the relationship that exists between food and wine.

Additionally, there are 11 public universities and 28 community colleges operating in Florida, many of which offer similar programs. Presently, Florida State University and Florida International University offer courses involving alcoholic beverage tasting as part of their hospitality management programs. Florida State University offers HFT 4866, *Wine and Culture*, which is an introduction to basic wine knowledge, and together with wine tasting, enhances a student's understanding and appreciation of wine and its place in our culture and heritage. This course is restricted to students who are 21 years of age or older. Florida International University offers HFT 3872, *Wine Technology, Merchandising, and Marketing*. Additionally, the university recently completed the construction of the Southern Wine & Spirits Beverage Management Center. The Center is designed to educate the student in both the science of tasting and analysis and the business of beverage management. The Center possesses a technologically advanced laboratory that can be used to analyze, test, and experience wines, spirits, beers, and other beverages.

ELIGIBLE PROGRAMS OF STUDY

CS/HB 417 provides that a student under 21 years of age but at least 18 years of age can possess and taste alcoholic beverages if such beverages are "delivered as part of the student's required curriculum" at qualifying institutions. There are several programs of study in which alcoholic beverages may be a recommended part of the curriculum. These programs of study may include culinary arts, restaurant/hotel management, food science/food design, and enology/viticulture. CS/HB 417 does not, however, limit the Beverage Law exemption to specific programs of study, such as the aforementioned programs. CS/HB 417 also does not provide for a standardized review process, such as the process implemented in South Carolina, that determines the legitimacy and appropriateness of specific programs of study requiring students under the legal drinking age to possess and taste alcoholic beverages. It appears the exemption provided in CS/HB 417 applies to any academic program as long as tasting and possessing alcoholic beverages are required by the program's curriculum.

PERMISSIBLE ALCOHOLIC BEVERAGES

CS/HB 417 provides an exemption to the Beverage Law that permits students under the legal drinking age to possess and taste "alcoholic beverages." The term "alcoholic beverages" as used in chapters 561, 562, 563, 564, 565, 567, and 568, Florida Statutes, is defined by section 561.01, Florida Statutes, as "distilled spirits and all beverages containing one-half of one percent or more alcohol by volume." Much of the discussion between staff and representatives of the education community regarding this bill centered predominantly on examples involving wine. However, it appears that the provisions of the bill would permit students at least 18 years of age to taste and possess any alcoholic beverage as long as it is required by the curriculum.

FEDERAL LAW

Federal law directs the United States Secretary of Transportation 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. House Committee on Regulated Services' staff received confirmation from Counsel for the U. S. Department of Transportation on March 23, 1999 and October 25, 1999 concerning legislation similar to CS/HB 417 that was filed during the 1999 and 2000 Legislative Sessions. On both occasions staff was advised that the legislation would not trigger any negative action by the Department under 23

U.S.C. s. 158. The U. S. Department of Transportation has been contacted regarding CS/HB 417; no response has yet been received.

INDEMNIFICATION

CS/HB 417 permits a student who is under 21 years of age but at least 18 years of age to taste and possess alcoholic beverages that are delivered as part of the required curriculum at a qualifying postsecondary educational institution if the "participating student executes a waiver and consent in favor of, and indemnifies and holds harmless, the state." To be eligible for the exemption that this CS/HB 417 provides, it appears that each participating student must indemnify the state.

Indemnification agreements are generally treated as contracts in Florida. *Steele v. Hallandale*, 125 So.2d 587 (Fla. 2d DCA 1960). Students 18 years or older entering into an indemnification agreement would essentially be entering into a valid, non-voidable contract, absent any fraud, coercion, or duress, and provided all other requirements for a valid contract are present.

D. SECTION-BY-SECTION ANALYSIS:

See above sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

CS/HB 417 does not contain any revenue raising provision.

2. Expenditures:

Florida Department of Education staff anticipates the costs to each institution for processing waiver and consent forms required of students who take courses under this provision will be negligible.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

CS/HB 417 does not contain any revenue raising provision.

2. Expenditures:

CS/HB 417 will not require an expenditure of revenue by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Negligible costs of processing waiver and consent forms required for students who take a course under this provision.

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 percent 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. House Committee on Regulated Services' staff received confirmation from Counsel for the U. S. Department of Transportation on March 23, 1999 and October 25, 1999 concerning legislation similar to CS/HB 417 that was filed during the 1999 and 2000 Legislative Sessions. On both occasions staff was advised that the legislation would not trigger any negative action by the Department under 23 U.S.C. s. 158. The U. S. Department of Transportation has been contacted regarding CS/HB 417; no response has yet been received.

III. 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.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

CS/HB 417 does not appear to violate any constitutional provisions.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Florida Department of Education staff commented that universities would need to set strict guidelines regarding the control and use of alcohol within university curricula. Guidelines could include curricula considerations for inclusion, training of faculty and/or staff, and the holding of students harmless if a student chooses not to taste alcoholic beverages due to health or religious reasons.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 9, 2002, the Committee on Colleges & Universities passed HB 417 as a committee substitute. CS/HB 417 includes 27 colleges and universities that are independent, nonprofit, four-year, SACS accredited institutions that are located and chartered by the State of Florida and are required to be licensed or exempt from licensure pursuant to ch. 246, F.S. HB 417 inadvertently omitted these institutions among the eligible institutions.

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VI. SIGNATURES:

COMMITTEE ON COLLEGES & UNIVERSITIES:

Prepared by:

Maria L. Eckard

Staff Director:

Betty H. Tilton, Ph. D.

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:

Don Rubottom

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