

# 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/CS/SB 326

SPONSOR: Committee on Judiciary, Regulated Industries and Senator Smith

SUBJECT: Alcoholic Beverage/Underage Employee

DATE: April 15, 2003

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Imhof</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
3.	<u>Greenbaum</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This CS prohibits a licensee or the agents, officers, servants or employees of a licensee (licensed under the Beverage Law defined as chapters 562, 563, 564, 565, 567 and 568, F.S.) from providing alcoholic beverages to an employee younger than 21 years of age, except as authorized pursuant to ss. 562.111 or 562.13, F.S., or permitting an employee younger than 21 years of age to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment. A violation under the CS will be punished as a first degree misdemeanor. (It is currently punishable as a second degree misdemeanor.)

This CS also provides that a beverage license in a county may become available for the statutory public drawing process in the event the license is revoked in that county after July 1, 2003. It also provides enforcement protections for a person holding a perfected lien or security interest in the revoked license.

This CS substantially amends ss. 561.19 and 562.11, Florida Statutes.

## II. Present Situation:

### The Unlawful Sale of Alcohol to Minors

Section 562.11(1)(a), 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. Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

Section 562.111, F.S., provides that it is unlawful for any person under the age of 21 years to have in his or her possession alcoholic beverages. A person under the age of 21 years may possess alcoholic beverages if they are employed under the provisions of s. 562.13, F.S., and acting in the scope of his or her employment. Any person under the age of 21 who is convicted of a violation of this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500. The court is required to direct the Department of Highway Safety and Motor Vehicles to withhold issuance, or suspend or revoke, the person's driver's license or driving privilege as provided in s. 322.056, F.S. This provision does not apply to the tasting of alcoholic beverages by students over 18 enrolled in a college program where the tasting is for instructional purposes. Persons over the age of 18 may also be employed in the sale, preparation, or service of alcoholic beverages in licensed premises in any establishment licensed by the Division of Alcoholic Beverages and Tobacco or the Division of Hotels and Restaurants in the Department of Business and Professional Regulation.

It is unlawful for any vendor licensed under the Beverage Law to employ any person less than 18 years of age pursuant to s. 562.13, F.S. However, the provisions of this section do not apply to:

- Professional entertainers 17 years of age who are not in school;
- Minors employed in the entertainment industry and who are employed under the procedures established for such employment or who have been granted a waiver from the Child Labor Law;
- Persons under the age of 18 years employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have licenses to sell beer and wine for consumption off the premises;
- Any senior high school student with written permission of their principal or any high school graduate employed by a bona fide food service establishment where alcoholic beverages are sold if they do not participate in the sale, preparation, or service of alcoholic beverages and their duties provide training that may lead to advancement in the food service establishments;
- Persons under the age of 18 years employed as bellhops, elevator operators, and other duties in hotels that do not work in the portion of the hotel where alcoholic beverages are sold for consumption on the premises;
- Persons under the age of 18 years employed in bowling alleys if they do not participate in the sale, preparation, or service of alcoholic beverages;
- Persons under the age of 18 years employed by a bona fide dinner theater whose employment is limited to being an actor, actress, or musician;
- Persons under the age of 18 years who are employed by a theme park as provided in s. 562.02(6), F.S., if they do not participate in the sale, preparation or service of alcoholic beverages; or
- A minor subject to this section, may not be employed if the employment involves nudity on the part of the minor and the nudity is intended as adult entertainment.

Pursuant to s. 561.01, F.S., a "licensee" under the Beverage Law (defined as chapters 562, 563, 564, 565, 567, and 568, F.S.), means a "legal or business entity, person, or persons that hold a

license issued by the [Division of Alcoholic Beverages and Tobacco] and meet the qualifications set forth in s. 561.15, F.S.”

Section 561.29, F.S., gives the Division of Alcoholic Beverages and Tobacco the authority to revoke or suspend the license of any person holding a license under the Beverage Law for a “violation by the licensee or his or her or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States. . . .”

A licensee can be subject to discipline under the penalty guidelines established in rule 61A-2.022, F.A.C. For violation of s. 562.11, F.S., the guidelines provide:

- 1st occurrence - \$1,000 fine and 7-day suspension of license.
- 2nd occurrence - \$3,000 fine and 30-day suspension of license.
- 3rd occurrence – revocation of license.

Agents from the Division of Alcoholic Beverages and Tobacco recently arrested a manager from a Tallahassee establishment on charges of providing alcohol to a minor and providing false information to its agents after a minor allegedly became intoxicated after hours at the establishment and shortly thereafter was involved in a fatal crash. Administrative charges are pending against the establishment. According to the investigating officer from the Tallahassee Police Department, there have been several incidents around the state where employers have allowed underage employees to drink at their establishments while on duty or after hours. There have been occurrences of the underage employee becoming intoxicated and being killed or severely injured in alcohol related automobile crashes. Recent fatalities have also occurred in Jacksonville.

### **Regulation of the Sale and Service of Alcoholic Beverages**

Chapters 561-565, 567 and 568, Florida Statutes, comprise Florida’s Beverage Law. 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.

Alcoholic beverage licenses are issued either for consumption on the licensed premises [COP] or for package sales [PS]. 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 liquor “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. Florida’s retail alcoholic beverage licensing system is generally built around the quota license structure with all other retail licenses which allow the sale of liquor enacted as exceptions to the quota limitation. Quota licenses also operate with considerable more flexibility than special classification licenses issued as an exception to the quota restriction. Liquor package stores and bars/nightclubs typically operate under the authority of a quota license. The law provides for an annual lottery-type, double random drawing to award quota licenses. If the winning quota license applicant does not qualify for issuance of the

license, the license option transfers to the next person in line based on their ranking from the quota drawing.

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

This CS amends s. 562.11, F.S., to provide that a licensee or the agents, officers, servants or employees of a licensee may not provide alcoholic beverages to a person younger than 21 years of age who is employed by the licensee, except as authorized pursuant to ss. 562.111 or 562.13, F.S. In addition, a licensee or the agents, officers, servants or employees of a licensee may not permit an employee younger than 21 years of age to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment. A licensee or the agents, officers, servants or employees of a licensee who violate this provision commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding one year and a fine not exceeding \$1,000.

This CS would increase the current penalty for licensees, their agents, officers, servants or employees from the current second degree misdemeanor offense under s. 562.11(1)(a), F.S., to a first degree misdemeanor offense for a violation of these provisions.

This CS also amends s. 561.19, F.S., to provide that a beverage quota license may become available for the statutory public drawing when the revocation of such license occurs after July 1, 2003. It also provides enforcement protections for a person holding a perfected lien or security interest in the revoked license.

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

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

None.

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

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

A licensee, or agent, officer, servant or employee of a licensee who commits a violation under the CS would be subjected to an increased penalty of up to one year incarceration

and a fine not exceeding \$1,000 (rather than up to 60 days and a fine not exceeding \$500).

Additional quotas licenses could be made available for drawing by the provisions of this bill.

**C. Government Sector Impact:**

There could be an indeterminate fiscal impact upon local jails to the extent that violators are incarcerated for longer periods of time under the CS (potentially up to one year rather than 60 days).

Additional revenue could be realized through license fees associated with the awarding of quota licenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.