

# 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 326

SPONSOR: Committee on Regulated Industries and Senator Smith

SUBJECT: Alcoholic Beverage/Underage Employee

DATE: February 20, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Imhof	Imhof	RI	Favorable/CS
2.	_____	_____	CJ	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill prohibits a licensee or the agents, officers, servants and employees of a licensee (licensed under the Beverage Law defined as chapters 562, 563, 564, 565, 567, and 568, F.S.) providing alcoholic beverages to employees younger than 21 years of age, except as authorized pursuant to ss. 562.111 or 562.13, F.S., or permitting a person under younger than 21 years of age to consume alcoholic beverages on the licensed premises. It provides that a violation of this provision is a misdemeanor of the first degree.

This bill substantially amends section 562.11, Florida Statutes.

**II. Present Situation:**

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;
- Person 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;
- Person 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;
- 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.

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

This bill amends s. 562.11, F.S., to provide that a licensee or the agents, officers, servants and 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. A licensee or the agents, officers, servants, and employees of a licensee may not permit a person younger than 21 years of age to consume alcoholic beverages on the licensed premises. A licensee or the agents, officers, servants, and employees of a licensee who violate this paragraph commit a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.

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

### **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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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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