

Bill No. SB 1954

Barcode 733198

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Hill) recommended the following **substitute for amendment** (931190):

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 562.11, Florida Statutes, is amended to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.--

(1)(a)1. It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age. It is unlawful for any licensee, or his or her agents, officers, servants, or employees ~~or~~ to permit a person under 21 years of age to possess or consume such beverages on the licensed premises. A person who violates this subparagraph commits a misdemeanor of the second degree,

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1 punishable as provided in s. 775.082 or s. 775.083.

2 2. In addition to any other penalty imposed for a
3 violation of subparagraph 1., the court may order the
4 Department of Highway Safety and Motor Vehicles to withhold
5 the issuance of, or suspend or revoke, the driver's license or
6 driving privilege, as provided in s. 322.057, of any person
7 who violates subparagraph 1. This subparagraph does not apply
8 to a licensee, as defined in s. 561.01, who violates
9 subparagraph 1. while acting within the scope of his or her
10 license or an employee or agent of a licensee, as defined in
11 s. 561.01, who violates subparagraph 1. while engaged within
12 the scope of his or her employment or agency.

13 (b) A licensee, or his or her or its agents, officers,
14 servants, or employees, may not provide alcoholic beverages to
15 a person younger than 21 years of age who is employed by the
16 licensee except as authorized pursuant to s. 562.111 or s.
17 562.13, and may not permit a person younger than 21 years of
18 age who is employed by the licensee to consume alcoholic
19 beverages on the licensed premises or elsewhere while in the
20 scope of employment. A licensee, or his or her or its agents,
21 officers, servants, or employees, who violates this paragraph
22 commits a misdemeanor of the first degree, punishable as
23 provided in s. 775.082 or s. 775.083. This paragraph may be
24 cited as "the Christopher Fugate Act."

25 (c) A licensee who violates paragraph (a) shall have a
26 complete defense to any civil action therefor, except for any
27 administrative action by the division under the Beverage Law,
28 if, at the time the alcoholic beverage was sold, given,
29 served, or permitted to be served, the person falsely
30 evidenced that he or she was of legal age to purchase or
31 consume the alcoholic beverage and the appearance of the

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1 person was such that an ordinarily prudent person would
 2 believe him or her to be of legal age to purchase or consume
 3 the alcoholic beverage and if the licensee carefully checked
 4 one of the following forms of identification with respect to
 5 the person: a driver's license, an identification card issued
 6 under the provisions of s. 322.051 or, if the person is
 7 physically handicapped as defined in s. 553.45(1), a
 8 comparable identification card issued by another state which
 9 indicates the person's age, a passport, or a United States
 10 Uniformed Services identification card, and acted in good
 11 faith and in reliance upon the representation and appearance
 12 of the person in the belief that he or she was of legal age to
 13 purchase or consume the alcoholic beverage. Nothing herein
 14 shall negate any cause of action which arose prior to June 2,
 15 1978.

16 (2) It is unlawful for any person to misrepresent or
 17 misstate his or her age or the age of any other person for the
 18 purpose of inducing any licensee or his or her agents or
 19 employees to sell, give, serve, or deliver any alcoholic
 20 beverages to a person under 21 years of age, or for any person
 21 under 21 years of age to purchase or attempt to purchase
 22 alcoholic beverages.

23 (a) Anyone convicted of violating the provisions of
 24 this subsection is guilty of a misdemeanor of the second
 25 degree, punishable as provided in s. 775.082 or s. 775.083.

26 (b) Any person under the age of 17 years who violates
 27 such provisions shall be within the jurisdiction of the judge
 28 of the circuit court and shall be dealt with as a juvenile
 29 delinquent according to law.

30 (c) In addition to any other penalty imposed for a
 31 violation of this subsection, if a person uses a driver's

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1 license or identification card issued by the Department of
2 Highway Safety and Motor Vehicles in violation of this
3 subsection, the court:

4 1. May order the person to participate in public
5 service or a community work project for a period not to exceed
6 40 hours; and

7 2. Shall direct the Department of Highway Safety and
8 Motor Vehicles to withhold issuance of, or suspend or revoke,
9 the person's driver's license or driving privilege, as
10 provided in s. 322.056.

11 (3) Any person under the age of 21 years testifying in
12 any criminal prosecution or in any hearing before the division
13 involving the violation by any other person of the provisions
14 of this section may, at the discretion of the prosecuting
15 officer, be given full and complete immunity from prosecution
16 for any violation of law revealed in such testimony that may
17 be or may tend to be self-incriminating, and any such person
18 under 21 years of age so testifying, whether under subpoena or
19 otherwise, shall be compelled to give any such testimony in
20 such prosecution or hearing for which immunity from
21 prosecution therefor is given.

22 (4) This section does not apply to a person who gives,
23 serves, or permits to be served an alcoholic beverage to a
24 student who is at least 18 years of age, if the alcoholic
25 beverage is delivered as part of the student's required
26 curriculum at a postsecondary educational institution that is
27 institutionally accredited by an agency recognized by the
28 United States Department of Education and is licensed or
29 exempt from licensure pursuant to the provisions of chapter
30 1005 or that is a public postsecondary education institution;
31 if the student is enrolled in the college and is required to

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1 taste alcoholic beverages that are provided only for
 2 instructional purposes during classes conducted under the
 3 supervision of authorized instructional personnel pursuant to
 4 such a curriculum; if the alcoholic beverages are never
 5 offered for consumption or imbibed by such a student and at
 6 all times remain in the possession and control of such
 7 instructional personnel, who must be 21 years of age or older;
 8 and if each participating student executes a waiver and
 9 consent in favor of the state and indemnifies the state and
 10 holds it harmless.

11 Section 2. Section 562.111, Florida Statutes, is
 12 amended to read:

13 562.111 Possession of alcoholic beverages by persons
 14 under age 21 prohibited.--

15 (1) It is unlawful for any person under the age of 21
 16 years, except a person employed under the provisions of s.
 17 562.13 acting in the scope of her or his employment, to have
 18 in her or his possession alcoholic beverages. It is unlawful
 19 for any person under 21 years of age to consume alcoholic
 20 beverages or to be intoxicated by consumption of an alcoholic
 21 beverage. ~~except that nothing contained in This subsection~~
 22 ~~does not shall~~ preclude the employment of any person 18 years
 23 of age or older in the sale, preparation, or service of
 24 alcoholic beverages in licensed premises in any establishment
 25 licensed by the Division of Alcoholic Beverages and Tobacco or
 26 the Division of Hotels and Restaurants. Notwithstanding the
 27 provisions of s. 562.45, any person under the age of 21 who is
 28 convicted of a violation of this subsection is guilty of a
 29 misdemeanor of the second degree, punishable as provided in s.
 30 775.082 or s. 775.083; however, any person under the age of 21
 31 who has been convicted of a violation of this subsection and

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1 who is thereafter convicted of a further violation of this
2 subsection is, upon conviction of the further offense, guilty
3 of a misdemeanor of the first degree, punishable as provided
4 in s. 775.082 or s. 775.083.

5 (2) A person under the age of 21 who has not
6 previously been convicted of a violation under subsection (1),
7 or who has not previously been convicted of more than one
8 nonviolent misdemeanor, and who is not charged with any other
9 offense, shall be referred to:

10 (a) A postarrest diversion program under s. 985.125 if
11 such person is a juvenile which consists of 12 hours of
12 community service or a \$250 fine in lieu of community service
13 and participation in an alcohol-awareness educational program
14 where available; or

15 (b) A pretrial intervention program under s. 948.08
16 which consists of 12 hours of community service or a \$250 fine
17 in lieu of community service and participation in an
18 alcohol-awareness educational program where available.

19
20 This postarrest or pretrial diversion requirement does not
21 supersede the civil citation process for juveniles under s.
22 985.12.

23 (3) The possession or consumption by, or the service
24 to, a person under 21 years of age of wine in the performance
25 of a religious service, ritual, or ceremony is not prohibited
26 by law.

27 (4)(2) The prohibition in this section against the
28 possession of alcoholic beverages does not apply to the
29 tasting of alcoholic beverages by a student who is at least 18
30 years of age, who is tasting the alcoholic beverages as part
31 of the student's required curriculum at a postsecondary

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1 educational institution that is institutionally accredited by
 2 an agency recognized by the United States Department of
 3 Education and that is licensed or exempt from licensure
 4 pursuant to the provisions of chapter 1005 or is a public
 5 postsecondary education institution; if the student is
 6 enrolled in the college and is tasting the alcoholic beverages
 7 only for instructional purposes during classes that are part
 8 of such a curriculum; if the student is allowed only to taste,
 9 but not consume or imbibe, the alcoholic beverages; and if the
 10 alcoholic beverages at all times remain in the possession and
 11 control of authorized instructional personnel of the college
 12 who are 21 years of age or older.

13 ~~(5)(3)~~ In addition to any other penalty imposed for a
 14 violation of subsection (1), the court shall direct the
 15 Department of Highway Safety and Motor Vehicles to withhold
 16 issuance of, or suspend or revoke, the violator's driver's
 17 license or driving privilege, as provided in s. 322.056.

18 (6) For purposes of this section, it is prima facie
 19 evidence that a person under the age of 21 years is
 20 intoxicated by the consumption of an alcoholic beverage if the
 21 person is affected to the extent that the person's normal
 22 faculties are impaired. This presumption does not limit the
 23 introduction of any other competent evidence bearing upon the
 24 question of whether the person was intoxicated by consumption
 25 of an alcoholic beverage. Normal faculties include, but are
 26 not limited to, the ability to see, hear, walk, talk, judge
 27 distances, make judgments, act in emergencies, and, in
 28 general, normally perform the many mental and physical acts of
 29 daily life. Any temporary detention of a person related to a
 30 violation of this section must be conducted in accordance with
 31 s. 901.151.

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1 Section 3. Section 322.056, Florida Statutes, is
2 amended to read:

3 322.056 Mandatory revocation or suspension of, or
4 delay of eligibility for, driver's license for persons ~~under~~
5 ~~age 18~~ found guilty of certain alcohol, drug, or tobacco
6 offenses; prohibition.--

7 (1) Notwithstanding the provisions of s. 322.055, if a
8 person ~~under 18 years of age~~ is found guilty of or delinquent
9 for a violation of s. 562.11(2), s. 562.111, or chapter 893,
10 and:

11 (a) The person is eligible by reason of age for a
12 driver's license or driving privilege, the court shall direct
13 the department to revoke or to withhold issuance of his or her
14 driver's license or driving privilege for a period of:

15 1. Not less than 6 months and not more than 1 year for
16 the first violation.

17 2. Two years, for a subsequent violation.

18 (b) The person's driver's license or driving privilege
19 is under suspension or revocation for any reason, the court
20 shall direct the department to extend the period of suspension
21 or revocation by an additional period of:

22 1. Not less than 6 months and not more than 1 year for
23 the first violation.

24 2. Two years, for a subsequent violation.

25 (c) The person is ineligible by reason of age for a
26 driver's license or driving privilege, the court shall direct
27 the department to withhold issuance of his or her driver's
28 license or driving privilege for a period of:

29 1. Not less than 6 months and not more than 1 year
30 after the date on which he or she would otherwise have become
31 eligible, for the first violation.

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1 2. Two years after the date on which he or she would
2 otherwise have become eligible, for a subsequent violation.

3
4 However, the court may, in its sound discretion, direct the
5 department to issue a license for driving privileges
6 restricted to business or employment purposes only, as defined
7 in s. 322.271, if the person is otherwise qualified for such a
8 license.

9 (2) If a person under 18 years of age is found by the
10 court to have committed a noncriminal violation under s.
11 569.11 and that person has failed to comply with the
12 procedures established in that section by failing to fulfill
13 community service requirements, failing to pay the applicable
14 fine, or failing to attend a locally available school-approved
15 anti-tobacco program, and:

16 (a) The person is eligible by reason of age for a
17 driver's license or driving privilege, the court shall direct
18 the department to revoke or to withhold issuance of his or her
19 driver's license or driving privilege as follows:

- 20 1. For the first violation, for 30 days.
- 21 2. For the second violation within 12 weeks of the
22 first violation, for 45 days.

23 (b) The person's driver's license or driving privilege
24 is under suspension or revocation for any reason, the court
25 shall direct the department to extend the period of suspension
26 or revocation by an additional period as follows:

- 27 1. For the first violation, for 30 days.
- 28 2. For the second violation within 12 weeks of the
29 first violation, for 45 days.

30 (c) The person is ineligible by reason of age for a
31 driver's license or driving privilege, the court shall direct

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1 the department to withhold issuance of his or her driver's
2 license or driving privilege as follows:

- 3 1. For the first violation, for 30 days.
- 4 2. For the second violation within 12 weeks of the
- 5 first violation, for 45 days.

6
7 Any second violation of s. 569.11 not within the 12-week
8 period after the first violation will be treated as a first
9 violation and in the same manner as provided in this
10 subsection.

11 (3) If a person under 18 years of age is found by the
12 court to have committed a third violation of s. 569.11 within
13 12 weeks of the first violation, the court must direct the
14 Department of Highway Safety and Motor Vehicles to suspend or
15 withhold issuance of his or her driver's license or driving
16 privilege for 60 consecutive days. Any third violation of s.
17 569.11 not within the 12-week period after the first violation
18 will be treated as a first violation and in the same manner as
19 provided in subsection (2).

20 (4) A penalty imposed under this section shall be in
21 addition to any other penalty imposed by law.

22 (5) The suspension or revocation of a person's
23 driver's license imposed pursuant to subsection (2) or
24 subsection (3), shall not result in or be cause for an
25 increase of the convicted person's, or his or her parent's or
26 legal guardian's, automobile insurance rate or premium or
27 result in points assessed against the person's driving record.

28 Section 4. Subsection (10) is added to section
29 1001.02, Florida Statutes, to read:

30 1001.02 General powers of State Board of Education.--

31 (10) The State Board of Education, in conjunction with

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1 the Board of Governors, shall develop an annual report
 2 regarding the extent of alcoholic beverage abuse and alcoholic
 3 beverage possession and consumption by students under 21 years
 4 of age at the state universities. The report must review the
 5 education, prevention, intervention, and enforcement policies
 6 and practices of the state universities. The report must
 7 provide and delineate its findings for each state university.

8 At a minimum, the report must:

9 (a) Detail the policies and practices concerning:

10 1. The extent to which alcoholic beverage consumption
 11 and possession is permitted on campus and during
 12 university-sponsored on-campus and off-campus events;

13 2. Notification of the parent or legal guardian of a
 14 student under 21 years of age regarding a first or subsequent
 15 violation by the student of the university's policies
 16 governing the use or possession of alcoholic beverages;

17 3. Cooperation with community coalitions, nonprofit
 18 organizations, law enforcement agencies, and the alcoholic
 19 beverage industry in implementing and developing education,
 20 prevention, intervention, and enforcement policies and
 21 practices;

22 4. The implementation of training regarding
 23 responsible alcoholic beverage service at on-campus facilities
 24 that sell or serve, or permit the sale or service of,
 25 alcoholic beverages; and

26 5. The advertisement of alcoholic beverages.

27 (b) Identify the education, prevention, intervention,
 28 and enforcement efforts designed and implemented to promote
 29 responsible student behaviors and personal responsibility and
 30 to reduce the extent of alcoholic beverage abuse and alcoholic
 31 beverage possession and consumption by students under 21 years

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1 of age, including:

2 1. The on-campus and off-campus programs that are used
3 to foster and encourage abstinence from the use of alcoholic
4 beverages and the responsible use of alcoholic beverages and
5 to deter the possession and consumption of alcoholic beverages
6 by students under 21 years of age;

7 2. The efforts to enforce universities' alcohol
8 policies;

9 3. The efforts to assist students suffering from
10 alcohol abuse and dependency; and

11 4. The efforts of student organizations to promote
12 responsible student behaviors and personal responsibility and
13 to reduce the extent of alcoholic beverage abuse and underage
14 alcoholic beverage possession and consumption.

15 (c) Collect data that reflects the universities'
16 experience with students, including:

17 1. The number of alcohol-related deaths of students
18 that are known to the university. The report must delineate
19 whether a death occurs on campus. If the death does not occur
20 on campus, the report shall identify the municipality and
21 state in which the death occurred, if known. The term
22 "alcohol-related deaths" includes deaths in which the use of
23 alcoholic beverages by the student was a contributing factor;

24 2. The number of on-campus violations of state or
25 local laws related to the possession or consumption of
26 alcoholic beverages which resulted in arrests delineated by
27 students and nonstudents and by specifying the number of
28 persons involved;

29 3. The number of alcohol-related violations of the
30 university's alcohol policies and delineated by students and
31 nonstudents and by the number of persons involved;

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1 4. The number of fully adjudicated violations of the
 2 student code of conduct pertaining to the possession or
 3 consumption of alcoholic beverages and the penalties imposed;
 4 and

5 5. The results of any surveys conducted by a
 6 university which demonstrates the extent of alcohol use by
 7 underage students and irresponsible alcohol use at that
 8 university or among college students statewide, if available.

9 (d) In order to provide a context for useful
 10 comparative analysis between universities, specify in relation
 11 to the university's total student population, the number and
 12 percentage of full-time students, the number and percentage of
 13 part-time students, the number and percentage of students who
 14 reside on campus, and the number and percentage of students
 15 under and over 21 years of age.

16 (e) Assess the effectiveness of the education,
 17 prevention, intervention, and enforcement efforts, including:

18 1. Whether existing university resources are
 19 sufficient to implement the university's education,
 20 prevention, intervention, and enforcement efforts, and
 21 indicate the need, if any, for additional resources; and

22 2. Whether progress has been made in reducing the
 23 incidence of alcoholic beverage abuse by students and the
 24 possession or consumption of alcoholic beverages by students
 25 under 21 years of age and whether specific practices or
 26 polices need improvement, if any.

27 (f) Assess whether the minimum reporting required by
 28 this subsection provides information that is beneficial to
 29 determining the effectiveness of the universities' education,
 30 prevention, intervention, and enforcement efforts and whether
 31 there is a need for this annual report.

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1 (g) Assess whether there is a need for uniformity in
 2 the reporting, data collection, and recordkeeping efforts of
 3 the state universities.

4
 5 The report shall reflect the period of July 1 through June 30
 6 of each year. The annual report shall be submitted by November
 7 15, 2008, and by November 15 of each successive year, to the
 8 Governor, the President of the Senate, and the Speaker of the
 9 House of Representatives. The State Board of Education shall
 10 encourage nonpublic universities and colleges to contribute to
 11 the findings of the annual report and to participate in its
 12 preparation.

13 Section 5. Paragraph (h) is added to subsection (8) of
 14 section 1001.64, Florida Statutes, to read:

15 1001.64 Community college boards of trustees; powers
 16 and duties.--

17 (8) Each board of trustees has authority for policies
 18 related to students, enrollment of students, student records,
 19 student activities, financial assistance, and other student
 20 services.

21 (h) Each board of trustees shall establish a plan to
 22 reduce and eliminate the irresponsible consumption of
 23 alcoholic beverages and the possession and consumption of
 24 alcoholic beverages by students under 21 years of age. The
 25 board shall conduct an annual evaluation of the effectiveness
 26 of this plan.

27 Section 6. Paragraph (j) is added to subsection (10)
 28 of section 1001.74, Florida Statutes, to read:

29 1001.74 Powers and duties of university boards of
 30 trustees.--

31 (10) Each board of trustees has responsibility for

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1 policies related to students, enrollment of students, student
2 activities and organizations, financial assistance, and other
3 student services.

4 (j) To the extent delegated by the Board of Governors,
5 each board of trustees shall establish a plan to reduce and
6 eliminate the irresponsible consumption of alcoholic beverages
7 and the possession and consumption of alcoholic beverages by
8 students under 21 years of age. The board shall conduct an
9 annual evaluation of the effectiveness of that plan.

10 Section 7. This act shall take effect July 1, 2007.

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12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 Delete everything before the enacting clause

16
17 and insert:

18 A bill to be entitled
19 An act relating to alcoholic beverages;
20 amending s. 562.11, F.S.; clarifying the
21 prohibition against allowing a person younger
22 than 21 years of age to consume alcoholic
23 beverages at premises licensed to sell alcohol;
24 amending s. 562.111, F.S.; prohibiting a person
25 younger than 21 years of age from consuming
26 alcoholic beverages or being intoxicated;
27 providing penalties for certain persons under
28 the age of 21 who have not been previously
29 convicted of underage drinking or intoxication;
30 providing an exception for religious
31 activities; specifying standards for

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1 determining whether such a person has consumed
2 alcoholic beverages or is intoxicated; amending
3 s. 322.056, F.S.; conforming a cross-reference;
4 providing that the penalty of suspending or
5 revoking a driver's license or privilege for
6 the offense of unlawfully serving alcoholic
7 beverages to a person younger than 21 years of
8 age applies to persons older than 18 years of
9 age; amending s. 397.591, F.S.; conforming a
10 cross-reference; amending s. 1001.02, F.S.;
11 requiring the State Board of Education to
12 annually report the occurrence of alcohol abuse
13 on college and university campuses; providing
14 requirements for the report; requiring that the
15 report be submitted to the Governor and the
16 Legislature; amending ss. 1001.64 and 1001.74,
17 F.S.; requiring that the board of trustees at
18 each community college and university establish
19 a plan for reducing and eliminating alcohol
20 abuse at the community college or university;
21 providing an effective date.

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