

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1527 Selling, Giving, or Serving Alcoholic Beverages to Persons Under
21 Years of Age

SPONSOR(S): Safety & Security Council; Sasso and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 2044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>11 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Cunningham/Davis</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 562.11(1)(a)1., F.S., makes it a 2nd degree misdemeanor for a person 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 such beverages on the licensed premises. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. Currently, the statute does not provide a defense to criminal liability.

CS/HB 1527 provides that a person who violates s. 562.11(1)(a)1., F.S., a second or subsequent time within 1 year after the first violation commits a 1st degree misdemeanor. A 1st degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine.

The bill also provides that a person has a complete a defense if, at the time the alcoholic beverage was sold, given, served, or permitted to be served:

- The buyer or recipient falsely evidenced that she or he was 21 years of age or older;
- The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and
- Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

While indeterminate, this bill could have a jail bed impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill increases the penalty for violating s. 562.11(1)(a)1., F.S., a second or subsequent time within 1 year after the first violation and provides a defense.

B. EFFECT OF PROPOSED CHANGES:

Selling Alcohol to Minors – Criminal Penalty

Section 562.11(1)(a)1., F.S., makes it a 2nd degree misdemeanor for a person to “sell, give, serve, or permit to be served alcoholic beverages¹ 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.”² A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine.³

Effect of the Bill

CS/HB 1527 provides that a person who violates s. 562.11(1)(a)1., F.S., a second or subsequent time within 1 year after the first violation commits a 1st degree misdemeanor. A 1st degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine.⁴

It should be noted that the language increasing the penalty for second or subsequent violations within 1 year after the first violation mirrors the language in s. 569.101, F.S., which makes it unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any *tobacco product*.

Selling Alcohol to Minors – Defenses

As noted above, s. 562.11, F.S., makes selling alcohol to a minor is a 2nd degree misdemeanor. Currently, the statute does not provide a defense to criminal liability. In contrast, s. 569.101, F.S., which makes it unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any *tobacco product*, contains a provision that provides a complete defense in a criminal action if, at the time the tobacco product was sold, delivered, bartered, furnished, or given:

- The buyer or recipient falsely evidenced that she or he was 18 years of age or older;
- The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and
- Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the

¹ Section 561.01, F.S., defines the term “alcoholic beverages” as, “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.”

² This prohibition does not apply to a person who “gives, serves, or permits to be served an alcoholic beverage to a student who is at least 18 years of age, if the alcoholic beverage is delivered as part of the student's required curriculum at a postsecondary educational institution that is institutionally accredited by an agency recognized by the United States Department of Education and is licensed or exempt from licensure pursuant to the provisions of chapter 1005 or that is a public postsecondary education institution; if the student is enrolled in the college and is required to taste alcoholic beverages that are provided only for instructional purposes during classes conducted under the supervision of authorized instructional personnel pursuant to such a curriculum; if the alcoholic beverages are never offered for consumption or imbibed by such a student and at all times remain in the possession and control of such instructional personnel, who must be 21 years of age or older; and if each participating student executes a waiver and consent in favor of the state and indemnifies the state and holds it harmless.” See s. 562.11(4), F.S.

³ See ss. 775.082 and 775.083, F.S.

⁴ Id.

representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

Effect of the Bill

The bill mirrors the criminal defense language found in the tobacco statute by adding the following language to s. 562.11, F.S.:

Any person charged with a violation of paragraph (a) has a complete defense if, at the time the alcoholic beverage was sold, given, served, or permitted to be served:

- The buyer or recipient falsely evidenced that she or he was 21 years of age or older;
- The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and
- Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

C. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S., relating to 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.

Section 2. This bill takes effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill provides that a person who violates s. 562.11(1)(a)1., F.S., a second or subsequent time commits a 1st degree misdemeanor. While indeterminate, this bill could have a jail bed impact on local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This bill simply raises the penalties for subsequent violations of Florida Statute 562.11 to match those of the tobacco statute, 569.101 so a first violation of the statute is a 2nd Degree Misdemeanor while further violations are a Misdemeanor of the First Degree.

While use of other drugs and tobacco in Florida has dropped over the last few years, alcohol has remained our state's leading drug problem. Among 6th-12th graders, 55.1% have consumed alcohol, 30.9% in the last 30 days, except for twelfth graders, 52.4% of which have had a drink in the last 30 days. (Citation needed)

According to the Dept. of Business and Professional Regulation, the non-compliance rate for the sale of alcohol to underage individuals is at 11%; for tobacco non-compliance is at 7%.

More compelling evidence relating to underage drinking, alcoholism, auto crashes, and deaths exists and makes this bill a crucial part of protecting our youth.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 26, 2008, the Homeland Security & Public Safety Committee adopted an amendment and reported the bill favorably as amended. The amendment adds a provision providing a complete defense if, at the time the alcoholic beverage was sold, given, served, or permitted to be served:

- The buyer or recipient falsely evidenced that she or he was 21 years of age or older;
- The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and
- Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

On April 9, 2008, the Safety & Security Council reported the bill favorably as a council substitute. This analysis is drafted to the council substitute.