

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 2170

INTRODUCER: Senator Altman

SUBJECT: Alcoholic Beverages

DATE: April 8, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodburn	Rhea	RI	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Section 562.11(1)(a)1., F.S., provides a second degree misdemeanor penalty for a person who sells, gives, serves, or permits alcoholic beverages to be served to a person under 21 years of age or permits a person under 21 years of age to consume such beverages on the licensed premises.¹

The bill makes a second or subsequent violation of s. 562.11(1)(a)(1), F.S., a first degree misdemeanor if violated within a year of the first violation.

The bill creates a complete defense for any person who violates s. 562.11(1)(a), F.S., if:

- The buyer or recipient of the alcoholic beverage falsely evidenced that he or she was 21 years of age or older;
- The appearance of the buyer or recipient was such that an ordinarily prudent person would believe him or her to be 21 years of age or older, and
- The person carefully checked the buyer or recipient’s identification card, acted in good faith and relied 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.

Section 856.015(4), F.S., provides a first degree misdemeanor penalty for a person who violates s. 856.015(2), F.S. That provision states that “No person having control of any residence shall allow an open house party to take place at said residence if any alcoholic beverage or drug is possessed or consumed at said residence by any minor where the person knows that an alcoholic beverage or drug is in possession of or being consumed by a minor at said residence and where

¹ “Licensed premises” as defined in s. 561.01(11), F.S.

the person fails to take reasonable steps to prevent the possession of consumption of the alcoholic beverage or drug.”

The bill amends present law to make a violation of s. 856.015(2), F.S., a first degree misdemeanor.

This bill substantially amends the following sections of the Florida Statutes: 562.11 and 856.015.

II. Present Situation:

Selling, Giving, or Serving Alcoholic Beverages to Minors

Section 562.11(1)(a)(1), F.S., provides that “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 or to permit a person under 21 years of age to consume such beverages on the licensed premises.” The section also provides a second degree misdemeanor for a person that violated this section. Second degree misdemeanor penalties include potential incarceration up to 60 days in jail² and/or a fine not exceeding \$500.³

Section 562.11(1)(c), F.S., provides a complete defense to any civil action against a licensee who violates s. 562.11(1)(a)(1), F.S., if the minor “falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage and the appearance of the person was such that an ordinarily prudent person would believe him or her to be of legal age to purchase or consume the alcoholic beverage and if the licensee carefully checked one of the following:”

- A drivers license;
- An identification card issued under the provisions of s. 322.051, F.S.;
- A comparable identification card issued by another state which indicates the person’s age;
- A passport; or
- A United States Uniformed Services Identification Card.

Some courts have interpreted s. 562.11(1)(a), F.S., to apply only to providing alcohol to a minor at a licensed location rather than at a residence or another location.⁴

Open House Parties

Section 856.015(2), F.S., states that “No person having control of any residence shall allow an open house party to take place at said residence if any alcoholic beverage or drug is possessed or consumed at said residence by any minor where the person knows that an alcoholic beverage or drug is in possession of or being consumed by a minor at said residence and where the person fails to take reasonable steps to prevent the possession of consumption of the alcoholic beverage or drug,” and s. 856.015(4), F.S. states that a violation of s. 856.015(2), F.S., is a second degree

² s. 775.082(4)(b), F.S.

³ s. 775.083(1)(e), F.S.

⁴ See *United States Automobile Association v. Butler*, 359 So.2d 498 (4th DCA 1978).

misdeemeanor. Second degree misdemeanor penalties include potential incarceration up to 60 days in jail⁵ and/or a fine not exceeding \$500.⁶

Section 856.015(1), F.S., defines “minor” to mean a person not legally permitted by reason of age to possess alcoholic beverages, and “person” as anyone 18 years of age or older. In Florida, it is unlawful for any person younger than 21 years of age to possess alcoholic beverages.⁷

The term “open house party” is defined to mean “a social gathering at a residence.”⁸ “Control” is defined as the “authority or ability to regulate, direct, or dominate.”⁹ “Residence” is defined to include a “home, apartment, condominium or other dwelling unit.”¹⁰ The statute exempts the use of alcoholic beverages at legally protected religious observances or activities.¹¹

The Florida Supreme Court in *State v. Manfredonia*,¹² while ruling that s. 856.015, F.S. was not unconstitutionally vague, articulated the following elements that the State must establish beyond a reasonable doubt in order to convict a person under s. 856.015(4), F.S.:

- an adult in control of the premises *knowingly* allows a social gathering to take place there;
- the possession or consumption of alcoholic beverages or controlled substances *by one or more minors* occurs during the gathering;
- the adult in control *has actual knowledge* of the possession or consumption of alcoholic beverages or controlled substances by the minors; and
- the adult in control: (a) allows the party to continue and (b) fails to take *any reasonable steps* to prevent the possession or consumption.¹³

The Court stated that, “In essence, the State has the heavy burden of proving beyond a reasonable doubt that the adult in charge stood by and *did nothing* in the face of the adult's actual knowledge of the minor's consumption or possession of alcohol or controlled substances.”¹⁴

Under current law, if the State is able to meet the heavy burden that was articulated in *State v. Manfredonia*,¹⁵ then the person would be guilty of a second degree misdemeanor.

III. Effect of Proposed Changes:

The bill amends present law to make a second or subsequent violation of s. 562.11(1)(a)(1), F.S., a first degree misdemeanor if violated within a year of the first violation.

⁵ s. 775.082(4)(b), F.S.

⁶ s. 775.083(1)(e), F.S.

⁷ s. 562.111, F.S.

⁸ s. 856.015(1)(e), F.S.

⁹ s. 856.015(1)(b), F.S.

¹⁰ s. 856.015(1)(g), F.S.

¹¹ s. 856.015(3), F.S.

¹² *State v. Manfredonia*, 649 So.2d 1388 (Fla. 1995).

¹³ *Id.* at 1390.

¹⁴ *Id.* at 1391.

¹⁵ *State v. Manfredonia*, 649 So.2d 1388 (Fla. 1995).

If a person were to sell, give, or permit a person under 21 years of age to be served an alcoholic beverage on a licensed premises for a second or subsequent time, within a year of the first of prior violation, the person would be charged with a first degree misdemeanor. First degree misdemeanor penalties include potential incarceration up to 1 year in jail¹⁶ and/or a fine not exceeding \$1000.¹⁷ Under current law, the charge would be a second degree misdemeanor with penalties that include potential incarceration up to 60 days in jail¹⁸ and/or a fine not exceeding \$500.¹⁹

The bill also amends s. 562.11, F.S., to include a complete defense to s. 562.11(1)(a)(1), F.S., if:

- The buyer or recipient of the alcoholic beverage falsely evidenced that he or she was 21 years of age or older,
- The appearance of the buyer or recipient was such that an ordinarily prudent person would believe him or her to be 21 years of age or older, and
- The person carefully checked the buyer or recipient's identification card, acted in good faith and relied 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.

The bill would allow a person to utilize the similar defense for civil actions against the person in s. 562.11(1)(c), F.S., for criminal defense as well.

The two changes to s. 562.11, F.S., mirror the language currently in s. 569.101, F.S., entitled "Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age."

The bill amends s. 856.015(4), F.S., to provide a first degree misdemeanor penalty for a person who violates s. 856.015(2), F.S., which states that "No person having control of any residence shall allow an open house party to take place at said residence if any alcoholic beverage or drug is possessed or consumed at said residence by any minor where the person knows that an alcoholic beverage or drug is in possession of or being consumed by a minor at said residence and where the person fails to take reasonable steps to prevent the possession of consumption of the alcoholic beverage or drug."

If the state is able to establish beyond a reasonable doubt the elements articulated in *State v. Manfredonia*,²⁰ then the person would be guilty of a first degree misdemeanor. First degree misdemeanor penalties include potential incarceration up to 1 year in jail²¹ and/or a fine not exceeding \$1000.²² Under current law, the charge would be a second degree misdemeanor with

¹⁶ s. 775.082(4)(a), F.S.

¹⁷ s. 775.083(1)(d), F.S.

¹⁸ s. 775.082(4)(b), F.S.

¹⁹ s. 775.083(1)(e), F.S.

²⁰ *State v. Manfredonia*, 649 So.2d 1388 (Fla. 1995).

²¹ s. 775.082(4)(a), F.S.

²² s. 775.083(1)(d), F.S.

penalties that include potential incarceration up to 60 days in jail²³ and/or a fine not exceeding \$500.²⁴

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

There may be additional revenues derived from the increase in penalties under this bill.

B. Private Sector Impact:

The bill increases the penalty under s. 856.015(4), F.S., and s. 562.11(1)(a)(1), F.S., to a first degree misdemeanor.²⁵ The change in penalty for violating the sections would increase the potential fine from \$500 to \$1000 and the potential jail time from 60 days to 1 year.

C. Government Sector Impact:

The bill creates a first degree misdemeanor penalty. A first degree misdemeanor carries a potential jail sentence of not more than one year. Persons serving a jail sentence of one year or less are housed in county jails, not state prisons. Thus, this bill may have an impact on county jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²³ s. 775.082(4)(b), F.S.

²⁴ s. 775.083(1)(e), F.S.

²⁵ The increase in penalty for s. 562.11(1)(a)(1), F.S., is for the second and any subsequent violations within a one year period.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
