

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 415 Selling, Giving, or Serving Alcoholic Beverages to Persons Under 21
Years of Age

SPONSOR(S): Randolph

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

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|---------------|----------------|-----------------------|
| 1) | Public Safety & Domestic Security Policy Committee | 7 Y, 0 N | Krol | Kramer |
| 2) | Insurance, Business & Financial Affairs Policy Committee | | | |
| 3) | Criminal & Civil Justice Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Section 562.11(1)(a)1., F.S., provides a second degree misdemeanor penalty for a person who sells, gives, serves, or permits to be served alcoholic beverages 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.

HB 415 makes it a first degree misdemeanor for a second or subsequent violation of s. 562.11(1)(a)1., F.S., within a year of the first violation.

HB 415 creates a complete defense for any person who violates s. 561.11(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.

This bill may have a county jail impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Currently s. 562.11(1)(a)1., F.S., provides a second degree misdemeanor¹ penalty for a person who sells, gives, serves, or permits to be served alcoholic beverages² 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.³

The bill makes it a first degree misdemeanor⁴ for a second or subsequent violation of s. 562.11(1)(a)1., F.S., within a year of the first violation.

As an additional penalty, s. 562.11(1)(a)2., F.S., requires the court to order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license or

¹ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine ss. 775.082 and 775.083, F.S.

² 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."

³ 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.

⁴ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine ss. 775.082 and 775.083, F.S.

driving privilege pursuant to s. 322.057, F.S.,⁵ of any person who violates s. 562.11(1), F.S. Alcoholic beverage licensees and employees or agents of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of his or her license, employment, or agency are exempt from this penalty.

Section 562.11(1)(c), F.S., provides that an alcoholic beverage licensee who violates the prohibition in s. 562.11(1)(a), F.S., has a complete defense to any civil action, except for any administrative action by the division⁶ under the Beverage Law,⁷ if at the time the alcoholic beverage was sold, given, served, or permitted to be served:

- The person falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage;
- 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;
- The licensee carefully checked one of the person's identification cards;
- The licensee acted in good faith and in reliance upon the representation and the appearance of the person in the belief that he or she was of legal age to purchase or consume the alcoholic beverage.

The bill provides a complete defense for any person charged with a violation of 562.11(1)(a)1., F.S. The complete defense described in the bill is identical to the defense to any civil action provided in s. 562.11(1)(c), F.S. relating to licensees.⁸

This bill provides an effective date of July 1, 2009.

B. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S.; an act 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, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁵ Section 322.057, F.S., provides the procedures for revocation or suspension of the driver's license for persons found guilty of violating s. 562.11(1)(a), F.S. It authorizes a suspension of not less than six months and not more than one year for a first violation and of two years for a subsequent violation.

⁶ Section 561.01(1), F.S., defines the term as the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

⁷ Section 561.01(6), F.S., defines the term "the Beverage Law" to mean this chs. 561, 562, 563, 564, 565, 567, and 568.

⁸ The complete defense created by HB 417 mirrors the complete defense offered in s. 569.101, F.S., an act relating to selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age.

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill creates a first degree misdemeanor penalty. This may have a county jail impact.

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:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

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. The bill does not alter the law on this issue.

In their 2007 Interim Project,⁹ the Senate Committee on Regulated Industries discussed the issue as follows.

"In *United Services Automobile Association v. Butler*¹⁰ (*Butler*), the underage sale, delivery or service prohibition in s. 562.11, F.S., was interpreted as being limited to violations that occur on alcoholic beverage licensed locations and not applicable to instances that occur at locations that are not licensed to serve alcoholic beverage.

Based upon discussions with several State Attorney offices across the state, it appears that s. 562.11(1)(a), F.S., is not being interpreted consistently between judicial circuits. Some State Attorney offices interpret the provision as applicable to violations that occur only on licensed alcoholic beverage locations, while other offices interpret the provision more broadly to include both licensed and

⁹ "Underage Drinking and Alcohol Abuse on University and College Campuses," Report 2007-135.

¹⁰ *United Services Automobile Association v. Butler*, 359 So.2d 498 (Fla. 4th DCA 1978).

unlicensed locations. According to the division, this provision is also not interpreted consistently among the agency's district offices.

In instances involving an adult who gives an alcoholic beverage to a child under 18 years of age at a non-licensed location, jurisdictions that follow the *Butler* decision can use s. 827.04, F.S., to charge the adult with a first degree misdemeanor violation of contributing to the delinquency of a child. This is a greater penalty than the second degree misdemeanor offense in s. 562.11(1)(a), F.S.

When an adult serves an alcoholic beverage to another adult who is less than 21 years of age, jurisdictions that follow the *Butler* decision may rely on s. 777.011, F.S., to charge the adult as a principal in the first degree. This violation charges the person who gives the alcohol to the underage person with aiding and abetting the person to illegally possess the alcoholic beverage. A violation of s. 777.011, F.S., as a principal in the first degree for a violation of underage possession in [s. 562.111(1), F.S.,] constitutes a second degree misdemeanor.

The lack of clarity in s. 562.11(1)(a), F.S., regarding whether a violation of this section is limited to alcoholic beverage licensed locations and the inconsistent interpretation of this provision across the state, may contribute to the inequitable application of criminal penalties. For example, an adult may be charged with a second degree misdemeanor violation of s. 562.11(1)(a), F.S., while another adult in a different jurisdiction but with the same circumstances may be charged with a first degree misdemeanor violation of contributing to the delinquency of a child under s. 827.04, F.S.”

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES