

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 Criminal and Civil Justice Appropriations Committee

BILL: CS/SB 1068

INTRODUCER: Criminal Justice Committee and Senators Altman and Fasano

SUBJECT: Alcoholic Beverages/Persons Under 21 Years of Age

DATE: April 14, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/1 amendment
2.	Dugger	Cannon	CJ	Fav/CS
3.	Sadberry	Sadberry	JA	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/>	Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/>	Technical amendments were recommended
	<input type="checkbox"/>	Amendments were recommended
	<input type="checkbox"/>	Significant amendments were recommended

I. Summary:

The bill creates a first degree misdemeanor for a subsequent violation within one year of a prior conviction for the sale or delivery of alcoholic beverages to a person under 21 years of age on the premises of an alcoholic beverage licensee. A first degree misdemeanor carries a jail sentence not to exceed one year as well as a fine not to exceed \$1,000. Under current law, a person who sells or delivers alcoholic beverage to a person under the age of 21 on an alcoholic beverage licensed premises is subject to a second degree misdemeanor, which carries a term of imprisonment not to exceed 60 days and a fine not to exceed \$500.

The bill also creates a complete defense for any person who violates the prohibition against the sale or delivery of an alcoholic beverage to a person under 21 years of age on an alcoholic beverage licensed premises. The defense applies 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 effective date of the bill is July 1, 2010.

This bill substantially amends section 562.11, Florida Statutes.

II. Present Situation:

Section 562.11(1)(a)1., 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.¹

Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed \$500.

The courts are required to order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege pursuant to s. 322.057, F.S., of any person who violates the sale to persons under 21 years of age prohibition in s. 562.11(1), F.S. This penalty does not apply to alcoholic beverage licensees and any 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.²

Section 562.11(1)(b), F.S., prohibits a licensee or his or her agents from providing alcoholic beverages to an employee younger than 21 years of age except as provided in ss. 562.111 and 562.13, F.S.,³ or allowing an underage employee to consume alcoholic beverages on the premises while in the scope of employment. A licensee⁴ or his or her agent convicted of violating this provision is guilty of a misdemeanor of the first degree punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.

Section 562.11(1)(c), F.S., provides a complete defense for any alcoholic beverage licensee who violates the prohibitions in s. 562.11(1)(a), F.S. The defense also does not apply to any criminal prosecution. The defense is limited to civil action for the violation. The defense does not apply to any administrative action by the division under the Beverage Law. The defense applies, if:

¹ Section 561.01(11), F.S., defines licensed premises to include "not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch . . ."

² Section 562.11(1)(a)2., F.S.

³ These sections provide exceptions for employment and for tastings of alcoholic beverages by students during class who are at least 18 years of age and the tasting is part of the educational curriculum.

⁴ Section 561.01(14), F.S., defines licensee "as legal or business entity, person, or persons that hold a license issued by the division and meet the qualifications set forth in s. 561.15."

- At the time the alcoholic beverage was sold, given, served, or permitted to be served, the person to whom the alcoholic beverage was sold, given, or served falsely provided false evidence that he or she was of legal age to purchase or consume the alcoholic beverage;
- The appearance of the person must also have been 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 must have carefully checked one of the specified forms of identification; and
- The licensee must have acted in good faith and relied upon the representation and appearance of the person in the belief that he or she was of legal age to purchase or consume the alcoholic beverage.

Section 562.11(1)(c), F.S., specifies the following forms of identification which the alcoholic beverage licensee may rely upon for the sale or service of alcoholic beverages:

a driver's license, an identification card issued under the provisions of s. 322.051 or, if the person is physically handicapped as defined in s. 553.45(1), a comparable identification card issued by another state which indicates the person's age, a passport, or a United States Uniformed Services identification card...

Section 553.45, F.S., was repealed by s. 4, ch. 93-183, L.O.F., and the term "physically handicapped" does not appear to be defined in the Florida Statutes.

The prohibition in s. 562.11(1), F.S., is limited to violations that occur on alcoholic beverage licensed premises. The prohibition does not apply to instances in which a person furnishes an alcoholic beverage to a person under legal age at locations that are not licensed to serve alcoholic beverages.⁵ However, this interpretation of the prohibition in s. 562.11(1), F.S., is not consistently or uniformly applied throughout the state.⁶

If an alcoholic beverage licensee sells or gives an alcoholic beverage to a person under the age of 21, the alcoholic beverage licensee may be fined and the license suspended, or revoked.⁷ Fines may not exceed \$1,000 for violations arising out of a single transaction.⁸

Section 562.11(2), F.S., prohibits a person from misrepresenting or misstating his or her age or the age of another person for the purpose of inducing any alcoholic beverage licensee or his or her agents or employees to sell, give, serve, or deliver any alcoholic beverages to a person under 21 years of age. It also prohibits any person under 21 years of age to purchase or attempt to purchase alcoholic beverages. Any person convicted of violating this subsection is guilty of a misdemeanor of the second degree. Any person under the age of 17 years is within the jurisdiction of the circuit court and is treated as a juvenile delinquent.

⁵ See *United Services Automobile Association v. Butler*, 359 So.2d 498 (Fla. 4th DCA 1978).

⁶ See *Underage Drinking and Alcohol Abuse on University and College Campuses*, Interim Report 2007-135, Florida Senate Committee on Regulated Industries, November 2006.

⁷ Section 561.29(1)(a), F.S.

⁸ Section 561.29(3), F.S.

Section 562.111(1), F.S., prohibits a person under 21 years of age from having an alcoholic beverage in his or her possession. Section 562.111, F.S., exempts persons 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 years convicted of violating this section is guilty of a misdemeanor of the second degree. A subsequent conviction is a misdemeanor of the first degree.

III. Effect of Proposed Changes:

The bill amends s. 562.11(1), F.S., to provide a first degree misdemeanor penalty for a subsequent violation of s. 562.11(1)(a)1., F.S., within one year of a prior conviction. A first-degree misdemeanor carries a jail sentence not exceeding one year as well as a fine not exceeding \$1,000.

The bill provides a complete defense for any person charged with a violation of s. 562.11(1)(a)1., F.S. The complete defense described in the bill is identical to the defense that may be used by alcoholic beverage licensees in any civil action, as provided in s. 562.11(1)(c), F.S. However, the defense provided by the bill is not limited to civil actions.

The bill includes similar forms of identification specified in s. 562.11(1)(c), F.S., but the bill does not reference s. 553.45(1), F.S., which was repealed by s. 4, ch. 93-183, L.O.F., and it also does not reference identification cards for persons who are physically handicapped.

The first degree misdemeanor penalty in the bill for an offense within one year of a prior conviction is also similar to the current first degree misdemeanor penalty for delivering tobacco products to an underage person (under 18 years of age) within one year of a prior offense.

The bill provides an effective date of July 1, 2010.

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an indeterminate fiscal impact upon county jails as a result of the increased misdemeanor penalty.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 7, 2010:

Provides that the enhanced penalty will apply one year after a previous “conviction,” rather than a previous “violation.”

B. Amendments:

None.