

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 33 Selling, Giving, or Serving Alcoholic Beverages to Persons Under 21 Years of Age

SPONSOR(S): Public Safety & Domestic Security Policy Committee; Randolph and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1068

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	11 Y, 0 N, As CS	Krol	Cunningham
2)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 0 N	Livingston	Cooper
3)	Criminal & Civil Justice Policy Council	15 Y, 0 N	Krol	Havlicak
4)				
5)				

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages.

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 premises of an alcoholic beverage licensee.

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 committed within a year of a prior conviction.

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.

The bill may have a minimal fiscal impact upon county governments because of potential jail bed impact.

The effective date of the bill is July 1, 2010.

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:

Present Situation

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law.

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.

Section 561.01(11), F.S., defines "licensed premises" to mean, in part:

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, in addition to that included or designated by general law. The area embraced within the sketch may include a sidewalk or other outside area which is contiguous to the licensed premises. When the sketch includes a sidewalk or other outside area, written approval from the county or municipality attesting to compliance with local ordinances must be submitted to the division to authorize inclusion of sidewalks and outside areas in licensed premises. The division may approve applications for temporary expansion of the licensed premises to include a sidewalk or other outside area for special events...

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

¹ Sections 775.082 and 775.083, F.S. provide that a second degree misdemeanor carries a penalty of a jail sentence of not more than 60 days and a fine of not more than \$500.

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."

the division under the beverage law, 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; and
- 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.

Effect of Proposed Changes

The bill provides a first degree misdemeanor³ penalty for a subsequent violation of s. 562.11(1)(a)1., F.S., within a year of a prior conviction. This is similar to the penalty that presently exists for distributing tobacco products to minors (under the age of 18 years).⁴

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.⁵

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

B. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S., to make a second or subsequent violation of s. 562.11(1)(a)1., F.S., a first degree misdemeanor if committed within a year of a prior conviction and creates criteria for a complete defense for any person who violates s. 562.11(1)(a), F.S.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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.

³ Section 775.082 and 775.083, F.S. provide that a first degree misdemeanor carries a jail sentence not exceeding one year as well as a fine not exceeding \$1,000.

⁴ Section 569.101, F.S., provides a first degree misdemeanor for the second violation of distribution of tobacco products to minors.

⁵ The complete defense created by CS/HB 33 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Underage drinking in Florida was estimated to result in costs of nearly \$3.073 billion in 2007.⁶ Nearly 10% of 6th graders and more than 48% of 12th graders reported using alcohol in the past month with approximately one out of six Florida students (16.4%) reported binge drinking within the past two weeks.⁷ Violent crime accounted for 49% of the total cost of underage drinking in Florida, followed by motor vehicle crashes at 21%.⁸ Additionally, 10.2% of all alcohol-related crashes and 10.6% of fatal alcohol-related crashes involved a driver less than 21 years of age.⁹ Specifically, underage drinking impose costs on the public through insurance rates, noninsured costs to employers, noninsured losses (medical & property), and Medicaid and other public programs, as well as pain and suffering for family members and victims.¹⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On January 12, 2010, the Public Safety & Domestic Security Policy Committee adopted an amendment that applies the first degree misdemeanor penalty for a second or subsequent violation if that violation occurs within one year after a prior conviction rather than "a violation" as was referenced in the bill as originally filed. The bill was passed out of committee unanimously as a committee substitute.

This analysis reflects the committee substitute.

⁶ Popovici, I., Davalos, M.E., McColliser, K.E., and French, M.T. (2009) Economic Costs of Underage Drinking in Florida.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Miller, Ted R., David T. Levy, Rebecca S. Spicer, and Dexter M. Taylor. Societal Costs of Underage Drinking. Journal of Studies on Alcohol, 67(4) 519-528, 2006.