

**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:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	11 Y, 0 N, As CS	Krol	Cunningham
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.

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 fiscal impact upon county governments because of potential jail bed impact.

The bill provides an effective date of 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:

##### Background

Underage drinking in Florida was estimated to result in costs of nearly \$3.073 billion in 2007.<sup>1</sup> 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.<sup>2</sup> Violent crime accounted for 49% of the total cost of underage drinking in Florida, followed by motor vehicle crashes at 21%.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

##### Proposed Changes

Currently s. 562.11(1)(a)1., F.S., provides a second degree misdemeanor<sup>6</sup> penalty for a person who sells, gives, serves, or permits to be served alcoholic beverages<sup>7</sup> 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.

The bill amends current law and provides a first degree misdemeanor<sup>8</sup> 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.<sup>9</sup>

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<sup>1</sup> Popovici, I., Davalos, M.E., McColliser, K.E., and French, M.T. (2009) Economic Costs of Underage Drinking in Florida.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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."

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 division<sup>10</sup> under the Beverage Law,<sup>11</sup> 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.<sup>12</sup>

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

#### 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. 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:

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<sup>8</sup> 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.

<sup>9</sup> Section 569.101, F.S. provides a first degree misdemeanor for the second violation of distribution of tobacco products to minors.

<sup>10</sup> 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.

<sup>11</sup> Section 561.01(6), F.S., defines the term "the Beverage Law" to mean this Ch. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>12</sup> The complete defense created by 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.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### 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:

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### Clarity of Proposed Change

The bill provides an absolute defense for persons violating the section if certain conditions are met. At present, this absolute defense exists for licenses in civil actions. The bill provides this defense for any “person”—a much broader term than “licensee” and does not limit the defense to civil actions. It is unclear whether the bill’s intent is to provide this defense in all cases or only in certain actions. Courts may interpret this provision differently; if the intent is to provide an absolute defense in all cases, clearly expressing this intent is suggested. Additionally, if this is the intent of the bill, then the provision in current law providing for the absolute defense in civil actions for licensees appears to be unnecessary.

#### Interpretation & Application of Current Law

Some courts have interpreted s. 562.1191(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 Interim Project,<sup>13</sup> the Senate Committee on Regulated Industries discussed the issue as follows:

“In [Butler],<sup>14</sup> 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

<sup>13</sup> “Underage Drinking and Alcohol Abuse on University and College Campuses,” Report 2007-135.

<sup>14</sup> *United Services Automobile Association v. Butler*, 359 So.2d 498 (Fla. 4th DCA 1978).

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 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. 562.11(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**

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.