

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 105 Open House Parties

**SPONSOR(S):** Goodson

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

| REFERENCE                        | ACTION    | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|----------------------------------|-----------|---------|--|
| 1) Criminal Justice Subcommittee | 14 Y, 1 N | Krol    | Cunningham                               |
| 2) Judiciary Committee           |           |         |  |

### SUMMARY ANALYSIS

Section 856.015, F.S., states that a person in control of a residence who allows an open house party to take place commits a second degree misdemeanor if they know a minor has possession of or consumed any alcoholic beverage or drug at their residence and the person fails to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.

HB 105 amends present law to make a second or subsequent violation of s. 856.015, F.S., a first degree misdemeanor.

This bill also provides that any violation of s. 856.015, F.S., which results in serious bodily injury or death of the minor, will be punishable by a first degree misdemeanor.

The bill does not appear to have a fiscal impact on state government; however, the bill could have an effect on county jails.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

In Florida, it is unlawful for any person younger than 21 years of age to possess alcoholic beverages.<sup>1</sup>

Section 856.015, F.S., states that a person<sup>2</sup> in control of a residence who allows an open house party<sup>3</sup> to take place commits a second degree misdemeanor if they know a minor<sup>4</sup> has possession of or consumed any alcoholic beverage<sup>5</sup> or drug<sup>6</sup> at their residence and the person had failed to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.<sup>7</sup> A second degree misdemeanor is punishable by up to 60 days in jail and/or a fine not exceeding \$500.<sup>8</sup>

The Florida Department of Law Enforcement reported the following arrests for a violation of s. 856.015, F.S.: 157 in 2008, 230 in 2009 and 174 for 2010.<sup>9</sup>

##### **Proposed Changes**

HB 105 amends present law to make a second or subsequent violation of s. 856.015, F.S., a first degree misdemeanor, which is punishable by up to 1 year in jail and/or a fine not to exceed \$1000.<sup>10</sup>

This bill also provides that any violation of s. 856.015, F.S., which results in serious bodily injury, as defined in s. 316.1933, F.S.,<sup>11</sup> or death of the minor, is a first degree misdemeanor.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 856.015, F.S., relating to open house parties.

Section 2. Provides an effective date of July 1, 2011.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

See "Fiscal Comments."

##### 2. Expenditures:

See "Fiscal Comments."

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<sup>1</sup> Section 562.111, F.S.

<sup>2</sup> Section 856.015(1)(f), F.S., defines "person" as "an individual 18 years of age or older."

<sup>3</sup> Section 856.015(1)(e), F.S., defines "open house party" as "a social gathering at a residence."

<sup>4</sup> Section 856.015(1)(d), F.S., defines "minor" as "an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

<sup>5</sup> Section 856.015(1)(a), F.S., defines "alcoholic beverage" as "distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of s. 561.01(4)(b)."

<sup>6</sup> Section 856.015(1)(c), F.S., defines "drug" as "a controlled substance, as that term is defined in ss. 893.02(4) and 893.03, F.S."

<sup>7</sup> Section 856.015(3), F.S., provides an exemption for the use of alcoholic beverages at legally protected religious observances or activities.

<sup>8</sup> Sections 775.082, and 775.083, F.S., respectively.

<sup>9</sup> Florida Department of Law Enforcement's Statistical Analysis Center, extracted January 1, 2011.

<sup>10</sup> Sections 775.082, and 775.083, F.S., respectively.

<sup>11</sup> Section 316.1933(b), F.S., defines the term "serious bodily injury" as "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

The bill creates the penalty of a first degree misdemeanor for a second or subsequent violation of s. 856.015, F.S. The change in penalty for a second or subsequent violation would increase the potential fine from \$500 to \$1000 and the potential jail time from 60 days to 1 year.

The bill also creates a penalty of a first degree misdemeanor if a violation of s. 856.015, F.S., results in seriously bodily injury or death of the minor.

The Florida Department of Law Enforcement reported the following arrests for a violation of s. 856.015, F.S.: 157 in 2008, 230 in 2009 and 174 for 2010.

This bill could have an impact on local jails.

**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:**

1. In subsection 5 it is unclear who "the minor" refers to.
2. Currently, the bill has an effective date of July 1, 2011. Generally, bills that impose criminal penalties are effective on October 1 so as to give adequate notice to the public, state attorneys, public defenders, etc.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**