

**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 Justice Committee

BILL: SB 746

INTRODUCER: Senator Altman

SUBJECT: Open House Parties

DATE: March 14, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young	Imhof	RI	<b>Favorable</b>
2.	Dugger	Cannon	CJ	<b>Pre-Meeting</b>
3.			BC	
4.				
5.				
6.				

**I. Summary:**

This bill amends s. 856.015, F.S., to enhance the penalty against a person violating, for a second or subsequent time, the prohibition against knowingly hosting an open house party where alcohol or drugs are possessed or consumed by a minor without having taken reasonable steps to prevent such possession or consumption. The penalty increases from a second degree misdemeanor (punishable by up to 60 days in jail and/or a fine not exceeding \$500) to a first degree misdemeanor (punishable by up to one year in jail and/or a fine not exceeding \$1,000).

The bill further amends s. 856.015, F.S., to provide that anytime there is a violation of the open house party law that causes or contributes to causing serious bodily injury or death, it is also a misdemeanor of the first degree.

The bill provides a July 1, 2011 effective date.

This bill substantially amends section 856.015, of the Florida Statutes:

**II. Present Situation:**

Section 856.15, F.S., provides that it is a second degree misdemeanor for a person who has control of a residence to allow an open house party to take place at the residence if that person has knowledge that alcohol or drugs are being possessed or consumed by a minor and the person fails to take reasonable steps to prevent the possession or consumption.

A second degree misdemeanor is punishable as provided under s. 775.082, F.S., or s. 775.083, F.S. Section 775.082, F.S., provides that a second degree misdemeanor is punishable by

incarceration for not longer than 60 days in jail.<sup>1</sup> Section 775.083, F.S., provides that a second degree misdemeanor can also be punishable by a fine of not more than \$500.<sup>2</sup>

Section 856.015(1), F.S., defines the following terms:

- “Open house party” means a social gathering at a residence;
- “Control” means the authority or ability to regulate, direct, or dominate;
- “Residence” means a home, apartment, condominium or other dwelling unit;
- “Minor” means a person not legally permitted by reason of age to possess alcoholic beverages; and
- “Person” means anyone 18 years of age or older.

It is unlawful for any person younger than 21 years of age to possess alcoholic beverages in the state of Florida.<sup>3</sup> This means that the penalties for holding an open house party where persons under the age of 21 possess or consume an alcoholic beverage applies to any person 18 years of age or older.

Section 856.015(3), F.S., provides an exemption for the use of alcoholic beverages at legally protected religious ceremonies or observances.

The prohibition requires the person in control of the residence have actual knowledge that a minor is in possession of or consuming an alcoholic beverage or drugs. Actual knowledge is defined as “direct and clear knowledge.”<sup>4</sup> As a result, it is not enough that the person in control of the residence should have known of the possession or consumption, but instead must have “direct and clear” knowledge of the possession or consumption by a minor.

Further, the statute provides that the person in control of the residence must take reasonable steps to prevent the possession or consumption by a minor of an alcoholic beverage or drugs. This includes reasonable steps once the person has actual knowledge that a minor possesses or is consuming an alcoholic beverage or drugs. The Florida Supreme Court discussed this provision and held that the “adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof.”<sup>5</sup>

Currently, s. 856.015, F.S., does not address the liability of a person in control of an open house party after a person leaves the open house party and causes death or serious bodily injury due to the possession or consumption of alcoholic beverages.

“Serious bodily injury” is defined by s. 316.1933(1)(b), F.S., to mean “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.”

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<sup>1</sup> See s. 775.082(4)(b), F.S.

<sup>2</sup> See s. 775.083(1)(e), F.S.

<sup>3</sup> Section 562.111, F.S.

<sup>4</sup> Black's Law Dictionary (9th ed. 2009), knowledge (actual knowledge).

<sup>5</sup> See *State v. Manfredonia*, 649 So.2d 1388, 1391 (Fla. 1995).

**III. Effect of Proposed Changes:**

The bill amends subsection (4) of s. 856.015, F.S., to provide that a person who violates the prohibition for a second or subsequent time by knowingly hosting an open house party where minors possess or consume an alcoholic beverage or drugs and does not take reasonable steps to stop or prevent the action, is guilty of a misdemeanor of the first degree (punishable by up to one year in jail and/or a fine that does not exceed \$1,000<sup>6</sup>).

The bill also creates subsection (5) in s. 856.015, F.S., to provide that a person who violates the statute by knowingly hosting an open house party and that violation causes or contributes to causing serious bodily injury (as defined in s. 316.1933, F.S.) or death, is guilty of a misdemeanor of the first degree.

**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 jails as a result of the enhanced misdemeanor penalties.

**VI. Technical Deficiencies:**

None.

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<sup>6</sup> See s. 775.082(4)(a) and s. 775.083(1)(d), F.S.

**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.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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