

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 5 Open Parties

**SPONSOR(S):** Judiciary Committee; Criminal Justice Subcommittee; Pilon

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Judiciary Committee	17 Y, 0 N, As CS	Cox	Havlicak

### SUMMARY ANALYSIS

Section 856.015, F.S., makes it a second degree misdemeanor for a person who has control of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

The term "open house party" is defined as "a social gathering at a residence", and the term "residence" is defined as a "home, apartment, condominium, or other dwelling unit." The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

The bill amends s. 856.015, F.S., to:

- Broaden the scope of criminal liability to include open parties that are held on "property" and defines this term as a "residence, vacant structure, or open acreage with or without a structure."
- Provide that a person "may not grant permission for an open party to take place at the property", rather than "allow" the open party to occur.

The bill expands the application of s. 856.015, F.S., to include vacant structures and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the misdemeanor penalties of s. 856.015, F.S., the bill may have a negative jail bed impact on local governments.

The bill is effective on October 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Section 856.015, F.S., makes it a second degree misdemeanor<sup>1</sup> for a person<sup>2</sup> who has control<sup>3</sup> of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor<sup>4</sup> and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.<sup>5</sup>

The term “open house party” is defined as “a social gathering at a residence,” and the term “residence” is defined as a “home, apartment, condominium, or other dwelling unit.”<sup>6</sup>

The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

There are other statutes currently in effect that relate to consumption or possession of alcohol by a minor. For example, s. 827.04, F.S., entitled “Contributing to the delinquency or dependency of a child”, makes it a first degree misdemeanor for “a person to commit an act which causes or tends to cause, encourage, or contribute to a child becoming a delinquent or dependent child or a child in need of services.” Case law related to this statute has held that providing alcohol or drugs to a minor does trigger criminal liability under this statute.<sup>7</sup>

#### **Effect of the Bill**

The bill amends s. 856.015, F.S., to broaden the scope of criminal liability to include open parties that are held on property other than a residence. Specifically, the bill prohibits a person who has control of a property to grant permission for an open party to take place at such property if:

- The person knows that an alcoholic beverage or drug will be or is in the possession of or will be or is being consumed by a minor at the property; and
- The person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

The bill defines the term “property” as a “residence, vacant structure, or open acreage with or without a structure.” The bill replaces references to “open house party” with “open party” and defines “open party” as “a social gathering at any property.”

The penalties remain unchanged.

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<sup>1</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

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

<sup>3</sup> Section 856.015(1), F.S., defines the term “control” as the authority or ability to regulate, direct, or dominate.

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

<sup>5</sup> Second or subsequent violations of the statute are first degree misdemeanors. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S. It is also a first degree misdemeanor if a violation causes or contributes to causing serious bodily injury, as defined in s. 316.1933, F.S., or death to the minor, or if the minor causes or contributes to causing serious bodily injury or death to another as a result of the minor’s consumption of alcohol or drugs at the open house party. Section 856.015(4) and (5), F.S.

<sup>6</sup> Section 856.015(1), F.S.

<sup>7</sup> See *Kito v. State*, 888 So.2d 114 (Fla. 4th DCA 2004). While the evidence was insufficient to uphold the conviction in this case, the Court was clear that a conviction for contributing to the delinquency of a minor can be sustained for an adult who knowingly allows a minor in their presence to possess or consume alcohol and/or drugs.

**B. SECTION DIRECTORY:**

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

Section 2. Provides an effective date of October 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill expands the application of s. 856.015, F.S., to include vacant structures and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the misdemeanor penalties of s. 856.015, F.S., the bill may have a negative jail bed impact on local governments.

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

Persons who have control of vacant structures or open acreage with or without structures are now subject to criminal penalties for violations of s. 856.015, F.S.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

“Control” is defined as “the authority or ability to regulate, direct, or dominate.” To date, this term has not been challenged. However, the bill expands the application of s. 856.015, F.S., to a vacant structure and open acreage with or without a structure. The element of “control” is an issue of fact.

Proving that a person had the “authority or ability to regulate or dominate” a vacant structure or open acreage in a criminal trial may be factually challenging.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 23, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified the definition of “property” by modifying the language to a “residence, vacant structure, or open acreage with or without a structure;” and
- Deleted the exception relating to restaurants and bars and created a new exception which states that s. 856.015, F.S., does not apply to the “use of alcoholic beverages on property where a minor child is accompanied by his or her parent or legal guardian who allows such use by the child.”

On February 5, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that a person may not *grant permission* for an open party to take place (rather than allow an open party to occur); and
- Removed an exception specifying that s. 856.015, F.S., does not apply to the “use of alcoholic beverages on property where a minor child is accompanied by his or her parent or legal guardian who allows such use by the child.”

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.